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Decision 90-12-087 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND)
 ELECTRIC COMPANY and the CITY OF)
 SAN MATEO for an order under Section)
 851 authorizing the former to sell)
 and convey to the latter a street-)
 light system in accordance with terms)
 of an agreement entered into on)
 May 7, 1984.)

ORIGINAL

Application 84-08-012
(Filed August 2, 1984)

FINAL OPINION

Statement of Facts

By Interim Decision (D.) 84-10-058 in the captioned application, Pacific Gas and Electric Company (PG&E) was authorized by the Commission to sell to the City of San Mateo (San Mateo), the streetlighting system described in the application and serving the city within the municipal limits. The decision also relieved PG&E of its public utility obligations of owning, operating, and maintaining the system but not of its obligation to furnish electric energy to the city for use in the system.

While authorizing the sale and transfer, the interim order further provided that PG&E reserve the gain accruing from the sale for further order by the Commission. There were no protests to this application.

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 issued December 18, 1989, the Commission granted a "rehearing" of D.86-11-063 in Application (A.) 88-05-004 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 held pending resolution on policy for the issues in the rulemaking, 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 proceeding is one of those other cases involving a gain issue that are pending.

The captioned application reveals that PG&E realized a gain of \$34,860 before taxes on sale of a streetlighting system with a depreciated net book value of \$144,000; lost the net book value from rate base; and lost part of the \$334,500 annual revenue reflecting the switch to the lower LS-2B tariff schedule applicable to customer-owned facilities service.

At the request of the ALJ, 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 streetlighting system sold to San Mateo.¹ The value of the system sold and the lost revenues did not involve large sums of money. In addition, the lost revenues are partly offset by operation and maintenance expense, depreciation, and taxes saved by sale of the system, and elimination of any return on the utility's investment.

Discussion

Basically, D.89-07-016 in R.88-11-041 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, revenues, and customers 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 streetlighting system sale 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 acquiring the streetlight system.

1 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.

In 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. Accordingly, there could be no significant or adverse economic impact on PG&E's remaining customers,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 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 condition set down in D.89-07-016 of the rulemaking proceeding 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

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).

a municipality of a streetlighting system within a defined geographic area of the municipality, and where the system sold consisted of all of the utility's streetlighting 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.

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 here sold and transferred to San Mateo.

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-2B rate available to municipalities.

5. In the captioned application, the remaining PG&E ratepayers are not adversely affected as the gain represents a very small amount of money, and the revenue loss derived from switching to LS-2B 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 this transaction provide no significant adverse effect on PG&E's remaining ratepayers requiring mitigation.

7. 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.

8. To permit PG&E 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 PG&E on the sale of the streetlighting system in the captioned application should accrue to PG&E and its shareholders.

2. A public hearing is not necessary.

FINAL ORDER

IT IS ORDERED that after taxes, the gain realized in the captioned application on the sale of the streetlighting system described in the application should accrue to Pacific Gas and Electric Company and its shareholders.

This order is effective today.

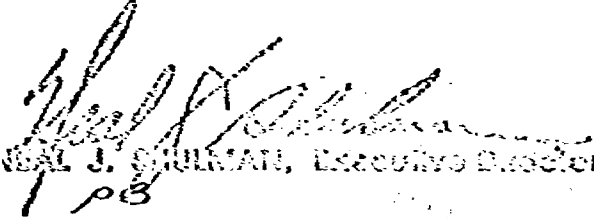
Dated December 19, 1990, at San Francisco, California.

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


NEAL J. SHULMAN, Executive Director

A.84-08-012
D.90-12-087

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 almost certainly less than the annual revenue loss associated with the sale of utility property and the switch to the lower LS-2B tariff schedule applicable to customer owned facilities service. Thus, the capital gain of \$34,860 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