Decision **DRAFT DECISION OF ALJ PATRICK (Mailed 6/21/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Establish Market Values for and to Sell its Richmond-to-Pittsburg Fuel Oil Pipeline Utilities Code Sections 367(b) and 851. (U 39 M)	Application 00-05-035 (Filed May 15, 2000, amended May 6, 2004 and September 9, 2004.)
Application of San Pablo Bay Pipeline Company to Own and Operate the Richmond-to-Pittsburg Fuel Oil Pipeline and Hercules Pump Station as a Common Carrier Pipeline Corporation Pursuant to the Provisions of Public Utilities Code Sections 216 and 228.	Application 00-12-008 (Filed December 12, 2000, amended May 6, 2004 and September 9, 2004.)

OPINION GRANTING CONSOLIDATED APPLICATIONS

1. Summary

The Commission grants Pacific Gas and Electric Company (PG&E) authority pursuant to § 851 of the Pub. Util. Code[1] to sell its Richmond-to-Pittsburg Fuel Oil Pipeline (Pipeline Assets), and Hercules Pump Station with its 44.2 acres of land (Pump Station Assets). The Commission also grants San Pablo Bay Pipeline Company (SPBPC) authority to own and operate the Pipeline Assets as a common carrier pipeline corporation under §§ 216 and 228. As part of this sale and transfer, the Commission approves a plan whereby

[1] All statutory references are to the Public Utilities Code unless otherwise stated.

the Hercules Pump Station will be abandoned and removed from utility service, and the 44.2 acres of pump station land will be purchased by Santa Clara Valley Housing Group, Inc. (SCVHG) for likely development after remediation of contamination. Also, as part of the plan, the Commission approves the acquisition of SPBPC by Shell Pipeline Company LP (Shell) under § 854. This decision allocates the $16.7 million gain on sale of these assets on the basis of a 50/50 split between ratepayers and shareholders.

These proceedings are closed.

2. Procedural Summary

Following a prehearing conference (PHC) held on June 20, 2002, the processing of these consolidated Applications (A.) 00-05-035 and A.00-12-008 was held in abeyance due to various changed circumstances.[2] With the filing of the September 9, 2004, Second Amendment to A.00-05-035 and A.00-12-008, the final plan for the sale of these Pipeline Assets and Pump Station Assets emerged. Thereafter, on March 11, 2005, the Commission's Environmental Branch (Staff) issued a Final Mitigated Negative Declaration (Final MND) for the project as amended. On March 25, 2005, Chevron U.S.A. Inc. (Chevron) filed its renewed request for a hearing on the Final MND. On April 8, 2005, Applicants[3] filed their opposition and reply to Chevron's request for hearing. On May 11, 2005, Chevron's request was denied by a Ruling and Scoping Memo of Assigned Commissioner and Administrative Law Judge (ALJ), which concluded that this proceeding should be submitted for decision on the pleadings as filed.

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[2] For details, *see* Final MND, Appendix D, letter of Best, Best & Krieger dated January 12, 2005, pp. 13-15.

[3] PG&E, SPBPC, SCVHG, and Shell, (collectively, the Applicants).

3. First Amendment to A.00-05-035 and A.00-12-008 (Amendment)

Application (A.) 00-12-008, filed December 12, 2000, requested Commission authority for SPBPC to own and operate the Pipeline Assets and Pump Station Assets as a common carrier pipeline corporation, pursuant to §§ 216 and 228.[4] As of the date of the filing, Tosco Corporation (Tosco) and PG&E had executed a Purchase and Sale Agreement, and Tosco had formed a wholly-owned subsidiary, SPBPC, for the specific purpose of owning and operating the Pipeline Assets and Pump Station Assets as a common carrier pipeline corporation subject to the Commission's jurisdiction over public utilities.[5] During the pendency of the subject applications, changed circumstances caused PG&E, ConocoPhillips, and other interested parties including SCVHG[6] and Shell, to enter into various agreements between themselves that modify the transaction initially described in A.00-12-008 and, correspondingly, change the disposition and ultimate use of the Pipeline Assets and Pump Station Assets from that set forth in the original application. By amendment to the Richmond Pipeline Agreement, SPBPC, a newly formed

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[4] A.00-12-008 and A.00-05-035 were consolidated for decision by ruling of the assigned ALJ at the prehearing conference held on June 20, 2002.

[5] Subsequent to the filing of A.00-12-008, Phillips Petroleum Company (Philips) acquired certain assets of Tosco, including the rights and obligations attendant to Tosco's planned purchase of the Pipeline Assets and Pump Station Assets of PG&E. Thereafter, Phillips and Conoco Inc. merged to form ConocoPhillips Company (ConocoPhillips); and, as such, ConocoPhillips is the successor-in-interest to Tosco with respect to A.00-12-008, as set forth in the First Amendment to A.00-05-035 and A.00-12-008.

[6] SCVHG, which initially protested A.00-12-008, is a developer of residential housing, including existing and potential subdivisions in proximity to the facilities that are the subject of A.00-12-008.

Delaware limited liability company, will be the purchaser of the Pipeline Assets and Pump Station Assets from PG&E.[7] Pursuant to various other contractual arrangements, PG&E, ConocoPhillips, SCVHG, and Shell, agreed that, conditioned upon Commission approval, the transactions described below will occur in the following sequence:

1. ConocoPhillips, with PG&E's consent, will assign the Richmond Pipeline Agreement to SPBPC;
2. SCVHG will acquire ConocoPhillips' ownership interest in SPBPC;
3. PG&E and SPBPC will execute an amendment to the Purchase and Sale Agreement;
4. SPBPC will purchase the Pipeline Assets and Pump Station Assets from PG&E;
5. The Pump Station Assets, upon their transfer from PG&E to SPBPC, will be removed from public utility service;
6. SCVHG, as owner of SPBPC, will transfer the Pump Station Assets (including all related real property) from SPBPC to SCVHG;
7. Immediately after the Pump Station Assets have been transferred to SCVHG, or an affiliated entity, SCVHG's ownership interest in SPBPC and corresponding ownership and control of the Pipeline Assets will be transferred to Shell; and
8. SPBPC, as controlled by Shell and subject to the Commission's jurisdiction, will own, operate, and maintain the Pipeline Assets for the purpose of providing common carrier, pipeline transportation of crude oil, blackoils, and refined petroleum products. Unless SPBPC

[7] A pro forma copy of the referenced amendment to the Richmond Pipeline Agreement that will be executed upon Commission approval of this transaction was included as Attachment A to the First Amendment to the consolidated applications.

> seeks and gains approval from the Commission and/or any other relevant agencies, it would not be permitted to use the pipeline to transport products other than crude oil, black oils, and refined petroleum products.

Upon consummation of the transactions described above and receipt of all necessary Commission authorizations, Shell will control SPBPC and provide, through SPBPC, intrastate pipeline transportation services as a public utility subject to the Commission's jurisdiction, pursuant to §§ 216 and 228.

4. Identification of Applicants

ConocoPhillips, as successor-in-interest to Tosco, acquired ownership and control of SPBPC, which had been formed by Tosco for the specific purpose of owning and operating the Pipeline Assets and Pump Station Assets as a common carrier pipeline corporation that is subject to the Commission's jurisdiction over public utilities. SPBPC was formed as a Delaware corporation, but with the intervening changes in ownership, its corporate existence was terminated and SPBPC formed as a Delaware limited liability company, qualified to do business in California. As set forth in the First Amendment to the consolidated applications, San Pablo Bay Pipeline Company, the corporation, and SPBPC, the limited liability company, agree that SPBPC, the limited liability company, should be substituted as the applicant.

SPBPC is a Delaware limited liability company that is wholly-owned by ConocoPhillips, and was formed for the purpose of owning and operating the Pipeline Assets and Pump Station Assets as a common carrier pipeline corporation subject to the Commission's jurisdiction over public utilities. Copies of SPBPC's certificate of formation and certificate of qualification to do business in California are included as Attachment B to the First Amendment to the consolidated applications.

With PG&E's consent, ConocoPhillips, as successor to Tosco's rights and obligations under the Purchase and Sale Agreement, has granted the right to assign its related interests to SPBPC. In turn, by agreement with SCVHG, ConocoPhillips will, once specified conditions have been met, transfer its ownership interest in SPBPC to SCVHG.

SCVHG, a California corporation, is an affiliate of SCS Development Company, a California corporation, which has over 40 year's experience developing residential homes and neighborhoods in the Northern California region. SCVHG's principal place of business is in Santa Clara, California. SCVHG will own and control SPBPC only long enough to transfer ownership of the Pump Station Assets to itself or an affiliate. Immediately, SCVHG will transfer its ownership interest in SPBPC, including Pipeline Assets, to Shell.[8]

Shell is a Delaware limited partnership and a wholly-owned subsidiary of Shell Oil Products US, a unit of Shell Company. Shell is headquartered in Houston, Texas, and has regional offices in Los Angeles, among other places. Shell has been in the pipeline transportation business for over 80 years, operates approximately 13,000 miles of pipeline and owns or has an interest in approximately 28,000 miles of pipeline. Shell operates over 1,100 miles of pipelines transporting crude oil, gasoline, jet fuel, diesel fuel and other petroleum products in California. A significant portion of these Shell-owned California pipelines are owned by its affiliate Shell California Pipeline Company,

[8] The agreement between SCVHG and Shell, which, among other things, provides the purchase price for the Pipeline Assets and Pump Station Assets as required by Commission Rule 35, is identified as Attachment C to the Amended Application and was submitted, under seal with a motion requesting confidential treatment, granted by ALJ ruling dated May 11, 2004.

LLC. Shell California Pipeline Company, LLC is a pipeline company regulated by this Commission and has tariffs for its California pipelines on file with the Commission.

5. Pipeline History

PG&E constructed the pipeline and Hercules Pump Station in 1975 as part of a 42-mile long pipeline extending from the Chevron Refinery in Richmond to the Pittsburg and Contra Costa Power Plants. From 1976 to 1982, PG&E used the pipeline to transport low sulfur fuel oil from the refinery to the power plants. Beginning in 1982, PG&E reduced its use of fuel oil due to increased expenses and regulatory requirements, and thus ceased its permanent use of the pipeline. Since 1982, PG&E has maintained the pipeline to provide stand-by capability in case of natural gas supply interruptions or similar circumstances. After regular operations ceased, oil has moved through the pipeline as necessary to maintain the integrity of the pipeline; however, the last major movement of oil through the pipeline was in 1991.

In 1998, at the request of Union Pacific Rail Road (UPRR), PG&E abandoned in place a 4,000-foot long section of the pipeline in the city of Martinez to allow for installation of two additional railroad tracks and relocation of the Martinez Intermodal Rail Station. The isolated section is capped and filled with a cement slurry mix. To reconnect the pipeline, a 5,500-foot long section extending around the train station is necessary.

In 1999, PG&E sold its Pittsburg and Contra Costa Power Plants, including a 7-mile portion of pipeline between these two plants and associated pumping stations located at the plant sites to Mirant. Since the sale of these power plants, PG&E has not used the remaining 35 miles of pipeline and pump station in its daily operations.

6. CEQA Review

Because the Commission must decide whether or not to approve the PG&E and SPBPC applications, and because the applications may cause either direct or reasonably foreseeable indirect effects on the environment, the California Environmental Quality Act (CEQA) requires the Commission, acting as the lead agency, to consider the potential environmental impacts that could occur as the result of its decisions and to consider mitigation for any identified significant environmental impacts. Therefore, as required by CEQA, the Commission Staff issued a Draft Mitigated Negative Declaration (Draft MND) for this project. A total of eight comment letters were received from various agencies and organizations in response to the Draft MND. Staff's response to the substantive comments are contained in the Final MND issued March 11, 2005.

For purposes of CEQA, the "project" that is the subject of environmental review includes review of the proposed sale of PG&E's Pipeline Assets and Pump Station Assets to SPBPC. The project also includes SPBPC's proposal to own and operate the pipeline as a common carrier pipeline corporation, and to restrict the products that could be transported in the pipeline to crude oil, black oils, and refined petroleum products. The project includes construction of the 5,500-foot replacement pipeline segment, since such replacement is plainly a reasonably foreseeable consequence of the sale of the Pipeline Assets.

The substantive issues raised in the comment letters on the Draft MND, are addressed below.

A. Potential Development of Hercules Pump Station Property

It is anticipated that SCVHG will demolish the pump station and remediate the 44.2 acres of land on which the pump station is located to reuse the land for industrial, commercial and/or residential uses. The site is currently

zoned by the City of Hercules for industrial land use. In order to use the land for anything other than industrial land uses, SCVHG would need, at minimum, approval by the City of Hercules of a General Plan amendment and rezoning, among other discretionary land use entitlements. When such entitlements are sought, environmental review under CEQA will be required by the City of Hercules as the lead agency. In addition, environmental remediation (under the regulatory jurisdiction of the Department of Toxic Substances Control and the San Francisco Regional Water Quality Control Board) would be needed to reuse the pump station land. Since the requirements for remediation depend on the intended use of the property, the nature and extent of remediation will not be known until the intended use is finally determined. No application or plans have been submitted to the City of Hercules for development of the pump station property, at this time.

Since details associated with future development of the pump station property are largely unknown at this point, Staff concludes that such development is properly excluded from the project analyzed in the MND. Not only is the future use of the pump station property uncertain (*i.e.*, it could be used for residential or commercial uses or alternatively for industrial uses in accordance with the site's existing zoning), but the density and configuration of any future development of the pump station property – essential information needed in order to meaningfully analyze traffic impacts, air quality impacts, noise impacts, etc. – are also unknown at this point in the process. Thus, Staff concludes that this case is not analogous to the facts of *Laurel Heights Improvement Association v. Regents of the University of California*, 47 Cal.3e 376 (1988), cited by some commenters. The EIR at issue in *Laurel Heights* had only examined the impacts of the University's plan to devote a small portion of an office building

located in a residential neighborhood to laboratory facilities, even though there was "credible and substantial evidence" in the record of the University's intent eventually to occupy the entire building with biomedical research laboratories. The court held that the EIR was inadequate because it failed to discuss the clearly anticipated future uses of the building and the environmental effects of those uses. Here, by contrast, there is no evidence in the record of either the particular land use likely to be proposed by SCVHG (*e.g.* residential, commercial, industrial, open space or some combination) or the likely configuration or density (*e.g.* single-family homes versus apartment buildings) of such possible future land use. In *Laurel Heights,* the University itself was preparing an EIR on its own readily foreseeable plans for the building. In contrast, in the case of these Pump Station Assets, although SCVHG intends to develop the property, it would be meaningless for the Commission to speculate on SCVHG's eventual plan for the property.

The Final MND states that the potential environmental impacts associated with possible remediation and redevelopment of the pump station property would be fully analyzed in an environmental document prepared by the City of Hercules if and when such a proposal is submitted for City review. The City of Hercules would serve as the lead agency for such a project. In a June 2004 meeting with Staff, City indicated that in the event it was asked to review a proposal to change the land use of the pump station site or otherwise develop the site, it would likely prepare an EIR. We agree with Staff that the City is the proper entity to conduct such a review since it is the primary permitting agency for the land use entitlements needed for such a project. In addition, feasible mitigation measures and a reasonable range of alternatives will be explored for any significant environmental impacts in accordance with CEQA.

Thus, we agree with Staff's conclusion that the impacts of the remediation and redevelopment should be addressed in detail at the appropriate time, and mitigated as appropriate, through the project-level environmental document to be prepared by the City of Hercules if and when an actual development plan is devised and proposed.

B. Potential Tie-In Points and Pumping Station

Commenters have also expressed concerns that the MND does not address the environmental impacts associated with potential tie-in points and pumping station(s). As stated in the Final MND, with the uncertainty surrounding development of the pump station property, the details associated with potential tie-in or pumping stations are largely unknown. SPBPC has not applied for permission to construct any such facilities. Instead, after the transfer of ownership of the pipeline to SPBPC, and after transfer of SPBPC to Shell, SPBPC intends to determine how to adapt and use the pipeline and which particular crude oils, black oils, and refined petroleum products would be transported through the pipeline. This process entails a comprehensive, comparative evaluation of the overall technical, economic, and commercial feasibility of use of the pipeline for transporting various potential products. The need for and location of facilities such as tie-in points and pumping station(s) will not be known until SPBPC has completed this detailed evaluation process and determined what specific products it intends to transport in the pipeline. Indeed, as pointed out by Applicants, it is possible that no pumping station facilities would be needed at all. For instance, the pipeline could be operated without the use of a pump station if it is connected to an existing pump station located at one of the refineries at either end of the pipeline.

The Final MND concludes that until SPBPC has completed its intended, comprehensive evaluation process and determined what specific products it intends to transport in the pipeline, the analysis of tie-in points and future pump station(s), if any, would be too speculative and meaningless to evaluate under CEQA. The facts of this case are analogous to the facts of *National Parks and Conservative Association v. County of Riverside,* , 42 Cal.App.4th 1505 (1996). In *National Parks,* the court rejected claims that an EIR for a regional solid waste landfill was inadequate for failing to analyze the impacts of solid waste transfer stations that would sort, recycle, and compact the solid waste before sending it to the landfill. The court reasoned that obtaining more information on the transfer stations would not be meaningful or possible since the location and operators of the facilities were unknown. (42 Cal.App.4th at 1519.) Thus, the EIR was not required to contain an analysis of such facilities.

Likewise, the reasoning of the *National Parks* case applies with equal force to the tie-in points and pumping station facilities at issue here, since whether such facilities are needed, where they would be located, and their size and other construction details, are unknown at this time. As such, we agree with Staff's conclusion that the MND is not required to speculate as to the impacts associated with such facilities. If the ultimate use of the pipeline requires the construction of such facilities, SPBPC would likely need discretionary approvals from at least the following agencies in order to construct tie-in points or pumping station(s): Contra Costa County, the Bay Area Air Quality Management District, and the State Fire Marshal.

C. Proposed Use of Pipeline

Although the pipeline was originally constructed specifically for the purpose of transporting fuel oil, its Certificate of Public Convenience and

Necessity (CPCN) authorizes transportation of "oil, petroleum, and products thereof" (Decision (D.) 84448).[9] However, in the Second Amendment to the consolidated applications, dated September 9, 2004, SPBPC seeks authority to transport crude oil, black oils, and refined petroleum products. The Draft MND examines this proposal. Unless SPBPC seeks and gains approval (after undergoing environmental review) from the Commission and other relevant agencies, it could not use the pipeline to transport products other than crude oil, black oils, and refined petroleum products. Fuel oil and cutter stock, which were previously transported through the pipeline, fall under this definition, along with a wide range of other petroleum products.

D. Potential Environmental Impacts

The Final MND analyzes the potential impacts to the environment that would result from the sale of the Assets, the construction of the 5,500-foot replacement pipeline segment in Martinez, and operation of the pipeline by SPBPC. The MND, finds that approval of the consolidated applications would have no impact or less than significant effects in the following areas:

- Agriculture
- Land Use an and Planning
- Mineral Resources
- Population and Housing
- Recreation
- Mandatory Findings of Significance

[9] The existing CPCN will not need to be transferred to SPBPC. Under § 1001, companies whose operations are solely related to the transport of oil (*i.e.*, oil pipeline companies) are not required to obtain a CPCN, but must obtain common carrier status from the Commission prior to commencing operations.

The MND indicates that approval of the applications would result in potentially significant impacts in the areas of:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Hydrology
- Noise
- Public Services
- Transportation and Traffic
- Utilities and Service Systems

E. Mitigation and Monitoring

The Final MND concludes that each of the identified potentially significant impacts can be mitigated to avoid the impact or reduce it to a less than significant level. The mitigation measures presented in the Final MND have been agreed to by PG&E and SPBPC. A Mitigation Monitoring and Reporting Plan included in the Final MND as Appendix C, specifies how all mitigation measures will be implemented.

Upon Commission approval of SPBPC's, application for authority to own and operate the pipeline, SPBPC would be responsible for implementation of any mitigation governing both construction of the 5,500-foot replacement segment and future operation of the pipeline. Though other state and local agencies[10] would have permit and approval authority over the construction of

[10] Including the East Bay Regional Park District, the City of Martinez during construction, and the State Fire Marshal when the entire pipeline is ready to be placed in service.

the 5,500-foot replacement segment, the Commission would continue to act as the lead agency for monitoring compliance with all mitigation measures required by the Final MND. All approvals and permits obtained by SPBPC would be submitted to the Commission for mitigation compliance prior to commencing the activity for which the permits and approvals were obtained.

7. Chevron's Protest

On March 25, 2005, Chevron filed a renewed request for a hearing on the Final MND. Chevron disputes Staff's reliance on a Mitigated Negative Declaration for this project and contends that SPBPC must provide, through hearings or amended application, a final business plan, which includes identifying the location of all anticipated tie-ins, potential pumping stations (or how the pipeline can be returned to service without a pumping station), and other infrastructure or improvements required to return the pipeline to commercial operation before the Commission can grant its request for public utility status.

Chevron's request for a hearing was denied in the May 11, 2005 Ruling and Scoping Memo of Assigned Commissioner and ALJ. The ruling states, in part:

> "According to Chevron, '[A] hearing is necessary so that Chevron and other members of the public may present the reasons why Environmental Impact Report (EIR) is required prior to approval of the Application.' Chevron provides no other reason to support its argument that a hearing is necessary. The Final MND addresses this issue as follows:
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> > While it was determined that the proposed project could result in potentially significant environmental effects, mitigation measures were identified that would reduce those impacts to a less than significant level. The mitigation measures were agreed to by the project applicants

prior to the release of the MND for public review. The MND determined that the proposed project, as revised with the identified mitigation measures, would result in a less than significant effect on the environment. Therefore, a mitigated negative declaration is the appropriate CEQA document for this project. (Final MND, Response A-1, at pp. 5-7.)" (p.2)

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"Chevron's request for an evidentiary hearing is denied. Chevron cannot reasonably argue that environmental concerns are not covered by the Final MND. Chevron attests that it (and other interested parties) 'submitted comments on the Draft MND . . .' and that 'the Draft MND has been revised . . . in response to those comments.' Indeed, Chevron did file comments – 24 pages of single-spaced comments. And unquestionably, the Commission responded to those comments, devoting 21 pages of the Final MND to addressing all of the environmental issues raised by Chevron, including Chevron's allegation that an EIR was required. The Final MND addressed each environmental issue of concern to Chevron, if not to Chevron's liking. Chevron certainly did not identify in its Motion any neglected issue. . ." (p. 7.)

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"To support its contention that SPBPC must provide a final business plan and identify the location of tie-ins before the Commission can approve SPBPC's Application, Chevron cites numerous cases not applicable to pipeline corporations. Common carrier petroleum pipelines are not subject to the requirements set forth in Section 1001 regarding the need for specified public utilities to obtain a Certificate of

> Public Convenience and Necessity (CPCN) from the Commission as a prerequisite to the provision of public utility services. However, Chevron obscures this critical fact in arguing that the Commission should apply the same standards used to award CPCNs to other utilities in evaluating whether to grant public utility status to SPBPC. The Commission has established decisive precedents concerning the requirements that a pipeline corporation, such as SPBPC, must satisfy before the Commission will grant it public utility status. These precedents have not required an Applicant to establish the final details concerning how the Applicant will ultimately provide public utility services. Chevron cites none of these precedents." (p. 9).
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> " . . . Also, a total of eight comment letters from various agencies and organizations, including Chevron, were received in response to the Draft MND. These comments are addressed in the Final MND. Based on these filings, the record is sufficient for the Commission to address the Applications now before it. While Chevron's request for a hearing is rejected, the Commission will consider the issues raised by Chevron to the extent they bear on the public interest." (p. 12.)

8. Discussion

We conclude that approving these consolidated applications is in the public interest. As it stands today, PG&E owns the Pipeline Assets and Pump Station Assets. PG&E's ratepayers continue to fund ongoing maintenance activities and have the normal liabilities associated with owning these assets, including the potential future liabilities associated with decommissioning. Ratepayers continue to incur these costs and maintain these liabilities even

though the assets are no longer required by PG&E to deliver electricity to ratepayers. Once the application is approved, however, PG&E's ratepayers will be relieved of these ongoing costs and future liabilities as specified in the Purchase and Sale Agreement filed with the Amended Application.

These direct benefits are precisely the same type of benefits that the Commission has relied upon when approving similar applications for the sale of assets no longer utilized by PG&E. The most relevant example occurred in connection with PG&E's sale of the El Dorado Hydroelectric Project to El Dorado Irrigation District after the hydroelectric project had been rendered inoperable after severe storms.[11] In concluding that the sale of those assets was in the public interest, the Commission expressly cited the benefits to PG&E's ratepayers of avoiding liability for future decommissioning costs and avoiding other liabilities and obligations associated with the continued ownership of an asset which was not necessary for PG&E to perform its core functions.[12]

We believe the benefits to the public interest, however, extend even further if the application now before us is approved as it creates the potential opportunity for currently wasted assets to be utilized. As stated above, it is anticipated that SCVHG proposes to remediate the pump station site. The land, which is in limited supply in the Bay Area, could be cleaned up, directly improving the environment, and become available for industrial, commercial and/or residential development. This would create new construction jobs, new

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[11] Application of PG&E for Authorization to Sell the El Dorado Hydroelectric Project to El Dorado Irrigation District Pursuant to Pub. Util. Code § 851, D.99-09-066, 1999 Cal. PUC LEXIS 677 (the El Dorado Application).

[12] El Dorado Application, 1999 Cal. PUC LEXIS 677 at 95, Finding of Fact 20.

long-term jobs with any commercial establishments that locate on the new site, and possibly new homes for families. Also, SPBPC would have the opportunity to return an idle pipeline to common carrier service, increasing the petroleum pipeline capacity available to any interested customers. Approving the application would also cause the pipeline to be owned by Shell, a financially secure, experienced and competent pipeline operator that already owns another Commission-regulated pipeline corporation – Shell California Pipeline Company, LLC.

Further, existing environmental law and the Commission's ongoing jurisdiction over SPBPC will continue to protect the public interest with respect to future potential activities. Potential remediation and redevelopment of the Pump Station Assets will be subject to future CEQA review, guarding against environmental risks. Any significant improvements required to return the pipeline to commercial operation will similarly be subject to a CEQA evaluation.[13]

Accordingly, we conclude the Final MND should be adopted by the Commission and the consolidated applications of PG&E and SPBPC should be approved.

9. Ratemaking Treatment of Sale Proceeds

PG&E initially proposed that any gain or loss resulting from the sale should flow through the Transition Cost Balancing Account (TCBA). PG&E's

[13] For example, if SPBPC determines that a new pumping station is required to return the pipeline to commercial operation, any such pumping station would be constructed as a state-of-the-art facility, complying with all of the applicable environmental and other regulations. Such a facility would replace the existing Hercules Pump Station, which is over 30 years old.

application (A.00-05-035) was filed in May 2000, when the TCBA was the operative transition cost recovery mechanism governed by the rate controls mandated by Assembly Bill (AB) 1890. Because the TCBA no longer exits, PG&E proposes[14] that the ratemaking treatment of the sale proceeds specified in A.00-05-035 should be altered as follows: net proceeds received from the sale of depreciable assets, not considered as an operating system, should be credited to the depreciation reserve, and any gain (or loss) on the sale of land (nondepreciable property) be recorded in a below-the-line account.[15]

PG&E initially proposed that any decommissioning accrual in excess of the actual decommissioning cost for the project would be credited to the TCBA. PG&E now proposes that with the elimination of the TCBA, any decommissioning accrual in excess of the recorded decommissioning cost should remain in the accumulated provision for depreciation, which reduces rate base and decommissioning accrual in future rate cases.

The Commission currently allocates gain on sale of a utility asset on a case-by-case basis. The Commission has relied on such factors as how long the asset was in ratebase, who bore the actual financial risk of the investment, how different allocations might affect various management and investor incentives, whether the asset is depreciable or nondepreciable, the type of asset sold, the circumstances leading to its sale, and judicial or Commission precedent.

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[14] *See* First Amendment to A.00-05-035 and A.00-12-008 filed on May 6, 2004.

[15] The purchase price payable by SPBPC to PG&E is $16.7 million pursuant to Section 2.5 of the Purchase Agreement, of which $13.45 million is allocated to Pump Station Assets and $3.25 million to Pipeline Assets.

In allocating gain on sale proceeds between the utilities and ratepayers, we should take into consideration that under the implicit compact enforced by this Commission, regulated utilities face few financial risks, and ratepayers cover almost all costs associated with the assets acquired by the utility. The corollary of limited shareholder risk is limited shareholder profit. The Public Utilities Code entitles a utility to charge its customers rates that cover its costs and are otherwise considered just and reasonable. Once the company prudently purchases an asset that is deemed needed for provision of the service, the shareholders' outlay is added to the utility's ratebase, and shareholders have the opportunity to earn a reasonable rate of return on that asset. All reasonable costs the utility bears are covered by the ratepayers, including a return of the investment through depreciation, maintenance, insurance, taxes, fees, administrative costs, and interest expense, and all other costs associated with that asset (often collectively called "carrying costs"). Furthermore, if the asset is taken out of service before it is fully depreciated, the undepreciated amount, if not covered by the asset sale price, is usually paid for by the ratepayers. Once again, there is little risk borne by shareholders from the sale of the asset when all costs related to the property are paid for by ratepayers.

Essentially, PG&E proposes that the $16.7 million sale proceeds be allocated $3.25 million to ratepayers and $13.45 million to shareholders. PG&E, apparently, justifies this allocation on the basis that the Uniform System of Accounts (USOA) treats depreciable and nondepreciable property differently. We are not persuaded that these accounting rules should determine the

allocation of the gain on sale in this instance.[16] Furthermore, we believe PG&E's proposal is inequitable to ratepayers who have borne much of the risks and all the costs associated with these assets since 1975. Since PG&E is selling the pipeline and land as a package (not divided into depreciable and nondepreciable property), there is no reason why the $16.7 million should not likewise be treated as a lump sum for the package. On balance, after weighing all the equities, we conclude that a reasonable allocation of the $16.7 million gain on the sale is a 50/50 split between ratepayers and shareholders, with the ratepayer portion applied as a permanent reduction to current rate base. However, today's decision is based on the specific facts of this case and should not be viewed as setting a precedent for the future treatment of gain on sale that is being considered in Order Instituting Rulemaking (R.) 04-09-003.

10. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

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[16] For example *see*, Re. California Water Service Company, D.94-09-032, 56 CPUC2d 4, at 14, where the Commission, in allocating the gain on sale on 29 parcels of land on a 50/50 basis between ratepayers and shareholders, stated:

> "Moreover, there is a good reason not to blindly follow the USOA accounting rule for allocating proceeds of the sale of nondepreciable property. Notwithstanding the specificity with which the USOA governs the accounting practices of a water company, we stress that the purpose of a system of accounts is to predict the bookkeeping entries but not the ratemaking impact of a sale. The purpose of the USOA is not to provide a methodology for allocating the gain on sale for the purpose of setting rates but to properly track the Commission-imposed allocation. The Commission is not bound by accounting convention; it is free to pursue its legislative duty to balance the interests of shareholders and consumers."

11. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in these proceedings.

Findings of Fact

1. Pursuant to § 851, PG&E seeks authorization to sell its Pipeline Assets and Pump Station Assets.

2. Applicants seek Commission approval of a series of transactions described in the amended application, and agreed to by Applicants, as follows: (a) SPBPC will purchase the Pipeline Assets and Pump Station Assets from PG&E; (b) SPBPC will become the owner and operator of the Pipeline Assets pursuant to §§ 216 and 228; (c) SPBPC will abandon the pump station from utility service; (d) SCVHG will acquire ownership of the Pump Station Assets from SPBPC; and, (e) Shell will acquire ownership of SPBPC.

3. Upon acquiring ownership of the pipeline, SPBPC proposes to transport crude oil, black oils, and refined petroleum products.

4. The Pipeline Assets and Pump Station Assets are no longer necessary or useful for PG&E's utility operations.

5. For purposes of CEQA, the Project is the transfer of ownership of the Richmond-to-Pittsburg Pipeline, along with the right to construct a 5,500 foot replacement pipeline segment, and operation of the pipeline by SPBPC. The Project, and the required environmental analysis, does not extend beyond what is contemplated by, or a reasonably foreseeable result of, this proposed transaction.

6. SPBPC and SCVHG have not requested authority to construct new tie-ins or pumping stations or to remediate and redevelop the pump station property. To the extent that SPBPC or SCVHG seek authority in the future to undertake

these activities, further governmental approvals of the actual plans, with the necessary environmental compliance, will be required.

7. The Final MND states and analyzes the potential impacts to the environment that would result from the sale of the assets, construction of the 5,500 foot replacement pipeline segment in Martinez, and the operation of the pipeline by SPBPC, and proposes mitigation measures as appropriate. The mitigation measures in the Final MND have been agreed to by PG&E and SPBPC.

Conclusions of Law

1. PG&E's request for authorization to sell its Pipeline Assets and Pump Station Assets is in the public interest, and should be approved.

2. The scope of the environmental analysis used by the Commission in the Final MND is appropriate. Any effort by the Commission to evaluate the potential environmental impacts associated with future pipeline tie-ins, and remediating and redeveloping the pumping station without any information concerning the proposed use and required remediation, would require the Commission to engage in speculation. This is not required by CEQA.

3. The Final MND dated March 11, 2005, should be adopted.

4. Applications A.00-05-035 and A.00-12-008, as amended May 6, 2004 and September 9, 2004, should be granted.

5. PG&E's proposal to allocate the $16.7 million gain on sale proceeds, on the basis of $3.25 million to ratepayers and $13.45 million to shareholders, is not equitable because it does not fully recognize the risks and costs borne by ratepayers related to these assets since 1975.

6. PG&E should be required to share the $16.7 million gain on sale 50/50 basis between ratepayers and shareholders, to properly acknowledge the risks and costs borne by ratepayers.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The Final Mitigated Negative Declaration dated March 11, 2005, is adopted.

2. Pacific Gas and Electric Company (PG&E), pursuant to § 851, is authorized to sell its Richmond-to-Pittsburg Fuel Oil Pipeline (Pipeline Assets) and Hercules Pump Station with its 44.2 acres of land (Pump Station Assets).

3. San Pablo Bay Pipeline Company, LLC (SPBPC), is authorized to own the Pipeline Assets and the Pump Station Assets.

4. Upon the transfer of the Pipeline Assets and the Pump Station Assets to SPBPC, SPBPC is a pipeline corporation under § 228 and a public utility subject to the Commission's jurisdiction pursuant to the provisions of § 216.

5. SPBPC is authorized to use the Pipeline Assets to transport "oil, petroleum, and products thereof," which are limited for purposes of this application to crude oil and other black oils as well as refined petroleum products. SPBPC shall not use the Pipeline Assets to transport products other than crude oil, black oil, and refined petroleum products without seeking further authority and environmental review, if necessary, from the Commission and any other relevant agencies.

6. The Pump Station Assets, upon their transfer from PG&E to SPBPC, shall be abandoned and removed from public utility service, and can be transferred by SPBPC without further Commission approval.

7. The transfer of Santa Clara Valley Housing Group's (SCVHG) ownership interest in SPBPC and corresponding ownership and control of the Pipeline Assets to Shell Pipeline Company, LP (Shell) is approved pursuant to § 854.

8. Following the transfer of SCVHG's ownership interest in SPBPC to Shell, SPBPC is authorized to own, control, operate and manage the Pipeline Assets.

9. PG&E shall share the $16.7 million gain on sale proceeds on a 50/50 basis between ratepayers and shareholders, with the ratepayer portion applied as a permanent reduction to current rate base.

10. PG&E's proposal for decommissioning accrual in excess of the recorded decommissioning cost, is adopted.

11. Applications (A.) 00-05-035 and A.00-12-008, are closed.

This order is effective today.

Dated _____, at San Francisco, California.