

SEP 15 1988

Decision 88 09 039 SEP 14 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND )  
 ELECTRIC COMPANY and the CITY OF )  
 REDDING for an order authorizing )  
 the former to sell and convey to )  
 the latter certain electric distri- )  
 bution facilities, in accordance )  
 with the terms of an agreement )  
 dated June 2, 1987. )  
 (Electric ) (U 39 E) )

Application 88-02-034  
 (Filed February 18, 1988)

INTERIM OPINIONStatement 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 California.

The City of Redding (the City), located in Shasta County, is a municipal corporation existing under the laws of the State of California. For some time the City has owned and operated an electric distribution system located within its corporate limits. From this system the City furnishes electric service to its residents and inhabitants.

In recent years the City has been annexing developing areas served by PG&E and located north of Redding. In each instance the City has been purchasing the PG&E electric distribution system serving the area in order to connect and append it to the Redding municipal system.

Adjacent to and northeast of Redding is a 439-acre detached partially developed subdivision area known as Argyle Estates. The area straddles State Highway 44's interchange with the Old Oregon Trail Road. At present PG&E serves 81 residential

and 9 commercial customers in the area, and derives an annual gross revenue of approximately \$143,000 from the distribution system.

PG&E has a mainline 12 kV distribution line that extends from the Jessup Substation near Anderson, 12 miles south of Redding, northward east of Redding to tie into PG&E's power grid serving communities to the north. This PG&E mainline traverses the Argyle Estates area by way of Airport Road. Power for the Argyle Estates distribution system is drawn into tap lines off this mainline, and from the tap lines the power is stepped down to 120/240 volts for distribution within Argyle Estates to the 90 residential and commercial customers and the high pressure sodium vapor streetlighting luminaires. This separate assemblage of electric distribution lines with correlated equipment including transformers forms a unitary whole electric operating system. Upon acquisition by the city, this separate distributive operating system will be severed from the present PG&E mainline power source and cut into the city's municipal electric supply. The city will accomplish this by building a short extension from its present 12 kV line on Hartnell Avenue East to the Argyle Estates distribution system. Thereafter, the Argyle Estates system will be operated by Redding independent of PG&E. The present PG&E residential and commercial customers will cease being PG&E customers and will thereafter be customers of the City of Redding's municipal system.

By Resolution No. 85-222 the City annexed the Argyle Estates unincorporated area, an annexation certified on December 19, 1985 by the Shasta County Local Agency Formation Commission (Annexation No. 83-6). The City now desires to acquire PG&E's distribution system within the area and PG&E has agreed to sell it.

Accordingly, on June 2, 1987 PG&E and the City executed a Purchase and Sale Agreement for the sale of the system. Under the terms of the agreement, the City will pay \$79,580 plus severance

costs of \$5,065 for the system. In addition, it will pay net value plus 15 percent and applicable severance costs of any additions and retirements made between September 24, 1986 and the date of conveyance. Taxes will be prorated. As of January 8, 1988 the historical book cost was \$55,000 and the depreciation reserve was \$19,000. Upon acquisition the City will furnish the electric service presently supplied by PG&E and future requirements in the area. The City will also assume responsibility for any of the facilities transferred which may contain polychlorinated biphenyls (PCB's). PG&E holds no line extension or other credit deposits for the customers involved.

By this application PG&E and the City seek an ex parte order of the Commission authorizing the sale and transfer of the Argyle Estates distribution system, including any additions or betterments to the date of conveyance, and PG&E seeks to be relieved of its public utility obligations with regard to the annexed area.

Notice of the application appeared in the Commission's Daily Calendar of February 24, 1988. No protest has been received.

Discussion

No protest having been received as provided under Rule 8.1 et seq. of our Rules of Practice and Procedure, we proceed ex parte as requested by the parties to this proceeding with regard to the authorization of the sale and transfer, 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 no income or other tax liabilities, 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 (Public Utilities (PU) Code § 10002). 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 (Gov. Code § 37350.5). Under not uncommon circumstances 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 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 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 determinative 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 Argyle Estates 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 electric distribution system being transferred. Shortly, the Commission will be taking another look at disposition of such gains in an Order Instituting Rulemaking.

By this interim order, therefore, we will be approving the sale and transfer of this Argyle Estates distribution system with concurrent relief to PG&E of its public utility obligations therein, but reserving disposition of the gain on sale issues for further decision.

Findings of Fact

1. PG&E provides public utility electric service in many areas of California, including areas in and about the City of Redding.

2. Redding, 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 unincorporated but inhabited area known as Argyle Estates adjacent to and northeast of the City.

4. PG&E owns and operates an electric distribution system which has been and continues to provide electric service and streetlighting to the residents and commercial establishments of the annexed area.

5. The City now wants to acquire and add PG&E's electric distribution system, including the streetlighting, in this annexed area to the City's municipal system.

6. Accordingly, Redding and PG&E have negotiated a sale and transfer 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 the City for this sale and transfer while the issues relating to allocation of the gain on sale to be realized are subject to further Commission consideration as provided in this Interim Opinion and Order.

Conclusions of Law

1. A public hearing of this application is not necessary.
2. The application authorizing sale and transfer and release of PG&E from its public utility obligations with regard to Argyle Estates should be granted while reserving allocation of the gain on sale issues for further Commission consideration and order as provided in the following order.

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 Redding the electric distribution and streetlighting system as set forth in their June 2, 1987 agreement annexed to and made a part of their application as Table 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 Argyle Estates system, along with its other fee remittances, at the next quarter following the date of 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 Argyle Estates area in the City of Santa Clara.

This order is effective today.

Dated SEP 14 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 Weiss*  
Victor Weiss, Executive Director  
AS