

Decision SS 05 070 MAY 25 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mailed

Application of PACIFIC GAS AND)
ELECTRIC COMPANY and the CITY OF)
SANTA CLARA for an order authorizing)
the former to sell and convey to the)
latter certain electric distribution)
facilities, in accordance with the)
terms of an agreement dated)
September 15, 1987.)

MAY 27 1988

Application 88-02-011
(Filed February 5, 1988)

(Electric) (U 39 E)

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 City of Santa Clara is a municipal corporation existing under the laws of the State of California. It is located in Santa Clara County. For some time the city has owned and operated a municipal electric distribution system located within its corporate limits. From this system the city furnishes electric service streetlighting to its residents and inhabitants.

Adjacent on the southeastern corner of Santa Clara is an inhabited but unincorporated area which for purposes of this application has been designated as Bell Arye Manor No. 6. Bounded roughly by Stevens Creek Boulevard, San Tomas Expressway, Forest Avenue, and North Winchester, the area has been served by PG&E. At present the PG&E electric distribution system in the area serves

282 residential customers and 14 commercial customers. Streetlighting is provided by 22 high pressure streetlights. At present PG&E derives an annual gross revenue of \$423,000 from this service.

By Resolution No. 4960 dated June 25, 1985 the Santa Clara City Council completed annexation "reorganization" proceedings to include the area within the city's corporate limits. The city now wants to acquire this PG&E electric distribution system and incorporate it into its municipal electric distribution system.

Accordingly, Santa Clara and PG&E on September 15, 1987 executed an agreement whereby Santa Clara will purchase the system. By this application the applicants seek an ex parte order of the Commission authorizing the sale and transfer, including any additions or betterments to the date of conveyance. Upon acquisition the city will furnish the electric service presently supplied by PG&E and future requirements in the area. Concurrent with the transfer, PG&E seeks to be relieved of its public utility obligations within the annexed area.

The purchase price for the electric distribution system negotiated by the parties is \$59,834, represented as being its value including 15% for value as a going concern. The city will also pay \$19,873 for severance costs. As of January 8, 1988, the historical book cost was \$28,000 and the depreciation reserve was \$19,000, leaving the net book value to be \$9,000. The actual cost of additions and betterments plus 15% as well as any severance costs accruing between the date of inventory and the date of conveyance will be determined upon the date of conveyance. The current ad valorem taxes will be prorated as of date of conveyance. The city has been advised that certain of the facilities involved may contain polychlorinated biphenyls (PCB's), and the city has agreed to hold PG&E harmless for liability arising from that substance from the date of conveyance.

Notice of the application appeared in the Commission's Daily Calendar of February 10, 1988. No protest has been received.

By response filed March 28, 1988, the Division of Ratepayer Advocates 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 Procedure, we proceed ex parte as requested by the parties to this proceeding and no public hearing is necessary.

While most California communities obtain their electric services from privately owned public utility corporations such as PG&E, some cities prefer and have been able to invest in the acquisition of their own electric distribution systems. Thereby, they are able to take advantage of low wholesale power rates available under preferential allocations for cities from federally owned hydroelectric projects. With lower financing costs, cheaper power sources, and not having to pay income or other taxes, cities sometimes are able to deliver this federally derived electric power at rates lower than those a public utility must charge. But to be eligible for federal allocations, a municipality must own its own distribution system, while depending upon the area public utility to wheel in the electric power and to also provide peaking period power.

In California any municipal corporation may acquire, construct, own, operate, or lease any public utility (West's Ann. Pub. Util. Code Sec. 10002). Under not uncommon circumstances, if a municipality wishes to acquire or add the property or system of a public utility it is empowered to exercise its powers of eminent domain to obtain that objective (West's Ann. Gov. Code Sec. 37350.5). Against this backdrop of potential coercion, if a

municipality indicates its serious interest in a system, the public utility involved and the municipality are often willing to negotiate a voluntary sale on mutually satisfactory terms, thereby avoiding the necessity of a lengthy condemnation proceeding with its attendant expense. Such a situation exists here.

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 a municipality 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 a municipal corporation is involved. If the Commission were to impose terms not acceptable to the municipality, the proposed sale could be abandoned and the city 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). Furthermore, after transfer and sale to a municipality, the customers transferred must continue to receive service and rates that are "fair, reasonable, just and nondiscriminatory." (See Hansen v City of San Buenaventura (1985) 213 C.Rptr. 859.) 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). By their September 15, 1987 agreement the city will continue to provide the electric service

presently provided by PG&E, and will also hold PG&E harmless with regard to possible PCB liabilities. There is no reason to anticipate any significant adverse impact or environmental effects to result from municipal operation of the system, and there are no line deposits or other credit deposits involved.

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 electric responsibilities with regard to the Bell Arye Manor No. 6 area.

Incidental to this transaction is the fact that the purchase will result in a gain being realized by PG&E over original cost less depreciation of the system being transferred. The Commission has established the appropriate ratemaking treatment of gain on the sale of utility property in City of Redding (1985) Decision (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.

The sooner the sale and transfer are approved, the sooner the customers directly involved can obtain the benefits of city ownership, operation, and rates inferentially promised them. Accordingly, this interim order will be made effective immediately.

Findings of Fact

1. PG&E provides public utility electric service in many areas of California, including areas in and about Santa Clara.

2. Santa Clara, a municipal corporation of the State of California, for some time has owned and operated an electric distribution system including streetlighting in areas within city limits.

3. The city in 1985 completed annexation of an area on its southeastern periphery designated here as Bell Arye Manor No. 6.

4. PG&E has been and continues to provide electric service and streetlighting to the residents and commercial establishments of the annexed area.

5. Santa Clara now wants to add PG&E's electric distribution system, including the streetlighting, in this annexed area to the city's municipal system.

6. Accordingly, Santa Clara and PG&E have negotiated a sale of this system to the city.

7. The purchase price 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. As a public utility continuing after this sale and transfer to operate in its remaining territory, PG&E remains responsible to the Commission for remittance of the Public Utilities Commission Reimbursement Fees collected up to the date of sale and transfer.

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

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

12. There is no reason to further delay authorization to PG&E and Santa Clara 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 suspension 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 obligations in the Bell Arye Manor No. 6 area.

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 City of Santa Clara the electric distribution and streetlighting system set forth in their September 15, 1987 agreement annexed to and made a part of their application as Tab A.
2. Within 10 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 affecting the sale and transfer shall be attached to the written notification.
3. Within 90 days after the date of actual transfer, PG&E shall advise the Commission's Advisory and Compliance Division, in writing, of the adjustments for additions and betterments made in accordance with the transaction.
4. Within 10 days of the 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 Reimbursements Fees collected to the date of sale and transfer of this Bell Arye Manor No. 6 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 obligations in connection with electric service including streetlighting in the Bell Ayre Manor No. 6 area in the City of Santa Clara.

This 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 Wasser, Executive Director

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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 a municipality 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 a municipal corporation is involved. If the Commission were to impose terms not acceptable to the municipality, the proposed sale could be abandoned and the city 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). Furthermore, after transfer and sale to a municipality, the customers transferred must continue to receive service and rates that are "fair, reasonable, just and nondiscriminatory." (See Hansen v City of San Buenaventura (1985) 213 C Rptr. 859.) 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). By their September 15, 1987 agreement the city will continue to provide the electric service presently provided by PG&E, and will also hold PG&E harmless with regard to possible PCB liabilities. There is no reason to anticipate any significant adverse impact or environmental effects to result from municipal operation of the system, and there are no line deposits or other credit deposits involved.

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 electric responsibilities with regard to the Bell Arye Manor No. 6 area.

Incidental to this transaction is the fact that the purchase will result in a gain being realized by PG&E over original cost less depreciation of the system 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.

The sooner the sale and transfer are approved, the sooner the customers directly involved can obtain the benefits of city ownership, operation, and rates inferentially promised them. Accordingly, this interim order will be made effective immediately.

Findings of Fact

1. PG&E provides public utility electric service in many areas of California, including areas in and about Santa Clara.
2. Santa Clara, a municipal corporation of the State of California, for some time has owned and operated an electric distribution system including streetlighting in areas within city limits.
3. The city in 1985 completed annexation of an area on its southeastern periphery designated here as Bell Arye Manor No. 6.
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