

ALJ/WRI/avs

Mailed 7/23/98

Decision 98-07-067 July 23, 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application 98-03-001
(Filed March 2, 1998)

(U 39 E)

O P I N I O N

Summary

We approve the sale and conveyance by Pacific Gas and Electric Company (applicant) of its streetlight system (Streetlight System) described in the application and located within the City of Campbell (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 March 2, 1998, 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 March 5, 1998. No protests were filed. The Office of Ratepayer Advocates (ORA) filed a response on April 2, 1998, 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.

In Resolution ALJ 176-2988, dated, March 12, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2988.

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 § 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 value of the Streetlight System is \$26,290. Currently, the City takes streetlight service under applicant's LS-1 tariff and pays a rate that covers 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. The City has offered to purchase the Streetlight System from applicant for the price of \$77,850 (exclusive

of any sales tax) plus the net value of any additions to and retirements from the Streetlight System between January 25, 1995 and the date of conveyance.

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 \$26,290 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 after taxes is \$24,662, 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*, 33 CPUC 2d 233), 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 Code Section 21080.)

A project is an "activity" that (1) "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and (2) is either (a) directly undertaken by any public agency, (b) is supported by contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies, or (c) involves the issuance of a

lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Public Resources Code Section 21065.)

Under the facts of this case, we must decide whether our permission for the transfer of the Streetlight System involves the issuance of an "entitlement for use," and, if so, whether the transfer of the Streetlight System is an "activity" within the meaning of CEQA and, if it is, whether it may cause direct or foreseeable indirect physical change in the environment.

Our order is legally necessary to effectuate the transfer of the Streetlight System. (PU Code § 851.) Without it, any purported transfer is void as a matter of law. (*Id.*) Therefore, our permission for the transfer of the Streetlight System necessarily involves the issuance of an "entitlement for use." The transfer of the Streetlight System, being the event that we are asked to approve, does not cause any direct physical change in the environment, because that transfer is a purely legal happening.

The question thus resolves itself as to whether there are any foreseeable *indirect* physical changes in the environment to be anticipated. In the absence of any substantial evidence in the record that City has the present intention of operating the Streetlight System in a different manner than applicant has in the past, we are unable to foresee any indirect physical changes in the environment. We conclude, therefore, that the application does not involve a project within the meaning of CEQA.

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 March 5, 1998. 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) is authorized to sell and convey to the City of Campbell (City) the property (Streetlight System) described in the application, subject to the terms and conditions described therein.

2. Applicant is authorized to 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 provide notice to Formal Files of the Commission and Office of Ratepayer Advocates of the recordation of the instrument of transfer of the property, shall provide a conformed copy of the instrument effecting such transfer, 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, (Application 97-12-020, Investigation 97-11-026) applicant shall reduce its rate base by \$26,290 and account for the lower operation and maintenance costs resulting from the sale and conveyance of the Streetlight System.

A.98-03-001 ALJ/WRI/avs

7. Application (A.) 98-03-001 is closed.
8. The issues presented in A.98-03-001 are resolved.

This order is effective today.

Dated July 23, 1998, at San Francisco, California.

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