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Decision 90-12-068 December 19, 1990

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY and the CITY OF SANTA CLARA 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 September 15, 1987.

(Electricity (U-39-E))

**FINAL OPINION****Statement of Facts**

By an interim Decision (D.) 88-09-070 issued May 29, 1988, the Commission authorized Pacific Gas and Electric (PG&E) to sell and convey to the City of Santa Clara (Santa Clara) the electric distribution and streetlighting system serving the Bell Arye Manor No. 6 geographic area within the municipality's limits. The decision relieved PG&E of all public utility obligations in connection with electric service including streetlighting in that geographic area.

The interim decision, while authorizing the sale and transfer, further provided that PG&E record the gain accruing over net book value from the sale and transfer it to an appropriate suspense account until further Commission order. Notice of the application appeared in the Commission's Daily Calendar of February 10, 1988. There were no protests, although on March 28, 1988, the Division of Ratepayer Advocates (DRA) filed an untimely response wherein it advocated adherence to D.85-11-018 (City of Redding) in disposition of the gain to allocate it to the ratepayers.

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On November 23, 1988, Order Instituting Rulemaking (R.) 88-11-041 was opened specifically "to reconsider the rule of D.85-11-018, 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. That decision further directed Administrative Law Judge (ALJ) John B. Weiss 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 each 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.

The present application reveals a capital gain of approximately \$59,834 on the system sold, that system bearing a net book value of \$9,000. As a consequence of the sale PG&E will lose annual revenue of \$423,000. PG&E also lost 282 residential customers and 14 commercial customers and 22 high pressure streetlights.

At the ALJ's request, PG&E's Manager of Construction Accounting, Joseph F. O'Flanagan, submitted a statement under penalty of perjury declaring that PG&E's remaining ratepayers had contributed no capital to the electric system sold. The lost revenues were in part offset by operational expense avoided by the sale, elimination of further depreciation and taxes, and elimination of any return on the utility's investment in the sold system.

#### 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.

On the captioned transaction, 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 transaction. The loss of customers was inconsequential. Accordingly, there could be no significant or adverse economic

impact on remaining customers,<sup>1</sup> and the utility 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 system sold, and there being no significant or direct adverse economic impact to the remaining ratepayers from the transaction, 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 capital gain after taxes to accrue to the utility 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 a municipality of an electric distribution and streetlighting system within a defined geographic area of the municipality, and where the system sold consisted of all of the utility's local system in that geographic area, a transaction since consummated, PG&E was ordered in that interim decision to record the capital gain in a suspense account until further Commission order.

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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 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).

2. D.89-07-016 in R.88-11-041 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 system herein sold and transferred to Santa Clara.

4. In the application, the remaining ratepayers were not adversely affected as the gain represents a very small amount of money, and the revenue loss is similarly insignificant.

5. The fact and results of this transaction provides no significant adverse effect on the utility's remaining ratepayers requiring mitigation.

6. The facts and results of this transaction serve to bring the gain disposition issue within the scope of D.89-07-016 in R.88-11-041.

7. To permit PG&E to include this gain in this year's financial results, the order which follows should be made effective immediately, thereby finally resolving this several-year-old application.

#### 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 the electric distribution and streetlighting system in the captioned application should accrue to PG&E and its shareholders.

2. A public hearing is not necessary.

that the Commission has determined that the proposed rate of return is reasonable and that the proposed rates are a **FINAL ORDER** and that the Commission has no further jurisdiction over the matter.

**IT IS ORDERED** that after taxes, the gain realized in the captioned application on the sale of the electric distribution and streetlighting system serving the Bell Arye Manor No. 16 geographic area in Santa Clara should accrue to Pacific Gas and Electric Company and its shareholders.

This order is effective today.  
Dated December 19, 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

*[Signature]*  
Executive Director

A.88-02-011  
D.90-12-068

FREDERICK R. DUDA, Commissioner, dissenting.

Once again I am compelled to dissent from the majority opinion regarding the disposition of gain on sale. My reasons are essentially the same as those set out in my dissents to D.90-10-017, D.90-10-018, D.90-10-023, and D.90-12-023. It is fundamentally wrong for the Commission to establish guidelines requiring mitigation of the adverse impacts on ratepayers resulting from a sale of utility assets and then to totally ignore those guidelines in subsequent decisions.

In the present case, there can be no question that the utility has failed to make the Redding II showing that any adverse effects on the utility's remaining ratepayers were fully mitigated. Although the majority did not require quantification of the reduction in operational expense and return on rate base which resulted from this sale, it is undoubtedly less than the \$423,000 annual revenue loss associated with the sale of utility property. After all, the net book value of the systems sold was only \$9,000. Thus, the capital gain of \$59,834 should be used to offset the adverse impact of the annual revenue loss.

By finding that an annual revenue loss approaching \$423,000 has no adverse effect on remaining ratepayers, the Commission ignores reality.

I must respectfully dissent from today's decision.



Frederick R. Duda, Commissioner

December 19, 1990  
San Francisco, California