

ORIGINAL

Decision No. 52761

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 EAST BAKERSFIELD WATER CO., a)
 California corporation, to sell its)
 water system to East Niles Community)
 Services District under Section 851)
 of the Public Utilities Code.)

Application No. 37681

OPINION AND ORDER

By this application filed on January 23, 1956, East Bakersfield Water Co.,¹ a corporation, seeks authority from this Commission to sell the physical assets of its public utility water system to East Niles Community Services District,² which joins in the application. Seller also asks to be relieved of its public utility obligations.

Under the terms of the "Contract of Purchase" dated November 1, 1955, a copy of which is attached to the application as Exhibit "A", Seller proposes to sell to District for the sum of \$98,304.82, its water system assets for which the cost has been entered on Seller's books on October 1, 1955. Also, Seller is to be paid amounts corresponding to the original costs of additional assets installed prior to the date of transfer, and those assets which have been contracted for but will not have been installed when possession of the water system is transferred.

A certificate of public convenience and necessity to construct and operate a public utility water system in unincorporated territory east of Bakersfield, Kern County, was granted to East Bakersfield Water Co. by the Commission in its Decision No. 50785, issued November 23, 1954, in Application No. 35698 as amended. It is

¹ Sometimes herein called Seller or Applicant.
² Sometimes herein called District.

stated in Exhibit "A" of the application that water for domestic purposes is furnished by Seller to a total of 349 customers.

District is a political subdivision of the State of California and the boundaries of District completely embrace the area certificated to East Bakersfield Water Co.

Authority for the transfer is stated to be sought for the reason that District proposes to build and operate an integrated water system that will be capable of serving all of the potential customers within its boundaries.

It is noted in the above-mentioned contract of purchase that the terms thereof provide for determination, by a Commission hydraulic engineer, of disputes between Seller and District connected with the purchase price of assets contracted for but not installed prior to transfer. Also, a similar clause of the contract provides for determination by a Commission hydraulic engineer of disputes connected with installed costs of facilities installed by someone other than Seller.

Such procedure is inappropriate and the transfer authorized hereinafter shall not be construed as approval of those parts of the contract which relate to determination of disputes by a member of the Commission staff.

The impropriety of informal settlement of disputes by members of the Commission staff, as provided for in the agreement, is also manifested by consideration of paragraph 14 of the contract, which sets up standard arbitration procedures in the event of disputes between the parties relating to the construction of the agreement or concerning the rights or obligations of the parties. Provision is also made for the submission of any matters in controversy to the courts in lieu of the arbitration procedures set forth in the contract. We refrain from passing upon these provisions of said agreement.

Applicant's prayer includes a request for an order of the Commission to provide the following:

"Authorizing East Bakersfield Water Co. to retire its preferred shares and to pay to the holders thereof the aggregate par value in cash."

Providing that such liquidation is to occur after Applicant is relieved of its public utility obligation, there is no apparent necessity for an order of this Commission authorizing retirement of shares in Applicant's corporation and, accordingly, the order herein will not include such authority.

IT IS HEREBY ORDERED that:

1. East Bakersfield Water Co., a corporation, may, on or after the effective date hereof and on or before July 31, 1956, sell and transfer its public utility properties to East Niles Community Services District substantially in accordance with the terms of the Contract of Purchase, Exhibit "A" attached to the application, except that those provisions of numbered paragraphs 2-c and 2-d(1) relative to a determination by a Commission hydraulic engineer, in case of a dispute, are specifically excluded from the authority herein granted.
2. On or before the date of actual transfer, East Bakersfield Water Co. shall refund all deposits which customers are entitled to have refunded, and within thirty days thereafter shall notify this Commission in writing of the completion of such refunding.
3. East Bakersfield Water Co. shall, within thirty days after the date of actual transfer, file with this Commission a verified statement showing all obligations to make refunds of customers' advances for construction, if any, the amounts thereof, and the names of persons or corporations in whose favor such obligations exist as of the date of transfer.
4. If the authority herein granted is exercised, East Bakersfield Water Co. shall, within thirty days thereafter, notify this

Commission in writing of the date of such completion of the property transfer herein authorized and of its compliance with the conditions hereof.

5. Upon due compliance with all of the conditions of this order, East Bakersfield Water Co. shall stand relieved of all further public utility obligations and liabilities in connection with the operation of the public utility water system herein authorized to be transferred.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of March, 1956.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners