

Decision 89 05 014 JUN 7 1989

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company, and the County of San Diego for an Order under Section 851 of the California Public Utilities Code to Sell and Convey Streetlighting Systems. (U-902-E)

Application 88-11-025 (Filed November 10, 1988)

INTERIM OPINION

Statement of Facts

San Diego Gas & Electric Company (SDG&E), a California public utility corporation, is engaged principally in the business of furnishing electric, gas and steam service in San Diego County and electric service in parts of Orange County.

The County of San Diego (County) is an agency created and existing under the laws of the State of California. In accordance with its obligations as a public utility, SDG&E has been furnishing electric energy to SDG&E-owned streetlighting systems located in the County. County pays SDG&E for the costs of ownership, operation, and maintenance of the systems and the energy provided these streetlighting facilities pursuant to SDG&E's LS-1C tariff, as authorized by the Commission. County now desires to own and maintain the systems involved herein and thereby obtain electric service from SDG&E pursuant to the latter's LS-2 tariff, a more favorable rate schedule available to entities owning and maintaining their own facilities and taking service from central points.

At present, SDG&E provides streetlighting service within County's Lighting Maintenance District 1 with approximately 2,625 luminaries using sodium vapor lamps on its own poles. County desires to purchase 160 of these lights, more particularly

described in Exhibit A to this application. The remaining lights will continue under SDG&E's ownership.

At present, SDG&E also provides streetlighting service within County's Lighting Maintenance District 3 with approximately 1,875 luminaries using sodium vapor lamps on its own poles. County desires to purchase 62 of these lights, more particularly described in Exhibit A to this application. The remaining lights will continue under SDG&E's ownership.

On November 10, 1987 and May 10, 1988, the parties signed agreements for conveyance of these system segments whereby the County would purchase luminaries, lamps, photocells, underground service wire from central points of service and streetlight-only concrete poles to qualify for tariff Rate LS-2. By this application, the parties seek an ex parte order of the Commission authorizing such sale and transfer, and application of the LS-2 rate thereafter for electric service. SDG&E also seeks, concurrently with the transfer of ownership, to be relieved of its public utility duties and responsibilities of owning, operating, and maintaining the facilities sold.

The purchase price agreed upon between SDG&E and County for the facilities, purportedly reflecting replacement cost less depreciation, is \$204,419. The original cost less depreciation of the facilities is \$119,556. County will also pay to SDG&E the current ad valorem taxes for the tax year the facilities are conveyed, prorated as of the closing date, and only upon such part attributable to the portion of the tax year. In the 12-month period ending May 30, 1988, SDG&E derived a gross annual revenue from County of approximately \$58,338 from provision of electric service to these facilities. Had the LS-2 rate been applicable, the revenue would have been \$42,484 less.

Notice of the application appeared in the Commission's Daily Calendar of November 17, 1988. No protest has been received.

Discussion

In California County Boards of Supervisors have alternative procedures available by which they may establish lighting maintenance districts to provide streetlighting on public roads in the County and decide upon the kinds of service most feasible for such districts. They also have the power to acquire by eminent domain any property necessary to carry out these functions (Gov. Code § 25350.5). The County of San Diego has established a number of county lighting maintenance districts, of which Districts 1 and 3 are included.

Under commonly experienced circumstances where the utility owns, operates, and maintains the streetlighting facilities, electric energy is provided to governmental agencies and lighting districts under provisions of the public utility's Schedule IS-1C. Under this schedule, the agency pays the utility for the costs of ownership, operation, and maintenance of the system and the energy provided to the facilities.

But also available to governmental agencies and lighting districts in instances where the customer owns the entire installation, including underground lines from a central point of connection with utility facilities, is Schedule IS-2, which offers more favorable rates.

In the present circumstances, the County seeks to purchase only the concrete pole street lights because lights mounted on wooden power poles would not be cost effective to buy. According to the County's estimate, owning the facilities would result in a 65% decrease in the electric bill applicable to these facilities, and would allow the districts to recover the purchase price in about 5-1/2 years. ✓

Against this backdrop, when a county expresses its desire to acquire all or part of a streetlighting system in order to be able to take advantage of lower rates, the public utility is often willing to negotiate directly for a voluntary sale with mutually satisfactory terms, and thereby avoid the necessity of a

condemnation proceeding with its attendant expense and delay. That situation pertains 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 duty without first obtaining authorization to do so from this Commission, under present operation of law, where a county district is involved our considerations are somewhat different than where private parties are involved. 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. (So. Cal. Mountain Water Co. (1912) 1 CRC 520). These concerns are not present here. In this application, reflecting as the proposal does, an arm's length negotiation which set the purchase price as being the replacement cost new of the utility streetlighting facilities less depreciation, the purchase price meets the test of being fair and just compensation to the utility for the streetlighting facilities to be sold.

There is no reason to anticipate any significant adverse impact or effect on the environment to result from County district, rather than SDG&E, operation and maintenance of portions of the streetlighting systems involved.

Incidental to the sale and transfer transaction is the fact that the purchase price agreed upon between the parties includes an increment of \$84,863 over the recorded net book or depreciated rate base valuation of the portions of the streetlighting systems to be sold and transferred. This fact raises the issue of whether this appreciation in value over net book belongs to the SDG&E shareholders, or whether some or all of SDG&E's ratepayers have a right to all or some portion of the appreciation in value. This issue is the same as that being

considered in ongoing proceedings in Rulemaking (R.) 88-11-041. Rather than further delay approval of this sale and transfer transaction between the County and SDG&E, by this interim decision we will authorize its consumation while reserving disposition and accounting of the \$84,863 gain over depreciated original cost until our resolution of this same issue in the R.88-11-041 proceeding.

There was no opposition to the sale and transfer aspect of this proceeding, and there is no need to set the matter for public hearing.

Findings of Fact

1. SDG&E provides public utility electric services in San Diego County and parts of Orange County.
2. The County desires to own, maintain, and operate portions of the streetlighting systems in County Lighting Maintenance Districts 1 and 3 in San Diego County.
3. Under PU Code § 851, the County and SDG&E by this application seek Commission authorization for SDG&E to sell and convey these streetlighting facilities in the County to the County.
4. Application of SDG&E's LS-2 schedule after the County acquires the lighting facilities including underground lines from a central point of connection with utility facilities will result in substantial savings to the County.
5. The purchase price for the facilities, arrived at by arm's length negotiation between the parties, represents reproduction cost less depreciation, and is fair, just and reasonable.
6. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of these facilities would have any significant adverse effect upon the environment.
7. Application of the LS-2 schedule rates to the energy delivered to these facilities after the sale and conveyance would be reasonable.

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

9. The proposed sale and transfer would not be adverse to the public interest.

10. Upon completion of the sale and transfer, SDG&E should be relieved of its public utility duties and responsibilities with reference to the ownership, maintenance and operation of these facilities.

11. There is no reason to further delay authorization to County and SDG&E for this sale and transfer.

12. The gain in the sale price over net book value when realized by SDG&E should be held in a suspense account pending further decision by the Commission.

Conclusions of Law

1. A public hearing is not necessary.

2. The effective date of this order should be today to permit County to obtain the maximum benefit from the lower LS-2 schedule rates.

3. The application should be granted as provided in the following order.

INTERIM ORDER

IT IS ORDERED that:

1. Within six months after the effective date of this order, San Diego Gas & Electric Company (SDG&E) may sell and convey to San Diego County the streetlighting facilities set forth in their agreements of November 10, 1987 and May 10, 1988.

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

3. Within 10 days of the actual transfer, SDG&E shall record the gains accruing from this sale and transfer in an appropriate memorandum account and retain them in that account until further Commission order.

4. Within 90 days after the date of actual transfer, SDG&E shall advise the Commission Advisory and Compliance Division, in writing of the final cost figures, including adjustment made for additions and betterments, of the streetlight facilities transferred.

5. The issue of the allocation of the gains received over recorded book value less depreciation is reserved for a further Commission decision.

6. After completion of the sale and transfer, SDG&E is authorized to apply its Tariff Schedule LS-2 to energy sales to San Diego County for these streetlighting facilities.

7. Upon compliance with this order, SDG&E shall stand relieved of its public utility duties and obligations of owning, operating and maintaining these facilities.

This order is effective today.

Dated JUN 7 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 Weisser, Executive Director

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