

OCT 17 1990

Decision 90-10-023 October 12, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY and CITY OF
ANGELS for an order authorizing
the former to sell and convey
to the latter certain water
facilities, known as the Angels
Water System, in accordance with
the terms of a Purchase Agreement
dated January 3, 1984.

(Water)

Application 84-03-11
(Filed March 2, 1984)

Application of PACIFIC GAS AND
ELECTRIC COMPANY and WESTERN
CANAL WATER USERS' ASSOCIATION
for an order authorizing the former
to sell and convey to the WESTERN
CANAL WATER DISTRICT certain water
facilities, known as the Western
Canal Water System, in accordance
with the terms of a Proposed
Purchase Agreement.

(Water)

Application 84-10-070
(Filed October 26, 1984)

FINAL OPINIONStatement of Facts

By an interim decision (D.) in each captioned case, D.84-12-052 in Application (A.) 84-03-11, and D.84-12-018 in A.84-10-070, the Commission authorized Pacific Gas and Electric Company (PG&E) to sell to the City of Angels (Angels) and the Western Canal Water District (Western Canal), respectively, the entire local water system serving each governmental entity. Each decision relieved PG&E of further public utility obligations in connection with the respective system.

The interim decision in each of the captioned proceedings, while authorizing the requested sale and transfer, further provided that PG&E record the loss (Angels) and gain

(Western Canal) accruing from each transaction in suspense accounts pending further order from the Commission. In the Angels sale one customer protested, fearing no control over rates under municipal ownership and administration. There were no protests to the Western Canal sale.

In Campton Heights Water Service (1985) 17 CPUC 2d 245, noting that "our concern with transfers of public utility property relates to the impact of such transfers on remaining customers, i.e., the ratepayers for whom the transferring utility retains the obligation to provide service", the Commission noted that in a liquidation, where the entire local system is sold, there are no "remaining" ratepayers; the transferee assumes the obligation, along with ownership of the system, to serve all the former customers. That decision determined that a public utility transferring its entire system would retain any gains, and absorb any losses, resulting from such transfer.

More recently, D.89-07-016 in Order Instituting Rulemaking (R.) 88-11-046 further 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 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. 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 A.83-05-004, but also to other cases involving gain or loss on sale issues which had been held 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.

The present proceedings are concerned with other of the gain/loss disposition cases pending.

In each of the two captioned applications, the applications reveal that as to Angels PG&E realized a capital loss, and that as to Western Canal it realized a capital gain; in both transactions it lost the facilities involved from rate base, lost some minor annual revenue, and also lost an inconsequential number of customers.¹

At the request of the ALJ, for each of the two 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 water system. In neither of the situations did the values of the systems sold or the lost

¹ Angels (A.84-03-11): Loss \$559,050.23; net book of sold plant \$644,050.23; lost annual revenue \$228,747; loss of 970 customers.

Western Canal (A.84-10-070): Gain \$682,304.72; net book of sold plant \$1,317,695.28; lost annual revenue \$382,000; loss of 126 customers.

revenues involve large sums of money (see Footnote 1). In addition, the lost revenues are offset by reduced operational expense saved by the sales of the systems and the elimination of any return on the utility's investment.

PG&E entered the Purchase Agreements because it did not wish to remain in the water business. It has been a water corporation only incidentally to its electric business, having, in the course of its electric business, acquired water facilities along with its acquisition of predecessor power companies. From time to time PG&E sells off these water facilities when disposition does not adversely affect its other operations or adversely affect the water customers.

Discussion

Basically, D.89-07-016 in R.88-11-046 recognizes the factual circumstance that the sale and transfer of part or all of a utility's service facilities, together with termination of its responsibility to serve in the future, are 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.

In each of the two 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 demonstrate that there were no adverse effects on the remaining ratepayers from the transactions in each instance. There were also inconsequential losses in customers. Accordingly, there could be no significant or adverse economic impact on PG&E's remaining customers in each

instance,² 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.

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 loss (Angels) and gain (Western Canal) after taxes to accrue to PG&E and its shareholders.

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

Findings of Fact

1. In the two captioned proceedings, while authorized by an interim decision in each proceeding to proceed with the proposed sale and transfer to a municipality or special utility district of a complete local water system serving a municipality or defined geographic area, and where the system sold consisted of all of the PG&E's respective local system, transactions since consummated, PG&E was ordered in each interim decision to record the capital

2 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 resulting in significant rate increases or inadequate service consequences 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).

loss or gain to result in a suspense account and to retain that loss or gain in that account until further Commission order.

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 the 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 respectively to the municipality and special utility district.

4. In each of the two captioned applications, the remaining PG&E ratepayers are not adversely affected as the loss and gain represent very small amounts of money, and the revenue losses are similarly insignificant.

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

6. 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.

Conclusions of Law

1. Pursuant to the Commission's determination in D.89-07-016 in R.88-11-046, the respective loss and gain realized by PG&E on the sale of the complete local water systems in the respective captioned applications should accrue to PG&E and its shareholders.

2. A public hearing is not necessary.

FINAL ORDER

IT IS ORDERED that the loss and gain respectively realized on the sale of the complete local water systems in the captioned applications shall accrue to Pacific Gas and Electric Company and its shareholders.

This order becomes effective 30 days from today.

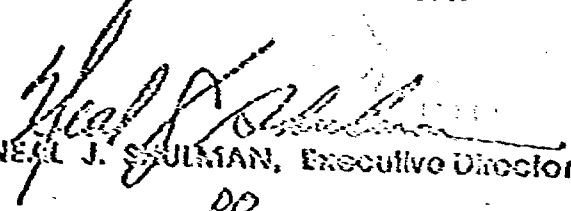
Dated October 12, 1990, at San Francisco, California.

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

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


NEAL J. SCHULMAN, Executive Director
DO

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 neither of the situations did the values of the systems 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 systems sold and the revenues foregone demonstrate that there were no adverse effects on the remaining ratepayers from the transactions.... 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 implicitly defines "significant" for gain or sale purposes.

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

- "4. In each of the two captioned applications, the remaining PG&E ratepayers are not adversely affected as the gain and loss represent very small amounts of money, and the revenue losses are similarly insignificant.
5. The facts and results of these transactions provide no significant adverse effect on PG&E's remaining ratepayers requiring mitigation.
6. 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 annual revenue losses of \$228,747 and \$382,000 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.

A.83-03-11; A.84-10-070
D.90-10-023

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.



Frederick R. Duda, Commissioner

October 12, 1990
San Francisco, California