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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 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 determined in Application (A.) 83-05-04 (PG&E and Healdsburg), 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.83-05-04, 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 a pending disposition of gain issue. However, this proceeding does not fall

within the requirements of D.89-07-016 because the sale and transfer was not to a municipality or other public entity, and no municipality or other agency assumed the public utility's obligations to the customer(s) within the area served by the system being sold. However, this sale meets some of the criteria of D.89-07-016 in that the sale involved all of the utility's distribution pipeline system within a geographic area; the components of the pipeline system sold have been included in the utility's rate base; and the utility was relieved of its public utility obligations with the pipeline being removed from public utility service.

The application reveals that Four Corners realized a net gain of \$16,350 from the sale of the pipeline with a net book value of \$8,645. The utility lost approximately \$15,441 annual revenue with the sale and transfer.

At the ALJ's request, a utility representative, Janice L. Dillon, controller, provided a statement under penalty of perjury that the utility's remaining ratepayers contributed no capital to the system sold. The value of the system sold and the revenues lost do not represent a large sum of money, and the lost revenue is partially offset by reduced operational expense, the elimination of depreciation and taxes, and any return on the utility's investment.

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.

Although the requirements of D.89-07-016 have not been met here, no one has suggested any alternative disposition of the small gain here. Furthermore, the remaining ratepayers here have contributed no capital to the pipeline system being sold and

and not as a common carrier. It has the sole responsibility to maintain and ultimately replace the pipeline if its requirements dictate continued use. As no other Four Corners' customers were involved, there was no obligation to serve to be transferred with the facilities. The pipeline was removed to the private sector from public service, and Four Corners was relieved of any obligations in connection with it. The franchises from the Cities of Long Beach, Signal Hill, and Port of Los Angeles to maintain and operate the pipeline and the rights of way from individual landowners were transferred to MacMillan as a part of the sale and transfer. Should MacMillan or its successor or assignee at some future date wish Four Corners to resume operation of a pipeline service, it will be Four Corners' sole option whether or not to undertake the service, and MacMillan or its successor or assignee will be responsible for all the costs involved should Four Corners elect to accept the obligation. In the future event that others in the area served by this pipeline should seek to obtain service from Four Corners, such service must be provided with all attendant costs thereto being borne by the new customers and/or the utility's shareholders, with the present remaining ratepayers of Four Corners being held harmless from the costs of initiating such new service. These conditions obviate any potential adverse effect on the remaining ratepayers.

The Commission has previously authorized allocation of gains to the utility and its shareholders where small systems comprising part of the utility's overall system were sold and transferred to private sector entities (See D.90-08-053 issued August 8, 1990 in A.87-08-049, A.87-08-050, and A.87-08-051, where small streetlighting systems were sold to private home-owner associations). There too, additional conditions were imposed to protect remaining ratepayers.

By these cases, we do not expand the rule of D.89-07-016 in R.88-11-041, but rather we impose conditions on the respective

sales consistent with the rationale of that rulemaking. As noted above, the sale here is to a customer rather than to a public entity. For this reason we must impose an additional condition upon the retention of the gain by the utility. If it develops that this utility again offers public utility service using the facility that is being sold, then the first source of funds to perform any needed repairs to the facility shall be the gain on sale retained by the utility. The cost of repairs funded from the gain shall not be recovered in rates. Once the facility that is being sold has reached the end of its useful life (as evidenced by its accounting depreciation, physical deterioration, etc.), the utility's obligation to apply the gain to repairs will cease and further service would be provided under the usually applicable terms and conditions. This preserves the position of ratepayers following the sale given the possibility that utility service could again occur using the facility that is being sold.

Here, the single ratepayer purchasing the pipeline was a customer of the sold distribution system and will obtain continued service from another source presumed to be reasonable and beyond our jurisdiction. However, the single customer in this case, or its successor or assignee, may have cause in the future to seek renewed utility service using the same facilities. In that event, we would preserve the position of that customer by prescribing that the first use of the retained gain be for needed repairs to the facilities now being sold.

On balance, therefore, the ratepayers having contributed no capital to the system sold, and there being no significant adverse economic impact to the remaining ratepayers from the transaction, the ratepayers are in the same position before and after the sale. Accordingly, in the absence of any request for alternative treatment, we will permit the small gain here to accrue to shareholders, subject to the conditions described above.

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

In the captioned application, while authorized by an interim decision to proceed with the proposed sale and transfer of a utility pipeline system within a defined geographic area, and where the system sold consisted of all of the utility's local system, as a transaction since consummated, the utility was ordered to record the capital gain derived from the sale 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. The facts in this case meet some but not all of the criteria of D.89-07-016. However, Four Corners serves only a small number of sophisticated customers, and no one has proposed any alternative disposition of the small gain here.

4. Ratepayers contributed no capital to the pipeline system herein sold and transferred.

5. The remaining ratepayers of Four Corners were not adversely affected by the sale and transfer as the system sold represented only a very small segment of the utility's system and the revenue lost was similarly insignificant, leaving ratepayers in essentially the same position as before the sale.

6. The facts and results of this transaction provide no significant adverse effect on the utility's remaining ratepayers to require mitigation.

7. The Commission finds that under the facts of this case and with the protection afforded the remaining ratepayers of the

utility, it is reasonable for the gain to accrue to Four Corners and its shareholders.

8. To protect the remaining ratepayers of the utility, said ratepayers should not bear any costs which might be incurred to provide service in the future should Four Corners elect to resume public utility obligations with regard to resumed service to MacMillan or its successor or assignee in this pipeline, or to other customers in the same service area.

9. To protect Four Corner/s ratepayers, the gain on sale retained by the utility should be the first source of funds to repair or renovate the sold pipeline system in the event it is returned to utility service.

10. To permit Four Corners to include this gain in this year's financial results, the order which follows should be made effective immediately, thereby finally resolving this 6-year-old application.

Conclusions of Law

1. The gain realized by Four Corners on the sale of this pipeline system should accrue to the utility and its shareholders.

2. A public hearing is not necessary.

FINAL ORDER

IT IS ORDERED that the gain realized after taxes on the sale of the utility pipeline described in the captioned application shall accrue to Four Corners Pipeline Company and its shareholders, and that the conditions described in the findings or fact be applied to this transaction.

This order is effective today.

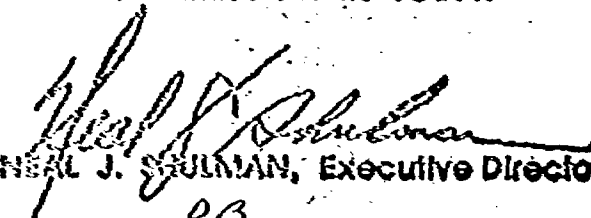
Dated December 27, 1990, at San Francisco, California.

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. SCHULMAN, Executive Director
PB

FREDERICK R. DUDA, Commissioner, dissenting.

Once again I am compelled to dissent from the majority opinion regarding the disposition of gain on sale.

Although the majority clearly recognizes that the property transfer involved in this proceeding does not meet the requirements of D.89-07-016 (Redding II), it applies its interpretation of that decision to today's factual situation simply because "no one has suggested any alternative disposition of the small gain here. . .;" and because "Four Corners serves only a small number of sophisticated customers."

I note that the application leading to today's decision was filed in late 1984, at a time when gains on sale were being recorded in suspense accounts pending further orders from the Commission after completion of the original City of Redding proceeding. The proceeding has been dormant until the recent issuance of the proposed decision, although it would have been appropriate for the Commission to have disposed of the gain in accordance with the first City of Redding decision. Given the timing of the application, the long dormancy of this proceeding, and the absence of any hearings, I find it predictable that no one has suggested an alternative disposition of the gain. That "no one has any better suggestion" only suggests a breakdown in our own process.

In any event, I have a suggestion as to how the Commission dispose of gains on sale which do not fit within the City of Redding II criteria. We should dispose of the gain in accordance with the basic principles set forth in D.90-04-028, as modified by D.90-11-031.

Furthermore, I believe that if the majority chooses to use the Redding II criteria in this case it should at least apply those criteria in a straightforward way. For the reasons set

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forth 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 \$15,441 annual revenue loss associated with the sale of utility property. After all, the net book value of the systems sold was only \$8,645. Thus, the capital gain of \$16,350 should be used to offset the adverse impact of the annual revenue loss.

By finding that an annual revenue loss approaching \$15,441 has no adverse effect on remaining ratepayers, the Commission ignores reality.

For the above reasons, I must respectfully dissent from today's decision.


Fréderrick R. Duda, Commissioner

December 27, 1990
San Francisco, California