

Decision 84 10 650

OCT 17 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND)
 ELECTRIC COMPANY and the CITY OF)
 REDDING for an order under Section)
 851 authorizing the former to sell)
 and convey to the latter that certain)
 electric distribution system, in)
 accordance with the terms of an)
 agreement dated May 4, 1983.)
 (Electric))

Application 84-02-06
 (Filed February 2, 1984)

INTERIM OPINIONStatement 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 service 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 Redding (the city), located in Shasta County, is a municipal corporation existing under the laws of the State of California. For some time the city has owned and operated an electric distribution system located within its corporate limits. From this system the city furnishes electric service to its residents and inhabitants.

In accordance with its obligation as a public utility, PG&E has been supplying electric service to six residential customers and one commercial customer in two unincorporated areas outside the city's boundaries.

In 1982 the city exercised its power of annexation and, by Resolution No. 82-49 in Annexation No. 82-8, annexed the Branstetter

Lane area where four of the residential and the commercial customer were located. The remaining two residential customers at issue are located on a remote area on the north side of Kenyon Road west of the city boundary line. As the result of a prior sale of distribution facilities to the city, PG&E no longer has distribution facilities in the unincorporated area which can readily serve this isolated enclave. Following its annexation of the Branstetter Lane area the city desires to acquire PG&E's electric distribution facilities which serve this area, and is also willing to serve the two residential customers off Kenyon Road. The city, after acquisition of the Branstetter Lane facilities, and the 532 feet of electric distribution facilities serving the two residential customers off Kenyon Road, intends to incorporate these facilities into its municipal electric distribution system.

Accordingly, the city and PG&E on May 4, 1983 executed an agreement whereby the city would purchase the poles, towers and fixtures, overhead conductors and devices, service conductors, line transformers, underground facilities, and meters involved within the two areas. By this application PG&E and the city seek an ex parte order of the Commission authorizing the sale and transfer of PG&E's electric facilities, including any additions and betterments, within the annexed area 82-8. Upon acquisition of these properties, the city intends to furnish the electric service presently supplied by means of these facilities, charging and collecting rates and charges not in excess of those paid presently to PG&E by the customers involved, and to provide such electric service as may be required in the future in the annexed area. Concurrent with the connection of the customers involved to the city's facilities, PG&E also seeks to be relieved of its public utility obligation within the annexed area.

The purchase price for the facilities, purportedly reflecting replacement cost less depreciation, is \$20,010.¹ In addition, as to any additions and retirements that may be made subsequent to September 10, 1982, and prior to conveyance, the city will pay PG&E:

- a. The net value of the facilities (as determined under the practice prescribed for electric utilities under the Federal Energy Regulatory Commission and California Public Utilities Commission Uniform System of Accounts),
- b. 15% of such net value, and
- c. any applicable severance costs.

The current ad valorem taxes for the tax year in which the facilities and any additions and betterments are conveyed will be prorated as of the conveyance date.

The city has been advised that certain of the facilities involved contain polychlorinated biphenyls (PCBs), and the city has agreed to hold PG&E harmless for any and all liability arising from such substances, or from any failure of the city to perform its utility obligations to customers in the annexed area. PG&E will assign all land rights and property interests for the facilities concurrently with delivery of the deed or deeds.

The seven customers involved in this transaction have produced for PG&E a gross annual revenue of approximately \$3,700. PG&E holds no line extension deposits or surety deposits for the customers involved.

Notice of the application appeared in the Commission's Daily Calendar of February 7, 1984. No protest has been received.

¹ The historical book cost, less depreciation, of the facilities involved is \$9,800.

Discussion

While most California communities obtain their electric services from privately owned public utility corporations such as PG&E, some cities prefer and are able to invest in the acquisition of their own electric distribution facilities, and thereby are able to take advantage of low wholesale power rates available under preferential allocations to cities from federally owned hydroelectric projects. Having lower financing costs than do privately owned public utility corporations, and not having to pay income and other taxes, cities are sometimes able to deliver this federally derived electricity to the residents and businesses within their boundaries at rates lower than those that a public utility must charge. But to be eligible for these preferential allocations from federal power projects, a municipality must own its own electric distribution facilities, and must accept utility responsibility to serve all present and future customers in its service territory. Usually lacking their own transmission lines, cities customarily pay the area public utility to wheel the federal power from the federal hydroelectric project source to the city's distribution lines. Then, to fully meet its utility responsibility the city will further contract with the area public utility for wholesale purchases as needed to make up any supplemental power supplies it will require over and above its federal allocation. In many instances this places upon the area public utility the requirement that it has available and carry peaking period capability.

In California a municipal corporation is empowered to acquire, construct, own, operate, or lease any public utility (West's Ann. Pub. Util Code § 10002). Thus the city has the power of eminent domain to acquire by court proceedings the electric distribution and streetlighting facilities within any area annexed to the city. Furthermore, each annexation and acquisition of electrical facilities

serves to entitle the city to a larger share or allocation of any federal power which may become available at the next contract period. Under such circumstances, in order to avoid condemnation suits and to compromise possible expensive litigation from such suits, a public utility corporation involved with an annexation area similar to the present situation is often willing to sell its involved facilities to the city by direct negotiation and contract.

Such is the procedure being followed here. Rather than proceeding by eminent domain, in the interest of saving both time and legal expense, the city and PG&E have agreed upon a price for the facilities and have contracted to perform accordingly. There having been no opposition to the application, Administrative Law Judge Weiss proceeded ex parte after close of the protest period provided in the Commission's Rules of Practice and Procedure.

Public Utilities (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. In transfer proceedings the function of the Commission is to protect and safeguard the interests of the public. The concern is to prevent the impairment of the public service by the transfer of utility property into the hands of companies incapable of performing an adequate service at reasonable rates or upon terms which will bring about the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 CRC 520). Therefore, we want to be certain that the purchaser is financially capable of the acquisition and satisfactory operation thereafter. But where a municipal corporation or other public entity is the purchaser, our consideration is somewhat different.

In this proceeding, the city has agreed to assume the utility obligation to provide electric service in the annexed area and to the two isolated services. The city will hold PG&E harmless from any and all liability arising from any failure of the city to perform these utility obligations. The city also accepts responsibility for any liability arising out of latent PCB problems.

The purchase price reflects replacement cost less depreciation of the facilities being sold, and was agreed upon between the parties. The parties assert that their agreement is

fair, just, and reasonable both as to the parties and to the customers affected. We accept the purchase price as fair and just compensation.

There remains the issue who, the investor shareholders or the ratepayers, should receive the approximate \$10,210 gain over original cost less depreciation which is being realized on disposition of this utility property which is or has been in rate base. This issue is the same issue being considered in ongoing proceedings in Application (A.) 83-04-37. Rather than further delay approval of this sale and transfer transaction between the city and PG&E, by this interim decision we will authorize its consummation while reserving disposition and accounting of the \$10,210 gain over depreciated original cost until our resolution of the gain issue in the A.83-04-37 proceeding.

There was no opposition entered to the sale and transfer aspect of this proceeding, and there is no need to set the matter for public hearing. The information contained in the application provides sufficient basis for our approval of the sale and transfer, and the sooner the sale and transfer are approved, the sooner the customers directly involved can obtain the lower rates and charges promised them. Accordingly, this interim order will be made effective immediately.

Findings of Fact

1. PG&E provides public utility electric service in many areas of California, including areas in and about the City of Redding.
2. The city, a California municipal corporation, for some time has owned and operated an electric distribution system in areas within municipal limits.
3. The city in 1982 annexed an unincorporated area which is the principal subject of this application, and has agreed to provide

service to two nearby customers outside the annexed area, all areas wherein the electric service or the obligation to provide electric service was provided by PG&E.

4. In the interim since annexation PG&E has continued to provide electric service to the annexed areas.

5. The city has plans to provide the electric service to this annexed area and has agreed to also provide service to the two customers in the nearby area outside the annexed area, and has contracted with PG&E to purchase the existing electric distribution system in area 82-8 as well as the 532 feet of electric distribution facilities serving the outlying two customers on the north side of Kenyon Road and will incorporate these facilities into the city's electric distribution system.

6. The purchase price negotiated between the city and PG&E for the facilities, the proposed payment of net value plus 15% for additions, the proposed payment of applicable severance costs, and the proposed proration of current ad valorem taxes constitute a just and reasonable compensation for the transfer.

7. The furnishing of electric services in the annexed area and to the two nearby customers outside the annexed area by the city will not result in rates and charges to these customers in excess of those paid to PG&E.

8. There is no known opposition to the proposed sale and transfer.

9. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of these particular facilities alone may have a significant effect on the environment.

10. The proposed sale and transfer of these particular facilities, under all the conditions applicable, would not be initially adverse to the public interest.

11. The transaction which is the subject of A.84-02-06 involves proportionately a substantial increment over the net book or depreciated rate base value of the property to be transferred.

12. There is no reason to further delay authorization for this sale and transfer.

13. The gain in the sale price over net book value when realized by PG&E should be held in a suspense account pending resolution in A.83-04-37 by the Commission of the issue who is entitled to the gains or responsible for the losses accruing from sales of utility property.

Conclusions of Law

1. Upon completion of the sale and transfer PG&E should be relieved of its electric public utility obligation in the annexed area and to the two customers north of Kenyon Road outside the annexed area.

2. PG&E should be required to defer classification of the gain realized over depreciated book value of the electric facilities involved in this sale and transfer until further order of the Commission.

3. A public hearing on the sale and transfer aspect of the application is not necessary.

4. The application should be granted as provided in the following order.

INTERIM ORDER

IT IS ORDERED that:

1. Within 6 months after the effective date of this order, Pacific Gas and Electric Company (PG&E) may sell and transfer to the City of Redding the electric distribution facilities set forth in their May 4, 1983 agreement annexed to and made a part of their application as Exhibit C.

2. Within 10 days of the actual transfer PG&E shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument of transfer shall be attached to the written notification.

3. Within 90 days after the date of actual transfer, PG&E shall advise the Commission's Evaluation and Compliance Division, in writing, of the adjustments for additions and betterments made in accordance with Exhibit C annexed to and made a part of the application.

4. Within 10 days of the actual transfer, PG&E shall record the gains accruing from this sale and transfer in an appropriate suspense account and retain them in that account until further Commission order.

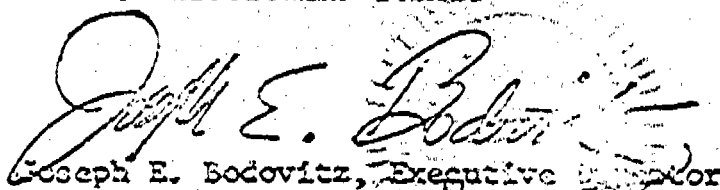
5. Upon compliance with this interim order, PG&E shall stand relieved of its public utility obligations in connection with electric service in the area which is the subject of this application, and to the two customers north of Kenyon Road outside the area.

This order is effective today.

Dated OCT 17 1984, at San Francisco, California.

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

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


Joseph E. Bodovitz, Executive Director

serves to entitle the city to a larger share or allocation of any federal power which may become available at the next contract period. Under such circumstances, in order to avoid condemnation suits and to compromise possible expensive litigation from such suits, a public utility corporation involved with an annexation area similar to the present situation is often willing to sell its involved facilities to the city by direct negotiation and contract.

Such is the procedure being followed here. Rather than proceeding by eminent domain, in the interest of saving both time and legal expense, the city and PG&E have agreed upon a price for the facilities and have contracted to perform accordingly. There having been no opposition to the application, Administrative Law Judge Weiss proceeded ex parte after close of the protest period provided in the Commission's Rules of Practice and Procedure.

Public Utilities (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. In transfer proceedings the function of the Commission is to protect and safeguard the interests of the public. The concern is to prevent the impairment of the public service by the transfer of utility property into the hands of companies incapable of performing an adequate service at reasonable rates or upon terms which will bring about the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 CRC 520). Therefore, we want to be certain that the purchaser is financially capable of the acquisition and satisfactory operation thereafter. But where a municipal corporation or other public entity is the purchaser, our consideration ^{is somewhat} ~~and approval~~

different.

essentially and necessarily are a ministerial act.² And where the public entity and the public utility have contracted under a shadow of eminent domain for a voluntary sale and transfer, and have agreed upon a purchase price, that agreed upon price will be accepted in our resulting PU Code § 851 transfer proceeding pertaining to that sale and transfer as fair and just compensation.

In this proceeding, the city has agreed to assume the utility obligation to provide electric service in the annexed area and to the two isolated services. The city will hold PG&E harmless from any and all liability arising from any failure of the city to perform these utility obligations. The city also accepts responsibility for any liability arising out of latent PCB problems.

The purchase price reflects replacement cost less depreciation of the facilities being sold, and was agreed upon between the parties. The parties assert that their agreement is

² See People ex rel. PUC v City of Fresno (1967) 254 CA 2d 76. The Court observed that if a city and a public utility are in agreement on the terms of a proposed sale, they may seek Commission approval rather than resort to condemnation proceedings. But if the Commission imposes terms or conditions not acceptable to the city, the proposed voluntary sale may be abandoned and the city may resort to eminent domain proceedings, using either the Superior Court or the Commission under PU Code §§ 1401-1421 to determine the just compensation. The Commission cannot compel the owners of a public utility property to sell (P.T. Durfy (1914) 4 CRC 447), and the Legislature intended to involve the Commission in a condemnation proceeding only with the consent of the city, and then, only on the limited question of setting just compensation.