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Decision 88-05-068 May 25, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company and the Department of Water Resources of the State of California for an order under Section 851 authorizing the former to sell and convey to the latter a 75 percent undivided interest in the former's Midway-Wheeler Ridge 230 kV transmission line, in accordance with the terms of an agreement entered into on November 15, 1984.

Application 88-02-009
(Filed February 3, 1988)

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 service in northern and central California. It also distributes and sells water in some rural areas and communities, and sells steam in certain parts of San Francisco.

The Department of Water Resources (DWR) is an agency of the State of California. DWR serves two principal functions: statewide water planning, and developing and managing the State Water Project.

In 1970 PG&E constructed a 230 kV transmission line to extend approximately 50 miles through rural southwestern Kern County from its Midway Substation to its Wheeler Ridge Substation located about 20 miles south of Bakersfield.

Earlier, PG&E, Southern California Edison Company and San Diego Gas and Electric Company had been parties to a 1966 Pacific Intertie Agreement, as well as 1967 Extra High Voltage (EHV) transmission exchange agreements with both the Western Area Power Administration and the Sacramento Municipal Utility District. They also had a 1967 EHV contract to provide DWR under certain circumstances with up to 300 MW of off peak power from the Pacific Intertie arrangement. In addition, the three utilities and Los Angeles Department of Water and Power (LADWP) had a suppliers contract to provide electric capacity, energy and transmission service to DWR. There was also a 1967 "Oroville" contract between the three utilities and DWR whereby DWR would sell the utilities all the output of DWR's Edward Hyatt and Thermalito Power Plants.

Differences surfaced in 1977 after PG&E sought a rate increase for off peak power sales to DWR and a declaratory order from the Federal Energy Regulatory Commission (FERC), and was opposed by DWR. In 1979 the LADWP agreement went into litigation when LADWP sought a commercial impracticability termination. DWR alleged violations of State and federal antitrust laws relative to the three utilities, the intertie agreement, the "Oroville" contract, and with regard to supply and pricing of "stub transmission service." DWR also intervened in certain Nuclear Regulatory Commission proceedings involving PG&E's Stanislaus commitments relative to the utility's Diablo Canyon Nuclear Project.

Complicating matters, DWR advised PG&E that it had executed agreements with Pacific Power & Light Company and Portland General Electric Company for purchase of energy and that after March 31, 1983 unless a settlement were reached, DWR would expect to use the full amount of its transmission entitlement all or a great majority of the time to transmit that Northwest energy rather than take its Pacific Intertie EHV entitlement.

Against this backdrop PG&E and DWR negotiated, and on April 22, 1982 concluded a "Comprehensive Agreement" which successfully resolved their differences involving transmission services, interconnection arrangements, and the purchase, sale, and exchange of electric capacity and energy. Today, in addition to transmitting its own power over the Midway-Wheeler Ridge 230 kV transmission line, PG&E, pursuant to this 1982 "Comprehensive Agreement" (which has been filed with FERC as FERC Rate Schedule No. 77) transports electric energy owned by DWR to three DWR pumping stations located at Buena Vista, Wheeler Ridge, and Wind Gap. Three PG&E tap lines lead to the locations of these pump stations.¹ DWR pays PG&E and \$83,646 each month for this service.

Desirous of resolving their other differences, PG&E and DWR then concluded a "Settlement Agreement" dated December 31, 1982 (which was submitted as part of an offer of settlement in the FERC proceeding). In that "Settlement Agreement," inter alia the parties agreed to transfer from PG&E to DWR undivided 75 percent interests in the existing Midway-Wheeler Ridge 230 kV transmission system and the Tap Lines for the Wind Gap, Wheeler Ridge, and Buena Vista Pumping Plants. Subsequently, by a Sale Contract made November 15, 1984 PG&E and DWR modified their agreement to adopt a

1 The shared facilities are the 230 kV transmission line extending 47.38 miles and include 208 towers commencing from and including Tower No. 0/1 at Midway Substation and terminating at and including the tower function (Tower No. 47/208) of the Tap Line for DWR's Wind Gap Pumping Plant. The Tap Lines are those connecting line facilities serving DWR's Buena Vista Pumping Plant (extending 1.19 miles and including 7 towers, commencing at but not including Tower No. 22/101), Wheeler Ridge Pumping Plant (extending 0.23 miles and including 2 towers, commencing at but not including Tower No. 46/205), and Wind Gap Pumping Plant (extending 1.63 miles and including 8 towers, commencing at but not including Tower No. 47/208). These facilities serve DWR's loads exclusively.

sale and transfer of a 100 percent interest in the Wind Gap, Wheeler Ridge, and Buena Vista Pumping Plant Tap Lines, and 75 percent of the 230 kV Midway-Wheeler Ridge transmission system, from the Midway Substation to the interconnection point of the Wind Gap Pumping Plant Tap Line. The purchase price agreed upon is \$10,686,788 (replacement cost less depreciation). As of December 31, 1987 the original cost was \$2,791,000 with a depreciation reserve of \$1,115,000, resulting in a net book value of \$1,676,000 for the system.

After the closing each party will have the right to transmit electric power at any given time (subject to certain jeopardy condition limitations set forth in the Sale Contract (see Section 5.5)) over that percentage of the shared facilities of the transmission system corresponding to each party's interest as a tenant in common. Each party may transmit temporarily over any unused portion of the other party's interest, and during operating emergencies PG&E may call upon DWR for use of DWR's portion of the transmission system. PG&E will operate and maintain the transmission system, billing DWR for the costs applicable to DWR's interest on the basis of PG&E's system average costs of operating and maintenance. Capital replacements will be made by agreement with costs shared proportionate to each party's interest. PG&E does not anticipate that the sale will affect its ability to interconnect qualifying facilities in the Kern County area. Each party will pay its own taxes and taxes ascribable to its ownership interest.

Notice of the application appeared in the Commission's Daily Calendar of February 9, 1988. No protest was received.

By a response filed March 28, 1988, the Division of Ratepayer Advocates (DRA) indicated that it has no objection to approval of the sale and transfer. Its recommendations on allocation of the gain realized will be addressed in our subsequent decision on that issue.

Discussion

No protest having been received as provided under Rule 30 of the Commission's Rules of Practice and Procedures, we proceed ex parte as requested by the parties to this proceeding, and no public hearing is necessary.

The DWR has wide responsibility and jurisdiction in California in water matters, including operation of the State Water Project, a major provision of which is to convey water by an aqueduct system to various parts of Central and Southern California. In 1967 the State began pumping water from the Sacramento-San Joaquin Delta into this California Aqueduct which serves the Santa Clara, Livermore, and San Joaquin valleys, as well as much of the densely populated southland. DWR operates numerous pumping stations along the Aqueduct. Water districts depend upon these pumping stations. In Kern County alone, water districts serve 1.5 million acres of California's most productive farmland. Certain of the DWR pumping stations also serve to move Aqueduct water up over the Tehachapi Mountains towards the Los Angeles basin. In this latter group are the three pumping stations at Buena Vista, Wheeler Ridge, and Wind Gap.

In 1970 PG&E constructed the Midway-Wheeler Ridge transmission line for two reasons; to reinforce its then existing transmission system for its own requirements, and to deliver energy to these three DWR pumping stations. Since then, for the most part DWR had merely used PG&E's facility to wheel in power DWR has obtained from its own Bottle Rock Geothermal, Pine Flat Hydro, and Hyatt Thermalito generating facilities, as well as from its San Luis joint venture plant with the Bureau of Reclamation. Since then DWR had decided it wants to acquire its own proprietary transmission capability and accordingly here seeks a share of the transmission facility of PG&E.

Normally, when a governmental entity indicates serious interest in a utility system, the public utility involved, aware of

the governmental entity's eminent domain powers, is often willing to negotiate a voluntary sale on mutually satisfactory terms, thereby enabling both parties to avoid the necessity of lengthy condemnation proceedings with attendant legal expense. Here the voluntary sale approach is especially advantageous to both parties. Quite apart from the burdensome condemnation process being avoided by both, DWR will obtain the amount of transmission capability it requires at current market value but will not have to assume physical maintenance burdens; and PG&E essentially will retain the transmission capacity it requires to fill its transformation needs at its Wheeler Ridge Substation where it must step down the 230 KV power to 70 kv for distribution to other substations to meet regional requirements. In addition, PG&E will also retain an emergency system backup. Thus, where both parties are advantaged and also can resolve other differences, tailoring their settlement package to accomodate each other's needs, the voluntary sale approach is a particularly reasonable and attractive one.

While 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 service without first obtaining authorization to do so from this Commission, under present operation of law, where an agency of the State is to be the purchaser, our consideration is substantially different than instances where the sale is between private parties. In the common transfer proceedings between private parties, the function of the Commission is to prevent the impairment of the public service to the ratepayers being served by the transferred facilities. This could result from the transfer of its property into the hands of parties incapable of performing an adequate service at reasonable rates or upon terms which would bring about the same undesirable result (Southern Cal. Mountain Water Co. (1912) 1 CRC 520). But such concerns are not determinant where sale to a State

agency is involved. And if the Commission were to require conditions or terms not acceptable to the State agency, the proposed sale could be abandoned and the agency could resort to its eminent domain alternative (see People ex rel. PUC v City of Fresno (1967) 254 CA 2d 76; petition for hearing denied by Supreme Court 11/22/67).

In the present proceeding the purchase price is one negotiated by the parties, and reflects an acceptable measure of market value (City of Riverside (1972) 74 CPUC 195, 202). PG&E's present customer requirements out of the Wheeler Ridge Substation will continue to be met without impairment. There is no reason to anticipate any significant adverse impact or environmental effects to result from State use and part, albeit majority part, ownership of the transmission line, particularly since PG&E will continue to maintain the system including the Tap Lines. And, as stated earlier, it is not anticipated that the sale and transfer will affect PG&E's ability to interconnect qualifying facilities in the area.

Accordingly, we see no reason why authorization for the sale and transfer should not be granted, and when consummated, why PG&E should not be released from its public utility responsibilities with regard to service to the three DWR pumping stations, the three Tap Lines to be owned by DWR, and the 75 percent interest in the 230 kV transmission line to be owned by DWR.

: Incidental to this transaction is the fact that the sale and transfer will result in a gain being realized by PG&E over original cost less depreciation of the transmission system interest being transferred. The Commission has established the appropriate ratemaking treatment of gain on the sale of utility property in City of Redding (1985) D.85-11-018, modified by D.86-02-056 and D.86-04-021. In accordance with the risk theory of allocations, we assigned the gain from the utility's sale of a portion of its

electric distribution facilities to the ratepayers. The fact that ratepayers would have borne the responsibility for the write-off of the asset was the basis for the allocation in Redding. In the present application, PG&E has argued that for the same reasons it tendered in the Redding case, the gain on the present sale should be allocated to PG&E's shareholders, and asked that the gain be so allocated. While authorizing the sale and transfer, we will reserve the gain on sale allocation issue for further Commission decision.

Because DWR must issue bonds to finance this acquisition, and time is presently of essence in the financial market, the parties have asked that this sale and transfer authorization be issued as quickly as possible. Accordingly, this interim order will be made effective immediately.

Findings of Fact

1. PG&E provides public utility electric services in many areas of California.
2. DWR is a State agency which, inter alia, owns and operates electric generating facilities in the State and also operates pumping stations along the California Aqueduct.
3. Since its construction in 1970, PG&E has owned and operated a 230 kV transmission line between the utility's Midway Substation and its Wheeler Ridge Substation in Kern County.
4. This 230 kV transmission line, in association with three interconnecting Tap Lines, has provided electric power to DWR's Buena Vista, Wheeler Ridge and Wind Gap pumping stations on the California Aqueduct, and has transported energy owned by DWR.
5. Over the years differences arose between PG&E and DWR over energy matters which the parties under an April 22, 1982 "Comprehensive Agreement" and an December 31, 1982 "Settlement Agreement" determined to resolve.
6. Consequently, as part of a package settlement, by a sale contract made November 15, 1984, PG&E agreed, subject to Commission

approval pursuant to PU Code § 851, to sell and transfer to DWR a 75 percent undivided interest in the 230 KV transmission line, and a 100 percent interest in the three Tap Lines.

7. The purchase price negotiated and agreed upon by the parties is reasonable.

8. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of this system may have a significant effect on the environment.

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

10. The purchase price includes a gain over original cost less depreciation of the system being transferred.

11. There is no reason to delay authorization to PG&E and DWR for this sale and transfer so long as the allocation of the gain on sale to be realized is held by PG&E in a suspense account pending further order of the Commission regarding its allocation.

Conclusions of Law

1. A public hearing of this application is not necessary.

2. The application authorizing sale and transfer should be granted while reserving allocation of the gain on sale for further Commission order as provided in the following order.

3. Upon completion of the sale and transfer, PG&E should be relieved of its public utility electric service and transmission responsibilities to the three DWR pumping stations, the three Tap Lines being acquired by DWR, and the 75 percent interest in the 230 KV transmission line being acquired by DWR.

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 Department of Water Resources of the State of California (DWR)

an undivided 75 percent interest in the former's Midway-Wheeler Ridge 230 kV transmission line and a 100 percent interest in the Buena Vista, Wheeler Ridge, and Wind Gap Tap Lines which run from the Midway-Wheeler Ridge transmission line to the respective three DWR pumping plants.

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

3. Within 90 days of the actual transfer PG&E shall advise the Commission's Advisory and Compliance Division, in writing, of any adjustments for additions and betterments made in accordance with the transaction.

4. Within 90 days after the date of actual transfer, PG&E shall record the gains accruing over net book value from this sale and transfer in an appropriate suspense account and retain them in that account until further Commission order.

5. PG&E shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees that have been collected to the date of sale and transfer of this system, along with its other fee remittances, at the next quarter following the date of the sale and transfer.

6. Upon completion of the sale and transfer authorized by this interim order, PG&E shall stand relieved of its public utility electric service and transmission responsibilities to the three DWR pumping stations at Buena Vista, Wheeler Ridge, and Wind Gap respectively, with regard to the three Tap Lines to these pumping stations, and with regard to the 75 percent undivided interest in

the 230 kV transmission line between Midway and Wheeler Ridge
Substations being acquired by DWR in Kern County.

This interim order is effective today.

Dated May 25, 1988, 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 Weiser, Executive Director

The DWR has wide responsibility and jurisdiction in California in water matters, including operation of the State Water Project, a major provision of which is to convey water by an aqueduct system to various parts of Central and Southern California. In 1967 the State began pumping water from the Sacramento-San Joaquin Delta into this California Aqueduct which serves the Santa Clara, Livermore, and San Joaquin valleys, as well as much of the densely populated southland. DWR operates numerous pumping stations along the Aqueduct. Water districts depend upon these pumping stations. In Kern County alone, water districts serve 1.5 million acres of California's most productive farmland. Certain of the DWR pumping stations also serve to move Aqueduct water up over the Tehachapi Mountains towards the Los Angeles basin. In this latter group are the three pumping stations at Buena Vista, Wheeler Ridge, and Wind Gap.

In 1970 PG&E constructed the Midway-Wheeler Ridge transmission line for two reasons; to reinforce its then existing transmission system for its own requirements, and to deliver energy to these three DWR pumping stations. Since then, for the most part DWR had merely used PG&E's facility to wheel in power DWR has obtained from its own Bottle Rock Geothermal, Pine Flat Hydro, and Hyatt Thermalite generating facilities, as well as from its San Luis joint venture plant with the Bureau of Reclamation. Since then DWR had decided it wants to acquire its own proprietary transmission capability and accordingly here seeks a share of the transmission facility of PG&E.

Normally, when a governmental entity indicates serious interest in a utility system, the public utility involved, aware of the governmental entity's eminent domain powers, is often willing to negotiate a voluntary sale on mutually satisfactory terms, thereby enabling both parties to avoid the necessity of lengthy condemnation proceedings with attendant legal expense. Here the voluntary sale approach is especially advantageous to both parties.

Quite apart from the burdensome condemnation process being avoided by both, DWR will obtain the amount of transmission capability it requires at current market value but will not have to assume physical maintenance burdens; and PG&E essentially will retain the transmission capacity it requires to fill its transformation needs at its Wheeler Ridge Substation where it must step down the 230 kV power to 70 kV for distribution to other substations to meet regional requirements. In addition, PG&E will also retain an emergency system backup. Thus, where both parties are advantaged and also can resolve other differences, tailoring their settlement package to accommodate each other's needs, the voluntary sale approach is a particularly reasonable and attractive one.

While 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 service without first obtaining authorization to do so from this Commission, under present operation of law, where an agency of the State is to be the purchaser, our consideration is substantially different than instances where the sale is between private parties. In the common transfer proceedings between private parties, the function of the Commission is to prevent the impairment of the public service of a utility which could result from the transfer of its property into the hands of parties incapable of performing an adequate service at reasonable rates or upon terms which would bring about the same undesirable result (Southern Cal. Mountain Water Co. (1912) 1 CRC 520). But such concerns are not determinant where sale to a State agency is involved. And if the Commission were to require conditions or terms not acceptable to the State agency, the proposed sale could be abandoned and the agency could resort to its eminent domain alternative (see People ex rel. PUC v City of Fresno (1967) 254 CA 2d 76; petition for hearing denied by Supreme Court 11/22/67).

In the present proceeding the purchase price is one negotiated by the parties, and reflects an acceptable measure of market value (City of Riverside (1972) 74 CPUC 195, 202). PG&E's present customer requirements out of the Wheeler Ridge Substation will continue to be met without impairment. There is no reason to anticipate any significant adverse impact or environmental effects to result from State use and part, albeit majority part, ownership of the transmission line, particularly since PG&E will continue to maintain the system including the Tap Lines. And, as stated earlier, it is not anticipated that the sale and transfer will affect PG&E's ability to interconnect qualifying facilities in the area.

Accordingly, we see no reason why authorization for the sale and transfer should not be granted, and when consummated, why PG&E should not be released from its public utility responsibilities with regard to service to the three DWR pumping stations, the three Tap Lines to be owned by DWR, and the 75 percent interest in the 230 kV transmission line to be owned by DWR.

Incidental to this transaction is the fact that the sale and transfer will result in a gain being realized by PG&E over original cost less depreciation of the transmission system interest being transferred. PG&E in the present application stated its belief that for the same reasons it set forth in City of Redding (1985) Decision (D.) 85-11-018, as modified by D.86-02-056 and D.86-04-021, the gain on the present sale should be allocated to PG&E's shareholders, and asked that the gain be so allocated. While authorizing the sale and transfer, we will reserve the gain on sale allocation issue for further Commission decision.

Because DWR must issue bonds to finance this acquisition, and time is presently of essence in the financial market, the parties have asked that this sale and transfer authorization be

issued as quickly as possible. Accordingly, this interim order will be made effective immediately.

Findings of Fact

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4. This 230 kV transmission line, in association with three interconnecting Tap Lines, has provided electric power to DWR's Buena Vista, Wheeler Ridge and Wind Gap pumping stations on the California Aqueduct, and has transported energy owned by DWR.
5. Over the years differences arose between PG&E and DWR over energy matters which the parties under an April 22, 1982 "Comprehensive Agreement" and an December 31, 1982 "Settlement Agreement" determined to resolve.
6. Consequently, as part of a package settlement, by a sale contract made November 15, 1984, PG&E agreed, subject to Commission approval pursuant to PU Code § 851, to sell and transfer to DWR a 75 percent undivided interest in the 230 kV transmission line, and a 100 percent interest in the three Tap Lines.
7. The purchase price negotiated and agreed upon by the parties is reasonable.
8. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of this system may have a significant effect on the environment.
9. There is no known opposition to the sale and transfer proposed.
10. The purchase price includes a gain over original cost less depreciation of the system being transferred.

11. There is no reason to delay authorization to PG&E and DWR for this sale and transfer so long as the allocation of the gain on sale to be realized is held by PG&E in a suspense account pending further order of the Commission regarding its allocation.

Conclusions of Law

1. A public hearing of this application is not necessary.
2. The application authorizing sale and transfer should be granted while reserving allocation of the gain on sale for further Commission order as provided in the following order.
3. Upon completion of the sale and transfer, PG&E should be relieved of its public utility electric service and transmission responsibilities to the three DWR pumping stations, the three Tap Lines being acquired by DWR, and the 75 percent interest in the 230 kV transmission line being acquired by DWR.

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 Department of Water Resources of the State of California (DWR) an undivided 75 percent interest in the former's Midway-Wheeler Ridge 230 kV transmission line and a 100 percent interest in the Buena Vista, Wheeler Ridge, and Wind Gap Tap Lines which run from the Midway-Wheeler Ridge transmission line to the respective three DWR pumping plants.
2. Within 10 days of the actual transfer PG&E shall notify the Commission in writing of the date of which the transfer was consummated. A true copy of the instrument affecting the sale and transfer shall be attached to the written notification.
3. Within 90 days of the actual transfer PG&E shall advise the Commission's Advisory and Compliance Division, in writing, of

any adjustments for additions and betterments made in accordance with the transaction.

4. Within 90 days after the date of actual transfer, PG&E shall record the gains accruing over net book value from this sale and transfer in an appropriate suspense account and retain them in that account until further Commission order.

5. PG&E shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees that have been collected to the date of sale and transfer of this system, along with its other fee remittances, at the next quarter following the date of the sale and transfer.

6. Upon completion of the sale and transfer authorized by this interim order, PG&E shall stand relieved of its public utility electric service and transmission responsibilities to the three DWR pumping stations at Buena Vista, Wheeler Ridge, and Wind Gap respectively, with regard to the three Tap Lines to these pumping stations, and with regard to the 75 percent undivided interest in the 230 kV transmission line between Midway and Wheeler Ridge Substations being acquired by DWR in Kern County.

This interim order is effective today.

Dated MAY 25 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners