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Decision 03-06-029 June 5, 2003

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 Generation-Related Property Located at Bridgehead Road in Antioch Pursuant to Public Utilities Code Sections 367(b) and 851. (U 39 M)	Application 00-05-033 (Filed May 15, 2000)

OPINION GRANTING APPLICATION TO SELL THE NEW BRIDGE MARINA PROPERTY

1. Summary

Pacific Gas and Electric Company (PG&E) seeks authorization, pursuant to Pub. Util. Code §§ 367(b) and 851, to market value by sale a strip of land known as the New Bridge Marina property located at Bridgehead Road in Antioch. The property is a non-nuclear generation-related property that is not necessary or useful to PG&E's utility distribution operations. The application is unopposed.

The Commission concludes that § 377, as amended by Assembly Bill (AB) 6X, does not bar the sale of generation-related properties no longer used directly or indirectly for electric generation purposes. Also, the sale of this property is in the public interest as required by § 851. The application is granted and the proceeding is closed.

2. Procedural History

The application was filed on May 15, 2000 and was noticed in the Commission's Daily Calendar on May 23, 2000. In Resolution ALJ 176-3040, dated June 8, 2000, the Commission preliminarily categorized this proceeding as

ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received regarding the sale of the New Bridge Marina property and a public hearing is not required. We affirm the determinations made in Resolution ALJ 176-3040.

3. Background

PG&E acquired the New Bridge Marina property in 1992 in settlement of a legal claim related to particulate fallout from the Contra Costa Power Plant. The property is a 19 feet by 735.14 feet strip of land (0.321 acre). The prior owner used the property for an irrigation pipe and pump to bring water from the Sacramento River. A standpipe and associated pump house, no longer in use, are located on the property. These items need to be demolished.

4. Market Valuation and Divestiture

PG&E intends to quit claim the property, including the improvements, to Buyers for $1.00 and asks that the Commission determine that this amount represents the property's market value for purposes of § 367(b). Buyers had informed PG&E of their belief that the standpipe and pump house located on the property constitute a nuisance. To address this claim, and because the property's inaccessible location renders it valueless to anyone other than Buyers, PG&E entered into negotiations to sell the property to Buyers.[1] At PG&E's request, Buyers commissioned an appraisal, which concluded that the cost of demolition of the standpipe and pump station would exceed the value of the property, and

[1] The Buyers are: Leon R. Bierly, Joann B. Bierly, Wallace Kent Gibson, Judith E. Gibson, Colin Dale Brown, Patricia Ann Brown, Ivan R. Bierly and Margaret D. Bierly as Trustees of the Bierly Family Trust, and Stephen M. Klee and Joann C. Klee as Trustees of the Klee Family Trust (Buyers).

that the value of the property was zero. PG&E therefore agreed to quit claim the property to Buyers in exchange for $1.00. Buyers have agreed to remove the concrete standpipe and pump house at their own expense, and release PG&E from liability arising out of the transfer.

PG&E states that the property is not necessary and useful to its utility distribution operations. Due to the impractical shape and inaccessibility of the property, the property has little value. In addition, the cost of demolishing the standpipe and pump house will exceed the property's value. Given that Buyers will bear the cost of demolition, the $1.00 sale price exceeds the property's fair market value.

5. Public Utilities Code Section 377

In considering this application, we need to address § 377, which reads:

> The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no *facility for the generation of electricity* owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility *generation assets* remain dedicated to service for the benefit of California ratepayers. (Section 377, as amended by AB 6X, emphasis added.)

Thus, before we may consider the merits of this application, we must address the threshold question—whether § 377 bars the proposed transaction?

The assets in question here were owned by PG&E prior to January 1, 1997. We must determine whether the assets that PG&E wants to dispose of are a facility for the generation of electricity. If so, such assets may not be disposed of

prior to January 1, 2006. The obvious example of a facility used for the generation of electricity would be a power plant, which literally is a facility that generates electricity. Section 377 clearly bars disposal of power plants owned by public utilities.[2]

But we are left with the question of whether § 377 only bars disposal of a power plant, itself, or whether it has a broader scope. We must determine whether a facility for the generation of electricity includes more than just the power plant. For example, does § 377 bar the sale of a generation-related property no longer used directly or indirectly for electric generation purposes?

Section 377 states that "public utility generation assets" are to remain dedicated to service for the benefit of California ratepayers. Section 377 does not specifically define the phrases "facilities for the generation of electricity" or "generation assets", both used in the statute. To the extent there is any potential conflict between the phrases "facilities for the generation of electricity" and "generation asset," that conflict must be harmonized. (See, e.g. *Wells v. Marina City Properties, Inc.* (1981) 29 Cal. 3d, 781, 788; *Louisiana-Pacific Corp. v. Humbolt Bay Municipal Water District* (1982) 137 Cal.App. 3d 152, 156.)

Here, we find looking to the available legislative committee analyses prepared for AB 6X discussion offers only limited guidance in harmonizing the phrases and understanding the legislative purpose and intent. In particular, we have looked to the analyses prepared for the Assembly Committee on

[2] This is confirmed by the subsequent enactment of § 377.1, which expressly exempted six hydroelectric plants from the restrictions of § 377.

Appropriations (January 12, 2000), the Assembly Committee on Energy Costs and Availability (January 11, 2001), and the Senate Energy, Utilities and Communications Committee (January 17, 2001).

In general, the committee analyses demonstrate a focus on megawatts (MW) of generation capacity. The Senate Energy, Utilities and Communications Committee specifically framed its inquiry as: (1) should utilities be required to secure explicit authorization from the CPUC prior to disposing of generation assets; and (2) should there be an outright ban on the sale of utility power plants for five years? The analysis identified the key assets in question as PG&E's hydroelectric system[3] and Diablo Canyon nuclear plant; SCE's hydroelectric system, its interest in the San Onofre nuclear plant and its interest in the Mohave coal-fired plant in Arizona; and SDG&E's interest in the San Onofre nuclear plant.

Unfortunately, we have no record upon which to determine whether or to what extent the legislative committees may have considered sales not involving the hydroelectric systems or nuclear plants. It is clear, however, that the legislature primarily and unquestionably intended to prohibit the disposal of public utility power generation plants to ensure that generation assets remain dedicated to the service of California ratepayers.

Although the legislature did not define "generation assets," the term is used in utility regulation as a term of art. This Commission has defined

[3] In A.99-09-053, PG&E's application for Commission authorization to divest its hydroelectric generating facilities, which the legislature was aware of, the hydroelectric system included all associated watershed lands.

generation assets as including "nonplant physical assets." (D.95-12-063, as modified by D.96-01-009, pp. 50-51.) The Uniform System of Accounts (USOA) of the Federal Energy Regulatory Commission (FERC) provides guidance that generation assets may include more than just the power plant itself.[4] Electric Plant Account 310 includes the cost of land and land rights associated with steam generation, and Account 330 includes land and land rights for hydroelectric generation. Accounts 311 and 331 include the respective cost of structures and improvements for steam and hydroelectric generation, while Account 332 includes the cost of reservoirs, dams, and waterways used for hydroelectric generation. Yet we recognize that accounting conventions are not always coextensive with the functional and practical requirements of generating electricity.

Given the above stated framework, we believe we must exercise discretion and make a factual determination of whether the denial of the disposition, in our view, is necessary to ensure dedication of generation assets to service for California ratepayers. This requires consideration of the nature, history, past or future intended use of the asset, including the nexus between it and future generation. In making these determinations, we will evaluate each § 851 application according to its unique facts, on a case by case basis, to determine whether the requested disposition is barred by § 377.

Accordingly, today we approve the proposed sale of the New Bridge Marina property located at Bridgehead Road in Antioch. We note that the land

[4] Utilities conform their records to the USOA. See, e.g., *Resource* 2nd Edition 1992.

was not used, and will not potentially be used, directly or indirectly for electric generation purposes. It is a small piece of property with a standpipe and associated pump house previously used for irrigation purposes. The buyer, who owns the surrounding land, will demolish those facilities.

Denying the proposed sale would not help ensure that generation assets remain dedicated to service for the benefit of California ratepayers as intended by the legislature. We do not believe the legislature intended to prohibit a sale of this nature when it contemplated or passed AB 6X to amend § 377.

Furthermore, the Commission has provided its interpretation of § 377 in the context of PG&E's application to market value and sell its Kern Facility. (Decision (D.) 01-04-004, 2001 Cal PUC LEXIS 414.) The Kern Facility was the site of a PG&E (non-operating) power plant. While the Commission rejected PG&E's proposed sale of the Kern Facility as being barred by statute, the discussion in D.01-04-004 supports the position that § 377 applies only to facilities that actually generate electricity. Specifically, the Commission states:

> Given the unreasonable nature of the current wholesale market, and the Federal Energy Regulatory Commission's failure to act to correct the market problems, it is not in the public interest to divest regulated utility generation assets, where the owners of those divested assets could then sell power to ratepayers at unreasonable market prices, or manage power production and sales in ways that do not benefit California consumers. This concern has led the Legislature to preclude divestiture of utility generation assets until 2006, and led the Commission to defer approval of application to sell the Mohave, Palo Verde and Four Corners generation facilities. (D.01-04-004, 2001, Cal. PUC LEXIS 414, *4-5.)

The Commission's reasoning in rejecting the Kern Facility sale, with the emphasis on the ability to "sell power to ratepayers at unreasonable market prices," supports the argument that § 377 was not intended to preclude the sale of land that was not used directly or indirectly to generate electricity, such as the New Bridge Marina property. In the instant proceeding, the new owners of the New Bridge Marina property would not be able to use the assets to "then sell power to ratepayers at unreasonable market prices." Unlike the Mohave, Palo Verde and Four Corners facilities, the New Bridge Marina property does not directly or indirectly generate electricity. Whereas the Kern Facility was an actual power plant, (albeit a non-operating plant), the New Bridge Marina property is but a parcel of real property purchased to settle a claim of particulate fallout from the Contra Costa power plant. Therefore, we find that § 377 does not bar the proposed sale of the New Bridge Marina property.

6. Section 851

PG&E's application is made under § 851, which requires Commission approval before a utility can sell the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The basic task of the Commission in a § 851 proceeding is to determine whether the transaction serves the public interest: "The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers." (D.02-01-058 (2002).) With these requirements in mind, we examine the public interest aspect of the sale of the property at issue.

As stated above, this property is valueless to anyone other than buyers, and the value of the property is zero. It is part of PG&E's generation rate base,

with an allocated original cost of $100,600. The public interest would be served by selling the property to buyers, so that PG&E is relieved of the cost of maintaining this property and any liability arising from ownership of this property, which has been declared a nuisance.

7. California Environmental Quality Act (CEQA)

Neither PG&E nor Buyer seeks authority from the Commission to change the existing uses of the New Bridge Marina property. Thus, it can be seen with certainty that there is no possibility that the transfer of ownership of the property may have a significant effect on the environment. Accordingly, under CEQA Guideline 15061 (b)(3), the proposed sale is not subject to CEQA.

8. Ratemaking Treatment

At the request of the Office of Ratepayer Advocates (ORA), PG&E provided further details regarding the proposed accounting treatment in its May 29, 2000 supplement to the application. ORA does not oppose PG&E's proposed accounting treatment or the proposal to sell the property.

PG&E proposes to credit the TCBA with the net proceeds after accounting for transaction costs, taxes and net book value. Since sales proceeds will not yield a credit, the uneconomic costs will be amortized over the remaining months of the transition period. (D.97-11-074.)

Given that the property will sell at a loss, a tax benefit would accrue to PG&E. Exhibit B to the Application estimates this tax credit to be $40,990. ORA has confirmed that PG&E's proposed treatment of the loss and its tax effects is proper and conforms with tax treatment used in association with the sale of the Sonoma County Geysers Units approved in D.99-04-026.

We agree with PG&E's proposed accounting and ratemaking treatment.

9. Conclusion

The property to be sold is no longer needed for PG&E's utility distribution operations. And, sale of the property will make this property available for other productive uses, remove these costs from the utility's rate base and reduce operating expenses, thereby lowering rates for all ratepayers. Therefore, we conclude that sale of the property is in the public interest and the application should be granted.

10. Comments on Alternate Draft Decision

The alternate draft decision of Commissioner Kennedy in this matter was mailed to the parties on May 8, 2003, in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received from Equilon Enterprises, dba Shell Oil Products US, Pacific Terminals LLC, and Southern California Edison Company. All comments agree with the alternate draft decision that § 377 (as amended by AB 6X) does not bar the sale of the property that is the subject of this proceeding.

11. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Bertram D.Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The New Bridge Marina property located in Antioch consists of a 0.321-acre non-nuclear generation-related property owned by PG&E.

2. Buyer has offered to purchase the New Bridge Marina property for $1.00 and release PG&E from liabilities arising from the transfer.

3. Section 377 does not bar the proposed sale, since the property is not a "facility for the generation of electricity" or a "generation asset."

4. Since the property to be sold is no longer needed for utility distribution operations, and the property constitutes a nuisance, the proposed sale satisfies the public interest requirements of § 851.

5. The proposed sale of the New Bridge Marina property is not an activity subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment.

6. The application is unopposed. Thus, a hearing is not needed.

Conclusion of Law

The application should be granted.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Gas and Electric Company to sell the New Bridge Marina property is granted.

2. This proceeding is closed.

This order is effective today.

Dated June 5, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I dissent

/s/ LORETTA M. LYNCH
Commissioner