

Decision 90-12-023 December 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company and the Department of Water Resources of the State of California for an Order Under Section 851 Authorizing the Former to Sell and Convey to the Latter a 75 Percent Undivided Interest in the Former's Midway-Wheeler Ridge 230 kV Transmission Line, in Accordance with the Terms of an Agreement Entered into on November 15, 1984.

ORIGINAL

Application 88-02-009
(Filed February 3, 1988)

FINAL OPINION

Statement of Facts

By Interim Decision (D.) 88-05-068, and D.88-11-096 extending time to finalize the transaction in the former decision, the Commission authorized Pacific Gas and Electric Company (PG&E) to sell and transfer to the Department of Water Resources of the State of California (DWR) an undivided 75% interest in the former's Midway-Wheeler Ridge 230 kV transmission line and a 100% interest in the Buena Vista, Wheeler Ridge, and Wind Gap Tap Lines, which run from the Midway-Wheeler Ridge transmission line to the respective three DWR pumping plants. The decision also relieves the utility, upon consummation of the authorized transaction, of its public utility electric service and transmission responsibilities to the three DWR pumping stations at Buena Vista, Wheeler Ridge, and Wind Gap, with regard to the three Tap Lines to these three pumping stations, and with regard to the 75% undivided interest in the 230 kV transmission line between Midway and Wheeler Ridge substation which interest was being acquired by DWR.

The interim decision, while authorizing the requested sale and transfer, further provided that the utility record the gain accruing over net book value from the transaction in a suspense account and retain it in that account until further Commission order. In its application, PG&E requested either an allocation of the gain to be derived from sale of its system to PG&E's shareholders, or deferring the determination of allocation of the gain until after reexamination of the rule of D.85-11-018 (City of Redding) as modified.

Notice of the application appeared in the Commission's Daily Calendar of February 9, 1988. No protest was received, although on March 28, 1988, the Division of Ratepayer Advocates (DRA) filed an untimely response wherein it advocated adherence to D.85-11-018 and allocation of the gain to ratepayers.

On November 23, 1988, Order Instituting Rulemaking (R.) 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 entity." By D.89-07-016 in the rulemaking proceeding, the Commission changed the City of Redding rule, and unanimously determined 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; (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's being relieved of and the municipality or other agency assuming the public utility's obligations to the customers within the area served by the system. The holding of D.89-07-016 is that if the 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 in respect to the disposition of gain issue previously determined in Application (A.) 83-05-004, the rehearing to be guided by the policies adopted in D.89-07-016. By D.89-12-053, assigned Administrative Law Judge (ALJ) John B. Weiss was directed, with regard not only to disposition of the gain in A.83-05-004, but also with regard to gain or loss dispositions which had been deferred in other cases, to require the utility to make a showing whether:

1. The ratepayers contributed any capital to the system sold.
2. There were any adverse effects on the utility's remaining ratepayers which were not fully mitigated.

If a material issue of fact arose, the matter was to be set for hearing.

On January 23, 1989, PG&E made a confirmation of transfer filing stating that the sale and transfer of the system authorized earlier by D.88-05-068 and D.88-11-056 had been consummated on January 17, 1989. Accordingly, the captioned proceeding presents a deferred gain disposition ready for final resolution consonant with the policy set forth in D.89-07-016.

A.88-02-009 reveals a capital gain of approximately \$9,010,788 on the system sold; that system bearing a net book value of \$1,676,000. The application shows that this contrasts with PG&E's Electric Department Year 1986 Recorded Rate Base of \$11,036,670,000. As a consequence of the sale PG&E will lose annual revenue of \$1,003,752 which the application contrasts with year 1986 Recorded Gross Operating Revenues for the Electric Department of \$5,571,674,000. Three DWR pumping station customers were lost by the sale and transfer. Ratepayers were relieved of

approximately \$200,000 in return payments the first year, and declining amounts thereafter, by removal of the system sold from PG&E's rate base. Since PG&E continues to operate and maintain the portions of the line sold to DWR, and DWR pays its share of the related expense based on PG&E's system average costs, ratepayers will also benefit from reduced operational and maintenance expense.

At the request of the ALJ, Joseph F. O'Flanagan, Manager of PG&E's Construction Accounting Department, has declared under penalty of perjury that the utility's remaining ratepayers contributed no capital to the Midway-Wheeler Ridge System sold to DWR.

Discussion

Basically, D.89-07-016 in R.88-11-041 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, revenues, and customers by such a sale and transfer.

In the transaction addressed by the present decision, the remaining ratepayers contributed no capital to the system sold and transferred. In addition, the impact to the utility and its remaining ratepayers is small and does not affect the financial condition of the utility. Ratepayers are no longer required to pay any return, depreciation, or taxes on the sold system. Accordingly, there has been no significant adverse economic impact on remaining ratepayers that requires mitigation, and PG&E continued able to serve its remaining ratepayers without adverse effect (indeed, the contract of sale provided that during any operating emergencies PG&E may even call upon DWR for the use of DWR's portion of the system). There is no diminution in quality of

service, and no economic harm. On balance, the ratepayers are in the same position after the sale as before.¹

The conditions set down in D.89-07-016 of the rulemaking proceeding are met for the capital gain after taxes to accrue to PG&E and its shareholders. Given the clearly miniscule impact to remaining ratepayers of this transaction, and there being no material issue of fact involved, there exists no need for a hearing.

Findings of Fact

1. In the captioned proceeding, while authorized by an interim decision to proceed with the proposed sale and transfer to DWR of an undivided 75% interest in its Midway-Wheeler Ridge 230 kV transmission line and a 100% interest in the Buena Vista, Wheeler Ridge, and Wind Gap Tap Lines which run from the Midway-Wheeler Ridge transmission Line to the respective three DWR pumping plants, a transaction since consummated, PG&E was ordered in that interim decision to record the capital gain in an appropriate suspense account until further Commission order.

2. D.89-07-016 in R.88-11-041 determined that when ratepayers have not contributed capital to a system or part of a system sold, and any significant adverse impacts resulting to the remaining ratepayers from the sale are fully mitigated, a capital gain or loss from sale of utility property which meets all the

1 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 Kenwood 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).

criteria of D.89-07-016 shall accrue to the utility and its shareholders.

3. Ratepayers contributed no capital to the system herein sold and transferred to the governmental entity involved.

4. The facts and results of this transaction provide no significant adverse effect on PG&E's remaining ratepayers requiring mitigation.

5. The facts and result of this transaction serve to bring the reserved gain disposition issue 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 gain realized by PG&E on the sale of respective interest in the Midway-Wheeler electric transmission line and the associated Tap Line should accrue to PG&E and its shareholders.

2. A public hearing is not necessary.

3. In view of the time already elapsed since this sale and transfer was consummated, and to enable PG&E to include the result in its 1990 fiscal year, the order which follows should be made effective immediately.

FINAL ORDER

IT IS ORDERED that the gain realized on the sale of this electric system of Pacific Gas and Electric Company (PG&E) to the Department of Water Resources of the State of California shall accrue to PG&E and its shareholders.

This order is effective today.

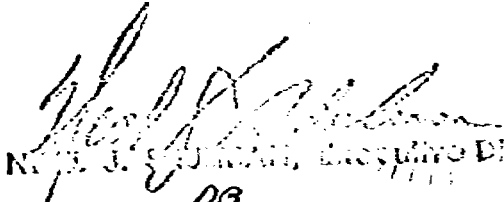
Dated December 6, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
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


James J. Sullivan, Executive Director
JB

FREDERICK R. DUDA, Commissioner, dissenting.

I dissent from the majority decision for the same reasons I dissented from D.90-10-017, D.90-10-023, D.90-10-018 and 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 moved to quantify the adverse impact on ratepayers.

Today's decision is more unacceptable than previous gain on sale decisions, since it finds that ratepayer impacts of up to \$800,000 are not worth quantifying and are not "significant" for gain on sale allocation purposes. Here, PG&E will lose \$1,003,752 in annual revenue. This loss will be partly offset by ratepayers being relieved of approximately \$200,000 in return payments the first year, and declining amounts thereafter. So far, ratepayers are roughly \$803,752 worse off as the result of the system sale. Admittedly, ratepayers will also benefit from reduced operations and maintenance expense. The decision, however, does not quantify the operations and maintenance expense savings. Unless these savings are at least \$803,752 per year, it is undeniable that ratepayers are worse off because of this transaction. Yet the majority concludes that there is no significant adverse impact on ratepayers requiring mitigation.

Is the Commission missing something in this decision? There is no reason to avoid quantifying the adverse impact of this transfer on ratepayers and mitigating the impact in accord with the clear guidelines in D.89-07-016.

A.88-02-009
D.90-12-023

I believe that a portion of the \$9,010,788 gain should be used to mitigate ratepayer losses. The integrity of our process depends upon a fair and accurate implementation of our prior policy decisions. This decision, in my view, does not fulfill it's requirements and falls, regrettably, short of the mark.



Frederick R. Duda, Commissioner

December 6, 1990
San Francisco, California