

ALJ/BRS/jva

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Decision 98-12-049 December 17, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) For Authority to Sell Certain Retired Distribution Property.

Application 98-06-015
(Filed June 8, 1998)

O P I N I O N

Summary

This decision approves the proposed settlement between applicant San Diego Gas & Electric Company (SDG&E) and the Commission's Office of Ratepayer Advocates (ORA), which sets forth the conditions under which the Station A and former South Bay Service Center properties will be sold. The net proceeds from the sales will be allocated to reduce transition costs. Hazardous waste clean-up costs will be recovered according to the New Hazardous Waste Substance Mechanism.

Background

In this application filed on June 8, 1998, SDG&E seeks Commission authority to sell two properties it had retired from gas and electric distribution service. SDG&E seeks a Commission finding that Public Utilities (PU) Code § 851 authority is not needed to sell the property, or that it is exempt under PU Code § 853(b); alternatively SDG&E seeks authority under PU Code § 851 to sell the properties, with a finding that such disposition is in the public interest.

In Resolution ALJ 176-2995 dated June 18, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary.

ORA filed a protest to the application on July 15, 1998, arguing that the properties at issue are not exempt from PU Code § 851, that the gain on sale of the properties should be shared between ratepayers and shareholders by crediting the Transition Cost Balancing Account (TCBA), and that SDG&E should amend the application to request prior approval of the method of sale and to indicate how it will reflect the sales in rate base and revenue requirements in the Performance Based Ratemaking (PBR) Application (A.) 98-01-014.

Under PU Code § 851, Commission authority is required for the sale of utility property, except for "...property which is not necessary or useful in the performance of its duties to the public...."

Under PU Code § 853(b) the Commission may exempt a utility from these provisions, and "...may establish rules or impose requirements deemed necessary to protect the interest of the customers may include ...provision for refunds or credits to customers or subscribers."

SDG&E had proposed to credit any net gain on sale of the properties to shareholders.

SDG&E filed a response to ORA's protest on July 27, 1998, disputing ORA's contentions, and attaching an amendment to the application which will amend its cost-of-service study in A.98-01-014 to remove from rate base amounts associated with the properties that are the subject of this application. This was one of ORA's requests in its protest.

The Properties

Station A

Station A consists of 11.4 acres in downtown San Diego, bounded approximately by 9th and 13th Streets, and by K Street and Commercial Street. This property had been the site of SDG&E's first operations in 1881 for manufacturing and storing gas for local distribution; with electric generation

operations were added in 1888 and used until 1938. In 1968 the gas storage facilities were retired and removed. Subsequently until retiring the facility in 1997, SDG&E continued support activities at the site, including electric and gas meter shops, fleet maintenance and fueling, metal fabrication, paint and machine shops. Most of the structures have been razed, and seismic risks identified make the remaining structures unfit for further use.

SDG&E believes that the site will require substantial environmental remediation and proposes to handle those costs through the Hazardous Waste Memorandum Account.

The rate base for the land and structures on the site is \$3,440,442 as of April 30, 1998. While the market value is uncertain, the site is being considered for a new baseball park for the San Diego Padres. Based on a recent property sale in the vicinity of this site at \$43.33 per square foot, the site would yield approximately \$23 million.

South Bay Service Center

The site of the former South Bay Service Center, located in Chula Vista, was acquired in 1985, and housed facilities to support electric and gas distribution operations. The site was selected to be near the rapid load growth that was expected in the undeveloped area to the east. That growth never materialized, and is no longer expected to occur.

The remaining rate base as of April 30, 1998 is \$11,255,211. The City of Chula Vista has negotiated to purchase this property for \$7 million.

Proposed Settlement

A Joint Motion was filed on September 3, 1998 requesting Commission adoption of a proposed settlement between SDG&E and ORA (collectively, "Movants"). The proposed settlement is attached to this decision as Appendix A. This proposed settlement was achieved after representatives of SDG&E and ORA

met and conferred on the issues raised by the application and the ORA protest, and agreed to the principles in the Joint Motion. Movants then timely published a notice of settlement conference in the Commission Daily Calendar. The conference was held as noticed, and was attended only by representatives of Movants.

In the proposed settlement Movants substantively agree that the Commission should grant authority to SDG&E to sell the properties, and that a hearing is not necessary. Movants further recommend the following to the Commission:

- the proceeds from the sales should be applied first to transaction costs and the undepreciated book value of the properties, with the remaining gain-on-sale credited to SDG&E's TCBA.
- SDG&E should amend its cost-of-service study in A.98-01-014 to remove from rate base amounts associated with these properties.
- reasonableness review of the sales is not needed because with the shareholder benefit of the proposed ratemaking treatment, SDG&E has sufficient incentive to achieve the best price available.
- hazardous waste clean-up costs for the properties should be recovered according to the New Hazardous Waste Substance Mechanism.
- the proposed sale of property is not subject to the California Environmental Quality Act (CEQA) because it does not constitute a project under CEQA, and because it falls within a categorical exemption to CEQA, and it can be seen with certainty that there is no possibility that the sale of the sites may have a significant effect on the environment.
- the requested authority requires approval under PU Code § 851 and the exercise of that authority is reasonable and in the public interest.

- Rule 51.2, which requires that settlement proposals be deferred until after the first prehearing conference has been held should be waived, since there are only two parties, and they propose settlement of all issues in the proceeding.

Movants agree that the subject property has been retired from service and is no longer useful and will not be useful to applicant's public utility purposes.

Discussion

Whereas in the application SDG&E proposed that net benefits accrue solely to shareholders, the proposed settlement will also offer benefits to ratepayers. Under the proposed ratemaking treatment, ratepayers will benefit from the reduced cost-of-service rate base amounts in A.98-01-014, which reduces the total revenue requirement for SDG&E. Additionally, the credit of the gain-on-sale to the TCBA benefits ratepayers by causing the transition costs to be recovered sooner, hastening the elimination of the balancing account and reducing the overall transition cost burden on ratepayers.

We agree with Movants that because of the benefit to shareholders of the TCBA's contribution to early return on their investment in generation, which reduces the likelihood of any such investment not being recovered, SDG&E has sufficient incentive to obtain the best achievable price for the properties. Therefore, we conclude that reasonableness review of the method used for these sales is not necessary.

The ratemaking treatment recommended in the proposed settlement will be approved since it represents a reasonable balance in allocating benefits of the sales between ratepayers and have holders. Ratepayer benefit from the reduced rate base in A.98-01-014 and resulting reduced revenue requirement for SDG&E, as well as the reduced transition cost to ratepayers resulting from the credit of the gain-on-sale to the TCBA. Shareholders benefit because the credit of the

gain-on-sale to the TCBA contributes to earlier recovery of SDG&E's investment in generation and reduces the likelihood of nonrecovery of any such investments.

In considering whether CEQA is involved in this matter, we note that CEQA § 15378(a) defines a project; "'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment," We believe that this application does not qualify as a project under CEQA since there is no foreseeable change in the environment either direct or indirect. Any possible subsequent change to the properties cannot be quantified or reviewed now.

Although SDG&E argued in its application that the sale of these properties should be exempt from approval under PU Code § 851, the proposed settlement requests approval under that section. We will grant that approval since the sales are in the public interest.

Movants request that the Commission waive the Rule 51.2 requirement that a settlement may be proposed for adoption by the Commission any time after the first prehearing conference. Since there are no other parties to the settlement conference no purpose would be served by holding a prehearing conference in this matter. We find it reasonable to waive the Rule 51.2 requirement.

It is apparent that hazardous waste may be present on the Station A site, due to the operations on the site including manufacturing and storage of gas. SDG&E does not anticipate that hazardous waste is present on the South Bay site. We agree that the costs of hazardous waste clean-up should be recovered through the Hazardous Waste Substance Mechanism as set forth in Decision (D.) 94-05-020 and D.96-07-016, which was established for these purposes, and will so order.

Findings of Fact

1. SDG&E seeks Commission authority to sell Station A and the South Bay Service Center.

2. Station A and South Bay Service Center have been retired.

3. SDG&E has buyers interested in purchasing these properties.

4. Station A likely has hazardous waste on site that will require environmental remediation.

5. ORA filed a protest to the application on July 15, 1998.

6. A duly noticed settlement conference held on August 28, 1998 was attended only by ORA and SDG&E.

7. ORA and SDG&E filed a motion on September 3, 1998, requesting adoption by the Commission of a proposed settlement, which recommends the following:

a. the proceeds from the sales are to be applied first to transaction costs and the undepreciated book value of the properties, with the remaining gain- or loss-on-sale credited to SDG&E's TCBA;

b. SDG&E will amend its cost-of-service study in A.98-01-014 to remove from rate base amounts associated with the properties;

c. reasonableness review of the sales is not needed because the shareholder benefit in the proposed settlement offers sufficient incentive to SDG&E;

d. hazardous waste clean-up costs for the properties should be recovered according to the New Hazardous Waste Substance Mechanism;

e. the sale of the properties does not constitute a project under CEQA; and

f. authority under PU Code § 851 is required to sell the properties.

Conclusions of Law

1. The ratemaking proposals in the proposed settlement offer a reasonable sharing of benefits to ratepayers and by reducing the rate base and revenue requirement of SDG&E and shareholders by contributing to earlier recovery of SDG&E's investment in generation and reducing the likelihood of nonrecovery of those investments, and should be adopted.

2. A prehearing conference is not necessary since no parties attended the settlement conference except Movants.

3. Given the filing of the proposed settlement between SDG&E and ORA subsequent to the filing of ORA's protest. There is no need to alter the preliminary determinations made in Resolution ALJ 176-2995.

4. A hearing in this matter is not needed.

5. Reasonableness reviews of the sales are not needed.

6. These property sales are not subject to CEQA.

7. Hazardous waste clean-up costs should be recovered according to the New Hazardous Waste Substance Mechanism.

8. The proposed settlement is reasonable and should be adopted.

9. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. A prehearing conference pursuant to Rule 51.2 of the Commission's Rules of Practice and Procedure is not necessary in this proceeding.

2. The proposed settlement between San Diego Gas & Electric Company (SDG&E) and the Office of Ratepayer Advocates (ORA) is approved.

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3. SDG&E is granted authority under Public Utilities Code § 851 to sell the Station A and South Bay properties (these properties) under the terms and conditions of the proposed settlement.

4. The proceeds of the sales of Station A and the South Bay Service Center shall be first applied to SDG&E's transaction costs and the undepreciated book value of the properties, with the remaining gain- or loss-on sale applied to SDG&E's Transition Cost Balancing Account.

5. Reasonableness review of the sales of these properties is not necessary.

6. Upon closure of the sale of these properties, SDG&E shall amend its cost-of-service study in Application (A.) 98-01-014 to remove from rate base the amounts associated with these properties.

7. Hazardous waste clean-up costs for these properties shall be recovered according to the New Hazardous Waste Substance Mechanism.

8. A.98-06-015 is closed.

This order is effective today.

Dated December 17, 1998, at San Francisco, California.

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

APPENDIX A

II. SETTLEMENT AGREEMENT

7. Movants agree that this Joint Motion comprises and constitutes the entirety of their understanding and agreement, and any other writings related to this settlement are hereby superseded by this Joint Motion.

8. Movants agree that the Commission should grant SDG&E the authority to sell the subject properties, and recommend that the Commission make the following findings of fact in support of this grant of authority:

(a) that the description of the properties as described in pp. 2-5 and Exhibits A through D of the application is complete and sufficient for the Commission to grant the requested authority.

(b) that the subject property, while still in SDG&E's ratebase, has been retired from service and is no longer necessary or useful to the performance of applicant's public utility obligations, nor will it be necessary or useful in the foreseeable future for public utility purposes.

(c) that the proceeds from the sales should be applied first to transaction costs and the undepreciated book value of the sites as utility property. Any remaining gain-on-sale would then be credited to SDG&E's Transition Cost Balancing Account.

(d) that SDG&E will amend its cost-of-service study in A.98-01-014 to remove from rate base amounts associated with the property that is the subject of this Application.

(e) that crediting the gain-on-sale in this case to SDG&E's Transition Cost Balancing Account benefits ratepayers by causing the total amount of transition

costs to be recovered sooner, thereby speeding the elimination of the balancing account and reducing the overall transition cost burden on SDG&E ratepayers.

(f) that ratepayers further benefit from this ratemaking treatment in that SDG&E will remove the properties from its ratebase thereby reducing SDG&E's total revenue requirement.

(g) that crediting the gain-on-sale in this case to SDG&E's Transition Cost Balancing Account benefits shareholders by contributing to the early return of their investment in generation, and reducing the likelihood that any of such investment will be "stranded" or unrecovered at the end of the transition cost recovery period provided by AB 1890.

(h) that, because of the substantial shareholder benefit from the foregoing rate treatment, SDG&E has every incentive to get the best price it can for the subject property.

(i) that, because shareholder and ratepayer interests in getting the best price for the property are aligned in this case, there is no need for a reasonableness review of SDG&E's methods for effectuating the sale.

(j) that, pursuant to D.94-05-020, hazardous waste clean-up costs for the properties that are the subject of A.98-06-015 shall be recovered according to the New Hazardous Waste Substance Mechanism. (See Re Southern California Gas Company (1994) 54 CPUC 2d 391, 400, 402 (Appendix A, Section III F), 407 (Appendix A, Attachment A, SDG&E Site #1), and 408 (Appendix A, Attachment B, SDG&E Site #12))

(k) that SDG&E's proposed sale of the subject property is not subject to the California Environmental Quality Act ("CEQA") because it does not constitute a

"project" within the meaning of CEQA, that CEQA does not apply to the sale of the subject property because it falls within a categorical exemption to CEQA, and that it can be seen with certainty that there is no possibility that the sale of the sites may have a significant adverse effect on the environment.

(l) that it is appropriate in this case to waive the Rule 51.2 requirement that submission of settlement proposals wait until after a prehearing conference has been held, given that there are only two parties, and that the parties propose a settlement resolving all issues arising under the instant application.

(m) that the requested authority in this Joint Motion requires approval under Section 851.

(n) that grant of the requested authority in this Joint Motion under Section 851 is reasonable in light of the whole record, consistent with the law, and in the public interest.

9. Movants further agree to recommend to the Commission that no evidentiary hearing is necessary to the entry of the foregoing findings of fact.

10. Movants further agree to recommend to the Commission that it enter a conclusion of law as follows:

(a) that a public hearing is not necessary.

(b) that the proposed sale and ratemaking treatment as set forth in this Settlement Agreement should be approved and the requested authority granted.

11. Movants agree to recommend that the Commission expedite action on this application and Joint Motion, in order to accommodate (a) the City of Chula Vista's desire to relocate its operations center to the South Bay site, and, (b) the City of San

Diego's redevelopment plans. To this end, Movants will request the Commission to waive its Rule 51.2 requirement that submission of this settlement proposal await until after a prehearing conference has been convened.

12. Movants agree that they will support this Joint Motion and Settlement Agreement and advocate its adoption before the Commission, and that they will take no action inconsistent with the Commission's early adoption of this Joint Motion.

13. Movants agree that this Settlement Agreement applies to the disposition of the instant application only, and that neither party will assert this Joint Motion and Settlement Agreement against the other in any other proceeding as having precedential value.

CONCLUSIONS AND PRAYER

For the foregoing reasons, Movants respectfully request the Commission to enter an order providing that:

1. SDG&E may sell the subject property and transfer all title to the buyers.
2. Upon sale and transfer of the property authorized by this Commission order, SDG&E shall stand relieved of public utility responsibility for the property except as may be appropriate for hazardous waste clean up under D.94-05-020.
3. That the ratemaking treatment of the sale shall be as set forth in paragraphs 8 (c) and (d) of this Joint Motion.

4. That, for good cause shown, the requirement that submission of this settlement await the convening of a prehearing conference in this matter is waived; and

5. Application 98-06-015 is closed.

Respectfully submitted,

Dated September 1, 1998

Laura J. Tudisco

Laura J. Tudisco
Attorney for Office of
Ratepayer Advocates

Dated September 2, 1998

E. Gregory Barnes

E. Gregory Barnes
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