

Decision 07-01-002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion for the purpose of considering policies and guidelines regarding the allocation of gains from sales of energy, telecommunications, and water utility assets.

Rulemaking 04-09-003
(Filed September 2, 2004)

ORDER CORRECTING ERROR

The Commission has been made aware of a typographical error in Decision (D.) 06-12-043, which was signed December 14, 2006. The third sentence of the second paragraph in Ordering Paragraph 1.i. on page 18 omits the word "not." The sentence should read (emphasis added): "Thus we believe shareholders should receive *a not* insignificant portion of gain on sale, consistent with our basic finding that ratepayers assume the majority of the risk associated with non-depreciable assets."

Pursuant to Resolution A-4661, **IT IS ORDERED** that:

1. The third sentence of the second paragraph in Ordering Paragraph 1.i. on page 18 is corrected to read: "Thus we believe shareholders should receive a not insignificant portion of gain on sale, consistent with our basic finding that ratepayers assume the majority of the risk associated with non-depreciable assets."
2. A corrected version of page 18 of D.06-12-043 is provided with this order as an attachment.

This order is effective today.

Dated January 8, 2007, at San Francisco, California.

/s/ STEVE LARSON

STEVE LARSON
Executive Director

ATTACHMENT

- h. The second allocation stated in the first line of the first full paragraph on page 38 is modified to be 67% - 33%.
- i. Sub-section B. of section IX., titled “Discussion— Incentives,” on pages 43-45, is restated to read as follows:

3. Discussion – Incentives

We do not believe law or good regulatory policy require that we set the shareholder portion of gain on sale at an unnecessarily high level in order to achieve prudent property management. Nor do we believe utilities are threatening to deliberately manage their property irresponsibly if we do not set shareholder gain at a high level.

Nonetheless, we believe the motive for high profits – especially in a real estate market as volatile as California’s – may unduly skew management decisions regarding valuable real property holdings. As we stated in D.03-09-021, “the result of allocating all net proceeds to shareholders creates a powerful financial incentive for water utilities to sell real property . . . without regard to long-term customer service needs, and may even lead to real property speculation by water utilities.” Thus we believe shareholders should receive a not insignificant portion of gain on sale, consistent with our basic finding that ratepayers assume the majority of the risk associated with non-depreciable assets.

Nothing in the comments changes our tentative conclusion, set forth in the OIR, that shareholders should receive a portion of the gain (“between 5% and 50% of the gain on sale under normal circumstances”) but not a majority of it. As discussed above, we have settled on 33% on non-depreciable assets in the exercise of our discretion, and our expertise in regulating public utilities. We adopt the percentages (100%-0%) the IOUs agreed were appropriate in their original comments for depreciable property. The 67%-33% split recognizes the risks we acknowledge shareholders do face in the utility business, and