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Decision 91-11-020 November 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of 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 January 2, 1991.

(Electric) (U 39 E)

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(Electric) (U 39 E)

ORIGINAL

Application 91-06-005 (Filed June 3, 1991)

Application 91-06-006 (Filed June 3, 1991)

OPINION

Statement of Facts

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 two small area distribution systems in two unincorporated areas in Shasta County near City. In recent years, City has annexed these two areas, known as Old Alturas Road Annexation Nos. 89-1 and 89-7 (see captioned Application (A.) 91-06-005, and South Hawley Road Annexation No. 89-2 (see captioned A. 91-06-006). The respective annexations were certified by the Executive Officer of the Shasta County Local Agency Formation Commission on December 13, 1989. City now desires to acquire these two PG&E local area distribution systems to incorporate them into its municipal electric distribution system. Faced with City's declared intention, PG&E agreed to sell.

Accordingly on January 2, 1991, PG&E and City executed Purchase and Sale Agreements whereby PG&E's electric local area distribution systems in the two 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 realized by the two captioned sales be allocated to the utility and its shareholders.

The purchase prices agreed upon by the parties for the respective systems are \$114,835 for Old Alturas Road and \$16,071.25 for South Hawley Road. For the Old Alturas Road system, the historical book cost was \$65,900 with a depreciation reserve of \$20,700, leaving a net book value of \$45,200, resulting in a gain before taxes of \$69,635. For the South Hawley Road system, the

historical book cost was \$8,600 with a depreciation reserve of \$2,400, leaving a net book value of \$6,200, resulting in a gain before taxes of \$9,871.25. 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 45 residential and four commercial customers of the Old Alturas Road area, and the 16 residential and three commercial customers of the South Hawley Road area will become customers of City, and PG&E will lose respective annual revenues of \$46,000 and \$7,200. 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 Calendar of June 7, 1991. 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 no 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 distribution system. Redding does. Usually lacking its own electric transmission lines, a city customarily pays the local privately owned public utility to wheel the federal power. Then to meet its utility obligations, 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 capacity.

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 potential eminent domain threat, in order to avoid expensive condemnation suits, a public utility corporation 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 rendering 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 these proceedings, 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 sales and transfers involve no risk to the ratepayers going with the systems being transferred. Were the Commission to refuse approval of the sales and transfers, City might proceed in eminent domain to acquire the systems and their 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 sales and transfers.

Under these circumstances, we still retain jurisdiction to formally relieve PG&E of its public utility obligations with respect to electric service for the areas being transferred to City, and upon consummation of the sales and transfers, PG&E will be relieved of these responsibilities for the Old Alturas Road and South Hawley Road areas where the systems are 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 two areas prior to consummation of the sales and transfers will be incorporated for payment with the utility's regular quarterly payment in the quarter following consummation date of these sales and transfers (PU Code § 433 (b)).

Remaining is disposition of the capital gains to be realized from the two sales herein authorized. In Rate-making Treatment of Capital Gains (supra), in a rulemaking proceeding involving a factual situation virtually identical to the facts presented herein,<sup>1</sup> the Commission addressed the issue whether gain or loss, as the case may be, on sales such as those proposed here should be allocated to the selling utility's investors or ratepayers. In Ordering Paragraph 2 of that decision, the Commission stated that such capital gain or loss should 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 neither of the situations involved in the present applications did the value of the property sold or the lost revenues involve large sums of money. The cost or quality of service to PG&E's remaining ratepayers will not be affected by the

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<sup>1</sup> Basically, Rate-making Treatment of Capital Gains (supra) recognized the factual circumstance that a sale and transfer to a public or governmental entity of part or all of a public utility's rate-based distribution service facilities, together with termination of its responsibility to provide future service in the area served by the sold 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.

sales of the distribution facilities in question. PG&E's total distribution facilities serve 4,159,230 customers, with an annual revenue of \$6,716,491,392 and a net book value as of December 31, 1990 of \$4,257,996,627. The annual revenue lost by these sales is minuscule in comparison with PG&E's revenues from its entire Electric Department (e.g., less than one-thousandth of one percent). The distribution facilities to be sold comprise less than one-thousandth of one percent of the net book value of PG&E's electric distribution facilities.

Accordingly, there could be no significant adverse economic impact on PG&E's remaining customers in each instance,<sup>2</sup> and PG&E will be able to continue to serve its remaining customers with no adverse effect, no diminution in quality of service, and no economic harm to be mitigated.

With regard to the capital for the facilities in question, the application states no operating revenue pursuant to arrangements such as the GEDA or EEDA Programs (83 CPUC 16, 19-21) or funds receivable under a PU Code § 454.3 program or comparable program were the source of investment in such facilities.

On balance, therefore, the ratepayers having contributed no capital to the systems to be sold and there being no significant

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2 This contrasts with the situation in each of the three cases cited and distinguished in Rate-Making Treatment of Capital Gains (supra). There, App. of Duke 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).

adverse economic impact to the ratepayers from the transaction to be mitigated, the ratepayers are in the same position after as before the proposed sale. The conditions laid down in Ratemaking Treatment of Capital Gains (supra) 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 two transactions, and the absence of any protest, there exists no need for a hearing. The sooner the sales and transfers are authorized, the sooner the consumers who are to be transferred to municipal service can obtain the rate benefits they have been led to expect. Accordingly, the order which follows should be made effective immediately. Because of the virtually identical factual situations presented, the two captioned applications are here being consolidated for decision.

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 Old Alturas Road and South Hawley Road areas to City.
4. In the interval since the annexations, PG&E has continued to provide public utility electric service to the two annexed areas.
5. City plans and desires to take over and acquire PG&E's electric distribution systems in the Old Alturas Road and South Hawley Road 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 two distribution systems include gains over original cost less depreciation.
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 present 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. Rate-making Treatment of Capital Gains (1989) 32 CPUC 2d 233, a rulemaking proceeding, 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 the decision shall accrue to the utility and its shareholders.

11. Each of these two 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 systems 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 areas served by the systems.

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

16. The remaining PG&E ratepayers are not adversely affected, as the two 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 two transactions serve to bring the gain disposition issue within the scope of Rate-Making and Treatment of Capital Gains.

19. Because the public interest would best be served by having the transfers 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 Rate-Making and Treatment of Capital Gains (1989) 32 CPUC 2d 233, for the capital gains to accrue to PG&E and its shareholders.
4. Upon completion of the sales and transfers, PG&E should be relieved to its public utility electric service obligations in the Old Alturas Road and South Hawley Road areas now annexed to the 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:) 91-06-005 and 91-06-006.
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 2 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 Old Alturas Road and South Hawley Road areas set forth in Tab A of A.91-06-005 and 91-06-006.

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 November 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director