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Decision 91-02-049 February 21, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY and the CITY OF REDDING 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 July 17, 1990. (Electric) U 39 E

ORIGINAL

Application 90-11-020 (Filed November 14, 1990)

Application of PACIFIC GAS AND ELECTRIC COMPANY and the CITY OF REDDING 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 June 19, 1990. (Electric) (U 39 E)

Application 90-11-026 (Filed November 14, 1990)

Application of PACIFIC GAS AND ELECTRIC COMPANY and the CITY OF REDDING 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 June 5, 1990. (Electric) (U 39 E)

Application 90-11-027 (Filed November 14, 1990)

OPINION

Statements of Fact

Pacific Gas and Electric Company (PG&E) since October 10, 1905 has been an operating public utility corporation organized under the laws of the State of California. PG&E is engaged principally in the business of furnishing electric and gas service.

in northern and central California. PG&E also produces and sells steam in certain parts of San Francisco.

The City of Redding (City), located in Shasta County, is a municipal corporation existing under the laws of the State of California. For some time City has owned and operated an electric distribution system serving within the city limits. From this system City furnishes electric service to its residents.

In accordance with its public utility service obligations to its dedicated service territory, PG&E has provided electric energy through three small area electric distribution systems in three unincorporated areas in Shasta County near City. In recent years City has annexed these three areas, known as County Oaks Annexation No. 88-5 (see captioned Application (A.) 90-11-020), Sheena Lane Annexation No. 86-3 (see A.90-11-026), and Oak Mesa Annexations No. 80-11 and No. 85-1 (see A.90-11-027); the respective annexations being certified by the Executive Officer of the Shasta County Local Agency Formation Commission on June 26, 1989, December 18, 1986, and January 14, 1981 and April 10, 1985. City now desires to acquire these three PG&E local area systems to incorporate them into its municipal electric distribution system. Faced with City's declared intention, PG&E agreed to sell.

Accordingly, on July 17, 1990, June 19, 1990, and June 5, 1990 relative respectively to the captioned applications, PG&E and City executed Purchase and Sale Agreements whereby PG&E's electric local area distribution systems in the three annexed areas would be sold to City. By the captioned applications the parties seek ex parte orders of the Commission authorizing the sales and transfers. The systems to be sold are described in Tab A of the respective applications. Upon the transfers, PG&E also seeks to be relieved of the duties and responsibilities (including all public utility obligations) of an electric corporation within the respective annexed areas. Finally, pursuant to Rate Making Treatment of Capital Gains - Utility Sales to Municipalities (1989) 32 CPUC 2d

233, PG&E requests that the gains on the three captioned sales be allocated to the utility and its shareholders.

The purchase prices agreed upon by the parties for the respective systems are: \$637,537 for County Oaks, \$9,154 for Sheena Lane, and \$31,452.50 for Oak Mesa. For the County Oaks system, the historical book cost was \$480,200 with a depreciation reserve of \$98,700, leaving a net book value of \$381,500, resulting in a gain before taxes of \$256,037. For the Sheena Lane system, the historical book cost was \$6,900 with a depreciation reserve of \$1,900, leaving a net book value of \$5,000, resulting in a gain before taxes of \$4,154. For the Oak Mesa system, the historical book cost was \$16,901.04 with a depreciation reserve of \$6,433.52, leaving a net book value of \$10,467.52, resulting in a gain before taxes of \$20,984.98. In each instance City will pay severance costs. Adjustments will be made for any additions to and retirements from the systems, subsequent to respective agreed dates and prior to conveyance to City, at PG&E's net value plus 15%.

By the sale and transfers, the 175 residential customers of the County Oaks area, the 2 residential and 1 commercial customer of the Sheena Lane area, and the 12 residential and 1 agricultural customer of the Oak Mesa area will become customers of City, and PG&E will lose respective annual revenues of \$101,000, \$3,055.12, and \$7,350. The transfer to City will not result in an increase over PG&E's presently effective rates and charges for these customers. PG&E holds no line extension or other credit deposits for the customers involved.

Current ad valorem taxes for the tax year of the conveyance will be prorated as of date of conveyance. City has also been advised that certain of the facilities involved may contain polychlorinated biphenyls (PCBs), a hazardous material, and City will assume liability, and responsibility for compliance with all laws, standards, rules, and regulations pertaining to same. Facilities are sold "as is." The facilities sold are presently

subject to the lien of PG&E's First and Refunding Mortgage Indenture, and PG&E will obtain removal of this encumbrance from the trustee of the indenture.

Notice of the filing of the captioned applications appeared in the Commission's Daily Calendars of November 19, 1990 (A.90-11-020) and November 20, 1990 (A.90-11-026 and A.90-11-027). No protests were filed.

Discussion

While most California communities obtain their electric services from privately owned public utility corporations such as PG&E, some cities prefer and are able to invest in the acquisition of their own electric distribution facilities, and thereby are able to take advantage of the low wholesale power rates available for cities from the federal government's sources. With lower financing costs than those available to privately owned public utility corporations, cheaper federally subsidized power sources, and not having to pay income or other taxes, cities are often able to resell to their inhabitants this federally derived electricity at rates lower than those a privately owned public utility must charge. But to be eligible for federal preferential power allocations, a municipality must own its own electric distribution system. Redding does. Usually lacking their own transmission lines, cities customarily pay the local privately owned public utility to wheel the federal power. Then to meet its utility obligation, the city will contract with the local public utility for wholesale power purchases as needed to augment normal requirements, in many instances placing upon the local public utility the need to have available and carry peaking period capability.

In California, a municipal corporation is empowered to acquire, construct, own, operate, or lease any public utility (Public Utilities (PU) Code § 10002.) Thus, a city has the power of eminent domain to acquire by court proceedings all or any part

of the distribution facilities of any privately owned public utility serving within its boundaries. Faced with this overhanging potential eminent domain threat, in order to avoid expensive condemnation suits, a public utility corporation involved in an annexation similar to the present situation is often willing to sell its involved facilities to the city by direct negotiation and contract for a sale.

Such is the situation and procedure being followed here. In the mutual interest of saving both time and legal expense, City and PG&E have bargained for an appreciated price for the facilities involved. As PU Code § 851 provides that no public utility other than a common carrier by railroad may sell the whole or any part of its system necessary or useful in the performance of its public duties without first obtaining authorization to do so from this Commission, the parties have filed this application.

In the usual private investor transfer proceeding, the function of the Commission is to protect and safeguard the interests of the public. The concern is to prevent impairment of the public service by the transfer of utility property and functions into the hands of parties incapable of performing an adequate service at reasonable rates or upon terms which would bring about the same undesirable result. (So. Cal. Mountain Water Co. (1912) 1 CRC 520). We want to be assured that the purchaser is financially capable of the acquisition and of satisfactory operation thereafter.

But in this proceeding we do not have the usual private party transfer. A city is the purchaser, and where a municipality, its corporation, or another governmental entity is the purchaser, our considerations are somewhat different. Since the rates to be charged by a municipally owned utility must be fair, reasonable, just, and nondiscriminatory (American Microsystems, Inc. v. City of Santa Clara (1982) 137 CA 3d 1037, 1041), and the city is assured of an electric supply, the sale and transfer involves no risk to

the ratepayers going with the system being transferred. Were the Commission to refuse approval of the sale and transfer, City could proceed in eminent domain to acquire the system and its customers without our consent (see People ex rel. PUC vs. City of Fresno (1967) 254 CA 2d 76; petition for hearing denied by Supreme Court November 22, 1967). Accordingly, the Commission approves the sale and transfer.

Under these circumstances, we still retain jurisdiction to formally relieve PG&E of its public utility obligations with respect to service for the area being transferred to City, and upon consummation of the sale and transfer, PG&E will be relieved of these responsibilities for the County Oaks, Sheena Lane, and Oak Mesa areas being sold. PG&E has annual gross intrastate revenues exceeding \$750,000. Accordingly, no payment of collected Public Utilities Commission Reimbursement fees will be due and payable upon this sale; rather fees collected from ratepayers in the three areas prior to consummation of the sale and transfer will be incorporated for payment with the utility's regular quarterly payment in the quarter following consummation date of this sale and transfer (PU Code § 433.b).

Remaining is disposition of the capital gains to be realized from the three sales herein authorized. In Decision (D.) 89-07-016 in Order Instituting Rulemaking (R.) 88-11-041, a proceeding involving a factual situation virtually identical to the facts present herein<sup>1</sup>, the Commission addressed the issue whether

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<sup>1</sup> Basically, D.89-07-016 in R.88-11-041 recognized the factual circumstance that a sale and transfer of part or all of a utility's service facilities, together with termination of its responsibility to provide future service in the area served by the sold service facilities, 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.

gain or loss, as the case might be, on a sale such as those present herein should be allocated to the selling utility's investors or ratepayers. In Ordering Paragraph 2 of D.89-07-016, the Commission stated that such capital gain or loss shall accrue to the utility and its shareholders to the extent that:

- 1) The remaining ratepayers on the selling utility's system are not adversely affected, and
- 2) The ratepayers have not contributed capital to the distribution system being sold and transferred.

In none of the situations involved in these cases did the value of the property sold or the lost revenues involve large sums of money. In addition, the lost revenues are offset by operational expenses saved by the sales of the systems and elimination of any return on the utility's investment.

With regard to the capital for the facilities being sold, PG&E states that no operating revenues pursuant to arrangements such as the GEDA or EEDA Programs (83 CPUC 16, 19.21) or funds receivable under a PU Code Section 454.3 program or comparable program were the source of its investment in those facilities.

Furthermore, the small amounts of money involved in the value of the systems sold and the revenues foregone demonstrate that there were no adverse effects on the remaining ratepayers from the transaction in each instance. There were inconsequential losses in customers. Accordingly, there could be no significant or adverse economic impact on PG&E's remaining customers in each

instance<sup>2</sup>, 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 systems to be sold, and there being no significant adverse economic impact to the ratepayers from the transaction to be mitigated, the ratepayers are in the same position after as before the proposed sales. The condition set down in D.89-07-016 of the rulemaking proceeding for the capital gains after taxes to accrue to the utility and its shareholders will be met.

Given the absence of adverse impact to remaining ratepayers from these three transactions, and the absence of any protest, there exists no need for a hearing. The sooner the sales and transfers can be authorized, the sooner the consumers who are to be transferred to municipal service can obtain the rate benefits they have been led to expect to receive. Accordingly, the order which follows should be made effective immediately. Because of the virtually identical factual situations presented, the three captioned applications are being consolidated for decision.

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<sup>2</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 Appl. 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).



Findings of Fact

1. PG&E provides public utility electric service in many areas of California, including areas in and about City.

2. City, a municipal corporation of the State of California, for some time has owned and operated an electric distribution system in areas within city limits.

3. In recent years City completed annexation procedures to annex the County Oaks, Sheena Lane, and Oak Mesa areas to City.

4. In the interim since the annexations, PG&E has continued to provide public utility electric service to the three annexed areas.

5. City plans and desires to take over and acquire PG&E's electric distribution systems in the County Oaks, Sheena Lane, and Oak Mesa areas, and has contracted with PG&E to purchase these systems to incorporate them into City's municipally owned system.

6. The negotiated prices for the three distribution systems include gains over original cost less depreciation, and are reasonable.

7. There is no known opposition to the proposed sales and transfers.

8. It can be seen with reasonable certainty that the sales and transfers to City presents no significant impact on the environment.

9. As a public utility continuing to operate after these sales and transfers, PG&E remains responsible to the Commission for remittance at the appropriate time of Public Utilities Commission Reimbursement Fees collected in the transferred service areas up to date the sales and transfers are consummated.

10. 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.

11. Each of these three systems constitute a distribution system sold to a municipality.

12. The systems consist of a part of the utility operating system within a geographically defined area.

13. The components of the system have been included in the rate base of the utility.

14. The sales will be concurrent with the utility being relieved of and the municipality assuming PG&E's obligations to the customers within the area served by the system.

15. Ratepayers contributed no capital to the three systems here to be sold and transferred to City.

16. The remaining PG&E ratepayers are not adversely affected as the three sales and transfers involve a very small amount of money, and the revenue and customer losses are similarly insignificant.

17. The facts and results of these transactions provide no significant adverse effect on PG&E's remaining ratepayers, requiring mitigation.

18. The facts and results of these three transactions serve to bring the gain disposition issue within the scope of D.89-07-016 in R.88-11-041.

19. Because the public interest would best be served by having the transfer take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. A public hearing is not necessary.
2. The sales and transfers should be authorized.
3. The sales and transfers meet the requirements of D.89-07-016 for the capital gains to accrue to PG&E and its shareholders.

4. Upon completion of the sale and transfer, PG&E should be relieved to its public utility electric service obligations in the County Oaks, Sheena Lane, and Oak Mesa areas now annexed to City.

ORDER

IT IS ORDERED that:

1. Within 6 months after the effective date of this order, Pacific Gas and Electric Company (PG&E) may sell and transfer to the City of Redding the electric distribution system set forth in Tab A of Applications (A.) 90-11-020, 90-11-026, and 90-11-027.

2. Within 10 days of the actual transfers, PG&E shall notify the Commission in writing of the date on which the transfers were consummated. A true copy of the instruments effecting the sales and transfers shall be attached to the written notification.

3. Within 90 days after the date of actual transfers, PG&E shall advise the Commission Advisory and Compliance Division, in writing, of the adjustments for additions and betterments, if any, made in accordance with the transactions.

4. PG&E shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected to the date of sale and transfer of these 3 systems, along with its other fee remittances, at the next quarter remittance date following the date of the sales and transfers.

5. Upon completion of the sales and transfers authorized by this Commission order, PG&E shall stand relieved of its public utility electric service obligations in the County Oaks, Sheena Lane, and Oak Mesa areas set forth in Tab A of A.90-11-020, 90-11-026, and 90-11-027.

6. The gains on sale realized from these sales and transfers shall accrue to PG&E and its shareholders.

7. In accordance with General Order 96-A, PG&E shall file a revised service area map delineating its service territory in the vicinity of Redding within 90 days of the transfer date.

This order is effective today.

Dated February 21, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I abstain.

DANIEL WM. FESSLER  
Commissioner

I abstain.

NORMAN D. SHUMWAY  
Commissioner

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

*[Signature]*  
NEXE J. SHULMAN, Executive Director  
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