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Decision 92-02-050 February 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC GAS AND ELECTRIC COMPANY and)
the CITY OF HEALDSBURG 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 October 10, 1990.)

ORIGINAL

Application 91-10-073
(Filed October 25, 1991)

(Electric) (U 39 E)

O P I N I O N

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 Healdsburg (City), located in Sonoma 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 distribution systems in three areas annexed to the City in Sonoma County; the unincorporated area known as Norton Addition, annexed by City Resolution No. 86-66; the incorporated area known as Old Redwood Highway Addition, annexed by City Resolution No. 168-79 (granted by Sonoma County Local Agency Formation Commission Resolution No. 630); and the unincorporated

area known as Oak Mound Island, annexed by City Resolution No. 103-87. City now desires to acquire these three PG&E local area distribution systems to incorporate them into its municipal electric distribution system. Faced with the City's declared intention, PG&E agreed to sell.

Accordingly on October 10, 1990, PG&E and City executed a Purchase and Sale Agreement whereby PG&E's electric local area distribution systems in the three areas would be sold to City.

By the captioned application, the parties seek an ex parte order of the Commission authorizing the sale and transfer. The systems to be sold are described in Tab A of the application. Upon the transfer, 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 gain realized by the sale be allocated to the utility and its shareholders.

The purchase price agreed upon by the parties for the systems is \$13,504. The historical book cost was \$6,250 with a depreciation reserve of \$2,600, leaving a net book value of \$3,650, resulting in a gain before taxes of \$9,854. 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 transfer, the 14 residential and one commercial customers will become customers of City, and PG&E will lose annual revenues of \$10,000. 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 December 6, 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. Healdsburg 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 v. 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 Norton Addition, Old Redwood Highway Addition, and the Oak Mound Island 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 three 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 sale 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,¹ the Commission addressed the issue whether gain or loss, as the case may be, on sales such as that 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 the situations involved in the present application the value of the property sold or the lost revenues did not involve large sums of money. The cost or quality of service to PG&E's remaining ratepayers will not be affected by the sale 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 this sale 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.

¹ 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.

Accordingly, there could be no significant adverse economic impact on PG&E's remaining customers,² 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 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 Rate-making Treatment of Capital Gains (supra) for the capital gain after taxes to accrue to the utility and its shareholders will be met.

Given the absence of adverse impact to remaining ratepayers from this transaction, and the absence of any protest, there exists no need for a hearing. The sooner the sale and transfer is authorized, the sooner the consumers who are to be transferred to municipal service can obtain the rate benefits they

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 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).

have been led to expect. Accordingly, the order which follows should be made effective immediately.

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 Norton Addition, the Old Redwood Highway Addition, and the Oak Mound Island area to City.
4. In the interval 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 Norton Addition, the Old Redwood Highway Addition, and the Oak Mound Island area, and has contracted with PG&E to purchase these systems to incorporate them into City's municipally owned system.
6. The negotiated price for the distribution systems include a gain over original cost less depreciation.
7. There is no known opposition to the proposed sale and transfer.
8. It can be seen with reasonable certainty that the sale and transfer to City present no significant impact on the environment.
9. As a public utility continuing to operate after this sale and transfer, 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 sale and transfer is 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 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 systems have been included in the rate base of the utility.

14. The sale 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 three systems here to be sold and transferred to City.

16. The remaining PG&E ratepayers are not adversely affected as the sale and transfer involves a very small amount of money, and the revenue and customer losses are similarly insignificant.

17. The facts and results of this transaction provides no significant adverse effect on PG&E's remaining ratepayers requiring mitigation.

18. The facts and results of this transaction serves to bring the gain disposition issue within the scope of Rate-Making Treatment of Capital Gains.

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 sale and transfer should be authorized.

3. The sale and transfer meets the requirements of Rate-making Treatment of Capital Gains (1989) 32 CPUC 2d 233 for the capital gain to accrue to PG&E and its shareholders.

4. Upon completion of the sale and transfer, PG&E should be relieved of its public utility electric service obligations in the Norton Addition, the Old Redwood Highway Addition, and the Oak Mound Island 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 Healdsburg the electric distribution system set forth in Tab A of Application (A.) 91-10-073.

2. Within 10 days of the actual transfers, PG&E shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument effecting the sale and transfer 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 transaction.

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 three systems, along with its other fee remittances, at the next quarter remittance date following the date of the sale and transfer.

5. Upon completion of the sale and transfer authorized by this Commission order, PG&E shall stand relieved of its public utility electric service obligations in the Norton Addition, the Old Redwood Highway Addition, and the Oak Mound Island area set forth in Tab A of A.91-10-073.

6. The gain on sale realized from this sale and transfer 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 Healdsburg within 90 days of the transfer date.

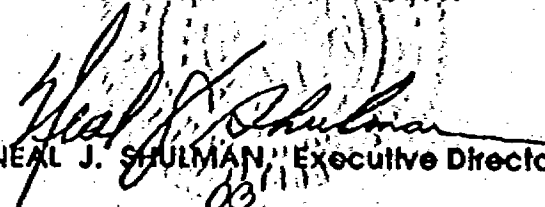
This order is effective today.

Dated February 20, 1992, at San Francisco, California.

DANIEL Wm. PESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director