
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 13, 2002

TO: ALL PARTIES OF RECORD IN APPLICATION 02-01-026

Decision 02-12-020 is being mailed without the Concurrence of Commissioner Carl Wood. The Concurrence will be mailed separately.

Very truly yours,

/s/ STEVEN KOTZ for
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB:hkr

Decision 02-12-020 December 5, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

(U 39 E)

Application 02-01-026
(Filed January 16, 2002)

OPINION ON SALE OF STREETLIGHT FACILITIES

1. Summary

We approve the sale and conveyance by Pacific Gas and Electric Company (PG&E) of its streetlight system located within the City of Manteca (City) to the City. We relieve PG&E of the public duties and responsibilities of owning, operating, and maintaining the streetlight system once the transfer and conveyance are complete. We authorize the disposition of the gain-on-sale to PG&E's shareholders, subject to the requirement that PG&E file with the Commission the final cost figures for the streetlight system within 90 days of the purchase date of the transaction.

2. Background

PG&E is a public utility subject to the jurisdiction of the Commission. On January 16, 2002, it filed an application for authority to sell and convey the streetlight system to City, which intends to remain PG&E's customer on the utility's LS-2 tariff. Notice of the application appeared in the Daily Calendar on January 24, 2002. No protests were filed. The application includes detailed

information on original cost less depreciation, effect on rate base, and explanation of accounting features, as requested by the Office of Ratepayer Advocates (ORA) in similar streetlight transactions in the past.

In Resolution ALJ 176-3081, dated February 7, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. In the absence of protests, public hearing is not necessary. The preliminary determinations made in Resolution ALJ 176-3081 are affirmed.

3. 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. (Pub. Util. Code § 851.) The streetlight system presently is used for the sale of electrical services, and Pub. Util. Code § 851 applies.

The City is a municipality located in San Joaquin County. The streetlight system, as described in the application, is located entirely within city boundaries. Currently, the City takes streetlight service under PG&E's LS-1 tariff rate, which includes PG&E's costs of owning, operating, and maintaining the system. City believes it can lower overall costs of streetlight service by purchasing, operating, and maintaining the streetlight facilities itself, and purchasing electricity from PG&E at the lower LS-2 tariff rate.

PG&E states that it desires to sell the system because City has offered a price greater than replacement cost new, less depreciation, for the facilities. City could exercise eminent domain to acquire the facilities, but this would involve costs of litigation and condemnation proceedings for both parties.

The sale does not include PG&E's poles, and our decision today authorizes use of the pole attachment agreement, attached to the sales agreement as Exhibit B, for attachment of City's streetlights to PG&E's poles.

The purchase price for the streetlight system is \$483,180.00 (excluding any sales tax) plus the net value of any additions to or retirements from the system between December 8, 1999, and the date of conveyance.

PG&E estimates that the sale will result in a net-of-tax gain of \$237,954.00, which would accrue to shareholders in conformance with past decisions of this Commission stemming from its "Redding II" decision in 1989. (*Re Rate-Making Treatment of Capital Gains Derived From the Sale of a Public Utility System Serving an Area Annexed by a Municipality or Public Entity* (1989) 32 CPUC2d 233, 234, Decision (D.) 89-07-016.) ORA does not oppose PG&E's ratemaking treatment of the gain-on-sale.

PG&E has entered into an agreement for sale of the streetlight system to City, subject to the approval of this Commission. PG&E represents that there will be a decrease of \$218,469.00 in its rate base as a result of the sale, and it provides the declaration of its manager of capital accounting that ratepayers have not contributed capital to the streetlight system, either in its initial purchase or in any subsequent modifications. PG&E states that the conveyance of the streetlight system will not adversely affect ratepayers, who will see neither a decline in service nor an increase in cost as a result of the transfer. Therefore, in accordance with D.89-07-016, the gain-on-sale should accrue to shareholders.

Under the California Environmental Quality Act (CEQA), we must consider the environmental consequences of projects, as defined, that are subject to our discretionary approval. (Pub. Resources Code § 21080.) While transfers of utility assets are generally projects subject to CEQA review, the facts of this case indicate that the sale, while a project, is not subject to environmental review. The

standard Customer-Owned Streetlights PG&E Pole Contract Agreement attached to the application as Exhibit B states that the City will use and maintain only the existing luminaries and facilities of the streetlights and will not install any new or additional equipment on PG&E's poles without first securing PG&E's written approval. Thus, it can be seen with certainty that there is no possibility that the transfer of ownership of the existing facilities may have a significant effect on the environment. Accordingly, under CEQA Guideline 15061(b)(3), the transfer before us is not subject to CEQA.

Since City has the legal authority to get ownership of the streetlight system through the eminent domain process, which might impose more costs on PG&E and City than a negotiated sale, and would yield an uncertain purchase price, and since in an eminent domain proceeding the purchase price is determined through litigation rather than by the parties, we conclude that the transaction is reasonable and in the public interest.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and Bertram Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E is an electric utility subject to the jurisdiction of this Commission.
2. Notice of the filing of the application appeared in the Daily Calendar on January 24, 2002; no protests were filed.
3. City is a municipality created and existing under the laws of the State of California.

4. PG&E has agreed to sell the streetlight system, as defined in the application, to City.
5. The streetlight system is located entirely within the City.
6. The purchase and sale agreement provides that PG&E will be relieved of its obligations for owning, operating, and maintaining the streetlight facilities.
7. PG&E's ratepayers have not contributed capital to the streetlight facilities.
8. The sale and conveyance of the streetlight system will not adversely affect existing ratepayers.

Conclusions of Law

1. A public hearing is not necessary.
2. The sale and conveyance of the streetlight system is subject to Pub. Util. Code § 851. The sale is in the public interest because it avoids the expense of eminent domain litigation.
3. The sale and conveyance of the streetlight system does not require further CEQA review by the Commission.
4. The sale and conveyance of the streetlight system should be approved.
5. PG&E should be authorized to enter into the purchase and sale agreement attached to the application.
6. The pole attachment agreement (Exhibit B to the sales agreement) should be approved.
7. PG&E 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 system.
8. The proposed sale and conveyance of the streetlight system meets the criteria for a public utility to sell utility property to a municipality or government entity, and for the utility to accrue any gain on such sale to its shareholders.

9. The order should be effective today to allow the proposed sale to be executed on an expeditious basis.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) may sell and convey to the City of Manteca the streetlight system described in the application (Streetlight System), subject to the terms and conditions described therein, including the pole attachment agreement (Exhibit B to the sales agreement).

2. Within 90 days of the sale and conveyance of the Streetlight System, PG&E shall file an advice letter to report the gain-on-sale of the Streetlight System; PG&E may accrue any such gain to its shareholders.

3. The authority granted herein shall expire if not exercised within one year of the date of this order.

4. PG&E 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.

5. Application 02-01-026 is closed.

This order is effective today.

Dated December 5, 2002, at San Francisco, California.

HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

President Loretta M. Lynch, being necessarily
absent, did not participate.

I will file a concurrence.

/s/ CARL W. WOOD
Commissioner