

Decision 06-05-014 May 11, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M) and the County of Plumas for Authorization Pursuant to Public Utilities Code Section 851 to Grant an Easement to Install, Use and Maintain Drainage Improvements.

Application 05-09-023
(Filed September 16, 2005)

**DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE
SECTION 851 FOR CONVEYANCE OF EASEMENTS BY PACIFIC GAS AND
ELECTRIC COMPANY TO PLUMAS COUNTY**

1. Summary

This decision grants the unopposed application of Pacific Gas and Electric Company (PG&E) and the County of Plumas (the County) for Commission authorization under Pub. Util. Code § 851¹ for PG&E to convey a permanent, non-exclusive drainage easement across a portion of its property located in unincorporated Plumas County. This easement will enable the County to implement a necessary drainage improvement plan in the unincorporated area near to Lake Almanor and will not interfere with PG&E's use of the property as necessary to serve its customers and the public.

¹ All statutory references are to the Public Utilities Code unless otherwise referenced.

2. Background

A. The Project

PG&E and the County request Commission authorization under § 851 for PG&E to grant the County a permanent easement over PG&E's property to construct, use, and maintain a 65-foot section of 36-diameter corrugated metal pipe, a concrete headwall, a rock-lined drainage ditch, and a wooden walkway. The section of corrugated metal pipe on PG&E's property will be used to divert surface and storm water collected upstream of PG&E's property, first through the pipeline, then through a concrete headwall into the rock-lined ditch. The rock-lined ditch, which is approximately 12 feet wide and 5 feet deep, will direct the water into Lake Almanor. As part of the project, the County will install a wooden pedestrian walkway with a handrail to serve as a bridge across the rock-lined ditch, in order to protect the safety of the public.

The existing storm drain is inadequate to serve the County's increasing development in the area and therefore must be replaced with the requested drainage improvements. The existing storm drain system channels storm water from Big Cove Road and Peninsula Drive down a natural swale on Eleanor Drive to Lake Almanor. Eleanor Drive is unpaved and unimproved.

As a result of successive development projects in the area, the surface run-off now exceeds the capacity of the existing storm drain. The increased amount of water feeding into the system, along with the limited capacity of the existing drainage system downstream of the storm water inlets, causes water to overflow out of the inlets upstream at the base of the wall of a commercial building on Ponderosa Drive and then flow across Peninsula Drive and down Eleanor Drive, causing increased erosion.

The Eleanor Drive property was recently sold to a private owner, who wishes to build a residence on the property.

The County has been working with developers in the area, including developers upstream of the Eleanor Drive property, to develop a storm drain improvement plan. Under the County's plan, storm water from new developments will be contained in those developments, and surface water and storm water already in the drainage system will be diverted through the proposed 36-inch diameter corrugated pipe that will cross PG&E property, in order to allow adequate drainage.

According to the application, the PG&E property that would be encumbered by the proposed easement is part of the Watershed Lands covered by the Land Conservation Commitment (LCC) established as part of the settlement agreement between PG&E, PG&E Corporation, and the Commission in Investigation (I.) 02-04-026. The LCC has been clarified and supplemented by a stipulation dated September 25, 2003. Pursuant to the settlement agreement, PG&E created the Stewardship Council (SC), a California non-profit corporation, to oversee and carry out the LCC.

The application states that under the LCC, the Watershed Lands, including the PG&E property that would be subject to the proposed easement here, must be either: (1) subject to permanent conservation easements restricting development of the land to protect and preserve their beneficial public values, or (2) donated in fee simple to one or more public agencies or qualified non-profit conservation organizations that will ensure the protection of those beneficial values. SC is scheduled to complete a Land Conservation Plan (LCP) to implement these actions and other aspects of the LCC by April 12, 2007. However, in the meantime, the Governing Board of SC has discretion to

recommend that PG&E undertake isolated transactions before the adoption of the LCP. SC has developed a policy regarding third party uses of lands subject to its jurisdiction.

Pursuant to this policy, SC has reviewed the County's request for approval of the proposed easement and has found that the proposed easement would be consistent with the long-term objectives of the settlement agreement, stipulation, and LCP. On July 13, 2005, SC issued a letter, which acknowledged its review of the County's request and advised that the County's proposed drainage improvement project is not likely to substantially diminish any beneficial public values of the land and will not impede SC's ability to complete the LCP. Therefore, SC has no objection to the request of PG&E and the County for Commission approval of the proposed easement.

B. The Proposed Agreement between PG&E and the County

PG&E has filed a proposed easement agreement (the agreement) with the County to be executed if the Commission approves this application. In the agreement, PG&E grants a non-exclusive easement to the County to excavate, install, construct, reconstruct, repair, maintain, and use, for storm water drainage only, approximately 65 feet of a single corrugated metal pipeline, not exceeding 36 inches in diameter, a concrete headwall, a rock-lined ditch for open-channel drainage of water, and a wooden walkway, with a handrail, to be used for crossing over the open ditch. The easement also grants the County the right of ingress and egress to and from the drainage facilities on the property. The County may not assign the easement, except with the prior written consent of PG&E.

The County has agreed to submit detailed plans and specifications for the drainage facilities it plans to construct on the property to PG&E for approval

before commencing construction. The County will also obtain all necessary permits and comply with all legal requirements related to construction of the drainage facilities. The County may not construct any additional facilities on the property without the prior written consent of PG&E.

PG&E has reserved the right to use the easement area for its own purposes or when use of the area is necessary or desirable in order to serve PG&E's patrons, consumers, or the public. PG&E may also restrict use of the easement area as necessary in the event of an emergency, if emergency repairs or maintenance to PG&E's facilities are necessary, or under other circumstances when PG&E finds it appropriate to do so.

The County has acknowledged that the property is part of Federal Energy Regulatory Commission (FERC) Project No. 2105, and has agreed not to interfere with the overall recreational use of the project area pursuant to FERC requirements. Under the agreement, the County also must coordinate its activities in order to reasonably minimize interference with PG&E's use of the property and may not use the easement area in a way that endangers human health and safety, PG&E facilities, or the environment. The County's use of the easement area must be compatible with Commission General Orders and decisions, and other legal requirements, including those related to hazardous substances and environmental protection. The County must maintain the easement area in good condition and is responsible for the security of its facilities on the easement area.

In addition, with certain exceptions,² the County has agreed to indemnify and defend PG&E from any claims for liability for personal injury (including

² The County's indemnification of PG&E does not include any claims arising from PG&E's sole negligence or willful misconduct.

death) or property damage in the easement area or for violation of any legal requirement, which arise from the County's occupancy or use of the easement areas, including construction, or from the exercise of the County's rights and duties under the agreement or the County's failure to perform its duties. This indemnification includes claims arising from or connected with the release or discharge of any hazardous substances as a result of the County's use or occupancy of the easement area or the surrounding property. The County has agreed to accept all risks related to its use of the easement area. In order to further protect PG&E from liability, the County must provide insurance during the term of the agreement.³

The County will pay a one-time fee of \$200.00 for the easement.

3. Environmental Review

The California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. Since the Commission must act on the § 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead 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 Section 15051(b)).

³ This insurance must include commercial general liability insurance, which names PG&E as an additional insured, in the amount of \$1 million per occurrence and \$2 million in the aggregate, with additional coverage for defense costs; business auto insurance; and workers compensation and employer's liability insurance. If the County is permitted to self-insure for any of the required insurance and a covered event occurs, the County is liable to PG&E for the full amount of insurance coverage that would have been available if the County had obtained insurance from a third party insurer in compliance with the agreement.

In this application, PG&E seeks authority to grant a permanent, non-exclusive drainage easement to the County of Plumas for the installation of a drainage pipeline.

Here, the County of Plumas is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for this 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 Section 15096.

The proposed project reviewed by the County consists of storm water drainage improvements consisting of the installation and maintenance of a corrugated metal pipeline, a concrete headwall, a rock-line drainage ditch, and a wooden walkway in the proposed easement. The County exercised discretionary authority over this project by virtue of an approved Storm Water Drainage Improvement Plan.

On July 21, 2004, the County Planning Department prepared and subsequently approved a Negative Declaration #559. We have reviewed the County's Negative Declaration and find it adequate for our decision-making purposes. We also find that the County reasonably concluded that the project would not have a significant negative effect on the environment. Accordingly, we adopt the County's environmental document and conclusions for purposes of our approval.

4. Ratemaking Considerations

PG&E proposes to credit the net revenue received from the County for the easement to Other Operating Revenue and to use the funds to reduce the generation revenue requirement in future general rate cases, consistent with conventional cost-of-service ratemaking.

This treatment of revenues from the proposed easements is unopposed.

5. Discussion

Section 851 provides that no public utility “shall . . . encumber the whole or any part of . . . property necessary or useful in the performance of its duties to the public,” without first having obtained Commission approval. Since the easement proposed to be conveyed to the County will be an encumbrance on PG&E property, we apply § 851 in considering this application.⁴

The primary question for the Commission in § 851 proceedings is whether the proposed transaction is in to the public interest. In reviewing a § 851 application, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”⁵ 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.⁶

We find that PG&E’s conveyance of the proposed easement to the County is in the public interest. The proposed easement will not interfere with PG&E’s use of the property or with service to PG&E customers, and will be utilized in a manner consistent with FERC, Commission, and legal requirements. PG&E’s conveyance of the easement to the County will also serve the public interest by

⁴ Decision (D.) 01-08-069.

⁵ D.3320, 10 CRRC 56, 63.

⁶ D.00-07-010 at p. 6.

enabling the County to make necessary drainage improvements in the unincorporated area near Lake Almanor. Further, although the easement area is part of watershed lands covered by the LCC, PG&E's conveyance of the easement to the County for the storm drainage project will not interfere with the long-term objectives of the stipulation, settlement agreement, and LCP for watershed lands.

We also approve of the proposed ratemaking treatment for the compensation that the County will pay to PG&E for the easements.

6. Conclusion

For all of the foregoing reasons, we grant the application of PG&E pursuant to § 851, effective immediately.

7. Final Categorization and Waiver of Review Period

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations as to categorization and need for a hearing made in Resolution ALJ 176-3159, dated September 22, 2005.

8. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment was waived. However, PG&E requested and received authorization to file written comments in order to propose corrections to the ratemaking section of this decision. Comments were filed on May 5, 2006.

We have reviewed PG&E's comments and made changes to the ratemaking section of this decision consistent with PG&E's suggestions.

9. Assignment of Proceeding

Geoffrey F. Brown is the assigned Commissioner in this matter, and Myra J. Prestidge is the assigned Administrative Law Judge.

Findings of Fact

1. The proposed easement will not interfere with PG&E's use of the property or with service to PG&E's customers, and will be utilized in a manner consistent with FERC, Commission, and legal requirements.

2. The easement area is part of watershed lands covered by the LCC established as part of a settlement agreement between PG&E, PG&E Corporation, and the Commission in I.02-04-026.

3. Pursuant to the settlement agreement in I.02-04-026, PG&E has established SC, a California non-profit corporation to oversee and carry out the LCC.

4. Pursuant to its policy regarding third party uses of watershed property, SC has reviewed the County's request for approval of the easement and found that PG&E's conveyance of the easement to the County would be consistent with the long-term management objectives for the property as contemplated in the settlement agreement in I. 02-04-026, a stipulation that clarified and supplemented the settlement agreement, and the LCP.

5. The County is the Lead Agency for the proposed project under CEQA.

6. The County has prepared and adopted a negative declaration for the project, which found that the project will not have a significant adverse effect on the environment.

7. The Commission is a Responsible Agency for the proposed project under CEQA.

8. Consistent with the County's findings and determinations, we find that no significant environmental effect will result from the project.

9. Compensation received by PG&E from the County for the proposed easements will be credited to Other Operating Revenue and will be used to reduce the generation revenue requirement in future general rate cases, consistent with conventional cost-of-service ratemaking.

10. The project will enable the County to install and maintain necessary drainage improvements in unincorporated portions of Plumas County near Lake Almanor.

Conclusions of Law

1. The mitigated negative declaration prepared and approved by the County is adequate for the Commission's decision-making purposes as a responsible agency under CEQA.

2. Consistent with § 851, PG&E's conveyance of the proposed easement to the County for the drainage improvement project is in the public interest and should be authorized.

3. The decision should be effective today in order to allow the easement to be conveyed to the County expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to convey a permanent easement for the installation and maintenance of storm drain facilities over its property located in Plumas County, as described in Exhibit B to the application, to Plumas County. When the final easement documents are executed, PG&E shall submit a copy by advice letter filing within sixty (60) days of this order.

2. PG&E shall credit the fees of \$200.00 to Other Operating Revenue and use these fees to reduce the generation revenue requirement in future general rate cases, consistent with conventional cost-of-service ratemaking.

3. Application 05-09-023 is closed.

This order is effective today.

Dated May 11, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
RACHELLE B. CHONG
Commissioners

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