

Decision 89 06 019 JUN - 7 1989

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 distribution )  
facilities, in accordance with the )  
terms of an agreement dated )  
December 20, 1988. )

ORIGINAL

Application 89-04-060  
(Filed April 26, 1989)

(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 produces and sells steam in certain parts of San Francisco.

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.

In accordance with its obligations as a public utility, PG&E has been supplying electric service to 48 residential customers in an area known as the Lema Road area, which area by City Resolution No. 86-9 (Annexation No. 85-11) was incorporated into the City. The annexation was certified on May 7, 1986 by the Executive Officer of the Shasta County Local Agency Formation Commission. Accordingly, the City now desires to acquire the

PG&E facilities serving these customers in the annexed area, and intends to incorporate them into its municipal electric distribution system.

On December 20, 1988, PG&E and the City executed a Purchase and Sale Agreement whereby the City would purchase PG&E's electric distribution facilities, including any additions and betterments, within the Lema Road area. The facilities are more particularly described in Exhibit B of Tab A in the application. By this application the parties seek an ex parte order of the Commission authorizing the sale and transfer, including any betterments and additions. Upon their acquisition the City intends to furnish the electric service presently supplied by PG&E. Concurrent with the sale and transfer of the facilities, PG&E also seeks to be relieved of the duties and responsibilities, including all public utility obligations of an electrical corporation within the annexed area.

The purchase price agreed upon between City and PG&E for the facilities, purportedly reflecting replacement cost less depreciation, is \$93,500 together with severance costs of \$9,178. The City also agreed to pay the net value of any additions made subsequent to June 27, 1988, and 15% of such net value, and applicable severance costs. The original cost less depreciation of the facilities to be conveyed was \$23,521.39.

The current ad valorem taxes for the tax year of the conveyance will be prorated as of the date of conveyance. The City has also been advised that certain of the facilities involved may contain polychlorinated biphenyls (PCBs), a hazardous material, and the City has agreed to indemnify PG&E against loss, damage, expense, and liability resulting from the City ownership, operation, and maintenance of the facilities. City service at its currently effective rates and charges will not result in an increase over PG&E's currently effective rates and charges. PG&E holds no line extension or other credit deposits for the customers

involved. PG&E has derived a gross annual revenue from these customers of approximately \$48,000.

Notice of the application appeared in the Commission's Daily Calendar of May 2, 1989. No protest has been received.

Discussion

While most California communities obtain their electric services from privately owned public utility corporations such as PG&E, some cities prefer and are able to invest in the acquisition of their own electric distribution facilities, and thereby are able to take advantage of the low wholesale power rates available for cities from the federal government's sources. With lower financing costs than those available to privately owned public utility corporations, cheaper power sources, and not having to pay income or other taxes, cities sometimes are able to deliver this federally derived electricity at rates lower than those a public utility must charge. But to be eligible for federal preferential allocations, a municipality must own its own electric distribution system. Redding does. Usually lacking their own transmission lines, cities customarily pay the area privately owned public utility to wheel the federal power. Then to meet its utility obligation, the city will contract with the area public utility for wholesale power purchases as needed to augment normal requirements, in many instances placing upon the area public utility the need to have available and carry peaking period capability.

In California, a municipal corporation is empowered to acquire, construct, own, operate, or lease any public utility. (Public Utilities (PU) Code § 10002.) Thus, a city has the power of eminent domain to acquire by court proceedings the electric distribution facilities of any privately owned public utility serving within its boundaries. Faced with this overhanging potential eminent domain threat, in order to avoid expensive condemnation suits, a public utility corporation involved in an annexation similar to the present situation is often willing to

sell its involved facilities to the city by direct negotiation and sale contract.

Such is the situation and procedure being followed here. In the mutual interest of saving both time and legal expense, the City and PG&E have bargained, presumably at arm's length, for an appreciated price for the facilities involved, and have contracted to perform accordingly. There undoubtedly existed a number of practical reasons why the City was willing to pay more than net book cost for these facilities. There having been no expressed opposition to the application, Administrative Law Judge John Weiss proceeded ex parte after close of the protest period provided in the Commission's Rules of Practice and Procedure.

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 necessary or useful in the performance of its public duties without first obtaining authorization to do so from this Commission. In the usual private investor transfer proceeding the function of the Commission is to protect and safeguard the interests of the public. The concern is to prevent impairment of the public service by the transfer of utility property into the hands of parties incapable of performing an adequate service at reasonable rates or upon terms which will bring about the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 CRC 520). We want to be certain that the purchaser is financially capable of the acquisition and of satisfactory operation thereafter.

The Commission, in transfers of public utility property between private investors, normally cannot authorize the sale without having before it definite information as to the terms of the sale because the price which the private purchaser proposes to pay for the property is a vital factor to be considered in determining whether that purchaser, if permitted to acquire the utility property, would be financially able to successfully continue the operation. But here we do not have the usual private

party transfer proceeding. A city is the purchaser, and where a municipality, its corporation, or another public entity is the purchaser, our considerations are somewhat different. Assuming that the price agreed upon by the parties is a fair one to the utility, and we so find in this instance, we look to the effect of the sale upon the utility's ratepayers. No adverse effects are discernible in this case, and since the rates charged by a municipally owned utility must be fair, reasonable, just, and nondiscriminatory (American Microsystems, Inc. v City of Santa Clara (1982) 137 CA 3d 1037, 1041), the sale and transfer involves no risk to the ratepayers. Accordingly, we will approve the sale.

Under such circumstances we still retain jurisdiction to formally relieve the utility of its public utility obligations in connection with service in the area transferred. Where applicable, we must collect any balance due of the Public Utilities Commission Reimbursement Fees (PU Code §§ 431 et seq.), and provide for disposition of capital gains/losses arising from the transaction.

As applicable here, upon completion of the sale and transfer PG&E will be relieved of its electric public utility obligations in the Lema Road area annexed by the City; no balance is presently due and payable of the Public Utilities Commission Reimbursement Fees; and inasmuch as the appropriate ratemaking treatment from gain or loss on the sale of utility property to municipalities under threat of eminent domain is presently under consideration in Rulemaking 88-11-041, 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.

The facilities involved are presently subject to the lien of PG&E's Trust and Refunding Mortgage Indenture. Within a

reasonable time PG&E will obtain the removal of this encumbrance from the trustee of the indenture.

Findings of Fact

1. PG&E provides public utility electric service in many areas of California, including areas in and about the City.
2. The City, a municipal corporation of the State of California, for some time has owned and operated an electric distribution system in areas within City limits.
3. In 1986 the City completed annexation procedures to add the Lema Road area to the City's municipal area.
4. In the interim since annexation PG&E has continued to provide public utility electric service to the annexed area.
5. The City plans and desires to provide electric service to the area, and has contracted with PG&E to purchase existing PG&E electric distribution facilities within the annexed area and will incorporate these into the City's electric distribution system after they are severed from the PG&E system.
6. The purchase price agreed upon between the parties, asserted to be replacement cost less depreciation, includes a gain over original cost less depreciation, and is reasonable.
7. There is no known opposition to the proposed sale and transfer.
8. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of these particular facilities and their subsequent operation and maintenance by the City 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 at the appropriate time to the Commission of the Public Utilities Commission Reimbursement Fees collected in these areas up to the date of sale and transfer of these facilities.

10. There is no reason to delay further the authorization to PG&E and the City for this sale and transfer.

11. The allocation of the gain to be realized from this sale should be deferred until further decision by the Commission.

Conclusions of Law

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

2. The sale and transfer should be authorized 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 Lema Road area of Redding.

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 facilities set forth in Tab A of their December 20, 1988 agreement annexed to and made a part of their application.

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 effecting 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 Advisory and Compliance Division, in writing, of the adjustments for additions and betterments, if any, made in accordance with the transaction.

4. Within 10 days of the actual transfer, PG&E shall record the gain accruing over net book value from this sale and transfer in an appropriate suspense account and retain it in that account until further Commission order.

5. PG&E shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected to the date of sale and transfer of these Lema Road facilities, 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 Commission order, PG&E shall stand relieved of its public utility obligations in connection with electric service in the Lema Road area annexed to the City of Redding by Annexation No. 85-11.

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 Weissor, Executive Director

pb