

Decision 97-07-007 July 16, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Mateo County for Modification of Commission Decision No. 85-11-018 regarding Distribution of Capital Gains in the Transfer of a Streetlighting System.

Application 88-02-005
(Filed February 2, 1988)

O P I N I O N

Summary

The County of San Mateo (San Mateo) asks that we declare its transaction involving sale of assets from a regulated utility to a governmental agency analogous to that involved in *PG&E (1985) 19 CPUC2d 161* and award the gain on sale of the property to San Mateo. The *PG&E* case, *supra*, was specifically reversed by *Rate-making Treatment of Capital Gains—Utility Sales to Municipalities (1989) 32 CPUC2d 233*. Since the legal basis of San Mateo's application no longer exists, we dismiss San Mateo's application as moot.

Discussion

San Mateo alleges that it is a municipal corporation which instituted eminent domain proceedings against Pacific Gas and Electric Company (PG&E) in 1983. The property in question was 2,527 streetlights and associated equipment located in San Mateo. The parties eventually agreed on a price of \$350,000 for the property, and the condemnation order of the superior court became final on March 30, 1987. The stipulated judgment included a finding acknowledging San Mateo's contention to that portion of the compensation award that exceeds PG&E's original investment, less depreciation, and reserved San Mateo's right to petition this Commission for that amount. Approximately 11 months after the superior court judgment became final, San Mateo filed this action which sought to modify *City of Redding (1985) 19 CPUC2d 161* to include San Mateo within its ambit. Although filed as a petition, it was accepted as an

application. There has been no response from PG&E and no further communication with the Commission by San Mateo.

San Mateo admits that there are procedural problems with this filing. It claims that it cannot file a complaint, since there is no violation of any rule, order, or provision of law by PG&E. (Public Utilities Code § 1702.) It points to the requirement of Commission Rule of Practice and Procedure 15 which requires that applications identify the statutory or other authority under which applicant seeks relief. There is no such authority. Thus San Mateo attempted to file a petition to modify a decision in a proceeding in which it was not a party. Without trying to resolve the procedural niceties of this matter, we note that the filing was denominated as an application by our Docket Office. However, more important than the eligibility to present a filing in this case is the legal basis of that filing.

The decision relied on by San Mateo (PG&E (1985) 19 CPUC2d 161) was specifically reversed by a rulemaking decision, *Rate-making Treatment of Capital Gains—Utility Sales to Municipalities* (1989) 32 CPUC2d 233. Since the decision which forms the basis for San Mateo's request has been reversed, there is no longer any reason to continue this docket. The application should be dismissed as moot.

Findings of Fact

1. San Mateo filed an application asking the Commission to find the sale of streetlights by PG&E to San Mateo to be analogous to the sale by PG&E in *City of Redding* (1985) 19 CPUC2d 161.
2. San Mateo contends that it is entitled to the gain on sale of the property obtained from PG&E pursuant to the *City of Redding* case, *supra*.
3. The *City of Redding* case, *supra*, forms the sole legal basis for the claim of the San Mateo to the gain on sale of the streetlights.
4. The *City of Redding* case, *supra*, was reversed by *Rate-making Treatment of Capital Gains—Utility Sales to Municipalities* (1989) 32 CPUC2d 233.

Conclusions of Law

1. The sole legal basis for the present application rests on a decision of this Commission that we later reversed.
2. There is no longer a legal foundation for this action.
3. This application should be dismissed as moot.
4. We make no determinations on the procedural issues raised by San Mateo in attempting to modify a decision in a matter to which it was not a party or on any other procedural issue.

O R D E R

IT IS ORDERED that:

1. This matter is dismissed as moot.
2. Application 88-02-005 is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners