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Decision 89 12 053 DEC 18 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND)
 ELECTRIC COMPANY and the CITY OF)
 HEALDSBURG 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 July 29, 1982.)

Application No. 83-05-004
 (Filed May 2, 1983)

ORDER GRANTING REHEARING
OF D.86-11-063

PACIFIC GAS AND ELECTRIC COMPANY (PG&E) has filed an application for rehearing of Decision (D.) 86-11-063. We have considered all the allegations of error in the application and are of the opinion that good cause for rehearing has been shown.

In November, 1985, we issued D.85-11-018 (*Redding*) in A.83-04-037. In that decision we held that, when a public utility's distribution system, consisting of all or part of the utility's operating system within a geographically defined area, is sold to a municipality; where the components of the system had been included in the utility's rate base; and when the sale of the system is concurrent with the utility being relieved of, and the municipality assuming, the public utility obligations to customers within the area served by the system, the gain on the sale should be allocated to the ratepayers rather than the shareholders. We based this decision on the assumption that the ratepayers had contributed capital to the system.

Three years later, we opened the rulemaking proceeding R.88-11-041, for the purpose of reexamining our *Redding* holding. In July of this year, we issued D.89-07-016 (the July decision), in which, having received comments from sixteen utilities and utility associations, three cities, and our Division of Ratepayer

Advocates (DRA), we changed our *Redding* ruling. The July decision found that, "for sales of utility assets within the scope of this rulemaking, any gain on the sale should accrue to the utility shareholders, provided that the ratepayers have not contributed capital to the distribution system and any adverse effects on the selling utility's remaining ratepayers are fully mitigated." July decision, p. 1.

In November of 1986, after the *Redding* decision but prior to the July decision, we issued D.86-11-063 (*Healdsburg*), which is the subject of PG&E's instant application for rehearing. In *Healdsburg*, we found that "It is reasonable to require that the gain on sale by PG&E be treated in accordance with the decision in A.83-04-037 [*Redding*]." *Healdsburg*, Finding of Fact No. 9, p. 3. PG&E applied for rehearing of *Healdsburg*, alleging that the facts in this case were different from those presented in the *Redding* case, and that Finding of Fact No. 9 was therefore erroneous so as to require rehearing.[1]

Before we issued any decision on the application for rehearing of *Healdsburg*, we had decided to revisit *Redding* through a rulemaking proceeding. Therefore, with the agreement of both PG&E and the City of *Healdsburg*, the only parties to the *Healdsburg* decision, we held the application in abeyance pending our resolution of the *Redding* question.

Now we have reviewed PG&E's application for rehearing in the light of the July decision, and conclude that the application does not allege error under *Redding*. We believe that the facts in both cases are sufficiently similar that it was

1 At PG&E's request in the original *Healdsburg* application, the decision in *Healdsburg* was made ex parte. Accordingly, there has as yet been no hearing and any "rehearing" granted here will be by analogy to Rule 13.2 (h) of our Rules of Practice and Procedure (rehearing on Expedited Complaint decision).

entirely reasonable to treat the gain on the Healdsburg sale in the manner prescribed by Redding.

However, although Healdsburg was correct at the time it was issued, it is erroneous under the July decision. For now the gain on sale must be allocated to the shareholders once it is shown that (1) the ratepayers have not contributed capital to the system, and (2) any adverse effects on PG&E's remaining ratepayers are fully mitigated. But evidence on these two points was not received prior to Healdsburg because, at PG&E's request, we made that decision ex parte.

Therefore, while rehearing is not necessary, strictly speaking, we will require PG&E to make a showing as to the two criteria quoted above from the July decision, so that we may determine how much of the gain on sale should be allocated to the shareholders under the July decision. To ensure the protection of the ratepayers' interests, we direct the assigned Administrative Law Judge to prepare an appropriate response schedule so that our Division of Ratepayer Advocates (DRA), and any other ratepayer representatives, may respond to PG&E's filing. We further direct that, if a material issue of fact arises within the scope of these filings, the matter be set for hearing.

There are at present several cases involving gain on sale issues, which have been held pending resolution of our rulemaking. They have now been assigned to Administrative Law Judge John B. Weiss. We direct that they be consolidated and that this matter be consolidated with them for reasons of administrative economy.

We are aware that in so ordering we may be charged with applying our July decision retroactively. However, this retroactive application will do no harm to the parties or to the ratepayers. First, both PG&E and Healdsburg agreed to wait for the July decision for the determination of the outcome of this application for rehearing. Second, PG&E, as the applicant herein, will bear the burden of proof as to the two conditions

under which the gain on sale may be allocated to PG&E's shareholders. Finally, DRA will participate in the consolidated proceeding, as representative of the ratepayers' interests.

Therefore,

IT IS ORDERED that:

1. Rehearing of D.86-11-063 is hereby granted; Application No. 83-05-004 is hereby consolidated with the other gain on sale cases in proceedings to be held before Administrative Law Judge Weiss, for allocation of the gain on sale in accordance with the findings in D.89-07-016.

2. The Administrative Law Judge assigned to the cases will prepare an appropriate schedule for written submissions by PG&E and for responses thereto.

3. Hearings will not be held in this matter unless a material issue of fact arises within the scope of the filings.

This order is effective today.

Dated DEC 18 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OMANIAN
PATRICIA M. ECKERT
Commissioners

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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