

Decision 90 02 049 FEB 23 1990

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 )  
 February 21, 1989. )  
 (Electric) (U 39 E) )

**ORIGINAL**

Application 89-10-012  
(Filed October 3, 1989)

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. PG&E 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 limits. From this system, the City furnishes electric service to its residents.

In accordance with its public utility obligations, PG&E has been supplying electric service to 51 residential customers in an area northeast of Redding. Now designated as the Hawley Road area, the 1,842 acres of the area lie south of State Highway 299-E, to the east of Interstate 5, and west of old Oregon Trail. By County Resolution No. 81-204, Shasta County annexed the Hawley Road area (Annexation No. 80-14) to City. The annexation was certified on July 22, 1981 by the Executive Officer of the Shasta County Local Agency Formation Commission. Accordingly, City now desires

to acquire the PG&E facilities serving these customers and intends to incorporate the customers and the 1,842 acre area into City's municipal electric distribution system. PG&E agreed to sell to City.

Accordingly, on February 21, 1989 PG&E and City executed a Purchase and Sale Agreement whereby PG&E's facilities in the annexed area would be sold to City. By the present application the parties seek an ex parte order of the Commission authorizing the sale and transfer. The facilities are described in Tab A of the application. Upon the transfer, 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. Finally, PG&E requests, pursuant to Decision (D.) 89-07-016, that the gain on the instant sale be allocated to PG&E and its shareholders.

The purchase price agreed upon by the parties is \$89,068 plus severance costs of \$7,127, for a total \$96,195. The historical book cost was \$43,900 with a depreciation reserve of \$16,050, for net book value of \$27,850. Actual cost of additions to and betterments plus 15 percent and actual severance costs accruing between November 1, 1988 and date of conveyance will be determined at time of conveyance.

Current ad valorem taxes for the tax year of the conveyance will be prorated as of date of conveyance. City has also been advised that certain of the facilities involved may contain polychlorinated biphenyls (PCBs), a hazardous material, and City will assume liability, and responsibility for compliance with all laws, standards, rules, and regulations pertaining to same. Facilities are sold "as is." The facilities sold are presently subject to the lien of PG&E's First and Refunding Mortgage Indenture, and PG&E will obtain removal of this encumbrance from the trustee of the indenture. City service at its currently effective rates and charges will not result in an increase to these

51 customers. PG&E will lose a gross annual income of approximately \$55,000 with the transfer.

On November 3, 1989 the Division of Ratepayer Advocates (DRA) filed a protest with respect to the requested allocation of the gain on sale, stating its view that PG&E had failed to adequately demonstrate the economic impact of the sale on the remaining PG&E ratepayers. DRA also sought to have the gains realized from past similar PG&E sales to municipalities and governmental agencies consolidated with the gain realized in the present proceeding for consideration with respect to the economic impact on remaining PG&E ratepayers. DRA listed five other sales in 1989 for consideration here, and made reference to eight others dating back to 1978. DRA would also limit consideration of the collective impact to ratepayers in only the PG&E Shasta Division.

On December 4, 1989, PG&E responded to DRA's protest, pointing out the fact that the instant sale, as well as earlier sales, viewed alone or collectively, would be de minimus in comparison with PG&E's huge electric facilities operations, and provided figures to show that the sales of such a minuscule portion of PG&E's facilities, and loss of a minuscule portion of PG&E's customers and revenues would have de minimus impact on the remaining PG&E customers. PG&E also reminded DRA that PG&E's electric rate zones were eliminated in favor of system-wide rates, without consideration of geographic area or customer location, by D.89316 in 1978. ✓  
✓

#### 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 contract for a sale.

Such is the situation and procedure being followed here. In the mutual interest of saving both time and legal expense, City and PG&E have bargained for an appreciated price for the facilities involved. As 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, the parties have filed this application.

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 and functions 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 (So. Cal Mountain Water Co. (1912) 1 CRC 520). We want to be assured that the purchaser is financially capable of the acquisition and of satisfactory operation thereafter.

But in this proceeding we do not have the usual private party transfer. A city is the purchaser, and where a municipality, its corporation, or another governmental entity is the purchaser, our considerations are somewhat different. Since the rates to be 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), and the city is assured of an electric supply, the sale and transfer involves no risk to the ratepayers going with the system being transferred. Were the Commission to refuse approval of the sale and transfer, City could proceed in eminent domain to acquire the system and its customers without our consent (See People ex rel. PUC vs. City of Fresno (1967) 254 CA 2d 76; petition for hearing denied by Supreme Court November 22, 1967). Accordingly, the Commission approves the sale and transfer.

Under these circumstances, we still retain jurisdiction to formally relieve PG&E of its public utility obligations with respect to service for the area being transferred to City, and upon consummation of the sale and transfer, PG&E will be relieved of these responsibilities for the Hawley Road area. PG&E has annual gross intrastate revenues exceeding \$750,000. Accordingly, no payment of collected Public Utilities Commission Reimbursement fees will be due and payable upon this sale; rather fees collected from Hawley Road area customers will be incorporated for payment with

the utility's regular quarterly payment in the quarter following consummation date of this sale and transfer (PU Code § 433.b).

Remaining is disposition of the capital gain to be realized from the sale and transfer herein being authorized.

OII 88-11-041 was opened specifically "to reconsider the rule of D.85-11-018 (City of Redding), regarding the ratemaking treatment of gains realized in certain sales of utility property to a municipality or other public utility." By D.89-07-016 in that proceeding the Commission changed the City of Redding rule, and unanimously determined that any capital gain or loss, net of costs of sales, realized from the sale to a public or governmental entity of a distribution system within a geographically defined area, and consisting of part or all of a utility's operating system, shall accrue to the utility and its shareholders where (1) the remaining ratepayers are not adversely affected, and (2) the ratepayers have not contributed capital to the system being sold. ✓

In the present Redding proceeding, there will be a capital gain realized from sale of the distribution system serving the 51 residential customers in the 1,842 acre geographically defined Hawley Road area. Unlike the situations in App. of Dyke Water Co. (1964) 63 CPUC 641, or App. of Plunkett Water Co. (1966) 65 CPUC 313, or App. of Kentwood in the Pines (1963) 61 CPUC 629, each discussed and distinguished in D.89-07-016, and where major portions of the facilities of each utility were to be sold which would have resulted in significant rate increases, or inadequate service to the remaining ratepayers, and/or precarious financial conditions which would jeopardize the utility's future operations (i.e., significant adverse economic impacts for remaining ratepayers), it is obvious that in the present situation, minuscule portions of PG&E's facilities are being sold, the customers and revenues being lost constitute only a minuscule portion of PG&E's ✓ ✓

customer base and revenues.<sup>1</sup> Accordingly, there can be no significant or adverse economic impact for remaining ratepayers.

DRA urges that the Commission apply collective analysis, including the gain from this present sale with those of earlier sales, and making the impact comparison limited to the PG&E Shasta Division alone. We disagree. In D.89-07-016, reflecting Commission intent that each application stand on its own, the Commission clearly stated that the disposition of gain or loss "realized from the sale of a distribution system" in the shadow of eminent domain would have to meet the twin tests of economic or service affect and capital contribution source (emphasis added). DRA's preference for collective analysis of past sales with each new sale would prevent closure on the gain or loss issue, and would leave the issue open indefinitely. In 1978 the Commission eliminated zone rates in favor of system-wide rates, so that there is no logical basis for an analysis limited to the Shasta Division--any impact now has an equal effect on PG&E customers throughout the system.

As to the second test, the ratepayers have contributed no capital to the distribution system being sold, and no operating revenues pursuant to past arrangements such as the Energy Exploration and Development Adjustments, or funds receivable under a PU Code § 454.3 program, or comparable program, have been the source of investments in these facilities being sold.

On balance therefore, the welfare of ratepayers who will remain with PG&E is unchanged by the sale, they will be in the same

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1 The Hawley Road distribution system serves 51 residential customers and has a net book value of \$27,850. The sale will result in an annual revenue loss of \$55,000. This contrasts with PG&E's electric service base of 4,096,185 customers, net book value of facilities of \$3,886,121,261, and annual revenues of \$6,083,940,850. Interestingly, PG&E each year adds more customers in the Shasta Division alone than are lost through all such sales.

position before and after the sale and transfer. Accordingly, the present sale and transfer meets the requirements of D.89-07-016 for the capital gain to be realized to accrue to PG&E and its shareholders.

Given the obviously minuscule impact on ratepayers of this proposed transaction, there is no need for a hearing. The Commission cannot afford to further dilute its limited resources to inquire into a matter as to which the holding in D.89-07-016 so obviously applies. ✓

The sooner the sale and transfer are authorized, the sooner the ratepayers who are to be transferred to City service can obtain the benefits of that service they have been led to expect to receive. Accordingly, the order which follows will be made effective immediately.

Findings of Fact

1. PG&E provides public utility electric service in many areas of California, including areas in and about City.
2. 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 1981 City completed annexation procedures to add the Hawley Road area to City.
4. In the interim since annexation, PG&E has continued to provide public utility electric service to the annexed area.
5. City plans and desires to take over and acquire PG&E's electric distribution system in the Hawley Road area, and has contracted with PG&E to purchase this system and incorporate it into City's system.
6. The negotiated purchase price for the distribution system 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 the sale and transfer to City presents no significant impact on the environment.

9. As a public utility continuing to operate after this sale and transfer, PG&E remains responsible to the Commission for remittance at the appropriate time of Public Utilities Commission Reimbursement Fees collected in the transferred service area up to date the sale and transfer is consummated.

10. In the present sale and transfer, minuscule portions of PG&E's facilities are being sold, and the customers and revenues lost constitute only a minuscule portion of PG&E's customer base and revenues. ✓

11. PG&E ratepayers have contributed no capital to the distribution system being sold to City.

12. By D.89-07-016 in OIR 88-11-041, the Commission intended each application of this nature be considered on its own merits.

13. Where a rate structure is applied systemwide without consideration of geographic area or customer location, any impact from sale of part of the utility distribution system has equal effect on ratepayers throughout the system, and there exists no basis for impact analysis limited in its application to any given region or area less than systemwide.

14. Because the public interest would best be served by having the transfer take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. A public hearing is not necessary.
2. The sale and transfer should be authorized.
3. The sale and transfer meets the requirements of D.89-07-016 for the capital gain to accrue to PG&E and its shareholders.

4. Upon completion of the sale and transfer, PG&E should be relieved of its public utility electric service obligations in the Hawley Road area of Redding.

O R D E R

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 (City) the electric distribution system set forth in Tab B of A.89-10-012 in accordance with the terms of the 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. PG&E shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected to the date of sale and transfer of this Hawley Road system, along with its other fee remittances, at the next quarter remittance date following the date of the sale and transfer.

5. Upon completion of the sale and transfer authorized by this Commission order, PG&E shall stand relieved of its public utility electric service obligations in the Hawley Road area of Redding.

6. The gain on sale realized from this sale and transfer shall accrue to PG&E and its shareholders.

7. In accordance with General Order 96-A, PG&E shall file a revised service area map delineating its service territory in the vicinity of Redding within 90 days of the transfer date.

This order is effective today.

Dated FEB 23 1990, at San Francisco, California.

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

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

  
NEAL J. SHULMAN, Executive Director  
PB