

Decision 87 10 057

OCT 28 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas &)
 Electric Company, and the Vista)
 Grande Glen Homeowners Association)
 for an order under Section 851 of)
 the California Public Utilities)
 Code to Sell and Convey a Street-)
 light System.)
 _____ (U 902-E))

Application 87-08-051
(Filed August 26, 1987)

INTERIM OPINION

Statement of Facts

San Diego Gas & Electric Company (SDG&E) is an operating public utility corporation organized and existing under the laws of the State of California. SDG&E is engaged principally in the business of furnishing electric and gas service in San Diego County and parts of Orange County.

The Vista Grande Glen Homeowners Association (Vista Grande) is a general partnership existing under the laws of the State of California. It is located in San Diego County. SDG&E provides electric energy to Vista Grande, including electric energy to SDG&E-owned streetlights located on Vista Grande private property. Vista Grande pays SDG&E for the costs of ownership, operation, and maintenance of the system pursuant to SDG&E's LS-1 tariff.

Vista Grande is desirous of purchasing this small streetlighting system in order to be able to avail itself of the lower LS-2 tariff rates applicable to corporate agencies for lighting of non-dedicated streets accessible to the public, where the customer owns the entire installation. Had these lower rates been in effect during the 12-month period ending April 30, 1987, Vista Grande would have realized a savings of approximately \$597.

Accordingly, on March 25, 1987 SDG&E and Vista Grande executed an agreement for conveyance of the streetlighting system. The negotiated purchase price is \$1,466. This reflects two components: (1) an amount equal to the average replacement cost new less depreciation (\$1,339), and (2) an amount necessary to neutralize the income tax effects of the transaction (\$127). The original cost of the system is \$1,336; the depreciated, or book cost as of December 31, 1980, is \$1,045. The system consists of 3 high pressure sodium vapor luminaries, 3 concrete poles, and 80 feet of underground wire to a central point of connection to SDG&E facilities. Vista Grande will also pay the current ad valorem taxes for the tax years in which the system is conveyed, prorated as of the closing date. Vista Grande will also assume all obligations of SDG&E to provide maintenance and replacement service. With the reduction in rates Vista Grande can meet operation and maintenance expenses of the system within its existing homeowners assessment, although if necessary the partners of the association can make an additional assessment; thus there will be no impairment of service.

For the 12-month period ending April 30, 1987 SDG&E derived a gross annual revenue from this system of approximately \$2,270.

By this application the parties seek ex parte Commission authorization of this sale and conveyance pursuant to the provisions of Public Utilities (PU) Code § 851. Notice of this application appeared in the Commission's Daily Calendar of September 1, 1987. No protest has been received.

Discussion

In many instances today when developers put together a residential subdivision they provide for certain common areas and services; for example, non-dedicated streets, which are to be owned and maintained by some form of homeowners association, but accessible to the general public. While these homeowners

associations are usually some form of non-profit corporation, they may take other form including that of general partnership. The association, reflective of the developer's stock of new homes to be sold, at first is usually dominated, controlled, and financially sustained by the developer's pro-rata contribution, but as the parcels are sold off the association eventually comes under the actual control of the homeowners. These homeowners must by assessment raise the funds thereafter to operate and maintain the common areas and necessary services. Usually included in the members' responsibility is provision of streetlighting for these non-dedicated private streets. The interest of the members is to hold down their costs while providing the necessary services.

In most instances the streetlight facilities, the poles, luminaries, and supportive wiring from a central point of connection with the utility, are owned and maintained by the electric public utility which provides local electric service, and the association merely pays rates based on utility costs and for the energy required to serve the streetlighting. However, in recognition of the quasi-public nature of these streetlights on private streets, the utility may provide special rates for this energy.

In the case of SDG&E, "corporations or unincorporated associations of landowners or others, organized as legal entities having a responsibility for street maintenance" pay SDG&E for energy used to light such private streets under provisions of SDG&E's tariff Schedule IS-1. This schedule incorporates SDG&E's costs of ownership, operation, and maintenance of the streetlighting facilities as well as the cost of the energy consumed.

Some electric public utilities offer a similar but lower rate tariff schedule for certain classes of private customers who own their own streetlighting facilities serving non-dedicated streets accessible to the public. Principally as a public

relations gesture, a public utility may also sell its utility streetlighting facilities to some classes of private customers with responsibility for street maintenance, and as part of the transaction offer such customers the same lower rate tariff schedule for future energy sales serving these now-to-be customer owned facilities.

This latter situation is the one presented by this application. SDG&E in some instances will sell its utility owned streetlighting facilities to private parties, and thereafter, if these private parties are "corporate agencies", will provide the electric energy required for these then customer owned streetlighting systems as provided in its tariff schedule LS.2.¹

Because 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 utility duty without first obtaining authorization to do so from this Commission, it is necessary for the parties to the proposed transfer to apply to the Commission for authorization. Here SDG&E and Vista Grande have done this. In the usual transfer proceeding the function of the Commission is to protect and safeguard the interests of the public; to prevent transfer of utility property into the hands of parties incapable of performing adequate service at reasonable prices. These concerns are really not present here. Reflecting as the proposal does, an arm's-length negotiation which set the purchase price as being the replacement cost less depreciation, the purchase price meets the test of being

1 SDG&E Tariff Schedule LS-2: Applicability: Applicable for service to governmental agencies and lighting districts for the lighting of streets, highways and other thoroughfares, and to other corporate agencies for the lighting of non-dedicated streets which are accessible to the public, where the customer owns the entire installation, including underground lines from a central point of connection with utility facilities.

fair and just compensation to the utility for the system proposed to be sold. Thus there is no legal reason why the sale and transfer should not be authorized.

But the chief reason Vista Grande wants to acquire this streetlighting system is to obtain SDG&E's tariff Schedule LS-2 rates; rates substantially less than those available to it presently under Schedule LS-1. However, these LS-2 rates are available only to "governmental agencies and lighting districts," and "other corporate agencies for the lighting of non-dedicated streets which are accessible to the public..." (Emphasis added.) Vista Grande's homeowner association is not the more commonly encountered non-profit corporation; it is a general partnership, and as such does not come within the class of customers, i.e., "corporate agencies," entitled under SDG&E's filed tariff to be granted the LS-2 rates. There are legal distinctions between corporations and partnerships² that may have influenced SDG&E to draw the line at "corporate agencies": A corporation is a legal entity, organized under statutory requirements and operating with the State's permission; a partnership is not a legal entity (although for some purposes at law it may be treated as such), and may be formed by a mere association. A corporation usually has an unlimited existence; a partnership is dissolved by death of a partner. A corporation acts through its Board of directors; partners are mutual agents and each can act in most matters. Thus, while the sale and transfer will be authorized, Vista Grande's homeowners association, as long as it retains its present partnership form of organization, cannot be authorized access to SDG&E's tariff Schedule LS-2 rates, and without access to LS-2 rates it is not readily evident what benefit the association would gain by ownership of the streetlighting system.

² See: Witkin, Summary of Cal. Law (8th Ed.) Corporations § 35 pp. 4345-4346.

Should Vista Grande's homeowner association elect to reconstitute itself as a corporate entity, there is no reason why it cannot be granted LS-2 rates. Accordingly, we will proceed, allowing six months for consummation of a sale and transfer. This will give Vista Grande time to consider the option and proceed or not.

There is no reason to anticipate any significant adverse impact or effect on the environment which would result from association rather than SDG&E ownership and maintenance of this streetlighting system on private streets.

Incidental to a sale and transfer transaction is the fact that the purchase price would ultimately include an increment over the recorded net book valuation of the streetlighting system to be sold and transferred. Should the transaction occur, SDG&E will be required to file with the Commission the final cost figures for the system within 90 days of the closing date for the purpose of reflecting the correct calculation of the income tax impact based on the closing date, and the resulting gain due to sale of the system. Until after that filing we will reserve disposition of the ultimate gain.

Upon completion of a sale and transfer SDG&E will be relieved of its public utility duties and responsibilities of owning, operating, and maintaining the system. If Vista Grande has adopted a "corporate agency" entity form, SDG&E may make its LS-2 tariff schedule rates applicable. 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 gained in the application, coupled with some clarification information readily furnished to Administrative Law Judge Weiss by SD&E upon the ALJ's request provides sufficient basis for our ex parte approval of a sale and transfer.

Findings of Fact

1. SDG&E provides public utility electric services in San Diego County and parts of Orange County.
2. Vista Grande, a general partnership homeowners association, desires to own, maintain, and operate the SDG&E owned streetlighting system serving Vista Grande's non-dedicated privately owned streets.
3. Under PU Code § 851, SDG&E and Vista Grande by this application seek Commission authorization to sell and convey SDG&E's streetlighting system located on Vista Grande's streets to Vista Grande.
4. The purchase price for the system, arrived at by arms's-length negotiation between SDG&E and Vista Grande, represents reproduction cost less depreciation, and is fair, just and reasonable.
5. Vista Grande's principal interest in purchasing the streetlighting system from SDG&E is to obtain SDG&E's tariff schedule LS-2 rates for the energy SDG&E provides for these streetlighting facilities.
6. It can be seen with a reasonable certainty that there is no possibility that the sale and transfer of this streetlighting system to Vista Grande would have any significant adverse effect upon the environment.
7. There is no known opposition to the proposed sale of the streetlighting 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, SDG&E should be relieved of its public utility duties and responsibilities of owning, operating, and maintaining the system.
10. There is no reason to delay authorization for this sale and transfer.

11. After completion of the sale and transfer the final cost figures based on the closing date should be filed with the Commission and disposition of the ultimate gain on the sale will be made.

Conclusions of Law

1. A public hearing on the sale and transfer is not necessary.

2. Vista Grande, as a general partnership homeowners association is not a "corporate agency" and therefore in its present entity organization does not qualify for SDG&E's tariff Schedule LS-2 rates.

3. If Vista Grande abandons its partnership status in favor of corporate form it will qualify for and may be offered SDG&E's tariff Schedule LS-2 rates after acquisition of the streetlighting system.

4. The application should be granted with respect to the sale and transfer provisions.

INTERIM ORDER

IT IS ORDERED that:

1. Within six months after the effective date of this order San Diego Gas & Electric Company (SDG&E) may sell and convey to the Vista Grande Glen Homeowners Association (Vista Grande) the streetlighting system as set forth in their March 25, 1987 agreement.

2. Within 10 days of the actual transfer, SDG&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 10 days of the actual transfer, SDG&E shall record the gain accruing from this sale and transfer in an appropriate memorandum account until further Commission order.

4. Within 90 days after the date of actual transfer, SDG&E shall advise the Commission's Evaluation and Compliance Division in writing of the final cost figures of the streetlighting system transferred.

5. Until such time as Vista Grande may adopt corporate entity legal form, SDG&E is not authorized under its present tariff Schedule LS-2 to provide the association access to the rates provided by that schedule.

6. Upon compliance with this order, SDG&E shall stand relieved of its public utility duties and responsibilities of owning, maintaining, and operating this streetlighting system except for the duty and responsibility to furnish Vista Grande with electric energy for the system.

This order becomes effective 30 days from today.

Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weiss
Victor Weiss, Executive Director

JB