

FEB 4 1998

Decision 98-02-026 February 4, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E) and the City of Cupertino, for an Order Under Section 851 of the California Public Utilities Code to Sell and Convey a Streetlight System.

(U 39 E)

ORIGINAL
Application 97-05-007
(Filed May 6, 1997)

O P I N I O N

Summary

We will approve the sale and conveyance by Pacific Gas and Electric Company (applicant) of its streetlight system (Streetlight System) described in the application located within the City of Cupertino (City), relieve applicant (concurrently upon the transfer and conveyance of the Streetlight System) of the public duties and responsibilities of owning, operating, and maintaining the Streetlight System, authorize the disposition of the gain on the sale to applicant's shareholders, subject to the requirement that applicant file with the Commission the final cost figures for the Streetlight System within 30 days following the purchase date of the transaction, and authorize the use of the pole attachment agreement in the form attached to the application for the attachment of City's streetlights to applicant's poles.

Procedural Background

Applicant is a public utility subject to the jurisdiction of the Commission. On May 6, 1997, applicant filed an application for authority to sell and convey the Streetlight System to City, which intends to remain applicant's customer on its LS-2 tariff. Notice of the application appeared in the Daily Calendar on May 8, 1997. No protests were filed. The Office of Ratepayer Advocates (ORA) filed a response on June 4, 1997, and recommended that the sale and conveyance be approved, subject to the condition that applicant be required to reflect in its 1999 general rate case any

reduction in revenue requirements by reason of decreases in rate base and operation and maintenance expenses resulting from the sale and conveyance.

Discussion

No public utility may transfer its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. (Public Utilities (PU) Code § 851.) The Streetlight System is presently used for the sale of electrical services, and PU Code Section 851 applies.

The City is a municipality located in Santa Clara County, California. The Streetlight System, as described in the application, is located entirely within the City. The net book cost of the Streetlight System is \$81,324. Currently, the City takes streetlight service under applicant's LS-1 tariff rate, which pays applicant's costs of owning, operating, and maintaining the Streetlight System. The City wishes to lower its overall cost for streetlight service by purchasing, operating, and maintaining the Streetlight System itself, and purchasing electricity from the applicant under its LS-2 tariff rate. The City has offered to purchase the Streetlight System from applicant for the price of \$259,350 (exclusive of any sales tax) plus the net value of any additions to and retirements from the Streetlight System between October 18, 1995, and the date of conveyance. That price is greater than the replacement cost new less depreciation for the Streetlight System.

Applicant and City entered into an agreement (Purchase Agreement) for sale of the Streetlight System to City, subject to the approval of this Commission. The Streetlight System does not include applicant's poles, and the City and applicant propose to enter into a pole attachment agreement in the form attached to the application.

Applicant represents that its rate base will decrease by \$81,324 as a result of the sale and conveyance of the Streetlight System. Applicant provided the declaration of its manager of capital accounting that ratepayers have not contributed capital to the Streetlight System, either to its initial purchase or to any subsequent upgrades or modifications. The estimated gain on sale is \$80,723, which applicant requests accrue to

its shareholders. Applicant represents that the sale and conveyance of the Streetlight System will not adversely affect existing ratepayers, who will see neither a decline in service nor an increase in cost as a result. Therefore, under Decision (D.) 89-07-016 (*In re Ratemaking Treatment of Capital Gains Derived from the Sale of a Public Utility Distribution System Serving an Area Annexed by a Municipality or Public Entity*), the gain should accrue to shareholders.

Under the California Environmental Quality Act (CEQA), we are obligated to consider the environmental consequences of projects, as defined, that are subject to our discretionary approval (Public Resources (PR) Code Section 21080).

A change of ownership does not cause any direct physical change in the environment unless construction is required as a condition of sale, as, for example, to separate facilities. (See *In re Pacific Gas & Electric Company*, D.97-07-019, *mimeo.* at 4.) Nonetheless, a change of ownership may give rise to foreseeable *indirect* physical changes to the environment, bringing the activity within the definition of a project for CEQA purposes. Because the Streetlight System will be used in the same manner as previously, and neither applicant nor City seeks authority from the Commission for a change in the existing use of the Streetlight System, there is no substantial evidence of any indirect change to the environment, and no CEQA review is required, at this time.

Findings of Fact

1. Applicant is an electric utility subject to the jurisdiction of the Commission.
2. Notice of the filing of the application appeared in the Daily Calendar on May 8, 1997. No protests were filed.
3. City is a municipality created and existing under the laws of the State of California.
4. Applicant has agreed to sell the Streetlight System to City.
5. The Streetlight System is located within the City.
6. The components of the Streetlight System are included in the rate base of applicant.

7. The Purchase Agreement provides that applicant shall be relieved of its obligations for streetlight service.
8. Applicant's ratepayers have not contributed capital to the Streetlight System.
9. The sale and conveyance of the Streetlight System will not adversely affect existing ratepayers.
10. Applicant did not object to ORA's recommendation that it be required to reflect the results of the sale and conveyance of the Streetlight System in applicant's 1999 general rate case.

Conclusions of Law

1. A public hearing is not necessary.
2. The sale and conveyance of the Streetlight System is subject to PU Code Section 851.
3. The sale and conveyance of the Streetlight System does not constitute a project for CEQA purposes.
4. The sale and conveyance of the Streetlight System should be approved.
5. Applicant should be authorized to enter into a pole attachment agreement with City as described in the application.
6. Applicant should be relieved of the public duties and responsibilities of owning, operating, and maintaining the Streetlight System concurrently with the sale and conveyance of the Streetlight System.
7. The proposed sale and conveyance of the Streetlight System meets with criteria for a public utility to sell utility property to a municipality or governmental entity, and for the utility to accrue any gain on such sale to its shareholders.
8. Applicant should be required to reflect the results of the sale and conveyance of the Streetlight System in its 1999 general rate case.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (applicant) may sell and convey to the City of Cupertino (City) the property (Streetlight System) described in the application, subject to the terms and conditions described therein.

2. Applicant may enter into a pole attachment agreement with City in the form attached to the application.

3. Within 30 days of the sale and conveyance of the Streetlight System, applicant shall file an advice letter to report the gain on sale of the Streetlight System and may accrue any such gain to its shareholders.

4. The authority granted hereby expires if not exercised within one year of the date of this order.

5. Applicant shall be relieved of the public duties and responsibilities of owning, operating, and maintaining the Streetlight System concurrently with the sale and conveyance of the Streetlight System.

6. In its test year 1999 general rate case, applicant shall reflect the reduction of (\$81,324) from its rate base and account for the lower operation and maintenance costs resulting from the sale and conveyance of the Streetlight System.

7. Application 97-05-007 is closed.

This order is effective today.

Dated February 4, 1998, at San Francisco, California.

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