

Decision 87 10 062

OCT 28 1987

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company and the Oak Tree Ranch Association for an Order under Section 851 of the California Public Utilities Code to sell and convey a streetlight system. (U-902-E))	
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)	Application 87-08-049
)	(Filed August 26, 1987)
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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 Oak Tree Ranch Association (Oak Tree) is an incorporated homeowners association existing under the laws of the State of California. It is located in San Diego County. SDG&E provides electric energy to Oak Tree, including electric energy to SDG&E-owned streetlights located on Oak Tree private property. SDG&E presently maintains these streetlight facilities while Oak Tree pays SDG&E for the costs of ownership, operation, and maintenance of the system pursuant to SDG&E's LS-1 tariff.

Oak Tree 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 nondedicated 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, Oak Tree would have realized a savings of approximately \$1,789.

Accordingly, on March 25, 1987, SDG&E and Oak Tree executed an agreement for conveyance of the streetlighting system. The negotiated purchase price is \$5,277. This reflects two components: (1) an amount equal to the average replacement cost new less depreciation (\$4,631), and (2) an amount necessary to neutralize the income tax effects of the transaction (\$646). The original cost of the system is \$4,713; the depreciated, or book cost as of December 31, 1986, is \$3,866. The system consists of nine high-pressure sodium vapor luminaries, nine aluminum poles, and 1,080 feet of underground wire to a central point of connection to SDG&E facilities. Oak Tree will also pay the current ad valorem taxes for the tax year in which the system is conveyed, prorated as of the closing date. Oak Tree will also assume all obligations of SDG&E to provide maintenance and replacement service. With the reduction in rates Oak Tree can meet operation and maintenance expenses of the system within its existing homeowners assessment, although if necessary the association's Board of Directors 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, nondedicated streets which are to be owned and maintained by a homeowners association, but accessible to the public. At first, reflective of the developers stock of new homes

to be sold, the association is dominated, controlled, and financially sustained by the developers' pro rata contribution, but as the parcels are sold off the association eventually comes under the actual control of the residents themselves. These residents, acting through their elected Board of Directors, must assess themselves to provide the funds thereafter to operate and maintain these common areas and necessary services. Usually included in the association's responsibility is provision of streetlighting for these nondedicated privately owned streets. The association attempts to keep costs at a minimum.

The streetlight poles, luminaries, and supportive wiring from a central point of connection with utility facilities are usually provided, owned, and maintained by the electric public utility which also supplies the energy to the streetlights. In recognition of the quasi-public nature of the streetlighting service, a special rate is provided the association.

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 in lighting these areas under provisions of SDG&E's tariff schedule LS-1. This tariff schedule incorporates SDG&E's costs of ownership, operation, and maintenance of the streetlighting facilities, as well as the costs of the energy provided.

Some electric public utilities offer similar but even lower rate tariff schedules for certain classes of private customers who own their own streetlighting facilities serving nondedicated streets accessible to the public. Principally as a public relations gesture, these electric public utilities may also sell utility streetlighting facilities to certain classes of private customers with responsibility for private street maintenance, and as part of the deal offer such customers the same

special lower rate tariff schedules for future energy sales for these now-to-be customer-owned facilities.

This latter situation is the one represented by this application. SDG&E in some instances will sell its utility owned streetlighting facilities to "corporate agencies," and thereafter provide the energy for these then customer-owned streetlighting facilities 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, SDG&E and Oak Tree have joined in this application seeking Commission authorization for the sale and conveyance of certain utility owned streetlighting facilities. In the usual transfer proceeding the function of the Commission is to protect and safeguard the interests of the public and to prevent transfer of utility property into the hands of parties incapable of performing adequate service at reasonable prices. These concerns are not really present here. In this application, reflecting as the proposal does, an arm's-length negotiation which sets the purchase price as being the replacement cost new of the utility streetlighting system less depreciation, the purchase price meets the test of being fair and just compensation to the utility for the system to be sold. Since the new owner, an incorporated homeowners association, constitutes a "corporate agency," it will be in that

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 nondedicated 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.

class of customers entitled to participate in SDG&E's tariff schedule LS-2, and after amortizing the cost of the facilities to be acquired, will reduce the net cost of providing streetlighting for the nondedicated streets it owns and has responsibility to illuminate. Accordingly, its acquisition of these facilities will be in the public interest.

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

Incidental to the sale and transfer transaction is the fact that the purchase price will ultimately include an increment over the recorded net book valuation of the streetlighting system to be sold and transferred. SDG&E will be required to file with the Commission the final cost figures for the system within 90 days of the closing date of the transaction 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 the sale and transfer SDG&E will be relieved of its public utility duties and responsibilities of owning, operating, and maintaining the system. At that time SDG&E is also authorized to apply the 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 contained in the application, coupled with some clarification data readily furnished to Administrative Law Judge Weiss by SDG&E upon his request provides sufficient basis for our ex parte approval of the sale and transfer.

Findings of Fact

1. SDG&E provides public utility electric services in San Diego County and parts of Orange County.

2. Oak Tree, an incorporated homeowners association, is a "corporate agency," as contemplated in SDG&E's tariff schedule LS-2, and desires to own, maintain, and operate the SDG&E-owned streetlighting system on Oak Tree's nondedicated privately owned streets.

3. Under PU Code § 851, SDG&E and Oak Tree by this application seek Commission authorization to sell and convey SDG&E's streetlighting system located on Oak Tree's property to Oak Tree.

4. The purchase price for the system, arrived at by arm's-length negotiation between SDG&E and Oak Tree, 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 streetlighting system to Oak Tree would have any significant adverse effect upon the environment.

6. There is no known opposition to the proposed sale of the streetlighting system.

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

8. 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.

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

10. 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. The effective date of this order should be today to permit Oak Tree to obtain the maximum benefit from the lower rates which will be applicable under SDG&E's tariff schedule LS-2.
3. There is no reason why, after a sale and transfer, that SDG&E should not apply its tariff schedule LS-2 to energy furnished Oak Tree for streetlighting purposes.
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, San Diego Gas & Electric Company (SDG&E) may sell and convey to the Oak Tree Ranch Association (Oak Tree) 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. After completion of the sale and transfer SDG&E is authorized to apply its tariff schedule LS-2 to energy sales to Oak Tree for this streetlighting system.

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 Oak Tree with electric energy for the system.

This order is effective today.

Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT
President

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

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

Victor Wasser
Victor Wasser, Executive Director

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