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Decision 92-06-050 June 17, 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 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 November 5, 1991.)
 (Electric) (U 39 E))

ORIGINAL
 Application 92-03-026
 (Filed March 11, 1992)

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 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 a small area distribution system in an unincorporated area in Shasta County near City. In recent years, City has annexed this area, known as Clear Creek Road Annexation No. 89-3. City now desires to acquire this PG&E local area distribution system to incorporate it into its municipal electric distribution system. Faced with City's declared intention, PG&E agreed to sell.

Accordingly on November 5, 1991, PG&E and City executed Purchase and Sale Agreements whereby PG&E's electric local area distribution system in the annexed area would be sold to City.

By the captioned application, the parties seek ex parte orders of the Commission authorizing the sale and transfer. The system to be sold is 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 area. 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 captioned sale be allocated to the utility and its shareholders.

The purchase price agreed upon by the parties for the system is \$41,954. The historical book cost was \$29,100 with a depreciation reserve of \$4,100, leaving a net book value of \$25,000, resulting in a gain before taxes of \$16,954. City will pay severance costs. Adjustments will be made for any additions to and retirements from the system, subsequent to August 9, 1991 and prior to conveyance to City, at PG&E's net value plus 15%.

By the sale and transfer, the six commercial customers of PG&E in the Clear Creek Road area will become customers of City, and PG&E will lose annual revenues of \$130,700. 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, 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 application appeared in the Commission's Daily Calendar of March 17, 1992. 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. Lacking its own electric transmission lines, a city customarily pays the local privately owned public utility to wheel the federal power. 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 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 involve no risk to the ratepayers going with the system being transferred. Were the Commission to refuse approval of the sale and transfer, City might proceed in eminent domain to acquire the system and the associated

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 electric 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 Clear Creek Road area where the system is 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 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 sale herein authorized. In Ratemaking 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 those proposed here should be allocated to the selling utility's investors or ratepayers. In

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 areas 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.

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.

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 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 this instance,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.

² This contrasts with the situation in each of the three cases cited and distinguished in Rate-Making Treatment of Capital Gains (supra). There, Duke Water Co. (1964) 63 CPUC 641, Plunkett Water Co. (1966) 65 CPUC 313, and 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).

With regard to the capital for the facilities in question, the application states no operating revenue pursuant to arrangements such as the Gas Exploration and Development Adjustments or Energy Exploration and Development Adjustments programs (See Decision 88121, 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 system 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 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 this transaction, and the absence of any protest, there exists no need for a hearing. The sooner the sale and transfer 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.

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 the city limits.
3. In recent years City completed annexation procedures to annex the Clear Creek Road area to City.
4. In the interval since the annexation, PG&E has continued to provide public utility electric service to the annexed area.
5. City plans and desires to take over and acquire PG&E's electric distribution system in the Clear Creek Road area, and has

contracted with PG&E to purchase this system to incorporate it into City's municipally owned system.

6. The negotiated prices for the distribution system includes gains 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 are consummated.

10. Rate-making Treatment of Capital Gains (1989) 32 CPUC 2d 233, 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. This system constitutes a distribution system sold to a municipality.

12. The system consists 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 sale 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 system here to be sold and transferred to City.

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

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

18. The facts and results of this transaction serve 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 meet the requirements of Rate-making 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 sale and transfer, PG&E should be relieved of its public utility electric service obligations in the Clear Creek Road area now annexed to City.

O R D E R

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 Application (A.) 92-03-026.

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

3. Within 90 days after the date of actual transfer, 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 this system, along with its other fee remittances, at the next quarterly 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 Clear Creek Road area set forth in Tab A of A.92-03-026.

6. The gains on sale realized from this sale and transfer shall accrue to PG&E and its shareholders.

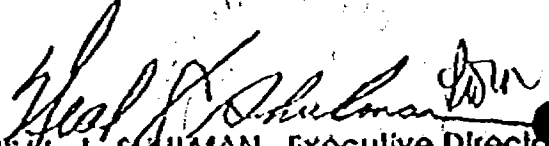
7. In accordance with General Order 96-A, PG&E shall file a revised service area map delineating its service territory in the vicinity of Redding within 90 days of the transfer date.

This order is effective today.

Dated June 17, 1992, at San Francisco, California.

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

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


NEAL J. STULMAN, Executive Director