

Decision 83 06 036

JUN 29 1983

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND  
ELECTRIC COMPANY and the CITY OF  
ARCATA for an order under  
Section 851 to sell and convey  
streetlight facilities or  
alternatively for an order dismissing  
this application for lack of  
jurisdiction.

(Electric)

Application 83-06-11  
(Filed June 3, 1983)

INTERIM OPINION

Pacific Gas and Electric Company (PG&E) and the City of Arcata (City) seek an order under Public Utilities (PU) Code § 851 granting PG&E authority to sell and convey to the City certain electric streetlight facilities and to otherwise effectuate the sales agreement attached to the application as Exhibit C, or alternatively an order dismissing the application for lack of § 851 jurisdiction over the transaction.

Under the sales agreement signed on June 2, 1983, PG&E has contracted, among other things, to sell to the City PG&E's electric streetlight facilities (Streetlight Facilities) within the City, including any additions and betterments. City has agreed to pay PG&E \$203,425.58 as the purchase price for the Streetlight Facilities. According to the application this purchase price reflects the replacement cost of the Streetlight Facilities less depreciation. The City has further agreed to assume all public utility obligations of PG&E to provide maintenance and replacement service to the approximately 600 streetlights in the City.

PG&E and City have arranged that the June 2, 1983 agreement shall not become effective until the Commission authorizes PG&E, pursuant to § 851, to carry out its terms and conditions, or until the Commission issues an order dismissing the application as not being within its § 851 jurisdiction.

The City pays PG&E for the costs of ownership, operation, and maintenance of the Streetlight Facilities and the electric energy used, all in accordance with PG&E's filed Tariff Schedule No. LS-1. After ownership is transferred, the City will operate and maintain the Streetlight Facilities, and it will obtain electric energy for the facilities under PG&E's Tariff Schedule No. LS-2.

For the 12-month period ended December 31, 1982, PG&E derived gross annual revenues of approximately \$85,000 from providing the City service through the Streetlight Facilities. According to the application, the transfer of ownership will not result in charges in excess of those paid to PG&E by the City for electric service.

PG&E is uncertain whether Commission approval of this transaction is required under § 851, which obligates a public utility to first secure from the Commission an order authorizing it to sell any property necessary or useful in the performance of its duties to the public. In PG&E's opinion, the Streetlight Facilities to be conveyed are neither necessary nor useful in the performance of its public utility obligations. Accordingly, PG&E requests the Commission to issue an order dismissing the application as not being within its § 851 jurisdiction.

The City also requests the Commission to dismiss this application for lack of § 851 jurisdiction. The City states that it

has calculated the economic benefit of its ownership and has procured financing with specific time requirements on the assumption of a July 1, 1983 transfer of title. The City advises that, if the Commission is unable to render a decision by July 1, then it will file a condemnation action in Superior Court to obtain immediate possession. The City points out that immediate dismissal of this application for lack of jurisdiction would eliminate the need for such judicial involvement and enable the parties to implement their negotiated agreement.

It is our opinion that the service PG&E is furnishing the City through the Streetlight Facilities is a public utility service which is provided under the specific provisions of Schedule No. LS-1 of PG&E's filed tariffs. PG&E's ownership of the facilities is an essential element of the public utility service provided under that tariff schedule; hence, the facilities are, inescapably, both necessary and useful in the performance of PG&E's public utility obligations under Schedule No. LS-1.

In Decision (D.) 83-02-044, we granted PG&E authority under § 851 to sell the City of Redding certain electric distribution facilities. That decision set forth the limited scope of the Commission's § 851 review of a sale to a municipality, as follows:

"[U]nder present operation of law, when a municipal corporation is involved, the approval of the Commission is substantially a ministerial act so long as there is fair and just compensation to public utility for the voluntary role. In this instance, reflecting as it does the replacement cost of facilities less depreciation, the purchase price meets the test of fair and just compensation for the facilities to be sold."

The compensation to be paid by the City for the Streetlight Facilities similarly reflects the replacement cost of the facilities,

less depreciation. In our opinion, it thus meets the § 851 test of fair and just compensation. However, it does not address the issue of whether the gain on sale over net book value should go entirely to the shareholders or to the ratepayers, or be split between them. We plan to address that issue in PG&E's A.83-04-37 re sale of certain facilities to the City of Redding after opportunity for briefing.

Findings of Fact

1. The Streetlight Facilities are useful to PG&E in performing its duties to the public; therefore, the proposed sale to the City is subject to the provisions of § 851.

2. Authorizing PG&E to carry out terms of the sales agreement will not be adverse to the public interest.

3. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted.

2. The effective date of this order should be today to permit the sale to be consummated by July 1, 1983.

The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to sell and convey to the City of Arcata (City), under the June 2, 1983 sales agreement, the Streetlight Facilities described in the application and the attached Exhibit D.

2. Within 30 days after the actual sale and transfer to the City, PG&E shall notify this Commission in writing of the date thereof.

3. Within 180 days after the actual sale and transfer, PG&E shall file with this Commission the final cost figures for property transferred.

4. The accounting for the proceeds of the sale will be according to further Commission order after receipt of briefs and decision in A.83-04-37.

5. In the event the sale and transfer are not consummated within five years after the effective date of this order, the authority granted by this order will expire.

This order is effective today.

Dated JUN 29 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO

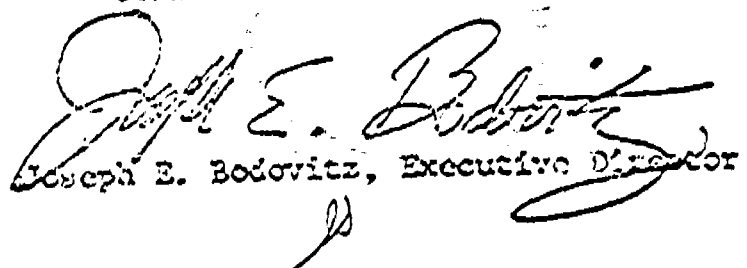
PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

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

  
Joseph E. Bodovitz, Executive Director

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