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Decision 90-10-018 October 12, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Application of PACIFIC GAS AND ELECTRIC COMPANY and the CITY OF REDDING for an order under Section 851 authorizing the former to sell and convey to the latter that certain electric distribution system, in accordance with the terms of an agreement dated May 4, 1983. (Electric) | Application 84-02-06 (Filed February 2, 1984) |
| Application of PACIFIC GAS AND ELECTRIC COMPANY and the CITY OF REDDING for an order under Section 851 authorizing the former to sell and convey to the latter that certain electric distribution system and streetlighting system, in accordance with terms of an agreement dated September 17, 1984. (Electric) | Application 85-01-018 (Filed January 11, 1985) |
| Application of PACIFIC GAS AND ELECTRIC COMPANY and the COUNTY OF FRESNO for an order under Section 851 authorizing the former to sell and convey to the latter a streetlight system in accordance with the terms of a Letter Agreement entered into in October 1984. (Electric) | Application 85-01-031 (Filed January 17, 1985) |
| Application of PACIFIC GAS AND ELECTRIC COMPANY and the CITY OF NAPA for an order under Section 851 authorizing the former to sell and convey to the latter a streetlight system in accordance with the terms of an Agreement entered into on March 19, 1985. U 39 E | Application 85-05-100 (Filed May 23, 1985) |

## FINAL OPINION

### Statement of Facts

By an interim decision (D.) in each of Application (A.) 84-02-06 (D.84-10-050) Redding, A.85-01-018 (D.85-05-017) Redding, A.85-01-031 (D.85-05-018) Fresno, and A.85-05-100 (D.86-02-012) Napa, the Commission authorized Pacific Gas and Electric Company (PG&E) to sell to the City of Redding, the County of Fresno, and the City of Napa, respectively, the described electric distribution system and/or streetlighting system serving the respective municipality or county entity. Each system was located in a distinct geographic area served by PG&E. The interim decisions in the two sales to Redding relieved PG&E of its public utility obligation to provide future electric, and/or streetlighting maintenance and operation services, as Redding assumed these obligations. In the instances involving the County of Fresno and Napa, PG&E was relieved of its obligations to provide future maintenance and operation services, but continues to carry an obligation to provide electric power for the two streetlighting systems, albeit at its lesser LS-2 tariff rates.

The interim decision in each of these four applications, while authorizing the requested sale and transfer, further provided that PG&E record the gains to be derived from the transactions in appropriate memorandum or suspense accounts until further Commission order. There were no protests to these applications.

D.89-07-016 in Order Instituting Rulemaking (R.) 88-11-046 modified Commission policy with respect to the disposition of the gain or loss from a sale of utility property in cases which meet 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 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. The holding of D.89-07-016 is that if ratepayers did not directly contribute capital to the system sold, and if there are no adverse impacts on the remaining ratepayers, the gain or loss is to accrue to utility shareholders.

By D.89-12-053 on December 18, 1989, the Commission granted a rehearing of D.86-11-063 in A.83-05-004 consistent with the policies adopted in D.89-07-016. By D.89-12-053, the assigned Administrative Law Judge (ALJ) was directed, with regard not only to A.83-05-004, but also to other cases involving gain or loss on sale issues which had been deferred pending resolution of the rulemaking, to require PG&E to make a showing whether:

1. The ratepayers contributed any capital to the system sold.

2. There were any adverse effects on PG&E's remaining ratepayers which were not fully mitigated.

If a material issue of fact arose, the matter was to be set for hearing. To the extent practical, cases were to be consolidated in the interest of administrative economy.

The present four proceedings are concerned with some of these pending gain/loss final disposition matters. In each of the four captioned proceedings, the applications reveal that as to each of the transactions PG&E realized a capital gain, lost the facilities involved in the respective sale and transfer from rate base, lost some minor annual revenue, and in the two Redding transactions lost an inconsequential number of customers.[1]

At the request of the ALJ, for each of the four captioned matters, PG&E's Manager of Construction Accounting, Joseph F. O'Flanagan, declared under penalty of perjury that PG&E's remaining ratepayers contributed no capital to the two Redding electric distribution systems, or to the Redding, County of Fresno, or Napa streetlighting systems.[2] In none of the situations involved in these cases did the value of the property sold or the lost revenues involve large sums of money (See footnote 1). In addition, the lost revenues are offset by operational expenses

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1 Redding (A.84-02-06): Gain before taxes $10,210; net book of lost plant $9,800; lost annual revenue $3,700; loss of 6 residential and 1 commercial customers.

Redding (A.85-01-018): Gain before taxes $56,301; net book of lost plant $18,610; lost annual revenue $148,639; loss of 94 residential, 17 commercial, and 1 industrial customers.

Fresno County (A.85-01-031): Gain before taxes $1,100; net book of lost plant $7,000; part of $1,000 annual revenue lost as result of switch to LS-2C tariff; County remains as power customer.

Napa (A.85-05-100): Gain before taxes $416,521; net book of lost plant $583,479; part of $270,000 annual revenue lost as result of switch to LS-2 tariff, although some additional revenues is derived from a pole contact fee charged Napa for its use of PG&E combination poles; City remains as power customer.

2 The streetlights sold were either high pressure sodium vapor (HPSV) or conversions from mercury vapor (MV). O'Flanagan declared under penalty of perjury that PG&E did not expense any of the cost of converting MV streetlights to HPSV. The costs were capitalized and financed by shareholders. Therefore, ratepayers contributed no capital to the cost of converting. An adjustment was made to depreciation rates for streetlights to reflect the fact that the MV lamps were not fully depreciated when they were retired. This accelerated depreciation was to make up for a depreciation reserve deficiency for the old MV lamps and was not associated with the new HPSV lamps.

saved by the sales of the systems and elimination of any return on the utility's investment.

Discussion

Basically, D.89-07-016 in R.88-11-046 recognizes the factual circumstance that a transfer of part or all of a utility's service facilities, together with termination of its responsibility to serve in the future, is essentially at least a partial liquidation of the public utility. The selling utility's business is diminished in terms of assets, customers, and revenues by such a sale and transfer. The situation is not materially different whether an electric distribution system or a streetlighting system is sold. Where, as in the three streetlighting system sales represented herein, the utility will continue to furnish the power under a lower tariff rate schedule, all the revenue is not lost, and the single customer is retained, the city requiring the streetlight system.

In each of the four captioned transactions the remaining ratepayers had contributed no capital to the system being sold and transferred. Furthermore, the small amounts of money involved in the value of the system sold and the revenues foregone demonstrates that there were no adverse effects on the remaining ratepayers from the transactions in each instance. There were inconsequential losses in customers. Accordingly, there could be no significant or adverse economic impact on PG&E's remaining customers in each instance[3], and PG&E continued able to serve its remaining

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3 This contrasts with the situation in each of the three cases cited and distinguished in D.89-07-016. There, App. of Dyke Water Co. (1964) 63 CPUC 641, App. of Plunkett Water Co. (1966) 65 CPUC 313, and App. of Kentwood in the Pines (1963) 61 CPUC 629, were cited as examples of significant adverse effects to remaining ratepayers; where major portions of the utilities were to be sold

(Footnote continues on next page)

customers without adverse effect, no diminution in quality of service, and no economic harm to be mitigated.

On balance, therefore, the ratepayers having contributed no capital to the respective system sold, and there being no significant adverse economic impact to the ratepayers from any of these transactions, the ratepayers are in the same position before and after the sale. The conditions set down in D.89-07-016 of the rulemaking proceeding are met for the respective capital gains realized to accrue after taxes to PG&E and its shareholders.

Given the clearly miniscule impact to remaining ratepayers of these transactions, and there being no material issue of fact involved, there exists no need for a hearing in any of the captioned cases.

Findings of Fact

1. In the four captioned proceedings, while authorized by an interim decision in each proceeding to proceed with the proposed sale and transfer to a municipality or governmental entity of an electric distribution or streetlighting system within a defined geographic area or municipal limits, and where the system sold consisted of part or all of the PG&E respective local system, transactions since consummated, PG&E was ordered in each interim decision to record the capital gain to result in a memorandum or suspense account and to retain that gain in that account until further Commission order.

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(Footnote continued from previous page)

resulting in significant rate increase or inadequate service to the remaining ratepayers. In each of the cited examples, the resulting precarious financial condition of the remainder would have jeopardized future operations (i.e., significant adverse economic impacts for remaining ratepayers).

2. D.89-07-016 in R.88-11-046 determined that when ratepayers have not contributed capital to a system sold, and any significant adverse impacts resulting from the sale to the remaining ratepayers are fully mitigated, a capital gain or loss from sale of utility property which meets all tho criteria of D.89-07-016 shall accrue to the utility and its shareholders.

3. Ratepayers contributed no capital to the systems herein sold and transferred to the respective municipalities or governmental entity.

4. While PG&E will continue to sell power for the streetlighting system sold, the revenue derived will be at the utility's lower LS-2 rate available to municipalities or governmental entity.

5. In each of the captioned applications, the remaining PG&E ratepayers are not adversely affected as the gains and losses represent small amounts of money, 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.

6. The facts and results of these transactions provide no significant adverse effect on PG&E's remaining ratepayers requiring mitigation.

7. The facts and results of these transactions serve to bring the gain/loss disposition issues in each within the scope of D.89-07-016 in R.88-11-041.

Conclusions of Law

1. Pursuant to the Commission's determination in D.89-07-016 in R.88-11-041, the respective gains realized by PG&E on the sale of the electric distribution systems and the streetlighting systems in the captioned applications should accrue to PG&E and its shareholders.

2. A public hearing is not necessary.

**FINAL ORDER**

IT IS ORDERED that the gains realized on the sale of the electric distribution systems and streetlighting systems in the captioned applications shall accrue to Pacific Gas and Electric Company and its shareholders.

This order becomes effective 30 days from today.

Dated October 12, 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I will file a written dissent.

/s/ FREDERICK R. DUDA
Commissioner

FREDERICK R. DUDA, Commissioner, dissenting:

I dissent from the majority decision for the same reasons I dissented from other recent gain on sale decisions which replace the D.89-07-016 requirement that shareholders receive gains on sale only where the sale of a utility distribution system has no adverse impact on ratepayers with the principle that shareholders receive the gain in all cases where there is no extremely significant impact on ratepayers or where the Commission has not bothered to quantify the adverse impact on ratepayers.

As the majority opinion points out, D.89-07-016 holds that if ratepayers did not directly contribute capital to the system sold, and if there are no adverse impacts on the remaining ratepayers, the gain or loss is to accrue to utility shareholders. This is a straightforward approach to the disposition of gain on sale, but it does require the Commission to determine whether or not a particular sale actually has an adverse impact on ratepayers.

The calculation involved should be relatively simple. The lost annual revenue resulting from the sale of the distribution system should be compared to the savings which result from the removal of the sold assets from rate base and from the reduction in operations and maintenance expenses previously associated with those assets. If the lost annual revenue exceeds the amount saved through the reduction in expenses and return on rate base, the remaining ratepayers are adversely affected by the sale.

Under D.89-07-016, ratepayers should be given enough of the gain on sale to mitigate fully the adverse impact of the transaction.

In the case before us, the utility provided information regarding the net book value of the assets sold and the annual revenue loss associated with the sale. The utility did not provide information regarding operations and maintenance savings or the reduction in return on rate base that would result from the sales. There was, however, no reason this information could not have been easily obtained.

Instead of quantifying the impact of the sale on ratepayers, however, the majority based its decision on simplistic assumptions. Its entire "adverse impact" analysis is essentially: "In none of the situations involved in these cases did the value of the property sold or the lost revenues involve large sums of money (see footnote 1). In addition, the lost revenues are offset by reduced operational expense saved by the sale of the systems and the elimination of any return on the utility's investment."

From this meager analysis the majority concludes: "[T]he small amounts of money involved in the value of the system sold and the revenues foregone demonstrate that there were no adverse effects on the remaining ratepayers from the transactions in each instance. ... Accordingly, there could be no significant or adverse economic impact on PG&E's remaining customers, and PG&E continued able to serve its remaining customers without adverse effect, no diminution in quality of service, and no economic harm to be mitigated."

In a footnote, the majority clarifies its last statement by contrasting today's situation with other cases where major portions of utility systems were sold resulting in significant rate increases or inadequate service consequences to remaining ratepayers: "In each of the cited examples, the resulting precarious financial condition of the remainder would have jeopardized future operations (i.e., significant adverse economic impacts for remaining ratepayers)." This footnote implicity defines "significant" for gain or sale purposes.

The majority's findings of fact regarding impact on ratepayers are:

> "5. In each of the captioned applications, the remaining PG&E ratepayers are not adversely affected as the gains and losses represent small amounts of money, 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.
>
> 6. The facts and results of these transactions provide no significant adverse effect on PG&E's remaining ratepayers requiring mitigation.
>
> 7. The facts and results of these transactions serve to bring the loss/gain disposition issue in each within the scope of D.89-07-016 in R.88-11-046."

I am puzzled by the majority's seeming inability to understand what its decision does. First, the majority fails to engage in any quantitative comparison of the revenue losses and savings resulting from the transactions at issue, thus making it absolutely impossible to tell if there are any adverse impacts on ratepayers or if any adverse impacts which do exist are fully mitigated. Second, it characterizes an annual revenue loss of $148,639 (A.85-01-018) as "small" and "insignificant." Third, the majority changes the D.89-07-016 requirement that there be no adverse impact on remaining ratepayers to a requirement that there be no "significant adverse impact." Finally, it defines the phrase "significant adverse economic impact" to mean an impact so horrendous that it actually jeopardizes the continued operation of the utility or its ability to provide quality service to its remaining customers. These are big steps to take in such a casual fashion.

If the Commission is going to conclude that a transaction has no adverse impact on remaining ratepayers, it should do its homework and make a quantitative comparison of the losses and savings associated with the transaction. Assumptions should not form the sole basis for conclusions.

If the Commission is going to shift from a "no adverse impact" test to a "no significant adverse impact" test for allocation of gains on sale, it should say so openly.

If the Commission is going to use a significant impact test it should define its terms so people have some idea of the magnitude an impact must achieve before it will be considered significant.

Finally, the Commission should define "significant" in a way that recognizes that an impact can be "significant" without jeopardizing the continuance of utility service. The threshold the majority establishes is too high.

For the reasons expressed above, I respectfully dissent.

/s/ FREDERICK R. DUDA
Frederick R. Duda, Commissioner

October 12, 1990
San Francisco, California

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

NEAL J. SHULMAN, Executive Director

FREDERICK R. DUDA, Commissioner, dissenting:

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As the majority opinion points out, D.89-07-016 holds that if ratepayers did not directly contribute capital to the system sold, and if there are no adverse impacts on the remaining ratepayers, the gain or loss is to accrue to utility shareholders. This is a straightforward approach to the disposition of gain on sale, but it does require the Commission to determine whether or not a particular sale actually has an adverse impact on ratepayers.

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For the reasons expressed above, I respectfully dissent.

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Frederick R. Duda, Commissioner

October 12, 1990
San Francisco, California