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Decision 90-12-088 December 19, 1990

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

In the Matter of the Application )  
 of SUBURBAN WATER SYSTEMS, a )  
 corporation, for an order )  
 authorizing (1) the sale and )  
 transfer to the City of La Habra )  
 of public utility property of )  
 Suburban Water Systems, and )  
 (2) the discontinuance of service )  
 by Suburban Water Systems in )  
 certain territory in the City of )  
 La Habra. )

ORIGINAL

Application 85-12-034  
 (Filed December 18, 1985)

FINAL OPINIONStatement of Facts

By Interim Decision (D.) 86-03-066, the Commission authorized Suburban Water Systems (Suburban) to sell and transfer to the City of La Habra (City) a small isolated domestic water distribution system (known as Suburban's La Habra Service Area) on the fringe of Suburban's Whittier District, a system which constituted an island within the City's municipal water system. The La Habra Service Area system served 97 of the approximately 17,000 Whittier District customers. The interim decision also relieved Suburban of its public utility service obligations with regard to the system sold.

While authorizing the sale and transfer, the interim order further provided that Suburban retain the \$76,024 gain accruing from the sale pending further order from the Commission.

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 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 is pending

The captioned application reveals that Suburban realized a gain of \$76,024 on the sale of the system which had a net book value of \$18,781.02; the utility lost the system sold from rate

base, and lost \$24,700 in annual revenue as well as the 97 customers.

At the request of the ALJ, Suburban's Daniel M. Conway, Vice President, Revenue Requirements, declared under penalty of perjury that Suburban's remaining ratepayers contributed no capital to the water system sold to the City. The rate base removed and the lost revenues did not involve large sums of money, and the customer loss was very small. 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 ratepayer 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.

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 Suburban's remaining customers,<sup>1</sup> and

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<sup>1</sup> 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

(Footnote continues on next page)

Suburban 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 conditions set down in D.89-07-016 of the rulemaking proceeding are net 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 a water distribution system within a defined geographic area of the municipality, and where the system sold consisted of all of the utility's water distribution system in that geographic area, a transaction since consummated, Suburban 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

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(Footnote continued from previous page)

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).

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 City.

4. The remaining Suburban ratepayers are not adversely affected as the sale and transfer represent a very small portion of Suburban's system, and the revenue and customer losses are similarly insignificant.

5. The facts and results of this transaction provide no significant adverse effect on Suburban'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 Suburban 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 Suburban on the sale of the water distribution system in the captioned application should accrue to Suburban 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 water distribution system described in the application should accrue to Suburban Water Systems and its shareholders.

This order is effective today.

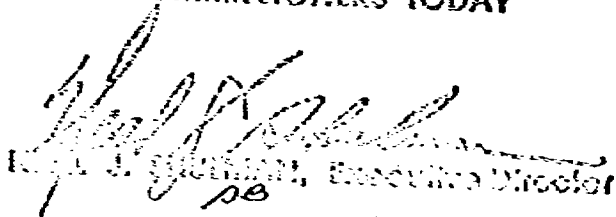
Dated December 19, 1990, at San Francisco, California.

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

  
Robert J. McMillan, Executive Director

A.85-12-034  
D.90-12-088


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 \$24,700 annual revenue loss associated with the sale of utility property. After all, the net book value of the systems sold was only \$18,781.02. Thus, the capital gain of \$76,024 should be used to offset the adverse impact of the annual revenue loss.

By finding that an annual revenue loss approaching \$24,700 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