

**ORIGINAL**

Decision S4 03 018

MAR 7 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and  
Electric Company, the City of Mendota  
and the Mendota Redevelopment Agency  
for an order under Section 851 to  
sell and convey a streetlight system.

Application 83-12-42  
(Filed December 22, 1983)

INTERIM OPINION

Statement of Facts

Pacific Gas and Electric Company (PG&E) since October 10, 1905 has been an operating public utility corporation organized under the laws of the State of California. PG&E is engaged principally in the business of furnishing electric and gas services in California, although it also distributes and sells water in some cities, towns, and rural areas, and produces and sells steam in certain parts of the City of San Francisco.

The City of Mendota (the City), located in Fresno County, is a municipal corporation existing under the laws of the State of California. The City contains substantial areas which are characterized as blighted areas requiring redevelopment in the interest of the health, safety, and general welfare of the people. Associated with extensive redevelopment undertaken on Seventh Street and Belmont Street as well as elsewhere in the City, the City proposes to acquire, and henceforth itself to operate, all the existing PG&E streetlighting system in the City, purchasing power thereafter from PG&E. However, because of indebtedness limitations imposed upon the City by the California Constitution, and the City's inability to obtain sufficient electoral support to legally create excess municipal indebtedness, the City lacks the financial means to itself purchase the PG&E streetlighting system. Consequently, the

City Council turned to the medium of constituting itself a local redevelopment agency to accomplish the desired result (see Health & Safety Code, §§ 33000 et seq.).

The Mendota Redevelopment Agency (the Agency) is the result. A duly constituted public body created by Ordinance 291 of the City Council filed with the Secretary of State of California, it is located in Fresno County. The City Council is the Agency's board, and the City's staff is the Agency's staff. The Agency exists to furnish the City with financing vehicles which otherwise would be unavailable to the City. The powers of the Agency include the power to acquire property for redevelopment purposes, and to lease or otherwise dispose of property, or to contract as necessary or convenient in the exercise of its powers. For purposes of redevelopment in this instance the Agency would purchase the streetlighting system from PG&E and then lease it to the City under a long-term lease. The City would then be responsible for all operation and maintenance as well as be a customer for energy service from PG&E, seeking service under PG&E's LS-2 tariff rate.

During the 12-month period ending October 31, 1983, in accordance with its obligation as a public utility, PG&E supplied electric service to the streetlighting system, deriving a gross annual revenue from providing service of approximately \$41,000.

By this application PG&E, the City, and the Agency seek an ex parte order of the Commission authorizing the sale and transfer. Concurrent with the transfer of ownership to the Agency, PG&E also seeks to be relieved of its public utility obligations with regard to the system. And finally, authorization is sought to permit PG&E to charge the City for electric service pursuant to PG&E's LS-2 tariff.

The purchase price of the system reflects the replacement cost less depreciation, and is in the amount of \$144,284. Historic cost less depreciation is \$92,003. On December 20, 1983, PG&E, the City, and the Agency executed an agreement whereby the transfer from PG&E to the Agency would be accomplished when the Commission, pursuant to Public Utilities (PU) Code § 851, gives PG&E authorization. The U.S. Department of Agriculture Farmers Home Administration has made a tentative commitment to loan the Agency the funds necessary, but that commitment may not be maintained beyond early spring 1984. Accordingly the City and the Agency ask that the application be expeditiously treated and that approval be granted by February 29, 1984. Notice of the application appeared in the Commission's Daily Calendar of December 28, 1983. No protest has been received.

Discussion

Under commonly encountered circumstances, when a municipality or a municipal corporation wishes to acquire the property or facilities of a public utility, it is empowered under Government Code § 37350.5 to exercise the power of eminent domain to obtain its objective. Against such a backdrop, when a city indicates its interest and intention to acquire the system or facilities of a public utility, the public utility corporation and the municipality are often willing to negotiate directly to contract a voluntary sale with mutually satisfactory terms, thereby avoiding the necessity of a condemnation suit with its attendant expense and delay. That situation pertains here.

While PU Code § 851 provides that no public utility other than a common carrier by railroad may sell the whole or any part of its system or property useful in the performance of its public duty without first obtaining authorization to do so from this Commission, under present operation of law, where a municipality is involved and with its abeyant eminent domain powers at mind, the approval of this

Commission is substantially a ministerial act so long as there is fair and just compensation provided to the public utility for the voluntary sale.

While in this instance technically the sale will be not to a municipality, but rather to a redevelopment agency, in our view the same dignity of consideration and action on our part is in order. The application recites that the agency "is basically an arm of the city," and that therefore the proposed sale and transfer is the same as would be a sale from PG&E to a municipality. In essence this is correct. Where no distinction exists between city council members and the agency board, the city council is the redevelopment agency, whether denominated as council or agency (Nolan v Redevelopment Agency of City of Burbank (1981) 172 C. Rptr. 797). Furthermore, under provisions of the California Community Redevelopment Law, a redevelopment agency also may acquire property by eminent domain (Health & Safety Code § 33390 et seq.), so that the same principle would apply.

In this application, reflecting as the proposal does, an arms length negotiation which set the purchase price as being the replacement cost of the utility streetlighting system less depreciation, the purchase price meets the test of being fair and just compensation for the system to be sold.<sup>1</sup>

The Agency and the City ask that the Commission authorize PG&E to apply Class A rates from PG&E's Tariff Schedule LS-2 -- Street and Highway Lighting, to the streetlighting energy provided the City after the sale and transfer. PG&E's Tariff Schedule LS-2

---

<sup>1</sup> The parties to the application also assert that transfer of ownership to the agency with subsequent operation and maintenance by the City will not result in higher rates than those paid to PG&E at present for electric service, and the citizens of the City will be served and benefit as before.

"is applicable to serve to lighting installations which illuminate streets, highways, and other publicly-dedicated outdoor ways and places where the customer usually owns the lighting fixtures, poles, and interconnecting circuits" (see Revised Cal. P.U.C. Sheet No. 8375-E effective January 1, 1984 - Advice Letter No. 989-E, D.83-12-068, and D.83-12-049), and the utility supplies energy and certain switching service only. Under the conditions which will prevail after the sale and transfer, this request is reasonable, staff has no objection, and we will authorize it.

There is no reason to anticipate any significant adverse impact or effect on the environment to result from Agency ownership and City operation and maintenance of the system. Rather, by incorporating this system into the redevelopment project work proceeding in the City, environmental benefits of an aesthetic, social, and economic nature should be achieved.

Incidental to the sale and transfer transaction is the fact that the purchase price agreed upon between the parties includes an increment of \$52,281 over the recorded net book or depreciated rate base valuation of the assets to be sold and transferred. This fact raises the issue of whether this appreciation in value over net book should be retained by PG&E, or whether some or all of PG&E's ratepayers have a right to all or some portion of the appreciation in value. As proposed by the application, PG&E would retain this increment. ✓

In a recent decision (D.83-06-096 in A.83-06-11) involving this issue, while authorizing the sale and transfer to proceed, this Commission deferred disposition of the appreciation increment of the sale price pending a decision in another such matter, A.83-04-37. In view of time constraints imposed by reason of the Department of Agriculture Farmers Home Administration loan commitment deadline to the Agency, we will proceed similarly here, authorizing the sale and transfer to go forward immediately but reserving disposition and

accounting of the \$52,281 appreciation in value of the assets pending our decision in A.83-04-37. We will make this order effective immediately.

Although this matter by error was omitted when the March 7, 1984 public agenda was prepared and issued, the time constraints imposed by reason of the U.S. Department of Agriculture Farmers Home Administration loan commitment deadline to the Agency serve as a sufficiently emergent situation under the requirements of Public Utilities Code § 306(b) as to justify our taking immediate action without waiting to include it on a future public agenda.

Findings of Fact

1. PG&E provides public utility electric service in many areas of California, including streetlighting service by means of a PG&E distribution system in the City.

2. The City, desiring to own and maintain its own streetlighting facilities, seeks to accomplish this objective by acquiring the local PG&E streetlighting system.

3. The City, because of debt limitations and elector restraints, is unable to provide conventional financing to purchase the PG&E system.

4. The City contains severely blighted areas which constitute an ongoing redevelopment project.

5. Accordingly, the City Council, by Ordinance 291, constituted itself a redevelopment agency.

6. This redevelopment agency, for a limited time, has access to U.S. Department of Agriculture Farmers Home Administration loan funds at advantageous financing costs.

7. The parties seek authorization for PG&E to sell the streetlighting system to the Agency, after which the Agency would lease it to the City which would operate and maintain the system, purchasing electric energy from PG&E.

8. The purchase price for the system, arrived at through arms length negotiations between PG&E, the City, and the Agency, represents reproduction cost less depreciation, and it constitutes a fair, just, and reasonable price for the system.

9. The parties' request that PG&E be authorized, after the sale and transfer, to charge the City for electric energy to be furnished to operate the system at Class A rates pursuant to PG&E's LS-2 tariff, is reasonable and should be approved.

10. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of this system would have any significant adverse effect upon the environment.

11. There is no known opposition to the proposed sale and transfer of the system.

12. The proposed sale and transfer of the system would not be adverse to the public interest.

13. Unless the sale and transfer authorization can be expeditiously issued, the federal funding commitment may no longer be available.

14. Upon completion of the sale and transfer of the system, PG&E should be relieved of its public utility streetlighting obligation in the City except as to the supplying of electric energy to the City for the system.

Conclusions of Law

1. The application should be granted.

2. The effective date of this order should be today to permit the Agency to obtain the federal loan pending before the loan commitment expires.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to sell and convey to the Mendota Redevelopment Agency (the Agency), under the December 20, 1983 sales agreement, the streetlighting system described in the application and in its attached Exhibit C.
2. Within 30 days after the actual sale and transfer to the Agency, PG&E shall notify this Commission in writing of the date thereto, and shall attach a true copy of the instrument of transfer.
3. Within 180 days after the actual sale and transfer, PG&E shall file with this Commission the final cost figures from property transferred.
4. In the event the sale and transfer are not consummated within six months after the effective date of this order, the authority granted by this order will expire.
5. Upon compliance with this order, PG&E shall stand relieved of its public utility obligations in connection with streetlighting service in the City of Mendota (the City) except for the obligation to furnish electric energy to the City for the system.



6. PG&E, upon completion of the sale and transfer, shall be authorized to charge the City for electric energy to the streetlighting system to be owned by the Agency pursuant to PG&E's LS-2 tariff.

7. The issue of the allocation of the \$52,281 increment over recorded book value is reserved pending our decision in A.83-04-37.

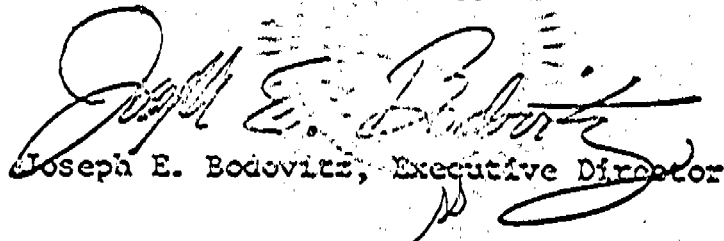
This order is effective today.

Dated     MAR 7 1984    , at San Francisco, California.

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director