

Decision 83 12 064

DEC 20 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND)
 ELECTRIC COMPANY and TUOLUMNE COUNTY)
 for an order authorizing the former)
 to sell and convey to the latter)
 certain water facilities, known as)
 the Tuolumne Water System, in accor-)
 dance with the terms of a Purchase)
 Agreement dated June 3, 1983.)
 (Water))

Application 83-08-13
(Filed August 3, 1983)

O P I N I O N

Summary

Pacific Gas and Electric Company (PG&E) applies for an order allowing it to sell and convey to the County of Tuolumne (County) the public utility water facilities known as the Tuolumne Water System, in accordance with an agreement between PG&E and the County dated June 3, 1983. Public Utilities Code § 851 requires PG&E to obtain Commission approval prior to the transfer of these facilities. Our jurisdiction in this matter is limited to whether the proposed transfer is reasonable and in the public interest.

This decision finds the agreement reasonable and authorizes the transfer.

I. HISTORY AND BACKGROUND

Description and Origin of System

The system has been owned by PG&E since 1927. It consists of a series of water conduits of various types (ditches, flumes, and pipes) and regulating and standby reservoirs in western Tuolumne County, between the south fork of the Stanislaus River and the north fork of the Tuolumne River. Also in the system are piped distribution systems in the Jamestown, Sonora, and Tuolumne service

areas. For those areas, treated water is supplied for domestic, commercial, industrial, and other uses. Outside these service areas only untreated water is furnished.

The system's origin dates from the gold mining era. Most of the ditches were constructed in the 1850's to supply the placer mines then operating. When the mines were played out, other uses were found for the water. The Tuolumne County Water Company constructed the Tuolumne Ditch in 1851 and 1852. During the following four decades that company purchased other ditch systems and consolidated them. Between that era and 1936 there were further transfers and consolidations. In 1936 PG&E acquired the properties.¹

As the system presently functions, water is taken from the south fork of the Stanislaus River, is impounded in Lyons Reservoir, and then conveyed via the 52 cubic feet per second (cfs) main Tuolumne Canal to the western portion of the county. It is then distributed through approximately 79 miles of ditches to the area between the south fork of the Stanislaus River and the north fork of the Tuolumne River. Water in the system is divided among PG&E's Section Four Ditch System, its Columbia System, and the Phoenix powerhouse, which also provides water for the Sonora-Jamestown area.

Recent History

In 1973 PG&E filed Application (A.) 54199, seeking authority to increase rates. A protracted and complex dispute developed over the extent of PG&E's water service responsibilities. Tuolumne County Water District No. 2 (TCWD 2) and other interested parties contended that PG&E was obligated to furnish public utility

¹ Some of the historical facts, as well as the Commission's recent treatment of the system, are taken from Pacific Gas & Electric Co., Decision (D.) 92064. We take official notice of this decision and its appendices since this history is relevant to our decision.

domestic (treated) water to the entire area in which it served untreated ditch water. PG&E maintained that it never had assumed that duty, and that it was required to serve treated water only to its Sonora, Jamestown, and Tuolumne service areas. The cost of upgrading the entire system to provide treated water was exhaustively litigated.

In D.92064, dated July 29, 1980, we found that PG&E is required to provide treated water for the entire system and that the cost of upgrading the system (i.e., installing improvements ordered in the decision) is from \$30,000,000 to \$52,000,000. The decision required PG&E to file plans for enlarging Lyons Reservoir, piping the ditches, and making other major improvements.

In conformance with the order, PG&E filed an improvement plan on July 3, 1983.² With its forwarding letter, PG&E included certain estimates and stated that in its opinion, \$90,624,000 would have to be added to the rate base over 35 years to complete the plan, which would expand the annual rate base revenue requirement from a 1981 low of \$33,000 to \$65,328,000 in 2010. PG&E asserts that the required development is beyond the ability of the system's ratepayers to absorb. (The entire population of Tuolumne County is presently about 37,000, not all of whom are system customers.)

Concerning rate treatment, PG&E's A.54199 had requested an increase in rates averaging 95.6% and in D.87468 (June 21, 1977) an increase averaging 77% was authorized. In A.58631, filed January 25, 1979, PG&E was awarded additional rate relief (primarily due to increased labor costs) and a return on rate base of 9%.

² The improvement plan is not a specific construction plan but a general plan containing construction estimates.

II. THE AGREEMENT

Value, Purchase Price, and Terms of Payment

According to the application the net book value of the system as of December 31, 1982 was \$4,106,490.77 and the historical cost before depreciation of the facilities transferred was \$7,109,293.03. The agreed purchase price is \$900,000. \$150,000 in cash is to be paid as a down payment. The balance will be paid in ten yearly cash installments of \$75,000 on the anniversary of the closing date. The agreement provides that the closing date shall be within 60 days of our final order authorizing the transfer.

What Is Included In the Sale

The sale includes the water system, the lands relating to the system, equipment, improvements, inventories and raw materials. All franchises, certificates, permits, etc. are transferred except those which by law are not subject to transfer. Water rights solely for consumptive use associated with the system are transferred.

PG&E's facilities which are part of Federal Energy Regulatory Commission Project 1061 (an on-line hydroelectric power project which requires periodic relicensing) are retained by PG&E. The project includes such structures as Lyons Dam, the Phoenix Header Box, the Main Tuolumne Canal, powerhouses, turbines, generators, transmission lines, and lands of the United States which PG&E possesses or uses under license from the Federal Government. (See letter to the Commission dated October 18, 1983 clarifying what is included in the project.)

Personnel

PG&E's employees will remain with the company. The County has been training the following: a water supervisor, a chief treatment plant operator, a meter reader, a secretary, three ditch tenders, and two utility repairmen. PG&E agrees to assist with the training for a three-month period prior to the closing date.

Supply of Water

The understandable length and detail of this section make summarizing it difficult.

Essentially, the agreement provides for a "base" water supply up to PG&E's water right of 52 cfs and a "supplemental" water supply up to 9,500 acre-feet calculated by a formula based on natural flow above New Melones Reservoir as measured by the Department of Water Resources. The base and supplemental water supply will be furnished the County at no cost.³

The base supply consists of water stored in Lyons Reservoir, water available for direct diversion into the main Tuolumne Canal below the Philadelphia Ditch diversion, and water released by PG&E below that diversion.

Except as County and PG&E may agree in writing, County may use the water only for "consumptive uses" (e.g., domestic, irrigation, industrial) and power uses under certain limiting conditions, and during specified periods.

This section of the agreement also states, "County acknowledges that the water PG&E will deliver pursuant to this agreement is untreated water, which PG&E considers unpotable."

Delivery points and certain diversion rights are specified. County and PG&E agree to coordinate operations so that both the water system and the Phoenix Power Project can be managed properly.

Certain charges or credits apply when PG&E delivers either more or less than specified amounts of water. Methods of measurement are set forth.

³ After the transfer, if increases in water supply are necessary, County is, of course, responsible for the capital improvements to meet future demands.

Service from the Canal

The agreement contains a section on service from the main Tuolumne Canal. While the canal remains PG&E's property, customers served from it are deemed to be the County's customers and shall continue to be served. The final sentence of Section 11(a) of the agreement states that the County "may furnish increased water service to existing retail or new or existing resale customers, but shall not accept new retail customers who would be served thereby." (Emphasis added.)

Amplification of the purpose of this section was requested. According to a November 17, 1983 letter from counsel for PG&E (a copy of which was provided the County Counsel), the restriction insures that service furnished from the canal by the County will not unduly interfere with PG&E's hydroelectric generation. The letter states, in part: ✓

"PGandE is retaining the Canal for generation purposes in connection with its Phoenix Project. Such generation requires a uniform flow in the Canal. PGandE and the County recognize that there is a duty to continue service to existing customers served off the Canal, but if the County were free after transfer of the System to add new retail (i.e. individual domestic) customers, the peak demands of those customers would result in daily diminution of the flow in the Canal.

"Resale (i.e. wholesale) customers, by contrast, are subject to contractual restrictions that limit the peak demand they may place upon the Canal. Moreover, although Article 11 leaves the County free to add new resale customers served off this facility, the County will if it does so eventually be required to pay PGandE for the water necessary to serve such customers at a rate equal to the value of the water for power generation purposes. See Article 7(f) of the Purchase Agreement. Thus, the County will have a strong incentive not to add new resale customers.

"Consistent with the restrictions in Article 11(a), it has been PG&E's policy since 1981 not to accept new retail or resale customers for service off the Canal."

With this explanation we consider the section of the agreement on this subject reasonable.

Assumption of Obligations

The agreement provides that on the closing date, PG&E will be relieved of all its public utility obligations in connection with the system and the County shall assume them.⁴ This includes PG&E's obligations under contracts, leases, etc.

The section of the agreement on assumption of obligations contains appropriate provisions on a closing bill from PG&E to its customers and on handling credit deposits and water main extension agreements.

The sale is on an "as is" basis with provision for loss or damage to tangible property prior to the closing date.

Other Provisions

There are certain other sections of the agreement which include PG&E's obligation to assist in training County employees, an arbitration provision, the method of conveying the system after approval, closing costs, and sections on certain other subjects. County agrees for ten years after the closing date to maintain a comprehensive general liability insurance policy of at least \$2 million, naming PG&E as an additional insured.

These various other provisions are reasonable in an agreement of this kind and a more detailed summary of them is unnecessary.

⁴ This does not mean that the Commission will regulate PG&E's successor, the County. State law regarding safe drinking water still applies, however.

III. DISCUSSION

PG&E's Continuing Responsibilities
For Main Tuolumne Ditch

Ordering Paragraphs 2, 3, and 5 of D.92064 as modified by D.92314 read as follows.

- "2. PG&E shall, within one hundred eighty days after the effective date of this order.
 - "a. Prepare a plan, including current estimated implementation costs, to modify and enlarge Lyons Reservoir so that it will act as a sedimentation basin.
 - "b. Prepare a plan, including current estimated implementation costs, to pipe the existing open ditch system emanating from Lyons Reservoir consistent with the requirements of this order.
 - "c. Serve the above-ordered plans on all appearances to this proceeding, serve a copy on the Commission's Hydraulic Branch, and submit one copy to the Docket Office for filing as a compliance filing in this proceeding.
- "3. Upon Commission approval of the plans filed in conformance to Ordering Paragraph 2, PG&E shall expeditiously undertake and initiate construction of the facilities required."
- "5. PG&E's plans for piping the existing ditch system shall be submitted to the California Department of Fish and Game for its review and consultation regarding a water supply for wildlife at elevations less than 3,000 feet above sea level."

As mentioned previously, PG&E retains the Main Tuolumne Ditch, and PG&E has filed a plan, parts of which were discussed above. The plan does not include piping of the Main Tuolumne Ditch.

We wish to make it clear that under present orders, PG&E retains the responsibility for piping the Main Tuolumne Ditch. Above-quoted Ordering Paragraph 2b requires piping of the "existing open ditch system emanating from Lyons Reservoir..." This clearly

includes the Main Tuolumne Ditch, which emanates from Lyons Reservoir and terminates at the junction with the Columbia Ditch.

If, because of this sale, conditions have sufficiently changed so that such piping is, in PG&E's opinion, no longer in the public interest, PG&E should file a new application (rather than petitioning for modification of D.92064 as modified by D.92314, or for modification of this present decision) to be relieved from that requirement. PG&E should serve a copy of any such application upon County, the Department of Fish and Game (Fresno Regional Office), the Department of Health Services, and the State Water Resources Control Board.

Necessity for Public Hearing

Since PG&E filed its application, some residents of Tuolumne County have written to the Commission requesting a public hearing. We do not believe a hearing is warranted in this case.

Four public meetings were held by the County, at one of which a member of our staff was present to answer questions and explain the extent of our jurisdiction in this matter.

It should be noted that the letters requesting a hearing for the most part raised issues outside of the scope of our jurisdiction which does not extend to assumption of the role of watchdog in connection with County government. If the County officials are, in the opinion of some members of the public, acting unfairly toward the County's citizenry or are in violation of state law concerning open meetings, these are matters for the courts, or the ballot box.

In answer to concerns about the County's financial ability to operate the utility, County intends to apply for federal funds for system improvements. If such funds are available to County, they will be a low cost funding source which is not available to PG&E. In addition, County may be able to achieve other economies through its operations or the types of improvements it makes, free from specific Public Utilities Commission orders. County residents have been informed that if the substantial improvements ordered of PG&E by this Commission were to be made then substantial rate increases to water users would follow.

Having thoroughly reviewed the contents of our correspondence file, we find that no substantial issue within our jurisdiction requires a hearing, and that the specific issues before us would not be developed by scheduling a hearing. In the absence of a statutory requirement, a public hearing is not necessary when it will not serve to enhance or assist development of the record.

(Denver Union Stockyard Co. v Livestock Marketing Ass'n. (1958) 356 US 262; William B. Zaharin (Ty Roe Enterprises) (1976) 80 CPUC 434.)

No further notice to the public of the transfer is necessary, except as provided in the order.

Review of the Agreement

None of those requesting a hearing specifically attack the provisions of the agreement. Assuming that certain language in some of the letters challenges the price the County is to pay as unreasonable, such a contention is frivolous. The price of \$900,000 is well below both the net book value of \$4.1 million, the historical cost before depreciation of \$7.1 million, and the depreciated rate base of \$2,955,700.⁵

If anything, considering the price, our role here would be to assure that PG&E and the ratepayers to whom it remains responsible are adequately compensated, rather than to be concerned about a possible overpayment on the County's part.

The price is fair to PG&E because it is relieved of substantial improvement costs over the next 30 years. While as we have stated, PG&E is entitled to pass those costs to the ratepayers, the extent of the required improvements would make this difficult. County, on the other hand, is not bound by our previous orders and may be eligible for federal assistance.

Regarding the "supply of water" provisions outlined previously, a review of them demonstrates that they are definite enough and fair to both parties.

Environmental Considerations

The system will be transferred in an "as is" condition. The transfer itself has no effect on the environment, and this type of proceeding is not subject to any statutory provisions requiring an environmental impact report or a negative declaration. ✓

Findings of Fact

1. The price of sale and terms of the agreement between PG&E and County are reasonable.

⁵ This is the estimate adopted in D.92490 issued December 12, 1980 (A.58631). Tuolumne Water System's books are separate, for plant and accounting purposes, from PG&E's gas and electric operations and from other water systems.

2. The transfer is in the public interest because County is, and PG&E is not, eligible for federal grants which may reduce the cost of future system improvements. (This is not a finding that County will necessarily receive such funding.)

3. No public hearing is necessary.

4. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. The transfer should be authorized.

2. The effective date of the order in this decision should be today, so that the transfer may be consummated without further delay.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1984, Pacific Gas and Electric Company (PG&E) may sell and transfer the Tuolumne Water System, under the terms of the Purchase Agreement executed June 15, 1983, to the County of Tuolumne (County).

2. PG&E shall notify all Tuolumne Water System customers of the transfer, and its effective date, by bill insert or separate letter.

3. On or before the date of transfer, PG&E shall refund any customer credit deposits which are subject to refund.

4. County shall assume any liability for refunds of main extension advances.

5. Within ten days after transfer, PG&E shall write the Commission stating the dates of transfer and deposit refunds, and the date when County began operating the system. A copy of the transfer documents shall be attached.

6. Upon compliance with this order, PG&E shall be relieved of its public utility obligation to the transferred system.

This order is effective today.

Dated DEC 20 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

includes the Main Tuolumne Ditch, which emanates from Lyons Reservoir and terminates at the junction with the Columbia Ditch.

If, because of this sale, conditions have sufficiently changed so that such piping is, in PG&E's opinion, no longer in the public interest, PG&E should file a new application (rather than petitioning for modification of D.92064 as modified by D.92314, or for modification of this present decision) to be relieved from that requirement. PG&E should serve a copy of any such application upon County, the Department of Fish and Game (Fresno Regional Office), the Department of Health Services, and the State Water Resources Control Board.

Necessity for Public Hearing

Since PG&E filed its application, some residents of Tuolumne County have written to the Commission requesting a public hearing. We do not believe a hearing is warranted in this case.

Four public meetings were held by the County, at one of which a member of our staff was present to answer questions and explain the extent of our jurisdiction in this matter.

It should be noted that the letters requesting a hearing for the most part raised issues outside of the scope of our jurisdiction which does not extend to assumption of the role of watchdog in connection with County government. If the County officials are, in the opinion of some members of the public, acting unfairly toward the County's citizenry or are in violation of state law concerning open meetings, these are matters for the courts, or the ballot box.

The contention that the system is too expensive for the County to purchase and operate, and that therefore PG&E should be forced to retain it and improve it, shows a lack of understanding of who, under law, must pay for water service when it is provided by an investor-owned utility.

Ever since the courts in this country first started considering the actions of regulatory agencies in setting utility

rates, they have held that public utilities are entitled to a reasonable return on their investment, and rates which are too low to allow such return are unlawful and confiscatory. (Bluefield Water Works v West Virginia Pub. Serv. Comm. (1923) 262 US 679; Federal Power Comm. v Hope Natural Gas Co. (1944) 320 US 591.)

This means that the Commission cannot order PG&E to improve the system while at the same time turning down PG&E's requests to raise rates to cover its investment in the improvements. Ultimately, then, the Tuolumne Water System's ratepayers (not PG&E's ratepayers at large) pay for the improvements. The Commission representative at the May 16, 1983 Board of Supervisors' meeting attempted to explain as much to the members of the public in attendance.

If the County takes over the system, there is at least some chance that problems connected with the major improvement costs will be alleviated. County intends to apply for federal funds in this connection. We do not know whether such funds will be made available, but the point is that at least the County, as a public agency, is eligible for them; PG&E is not. Additionally, County will be free to adopt its own policies, under state law, on improvements and will not be bound by our orders directing PG&E to make future plant improvements.

Having thoroughly reviewed the contents of our correspondence file, we find that no substantial issue within our jurisdiction requires a hearing, and that the specific issues before us would not be developed by scheduling a hearing. In the absence of a statutory requirement, a public hearing is not necessary when it will not serve to enhance or assist development of the record. (Denver Union Stockyard Co. v Livestock Marketing Ass'n. (1958) 356 US 282; William B. Zaharin (Ty Roe Enterprises) (1976) 80 CPUC 434.)

No further notice to the public of the transfer is necessary, except as provided in the order.

domestic (treated) water to the entire area in which it served untreated ditch water. PG&E maintained that it never had assumed that duty, and that it was required to serve treated water only to its Sonora, Jamestown, and Tuolumne service areas. The cost of upgrading the entire system to provide treated water was exhaustively litigated.

In D.92064, dated July 29, 1980, we found that PG&E is required to provide treated water for the entire system and that the cost of upgrading the system (i.e., installing improvements ordered in the decision) is from \$30,000,000 to \$52,000,000. The decision required PG&E to file plans for enlarging Lyons Reservoir, piping the ditches, and making other major improvements.

In conformance with the order, PG&E filed an improvement plan on July 3, 1983.² With its forwarding letter, PG&E included certain estimates and stated that in its opinion, \$90,624,000 would have to be added to the rate base over 35 years to complete the plan, which would expand the annual rate base revenue requirement from a 1981 low of \$33,000 to \$65,328,000 in 2010. PG&E asserts that the required development is beyond the ability of the system's ratepayers to absorb. (The entire population of Tuolumne County is presently about 37,000, not all of whom are system customers.

Concerning rate treatment, PG&E's A.54199 had requested an increase in rates averaging 95.6% and in D.87468 (June 21, 1977) an increase averaging 77% was authorized. In A.58631, filed January 25, 1979, PG&E was awarded additional rate relief (primarily due to increased labor costs) and a return on rate base of 9%.

² The improvement plan is not a specific construction plan but a general plan containing construction estimates.

Service from the Canal

The agreement contains a section on service from the main Tuolumne Canal. While the canal remains PG&E's property, customers served from it are deemed to be the County's customers and shall continue to be served. The final sentence of Section 11(a) of the agreement states that the County "may furnish increased water service to existing retail or new or existing resale customers, but shall not accept new retail customers who would be served thereby." (Emphasis added.)

Amplification of the purpose of this section was requested. (According to a November 17, 1983 letter from counsel for PG&E (a copy of which was provided the County Counsel), the restriction insures that service furnished from the canal by the County will not unduly interfere with PG&E's hydroelectric generation. The letter states, in part:

"PGandE is retaining the Canal for generation purposes in connection with its Phoenix Project. Such generation requires a uniform flow in the Canal. PGandE and the County recognize that there is a duty to continue service to existing customers served off the Canal, but if the County were free after transfer of the System to add new retail (i.e. individual domestic) customers, the peak demands of those customers would result in daily diminution of the flow in the Canal.

Resale (i.e. wholesale) customers, by contrast, are subject to contractual restrictions that limit the peak demand they may place upon the Canal. Moreover, although Article 11 leaves the County free to add new resale customers served off this facility, the County will if it does so eventually be required to pay PGandE for the water necessary to serve such customers at a rate equal to the value of the water for power generation purposes. See Article 7(f) of the Purchase Agreement. Thus, the County will have a strong incentive not to add new resale customers.

Terrence

Boyer

In answer to concerns about the County's financial ability to operate the utility, County intends to apply for federal funds for system improvements. If such funds are available to County, they will be a low cost funding source which is not available to PGandE. In addition, County may be able to achieve other economies through its operations or the types of improvements it makes, *free from specific P.U.C. orders.*

County residents have been informed that if the substantial improvements ordered of P.G. & E. by this Commission are to be made then substantial rate increases to water users would follow.

Having thoroughly reviewed the contents of our correspondence file, we find that no substantial issue within our jurisdiction requires a hearing, and that the specific issues before us would not be developed by scheduling a hearing. In the absence of a statutory requirement, a public hearing is not necessary when it will not serve to enhance or assist development of the record.

(Denver Union Stockyard Co. v Livestock Marketing Ass'n. (1958) 356 US 282; William B. Zaharin (Ty Roe Enterprises) (1976) 80 CPUC 434.)

No further notice to the public of the transfer is necessary, except as provided in the order.

Review of the Agreement

None of those requesting a hearing specifically attack the provisions of the agreement. Assuming that certain language in some of the letters challenges the price the County is to pay as unreasonable, such a contention is frivolous. The price of \$900,000 is well below both the net book value of \$4.1 million, the historical cost before depreciation of \$7.1 million, and the depreciated rate base of \$2,955,700.⁵

If anything, considering the price, our role here would be to assure that PG&E and the ratepayers to whom it remains responsible are adequately compensated, rather than to be concerned about a possible overpayment on the County's part.

The price is fair to PG&E because it is relieved of substantial improvement costs over the next 30 years. While as we have stated, PG&E is entitled to pass those costs to the ratepayers, the extent of the required improvements would make this difficult. County, on the other hand, is not bound by our previous orders and may be eligible for federal assistance.

Regarding the "supply of water" provisions outlined previously, a review of them demonstrates that they are definite enough and fair to both parties.

Environmental Considerations

The system will be transferred in an "as is" condition. The transfer itself has no effect on the environment, and this type of proceeding is not subject to any statutory requirements requiring an environmental impact report or a negative declaration.

Findings of Fact

1. The price of sale and terms of the agreement between PG&E and County are reasonable.

⁵ This is the estimate adopted in D.92490 issued December 12, 1980 (A.58631). Tuolumne Water System's books are separate, for plant and accounting purposes, from PG&E's gas and electric operations and from other water systems.