

Decision 05-06-048 June 30, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 M) for Authorization Pursuant to Public
Utilities Code Section 851 to Grant Easements for
the Installation, Operation, Maintenance and Use
of Domestic Water Wells.

Application 05-04-011
(Filed April 5, 2005)

O P I N I O N

1. Summary

Pursuant to Pub. Util. Code § 851, we authorize Pacific Gas and Electric Company (PG&E) to grant easements to two couples in Shasta County for installation of water wells on separate parcels of land in which PG&E owns all surface and subsurface water and water rights. We dismiss as moot PG&E's request that we adopt a streamlined procedure for easements of this type because the Commission already is considering streamlined review of § 851 transactions. This proceeding is closed.

2. Background

PG&E is the owner of certain surface and subsurface water and water rights, together with the right of using such waters, which are necessary and useful in generating electricity at PG&E's Battle Creek Project near Manton, California. In 1984, the utility recorded an indenture to further perfect its rights and to establish a procedure by which PG&E could convey certain of its water rights for use by a property owner for domestic purposes. A copy of the indenture is attached to the application.

By this application, PG&E seeks authority to grant separate easements to one residential lot owned by Wayne B. and Annie L. Gipson and to two residential lots owned by Wayne J. and Kathy J. Morcom. All of the lots are located in Shasta County (the County), and the two couples seek to construct homes on their properties. The County will not issue permits to develop these properties unless PG&E grants easements for the property owners to install and use domestic water wells.

PG&E states that it has determined that granting the easements to permit domestic water wells on these properties will not interfere with the operation of PG&E's facilities or with the provision of service to PG&E's customers. The application is brought under § 851, which prohibits an encumbrance on utility property without Commission authorization.

Under the proposed easements, PG&E will receive payments of \$491 per lot, and the net amount will be credited to Other Operating Revenue and used to reduce PG&E's generation revenue requirement in future general rate cases. The water rights are associated with PG&E's non-nuclear hydroelectric generation-related facilities. PG&E does not own the real property on which the proposed new wells are to be installed. Therefore, there are no PG&E book values associated with this application, and there is no effect on PG&E's rate base as a result of the proposed easements.

3. Public Interest

Pub. Util. Code § 851 requires that transactions involving public utilities shall not be adverse to the public interest. Copies of this application were served on the Shasta County Counsel, California Resources Agency, California Environmental Protection Agency, United States Environmental Protection Agency, United States Department of the Interior and the Commission's Office of

Ratepayer Advocates, among others. No protests or comments opposing this application were received. Granting the easements will not interfere with the operation of PG&E facilities or with the level of service to its customers.

PG&E states that granting the easements will allow the properties to be developed for residential use and will not interfere with the operation of PG&E's facilities. The Commission recently approved a nearly identical application in which PG&E sought to grant water rights easements to seven private property owners for the installation of domestic water wells. (Decision (D.) 04-04-056.)

4. Environmental Review

The California Environmental Quality Act (CEQA, Public Resources Code §§ 21000, *et seq.*) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines § 15002.)

Because the Commission must issue a discretionary decision (i.e., grant § 851 authority) without which the proposed activity will not proceed, the Commission must act as either a Lead Agency or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines § 15051(b)).

Here, the County is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for the proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and

findings before acting upon or approving the project. The specific activities a Responsible Agency must conduct are contained in CEQA Guidelines § 15096.

In this application, PG&E requests that the Commission find that the installation, construction, and maintenance of domestic water wells as part of construction of single family homes is categorically exempt from the CEQA pursuant to CEQA Guidelines §§ 15303(b) and (d). Section 15303(b) provides an exemption from CEQA review for a duplex or similar multi-family residential structure totaling no more than four dwelling units. Section 15303(d) provides an exemption from CEQA review for water main, sewage, electrical, gas, and other utility extensions, including street improvements of reasonable length to serve such construction. We find that it is unnecessary to grant this request for exemption from CEQA.

The County as Lead Agency conducted a full environmental review for the development on the lots in the Manton Heights Subdivision, Tract No. 1523, which are at issue relative to the easements requested in this application. We prefer to rely on full CEQA review where the Lead Agency has determined it to be warranted. Specifically, in 1982 the County certified a Final Environmental Impact Report (EIR) approving residential development for the Manton Heights Subdivision, Tract No, 1523. By Resolution No. 5593 dated December 9, 1982, the County Planning Commission approved the EIR and on the same date approved the tract map by Resolution No. 5594. The County Planning Commission later modified and extended the tract map by Resolution No. 5794 (dated May 26, 1983) and Resolution No. 6382 (dated January 10, 1985), respectively. The lots in question here are Lots 15, 17 and 43, all part of Tract No. 1523.

According to correspondence entered into the record from the County Planning Division, the EIR and Resolutions constitute the final discretionary

environmental review for the Manton Heights Subdivision. Following certification of the EIR and recording of the tract map, the County issues ministerial building permits for residential construction on lots which is consistent with the subdivision development approved by the EIR. The County verified that the installation, construction, and operation of residential water wells for the Tract No. 1523 lots specified in this application is consistent with the subdivision development approved in the Final EIR. This construction would now be approved by the County as part of the building permit authorizing the residential development on the Manton Heights lots.

Although the County now issues only ministerial permits for the construction in question, we believe that pursuant to the EIR and recording of the tract map, the County conducted adequate CEQA review applicable to the project activity that would likely result from our approval of this application. Accordingly, we adopt the County's findings and find that CEQA has adequately been conducted for purposes of our approval. The installation, construction, and operation of water wells for the Tract No. 1523 lots is consistent with the subdivision development approved in the EIR.

The Commission has considered a request similar to this one in Application 05-02-007.

5. Discussion

Under Pub. Util. Code § 851, no public utility may transfer or encumber its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. The easements here are encumbrances on utility property, but PG&E has shown that the easements serve a useful purpose and will not affect PG&E's operations and customer service. As noted, 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 the public. Accordingly, we grant the application and authorize PG&E to enter into easement agreements with the property owners for installation of domestic water wells.

PG&E also asks that we establish a streamlined procedure for approval of minor encroachment agreements like those here. PG&E suggests that one approach would be for the utility to file an advice letter notifying the Commission of a proposed encroachment agreement and identifying the grantee, the location of the encroachment within the easement area and any applicable CEQA exemption.

We dismiss PG&E's motion as moot, since the Commission has already launched an inquiry to examine means in which § 851 applications like this one can be streamlined. On March 18, 2005, the Commission invited written comments on a proposed pilot program and options for streamlining § 851 review. Comments were due in May 2005.

6. Categorization and Need for Hearings

In Resolution ALJ 176-3151, dated April 21, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. A public hearing is not necessary. The preliminary determinations made in Resolution ALJ 176-3151 are affirmed.

7. Waiver of Review

This is an uncontested matter in which the decision grants the relief requested. PG&E has agreed to waive review and comment as to the Commission's decision regarding the request for a streamlined procedure for encroachment matters. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the

otherwise applicable 30-day period for public review and comment is being waived.

8. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E is an electric utility subject to the jurisdiction of this Commission.
2. Notice of the filing of the application appeared in the Daily Calendar on April 22, 2005.
3. No protests have been filed.
4. PG&E owns certain surface and subsurface water and water rights in Shasta County.
5. PG&E has agreed to execute easements on three parcels of land in Shasta County that would permit the owners of those parcels to install and operate domestic water wells.
6. The installation of domestic water wells will permit the owners of the parcels of land to construct single-family homes on the properties.
7. The easements will not affect PG&E's operations and will not adversely affect existing ratepayers.

Conclusions of Law

1. A public hearing is not necessary.
2. The request for authorization to grant easements for domestic water wells on three parcels of land in Shasta County is subject to Pub. Util. Code § 851.
3. We adopt the County's findings in reference to CEQA and find that CEQA has been adequately conducted for purposes of our approval.
4. Granting authority for the easements is in the public interest.
5. PG&E should be authorized to enter into the easement agreements as set forth in the application.
6. The order should be effective today to allow the proposed easements to be executed on an expeditious basis.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized pursuant to Pub. Util. Code § 851 to grant easements to (1) Wayne B. Gipson and Annie L. Gipson, and (2) Wayne J. Morcom and Kathy J. Morcom for the installation, operation, maintenance and use of domestic water wells on separate parcels of land for which PG&E owns all surface and subsurface water and water rights, as more fully set forth in the application and its exhibits, and subject to the terms and conditions described therein.

2. The authority granted herein shall expire if not exercised within one year of the date of this order.

3. Application 05-04-011 is closed.

This order is effective today.

Dated June 30, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.