

Decision 84-10-059 October 17, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND)
ELECTRIC COMPANY for an order under)
Section 851 authorizing the sale and)
conveyance of a streetlight system)
to the City of Santa Rosa.)

Application 84-08-055
(Filed August 13, 1984)

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 Santa Rosa is a municipal corporation existing under the laws of the State of California. It is located in Sonoma County. Until 1982 PG&E owned and provided streetlighting service to the city. The city determined that it desired to purchase the PG&E owned streetlighting facilities within Santa Rosa city limits, and thereafter to operate, maintain, and replace these facilities, taking advantage of the lower energy rates that would be applicable under PG&E's Tariff Schedule LS-2A to installations for streetlighting where the customer owns the facilities and the utility supplies energy and switching service only. Accordingly, PG&E and the city entered into an agreement to that effect on September 29, 1982. The

purchase price was approximately \$2,350,400.¹

Since the above transaction transpired, the city has annexed an area known as the South Santa Rosa Annexation, and since the city desires to own, operate, and maintain the system in this area similarly to the situation pertaining elsewhere within the city, it seeks to purchase the 52 PG&E owned streetlights in that area. On July 14, 1983, the city proposed this further purchase to be in accord with the provisions in Section 111 General provisions of the previous September 29, 1982 agreement between the parties, and

¹ While this 1982 sale and transfer to Santa Rosa was not (pursuant to Public Utilities Code § 851) submitted for Commission sanction, it then having been PG&E's opinion that the provisions of this code section were not applicable to sales of streetlighting facilities to municipal entities because PG&E did not deem such facilities as being "necessary and useful to the performance of its duties to the public", the Commission has since determined that such sales and transfers are within the purview of § 851 (PG&E - City of Arcata); D.83-06-096 dated June 29, 1983 in A.83-06-11). However, the Commission has also determined in essence that as to such transactions consummated before June 3, 1983 (the filing date of the Arcata application), "PG&E's future compliance with Section 851 is now settled and we need not pursue the matter any further" (PG&E General Rate Proceeding; D.83-12-068 dated December 22, 1983 in A.82-12-48 see pp. 90-91).

offered PG&E \$11,500 for the acquisition, an amount represented to be the replacement cost of the system, less depreciation.² On October 7, 1983 PG&E accepted the city's offer, consequently on August 3, 1984 filing this application to obtain Commission authorization of the sale and transfer pursuant to provisions of Public Utilities Code (PU Code) § 851. For the 12-month period ending November 30, 1983 PG&E received \$7,480 in gross annual revenue for providing electric service to this system. The city by letter dated August 21, 1984 urges the Commission to approve PG&E's application. As was the situation under the earlier 1982 purchase, were the city to itself own these lighting installations and thereafter maintain them, relying upon PG&E to furnish the required energy, PG&E's Tariff Schedule LS-2A would apply, resulting in substantially lower annual costs to the city. The present understanding between PG&E and the city states that the operation of these facilities will be in accord with Section 111 General provisions of their earlier September 29, 1982 agreement, thereby providing that the city until August 31, 2002 (unless cancelled sooner) and with provision for annual extensions thereafter, with PG&E's written approval on a contact permit,³ may make future installations placing lighting equipment on PG&E poles and receive PG&E's Tariff Schedule LS-2A rates and charges as may at such time be applicable.

Notice of this application appeared in the Commission's Daily Calendar of August 17, 1984. No protest has been received.

² Original cost of these facilities was \$10,093. Accrued depreciation through December 31, 1984 was \$2,840, so that original cost less depreciation was \$7,253.

³ A permission permit from PG&E allowing the placement of attachments to designated PG&E poles.

Discussion

Under commonly encountered circumstances, when a municipality 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, and thereby avoid 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 our considerations are somewhat different. 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.

There is no reason to anticipate any significant adverse impact or effect on the environment to result from city rather than PG&E operation and maintenance of the streetlighting system.

Incidental to the sale and transfer transaction is the fact that the purchase price agreed upon between the parties includes an increment of \$4,247 over the recorded net book or depreciated rate base valuation of the facilities system to be sold and transferred. This fact raises the issue of whether this appreciation in value over net book belongs to the PG&E shareholders, or whether some or all of PG&E's ratepayers have a right to all or some portion of the appreciation in value. This issue is the same being considered in ongoing proceedings in Application (A.) 83-04-37. Rather than further delay approval of this sale and transfer transaction between Santa Rosa and PG&E, by this interim decision we will authorize its consummation while reserving disposition and accounting of the \$4,247 gain over depreciated original cost until our resolution of this same 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, coupled with some clarification data readily furnished to Administrative Law Judge (ALJ) Weiss by PG&E upon his request provides sufficient basis for our ex parte approval of the sale and transfer.

Only one item remains which requires comment. The agreement between the city and PG&E contains a recital that PG&E, after consummation of the sale and transfer of the lighting system to the city, will apply its Tariff Schedule LS-2A to replace Schedule

LS-1 in charging the city for subsequent power used to energize the transferred system. Schedule LS-1 is applicable to utility owned installation. Schedule LS-2A "is applicable to serve to lighting installations which illuminate streets, highways, and other publically-dedicated outdoor ways and places where the customer usually owns the lighting fixtures, poles, and interconnecting circuits" (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).

In this review of the application in preparing this decision for the Commission's consideration, ALJ Weiss observed that unlike the customary situation where utility property is sold, in this instance PG&E will continue to own all the poles involved. Furthermore, provision is contained in Part II. Subsequent Installations of the city-PG&E agreement, whereby the city will have the privilege of "installing, operating, maintaining and using equipment on the poles specified" (those owned by PG&E) on the same terms and conditions specified in PG&E's contact permit. The ALJ accordingly queried PG&E whether, since the utility initially installed the poles and will still continue to own all of them, Special Condition 8 monthly charges from Schedule LS-2 would not be appropriate.⁴ PG&E responded that here the poles would be combination poles, that is, poles used jointly by the utility and the city, and since costs for such class poles were already included in the utility's distribution system rates, PG&E could not also apply Schedule LS-2 Special Condition 8 charges.

⁴ Special Condition 8. SYSTEMS OWNED IN PART BY UTILITY: Where, after the date this provision is first effective, the utility installs and thereafter owns and maintains any portion of the fixtures, poles, circuits, or other facilities that comprise customer's streetlighting system, an additional monthly charge of 2% of the utility's estimated installed cost of such facilities will be made. If such facilities were installed prior to the date this provision is first effective, the additional monthly charge will be 1 3/4% of such cost.* Customer or others may elect to pay the utility's estimated installed cost of such facilities, in which event the additional monthly charge will be 1% of such cost.

Furthermore, although the contact permit referenced in the subject agreement (a sample being included there as Exhibit A) also provides for an annual rental fee per utility owned pole to which non-utility owned attachments are affixed, PG&E's presently filed tariff does not contain provision for such a charge.

Findings of Fact

1. PG&E provides public utility electric services in many areas of California, including streetlighting service to and within the boundaries of the City of Santa Rosa.
2. The city desires to own, maintain, and operate its own street lighting system within its boundaries, and here seeks to acquire by purchase the 52 PG&E streetlighting fixtures located in the recently annexed South Santa Rosa Annexation area.
3. Pursuant to PU Code § 851, PG&E by this application seeks Commission authorization to sell and convey its system in Santa Rosa to the city.
4. The purchase price for the system, arrived at by arms length negotiation between the city and PG&E, represents reproduction cost less depreciation, and is fair, just, and reasonable.
5. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of this system to the city would have any significant adverse effect upon the environment.

6. The provisions in the party's agreement that PG&E charges to the city for electric energy to energize the system after transfer be furnished at rates pursuant to PG&E's Tariff Schedule LS-2A, are reasonable.

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

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

9. Upon completion of the sale and transfer of the system, PG&E should be relieved of its public utility duties and responsibilities of owning, operating, and maintaining the streetlighting system in the South Santa Rosa Annexation area.

Conclusions of Law

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

2. The effective date of this order should be today to permit the city to obtain the maximum benefit from the lower rates which will be applicable under PG&E's Tariff Schedule LS-2A.

INTERIM ORDER

IT IS ORDERED that:

1. Within six months after the effective date of this order Pacific Gas and Electric Company (PG&E) may sell and transfer to the City of Santa Rosa the streetlighting system located in the South Santa Rosa Annexation area.

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

4. Within ninety days after the date of actual transfer, PG&E shall advise the Commission's Evaluation and Compliance Division in writing the final cost figures of the system transferred.

5. Upon compliance with this order, PG&E shall stand relieved of its public utility duties and responsibilities of owning, operating, and maintaining the streetlighting system in the South Santa Rosa Annexation area of the City of Santa Rosa except for the duty and responsibility to furnish the city with electric energy for the system.

6. The issue of the allocation of the \$4,247 increment over recorded book value less depreciation is reserved pending further order by the Commission after the decision in A.83-04-37.

This order is effective today.

Dated OCT 17 1984 , at San Francisco, California.

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

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE
COMMISSIONERS



Joseph E. Bodovius, Executive Director



ORIGINAL

Decision 84 10 059

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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 (PG&E - Redding, D.83-02-44 (issued February 16, 1983) in A.82-11-27, slip opinion at 5). 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.

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