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Decision 90-12-082 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA WATER COMPANY)
(U 133 W) and CITY OF VERNON for an)
order authorizing the sale of certain)
properties of Southern California)
Water Company to the City of Vernon.)

ORIGINAL
Application 85-09-024
(Filed September 11, 1985)

FINAL OPINION

Statement of Facts

By Interim Decision (D.) 86-03-016 of March 6, 1986, the Commission authorized Southern California Water Company (SoCalWater) to sell part of its Metropolitan District System which was in the city limits and entirely surrounded by the city to the City of Vernon. The decision relieved SoCalWater of further public utility obligations in connection with the respective service area being sold and transferred.

The interim decision while authorizing the sale and transfer of the water system serving that part of the city, further provided that the utility record the \$42,902 gain before taxes accruing from the transaction in a suspense account pending further order from the Commission. There were no protests received.

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 that 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 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'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 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 determined in Application (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 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. To the extent practical, cases were to be consolidated in the interest of administrative economy.

The present proceeding is concerned with this pending gain final disposition matter. The application reveals that the utility involved realized a capital gain, lost the facilities involved in the respective sale and transfer from rate base, lost minor annual revenue of \$27,108, and also lost 108 customers.

At the request of the ALJ, Joel A. Dickson, Vice President, Regulatory Affairs for SoCalWater has declared under

penalty of perjury that the utility's remaining ratepayers contributed no capital to the water system sold. The value of the system sold and the lost revenues did not involve large sums of money. In addition, the lost revenues are offset by reduced operational expense, maintenance, depreciation, and taxes saved by sale of the small system, and the elimination of any return on the utility's investment in the system sold.

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 captioned transaction, the remaining ratepayers had contributed no capital to the system being sold and transferred. Furthermore, the small amount 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. There was also an inconsequential loss in customers. Accordingly, there could be no significant or adverse economic impact on remaining customers,¹ and the utility continued to

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).

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 adverse economic impact to the 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 respective capital gain after taxes to accrue to SoCalWater 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 a water distribution system within a defined geographic area in the municipal limits, and where the system sold consisted of part of the utility's respective local system, a transaction since consummated, the utility was ordered to record the capital gain in a memorandum or 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 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 the City of Vernon.

4. In the captioned 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 facts and results of this transaction provide 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 SoCalWater to include this long deferred gain in this year's financial results, the order which follows should be made effective immediately.

Conclusions of Law

1. Pursuant to the Commission's determination in D.89-07-016 in R.88-11-041, the gain realized by SoCalWater on the sale of the water distribution system in the captioned application should accrue to SoCalWater and its shareholders.

2. A public hearing is not necessary.

FINAL ORDER

IT IS ORDERED that the gain realized on the sale of the water distribution system in the captioned application shall accrue to Southern California Water Company and its shareholders.

This order is effective today.

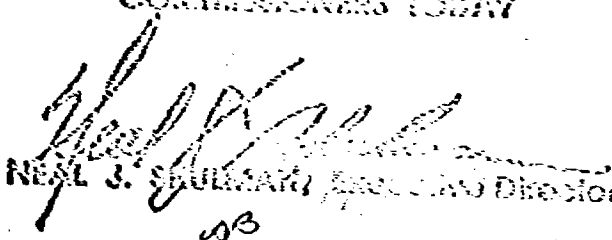
Dated December 19, 1990, at San Francisco, California.

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


NEAL J. SULLIVAN, Executive Director

A.85-09-024
D.90-12-082

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 \$27,108 annual revenue loss associated with the sale of utility property. Thus, the capital gain of \$42,902 should be used to offset the adverse impact of the annual revenue loss.

By finding that the annual revenue loss incurred here 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