COM/SWH/kal

Mailed

AUG 10 1990

Decision 90-08-053 August 8, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company and the Oak Tree Ranch Association for an Order under Section 851 of the California Public Utilities Code to sell and convey a streetlight system. (U-902-E)	Application 87-08-049 (Filed August 26, 1987)
Application of San Diego Gas & Electric Company and Scripps Ranch Estates Homeowners Association for an Order under Section 851 of the California Public Utilities Code to sell and convey a streetlight system.	Application 87-08-050 (Filed August 26, 1987)
Application of San Diego Gas & Electric Company and the Vista Grande Glen Homeowners Association for an Order under Section 851 of the California Public Utilities Code to sell and convey a street-light system.	Application 87-08-051 (Filed August 26, 1987)

FINAL OPINION

Statement of Facts

By an Interim Decision (D.) in each of Application (A.) 87-08-049 (D.87-10-062), A.87-08-050 (D.87-10-061), and A.87-08-051 (D.87-10-057), the Commission authorized San Diego Gas & Electric Company (SDG&E) to sell and convey to the Oak Tree Ranch Association (Oak Tree), Scripps Ranch Estates Homeowners Association (Scripps), and the Vista Grande Glen Homeowners Association (Vista Grande), the respective streetlighting systems serving each entity. Each is located in a different geographic area served by SDG&E. The decision also relieved SDG&E of its public utility obligations of owning, maintaining, and operating

each system while retaining the utility's obligation to continue providing electric energy to each association for application in the streetlighting system, albeit at the reduced LS-2 tariff rate.

By each of these sales of a small electric distribution system SDG&E realized either a capital gain or loss. The utility also lost the system involved from rate base, and thereafter received a reduced revenue from each:

A.87-08-049 - Oak Tree, net book of lost plant (a 9-light system) $3,866; approximate annual revenue lost $1,789; net loss $22 after taxes.

A.87-08-050 - Scripps, net book of lost plant (39-light system), $24,810; approximate annual revenue lost $2,030; capital gain before taxes $8,968.

A.87-08-051 - Vista Grande, net book of lost plant (3-light system) $1,045; approximate annual revenue lost $597; capital gain before taxes $421.

The interim decision in each application, while authorizing the requested sale and transfer, further provided that SDG&E record the gain accruing from the sale and transfer in an appropriate memorandum account until further Commission order. There were no protests to the applications.

Discussion

On July 6, 1989, the Commission issued D.89-07-016 in Rulemaking (R.) 88-11-041, providing the disposition to be followed with reference to a gain or loss resulting from a utility sale of property which meets all of the following criteria: 1) the sale is to a municipality or other public or governmental entity such as a special utility district; 2) the sale involves all or part of the utility's distribution system located within a geographically defined area; 3) the components of the system are or have been included in the utility's rate

base; and 4) the sale of the system is concurrent with the utility being relieved of and the municipality or other agency assuming the public utility obligations to the customers within the area served by the system.

As to the disposition of any gain or loss on a transaction meeting the above criteria, the decision specifically provides:

> "... for sales of utility assets within the scope of this ruling, any gain on the sale shall accrue to the utility shareholders, providing 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."

The decision in this rulemaking proceeding further provided that the gain/loss issue in outstanding proceedings within its scope be disposed of pursuant to the findings, conclusions, and order of the decision.

Basically, the decision in the rulemaking procedure recognized the factual circumstances that the transfer of distribution facilities together with the responsibility to serve customers is essentially a partial liquidation of the public utility. The utility's business diminishes in terms of assets, customers and revenue, and so long as the remaining utility ratepayers paid no capital for the facilities transferred and will not be left with unmitigated adverse effects from the sale and transfer, any gain or loss resulting should accrue to the utility and its shareholders.

However, the gain/loss issue posed by the present three SDG&E applications does not fit within the factual scope of the situation in the rulemaking proceeding for two reasons. First, the purchasing entity in each of these three applications is not a municipality or a public entity; rather, it is a homeowners association. These associations acquired the respective streetlighting systems and thereby become exclusively responsible

as private owners for maintaining and ultimately replacing them. Second, the obligation to serve the customers served by the transferred facilities has not been transferred with the facilities. While this does not precisely duplicate the conditions found in the Redding case, characteristics of this case bear sufficient similarities to that case that, with additional protections for the utility's remaining ratepayers, we are willing to extend the ratemaking principles adopted in the Redding case to the limited extent defined herein.

These associations provide not only a private service but also a public service; they provide streetlighting for both association members and the general public using the nondedicated streets of the respective subdivisions. Since the general public is a beneficiary and the facilities are owned and maintained by the association, with power delivered to a central point of connection, that power is sold under the utility's LS-2 schedule at lower rates applicable both to governmental agencies and other corporate agencies responsible for lighting nondedicated streets accessible to the public. Thus, while not a governmental entity, the homeowners associations have many of the characteristics of a public entity, enough, in our view, to warrant application of the Redding analysis.

The risk of such homeowners associations assuming the public utility obligation to serve is more troubling. Their assets are more limited than those of a municipality and their organizational structure is likely less secure than a governmental entity. However, the sale does not place at risk the obligation to serve residential customers in their homes, as only streetlighting service is at issue here. If the utility's ratepayers are protected from any future expense as a result of the necessity of the utility resuming the obligation to serve these facilities, this concern would be mitigated.

Thus we shall require that if at some future time the homeowners association fails or is unable to maintain the streetlights and desires SDG&E to resume the task, and provided

SDG&E is willing to reassume the public utility obligation to provide such service, the homeowners will be responsible for all the costs involved, from that point in time forward, and must accept a return to the LS-1 tariff rates then effective or their successor. Our intention is to hold all other ratepayers harmless for any and all costs related to the homeowners association returning to the utility system.

For these reasons the Commission does not believe that the distinction between public entity and association requires any different result as to disposition of gain or loss realized from such sales than that set forth in the decision in the Redding case.

As to each of the captioned application transactions, Bruce J. Williams, SDG&E's Principal Regulatory Affairs Manager, has declared under penalty of perjury that SDG&E's ratepayers contributed no capital to any of the three streetlighting systems involved. It is also obvious that the net book value of each of these three systems, $3,866 (Oak Tree), $24,810 (Scripps), and $1,045 (Vista Grande), contrasted to SDG&E's net gain or loss on each system , $22 loss (Oak Tree), $8,968 gain (Scripps), $421 gain (Vista Grande) demonstrates that the gains or losses are not objectively large, nor are they large in comparison to the value of the facilities sold. The decline in revenue, $1,789 (Oak Tree), and $2,030 (Scripps), and $597 (Vista Grande), is offset by reduced costs for serving these facilities, including removal of these assets from rate base and the attendant elimination of any return on such investments due to the utility. There was no change in the number of customers. Accordingly, there will be no significant or adverse economic impact on SDG&E's remaining customers resulting from this transaction.

On balance, therefore, the ratepayers in each instance having contributed no capital to the respective systems sold, and there being no significant adverse economic impact for the SDG&E ratepayers, the sales should be treated as set forth in D.89-07-016 for the respective capital gains or loss to accrue to SDG&E and its shareholders.

There being no other material issue of fact remaining, there is no need for a hearing as to any of them.

Findings of Fact

1. In each of the captioned applications, while authorized by an interim order in each proceeding to proceed with the sale and transfer of an electric streetlighting system consisting of all of the utility's operating system within a geographically defined area to a homeowners association, SDG&E was also ordered to record the capital gain or loss to be realized in each transaction in an appropriate memorandum account until further Commission order.

2. D.89-07-016 in R.88-11-041 determined that in those cases which meet all of the stated criteria for a sale of all or part of a utility distribution system, and where ratepayers have not contributed capital to the distribution system sold, and adverse impacts from a sale on the utility's remaining ratepayers are fully mitigated, a capital gain/loss realized from such sale shall accrue to the utility and its shareholders.

3. In the captioned applications the purchasers of the streetlighting systems are homeowners associations rather than public entities; however, the associations provide streetlighting services both to their members and to the general public using the nondedicated streets of the respective subdivisions.

4. While SDG&E continues after the sale and transfer to sell electric power to the associations, it is at the utility's lower LS-2 rate available only to governmental agencies and other corporate agencies responsible for lighting nondedicated streets accessible to the public.

5. The Commission finds that with additional protections for the remaining ratepayers of the utility, it is reasonable to extend the ratemaking treatment of gains or losses as set forth in D.89-07-016 to the facts of the cases presented herein.

6. To protect the remaining ratepayers of the utility, said ratepayers should not bear any of the costs incurred in maintaining, operating or otherwise providing service to the streetlight systems which are the subject of this order if the

utility at some time in the future reassumes the obligation to provide streetlighting service previously transferred to the homeowners associations.

7. In the instance represented by each of the captioned applications, SDG&E ratepayers contributed no capital to the respective streetlighting system sold and transferred to an association.

8. In each of the captioned applications, the remaining SDG&E ratepayers are not adversely affected as the gains and losses represent very small amounts of money, are small in proportion to the value of the assets transferred, and the revenue loss derived from switching to LS-2 tariff rates, particularly in comparison to the cost savings due to the sale of the facilities, is similarly insignificant.

Conclusions of Law

1. The respective gains and loss on sale realized in each of the captioned proceedings, pursuant to the Commission's determination in D.89-07-016 in R.88-11-041, should accrue to SDG&E and its shareholders.

2. A public hearing is not necessary.

FINAL ORDER

IT IS ORDERED that the gains or loss from sale realized from the sales and transfers authorized previously in each of the captioned applications shall accrue to San Diego Gas & Electric Company and its shareholders.

This order becomes effective 30 days from today.

Dated August 8, 1990, at San Francisco, California.

G. MITCHELL WILK
President

STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I will file a partial dissent.

/s/ FREDERICK R. DUDA
Commissioner

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

NEAL J. SULLIVAN, Executive Director

FREDERICK R. DUDA, Commissioner, dissenting:

I dissent from the majority decision because I believe that the attempt to stretch the City of Redding Rulemaking logic to fit the facts of this case expands the applicability of that decision beyond reasonable limits, and because I believe that the use of the size of the gain or loss as a criteria for disposition of the gain on the sale of most utility property represents a major shift in Commission policy unaccompanied by any significant discussion of the issue. I also question the Commission's evident willingness to make assumptions about the impact of the sale of utility property on ratepayers without conducting a reasonable analysis of a record adequate to determine whether those assumptions are well founded.

The gain on sale issues posed by the present three SDG&E applications do not fit within the factual scope of the situation in the rulemaking proceeding for three reasons. First, the purchasing entity in each of these three applications is not a municipality or a public entity; rather, it is a homeowners' association. These associations do not possess the eminent domain power that municipalities may use to take over utility systems against the utility's will, and thus transfers of utility assets to such associations represent simple and voluntary arm's length financial transactions rather than virtually inevitable transfers to entities with superior bargaining power. Here, there is no reason for the utility to accept any net loss of revenue, and we should not be ratifying utility decisions which lead to such results. The fact that homeowners' associations may light streets used by the general public does not justify acceptance of revenue losses, since previously the public received the same streetlighting benefits when the utility itself provided the lighting with no such revenue losses.

H-3

FREDERICK R. DUDA, Commissioner, dissenting.

I dissent from the majority decision because I believe that the attempt to stretch the City of Redding Rulemaking logic to fit the facts of this case expands the applicability of that decision beyond reasonable limits, and because I believe that the use of the size of the gain or loss as a criteria for disposition of the gain on the sale of most utility property represents a major shift in Commission policy unaccompanied by any significant discussion of the issue. I also question the Commission's evident willingness to make assumptions about the impact of the sale of utility property on ratepayers without conducting a reasonable analysis of a record adequate to determine whether those assumptions are well founded.

The gain on sale issues posed by the present three SDG&E applications do not fit within the factual scope of the situation in the rulemaking proceeding for three reasons. First, the purchasing entity in each of these three applications is not a municipality or a public entity; rather, it is a homeowners' association. These associations do not possess the eminent domain power that municipalities may use to take over utility systems against the utility's will, and thus transfers of utility assets to such associations represent simple and voluntary arm's length financial transactions rather than virtually inevitable transfers to entities with superior bargaining power. Here, there is no reason for the utility to accept any net loss of revenue, and we should not be ratifying utility decisions which lead to such results. The fact that homeowners' associations may light streets used by the general public does not justify acceptance of revenue losses, since previously the public received the same streetlighting benefits when the utility itself provided the lighting with no such revenue losses.

Second, the obligation to serve the customers served by the transferred facilities has not been transferred with the facilities. Thus, the utility will retain a continuing, although somewhat altered, relationship with the customers. The only arguable benefit of this changed relationship is the removal of the obligation to maintain the streetlight plant transferred. This is, in all likelihood, a very minor benefit when compared to the revenue lost as the result of these transactions.

Third, the record is inadequate to determine whether ratepayers will be harmed by the sale and transfer of one or more of the three systems involved in this proceeding. Preliminary analysis suggests that when systems with substantial undepreciated rate base are sold and transfered as proposed here, ratepayers may benefit because the revenue the utility will continue to receive under the reduced rates available to the purchaser may exceed the net revenue previously received after the operating expenses and return on rate base are deducted from the higher initial revenue received under the original rate schedule. However, when the system transferred consisted mainly of highly depreciated rate base, the revenue received under the new lower rate schedule may be substantially less than the previous net revenue since the savings resulting from the elimination of the cost of the utility's expenses and return on investment may be significantly less than the revenue lost because of the switch from retail to wholesale rates.

I believe that the revenue losses associated with the facilities transferred may be partly offset by the reduction in the cost of serving these facilities and the elimination of any return on investment due the utility once these facilities are removed from rate base. I do not believe, however, that we can on this record conclude that there will be no adverse economic impact on SDG&E's remaining customers. Unless we know for a fact that there

will be no adverse economic impact on ratepayers, we should not claim that this is true.

I am pleased that the majority has chosen to compare the gains or losses on the sale of utility assets to the value of the assets themselves, rather than to the utility's overall rate bases, but I question the use of the size of the gain or loss as a criteria for the disposition of such gains or losses. Other than administrative simplicity, I see no reason why the actual amount of gain or loss, or the relative size of such gain or loss when compared to the asset's value should provide any theoretical underpinning for a decision to allocate such gains or losses to shareholders rather than ratepayers. And if administrative simplicity is truly the excuse for such an approach, then why not establish either an objective dollar figure, or a percent of asset value, as the "insignificant impact" cut-off point. Such guidelines would be more useful than the vague wording of today's decision.

I believe we should have disposed of the gains on sale in accord with the longstanding past Commission policy of allocating the gains on the sale of rate base property to ratepayers. This policy makes sense for the reasons set forth in my dissent to D.90-04-028, the decision establishing the Commission's new "ratepayer indifference" policy for disposing of the gains on the sale of utility headquarters.

Frederick R. Duda, Commissioner

August 8, 1990
San Francisco, California