

Decision 89 04 035 APR 12 1989

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion re the sale by Pacific )  
Gas and Electric Company of certain )  
real property in Carbon County, )  
Utah. )

OII 82-05-01  
(Filed May 4, 1982)

Mailed

APR 13 1989

OPINION

Statement of Facts

During the 1970's, Pacific Gas and Electric Company (PG&E) contemplated the construction of a coal-fired plant to be located in California, and to be known as the Montezuma plant. After exhaustive analysis and search for suitable coal reserves, PG&E acquired certain properties and rights in Utah, and completed extensive prefatory activities, all linked directly to its plans for Montezuma. A substantial portion of the total investment was included as plant held for future use (PHFU) in PG&E's rate base, while stockholders incurred all carrying charges on the balance. Subsequently it appeared that Montezuma might never be built, and PG&E solicited bids for the consolidated properties and the rights, and sold them to Sunedco Energy Development Company (Sunedco), obtaining a substantial gain on the sale.

By an order dated May 4, 1982, the Commission instituted the captioned investigation into PG&E's sale to Sunedco of these consolidated properties and rights to explore, develop, and extract coal deposits. On December 30, 1982, after a hearing, the Commission, applying risk analysis but only to that part of the properties which had been placed in rate base, concluded that the ratepayers had carried all the risk for that portion of the total investment held as PHFU, and that accordingly they should realize the entire gain. This treatment implicitly recognized that the shareholders had been made completely whole through recoupment of

their original investment plus a return on the rate based property. Using a Btu basis as the most meaningful measure of the value of the properties, the Commission allocated \$59.6 million of the gain (including a commensurate share, \$4.3 million, for a disputed potential tax liability) for immediate distribution to the ratepayers. PG&E was to propose a refund plan.

Expecting that PG&E in its next general rate case would seek to recover substantial costs, including that of the feasibility study associated with the project, the Commission deferred any determination on risk analysis of the remaining balance of the gain until it would have the remainder of the Montezuma project before it. Since PG&E remained possibly liable for California capital gains tax on the entire gain, the Commission provided that as to any share of such tax allocable to the rate base property, if PG&E did become liable, PG&E should recover its payment on a dollar-for-dollar basis.<sup>1</sup>

After D.82-12-121 was issued, the Utah State Tax Commission audited PG&E and advised that it would consider the profits from the coal transaction to constitute "unitary business income" on the grounds that the properties had been acquired and used in the taxpayer's business.<sup>2</sup> To accept this Utah determination would effectively concede that California could also

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1 The issue of a California tax turned on whether the proceeds constituted "business or nonbusiness income under §§ 25120 et seq. of the Revenue and Taxation Code. While assuming it would be taxed, PG&E intended to resist any attempt to tax the capital gain. In view of the uncertainty the Commission determined to proceed with distribution of the gain without recognition of the portion of any California tax applicable to the rate base property.

2 Unitary business income must be apportioned and taxed by the various states in which the company conducts its business in proportion to its unitary business operation conducted in each of these states.

tax on the same basis. However, this resolution of the Utah tax matter would also lower the Utah tax substantially, and would further provide an expeditious and definitive early resolution of all the tax issues.

In the belief that its ratepayers interests would best be protected by acceptance of Utah's determination, and by paying the lesser Utah tax and California's tax, PG&E filed Advice Letters Nos. 948-E and 949-E on April 14, 1983 seeking authority to adjust the amount of gain, and for acceptance of its proposed distribution plan. The Commission agreed, and with a minor modification to the plan, issued D.83-06-064, reducing the distribution to reflect the lesser tax consequence to \$57.3 million, and approved the Electric Rate Adjustment Credit. The distribution was thereafter made pursuant to the plan.

Meanwhile, PG&E's general rate proceeding, Application 82-12-48, was before the Commission. Included in that proceeding, as provided in D.82-12-121, was consideration of disposition of that portion of the gain allocated to the nonrate base properties. The Commission concluded that by not placing these properties in rate base, the shareholders had assumed the entire risk of loss or damage to their investment. By D.83-12-068 issued December 22, 1983, the Commission awarded the entire \$37.9 million realized from sale of the nonrate base properties to PG&E. But PG&E was also required to absorb the direct feasibility study costs of \$14.3 million, so that the shareholders received a net gain of \$23.6 million.

D.83-12-068 thus resolved the last of the disposition of the capital gain issues from OII 82-05-01, the Commission's investigation relating to the sale of the PG&E Montezuma properties and rights. Inadvertently, the Commission in D.83-12-068 neglected to close OII 82-05-01. This should be done.

3. The authority granted herein and by D.88-12-014 shall expire one year after the effective date of that order.

This order is effective today.

Dated APR 12 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

Commissioner Frederick R. Duda  
being necessarily absent, did  
not participate.

Findings of Fact

1. Essentially, by D.82-12-121, D.82-06-064, and D.83-12 068, the Commission completed its investigation relative to the sale by PG&E of the Montezuma plant properties and rights in Utah, allocated the capital gains derived from that sale, and authorized disposition of the gains.

2. No other matters raised by OII 82-05-01 remain.

Conclusion of Law

OII 82-05-01 should be closed.

ORDER

IT IS ORDERED that OII 82-05-01 is closed.

This order becomes effective 30 days from today.

Dated APR 12 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

Commissioner Frederick R. Duda  
being necessarily absent, did  
not participate.

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

*Victor Weisner*  
Victor Weisner, Executive Director