

Decision 88 04 C27 APR 13 1988 APR 13 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CP NATIONAL CORPORATION (U 11 M), a)
 California corporation, "or)
 authority to sell its Lassen)
 Electric District Electric System)
 to the Lassen Municipal Utility)
 District, a California municipal)
 utility district.)

Application 88-02-019
 (Filed February 11, 1988)

OPINIONStatement of Facts

CP National Corporation (CP National) seeks authority to sell to the Lassen Municipal Utility District (LMU District), CP National's Lassen Electric District, including all of the properties and assets applicable to CP National's electrical distribution and transmission system in Lassen and contiguous counties.

CP National is a California corporation which owns and operates electric, gas, and telephone systems in various parts of California and other states.

The LMU District is a municipal utility district duly organized and existing under the laws of the State of California.

The area encompassed by CP National's Lassen electric system lies in southern Lassen County and smaller contiguous portions of adjoining Plumas and Tehama Counties. The system serves approximately 9,150 customers in Lassen County, 700 in Plumas and 100 in Tehama, a total of approximately 9,950 customers.

The electric system is subject to and under the regulatory jurisdiction of this Commission.

The LMU District and CP National have executed an Agreement of Purchase and Sale whereby, subject to Commission approval, the LMU District will purchase and CP National will sell

all of the properties located in Lassen, Plumas, and Tehama Counties, California used and useful in CP National's Electric system. A copy of the Agreement of Purchase and Sale is attached to the application as Exhibit A. The LMU District proposes to finance the contemplated purchase by amending the Agreement of Purchase and Sale shortly before the closing of the financing, converting it into an installment sales contract, and selling Certificates of Participation in the installment payment obligation under such installment sales contract. CP National will assign the sales contract to a bank trustee in consideration of payment of the purchase price. The LMU District would use the proceeds of the sale of the Certificates of Participation to pay the purchase price of the Electric System on the Closing Date (as defined in the Agreement of Purchase and Sale). The underwriting and distribution of the Certificates of Participation will be accomplished by Prudential Bache.

Upon acquisition of CP National's Electric System, the LMU District will assume the total obligation to provide electric service to the public within the boundaries of CP National's Lassen Electric District service area without unreasonable differences or discrimination between members of the public as to rates, charges, practices, rules, service facilities or any in other respect.

Under the Agreement of Purchase and Sale, the LMU District will assume and honor all liabilities and obligations of CP National with regard to refundable customer deposits and/or advances previously made to CP National arising out of its operations of the Electric System. Under the Agreement of Purchase and Sale, the LMU District will also assume and honor all liabilities and obligations resulting from past and future Federal Energy Regulatory Commission (FERC) rate settlement agreements.

CP National and the LMU District believe that the change of operation and ownership of the Electric System from CP National to the LMU District will not result in deterioration in or interruptions of service or inconvenience to the general public.

Upon acquiring ownership of the Lassen Electric District, the LMU District expects to adopt rates for its electric service which would be lower than those charged to the public by CP National as of the date of transfer.

The proposed sale of the Electric System to the LMU District is expected to benefit the public interest because the LMU District can provide electric service to the customers of the Electric System at lower rates than can CP National. The expected savings to the LMU District are from its ability to purchase power at wholesale rates lower than those paid by CP National, from sources that would not be available to CP National. Savings would also occur from the elimination of taxes and profits accompanying private ownership.

The Commission has addressed this proposed transaction previously. On May 28, 1986, as part of the Lassen County's Local Agency Formation Commission procedures for approving the formation of the LMU District, the Commission adopted the staff report which concluded that the proposed sale of all of the Electric System (but not part of such system) to the proposed LMU District would not impair CP National's ability to continue to provide adequate service at reasonable rates to its remaining customers. A copy of the report which states this finding is attached to the application as Exhibit C. The report indicates that the petition to form the LMU District followed a series of rate increase applications by CP National, and that the LMU District is expected to provide less expensive electric service than CP National is able to provide.

CP National's financial statements and a statement of the book cost and original cost of the properties to be sold pursuant to said Agreement of Purchase and Sale is attached to the application as Exhibit D. The purchase price for the Electric System to be paid by the LMU District to CP National is set forth in Section 1.2 of the Agreement of Purchase and Sale. The aggregate purchase price for the Electric System will be an amount equal to the sum of: (a) \$19,900,000.00, and (b) the book cost of additions and betterments (including construction work in process (CWIP)) added to the Electric System between October 31, 1987 and the Closing Date. According to Exhibit D the original cost of the electric system as of September 30, 1987 is \$19,781,579 and the net book value is \$13,742,852.

The LMU District has authorized CP National to state that they join in this application and support the statements regarding the LMU District.

Because the acquisition of CP National's Electric System by the LMU District will result in no detriment to the public and the LMU District desires to arrange for the sale of the Certificates of Participation as soon as possible to take advantage of favorable market conditions, CP National and LMU believe that there is no need to set this application for hearing.

Notice of this application requesting ex parte treatment was published on March 2, 1988 in the Chester Progressive, a newspaper published at Chester in Plumas County; and on March 1, 1988 in the Lassen County Times, a newspaper published at Susanville in Lassen County. Also, all public entities affected by the application were notified by letter dated February 23, 1988. Accordingly, CP National and LMU request ex parte treatment of this application.

Notice of this Application appeared in the Commission's Daily Calendar of February 17, 1988. No protest has been received.

Discussion

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 utility duty without first obtaining authorization to do so from this Commission. And in the usual transfer proceedings 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 not present here. Private parties are not involved. Based on Exhibit D attached to the application, we note that the purchase price is the original cost to CP National as of September 30, 1987 plus an amount to cover additions after that date. Therefore, it is reasonable to conclude that this is an arm's length transaction and the purchase price meets the test of being fair and just compensation to the utility for the system to be sold.

With regard to any gains or losses resulting from this transaction, pursuant to our decision in Campton Heights (Decision (D.) 83-08-047), a public utility selling and transferring its entire public utility system can retain any gains realized over net book resulting from such disposition, and will absorb any losses. In Campton Heights we determined that no jeopardy to the interests of ratepayers connected with the transferred system arises from such disposition of sale gains or losses. Such is the situation here. Under Campton Heights CP National's shareholders are entitled to any gain on sale.

Also, we note that on May 28, 1986 we adopted a staff report prepared for the formation of the LMU District, which states:

FINDINGS: The Commission finds that the proposed LMUD acquisition of the entire CPN Lassen electric system would not impair CPN's

ability to continue to provide adequate service at reasonable rates to its remaining customers.

"The Commission also finds that if only a part or parts of the CPN Lassen electric system were acquired by the proposed LMUD it would impair CPN's ability to continue to provide adequate service at reasonable rates to its remaining customers.

"Acquisition of less than the entire system should not be permitted."

Accordingly, there is no reason to anticipate significant adverse impact resulting from the transfer of the ownership and operation of CP National's Lassen electric system to LMU District.

Since there is no opposition, this is a matter of public knowledge in the area as a result of the formation of the LMU District, notice of this application has been advertised in newspapers serving the area, and we do not wish to delay this sale and transfer, there is no need to set the matter for public hearing. The information contained in the application provides sufficient basis for our ex parte approval of the sale and transfer.

Findings of Fact

1. The information contained in this application is sufficient to conclude that there should be no adverse impact to the ratepayers of CP National's Lassen District resulting from the proposed sale to LMU District.

2. In D.83-08-047 (Campton Heights) it was determined that since in "liquidation" proceedings no ratepayers remain to the seller (the transferee having assumed all obligations to serve the seller's former customers together with ownership of the system) and seller's former customers are not separated from the system, no jeopardy to ratepayers' interests results from release to the seller of such gains above depreciated rate base in the sale price.

Such is the situation here. CP National's shareholders are entitled to the gain on sale.

Conclusions of Law

1. Since there is no opposition and this application is a matter of public knowledge in the area, it is appropriate to handle this transfer of ownership on an ex parte basis.

2. Since CP National's Lassen District will be transferred to a public entity and there is no basis to conclude that the electric customers will be adversely impacted by the transfer, the transfer should be approved.

3. Pursuant to PU Code § 851 and the Commission's Rules and General Orders, CP National should be authorized to complete the transfer and sale of its Lassen District to LMU District.

ORDER

IT IS ORDERED that:

1. CP National Corporation (CP National) is authorized to complete the sale and transfer of its Lassen District (in its entirety only) to Lassen Municipal Utility District in substantially the form as set forth in its application.

2. The grant of authority in Ordering Paragraph 1 is conditioned on payment to the Commission of all fees required by PU Code § 401 up to the date of sale of Lassen Electric District.

3. CP National shall notify the Commission Advisory and Compliance Division, in writing, within 10 days after the sale, stating the date of transfer. Upon receipt of such notice of sale and transfer, the electric tariffs of Lassen Electric District currently on file shall be cancelled.

4. CP National shall file, in accordance with GO 104-A, an annual report on Lassen District electric operations from the first day of the current year through the date of transfer.

5. After completion of the sale and transfer CP National will be relieved of its public utility duties and responsibilities to provide public electric service in its Lassen District service area.

6. The authority granted by this order shall expire after two years from the effective date, if it has not been exercised by that date.

This order is effective today.

Dated APR 13 1988, at San Francisco, California.

STANLEY W. HULETT
President
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Donald Vial, being
necessarily absent, did not
participate.

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

Victor Weiss
Victor Weiss, Executive Director