

ORIGINAL

Decision No. 68155

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
EARL J. GILLETTE, DEAN J. GILLETTE,)
and DAVID B. GILLETTE, doing business)
as LA VERNE HEIGHTS DOMESTIC WATER)
COMPANY for authority to sell and)
transfer their properties to the City)
of LA VERNE and further that they be)
relieved of public obligation.)

Application No. 46705
(Filed June 8, 1964)

Earl J. Gillette, for sellers.

Everett A. Philips and Eugene J. Axelrod, for purchaser.

Jerry J. Levander and Raymond E. Heytens, for the Commission staff.

O P I N I O N

Earl J. Gillette, Dean J. Gillette and David B. Gillette (sellers), individuals doing business as La Verne Heights Domestic Water Company, seek authority to transfer their utility properties to the City of La Verne (purchaser), and to discontinue service. Purchaser joins in the application.

A public hearing on this application was held before Examiner Catey in Los Angeles on September 15, 1964. Copies of the application and notice of hearing had been served in accordance with this Commission's rules of procedure. The matter was submitted on September 30, 1964, subject to receipt of late-filed exhibits.

At the hearing, testimony on behalf of sellers was presented by one of the sellers; testimony on behalf of buyer was presented by its water consultant. There were no protests against the proposed transfer.

Sellers provide water service in and about an area known as La Verne Heights, located in or near the City of La Verne in Los

Angeles County. Decision No. 49277, dated November 3, 1953, in Application No. 34765, and Decision No. 52571, dated February 7, 1956, in Application No. 37203, show that sellers' certificated area of some 1,430 acres was not within purchaser's city limits. Sellers' witness testified that about two-thirds of sellers' present service area is now within the city limits.

Sellers' 1963 annual report to this Commission shows that, as of December 31, 1963, there were 549 active metered services and 56 fire hydrants. The annual report also shows end-of-year utility plant of \$275,962, depreciation reserve of \$83,519, advances for construction of \$45,846, and contributions in aid of construction of \$37,977, resulting in a net plant investment of \$108,620 excluding consideration of materials and supplies.

On December 12, 1963, sellers entered into an agreement with purchaser providing an option for the sale of the public utility water system. Copies of the option agreement and the contract of sale are attached to the application. The contract of sale was signed by the parties on April 22, 1964, to become effective on July 1, 1964. The agreed purchase price of the system is \$440,000, payable in eleven equal annual installments commencing one month after the month that the contract was executed. No provision is made for additional payments representing interest on the unpaid principal,^{1/} other than a \$600 increase in the initial payment if it is paid in two parts, six months apart. Purchaser also agrees to be responsible for payment of a \$3,000 bank loan and outstanding refund obligations of approximately \$41,600 related to advances for construction as of July 1, 1964.

1/ Approximate economic equivalents of the purchase price, assuming interest on the unpaid balance to be included in the \$40,000 annual payments:

<u>Interest Rate</u>	<u>Equivalent Purchase Price</u>
0%	\$440,000
2	399,000
4	364,000
6	334,000
8	308,000

The annual payments are to be made exclusively out of a portion of the gross revenue derived by purchaser from its present system and the system to be acquired from sellers.

Under the terms of the contract of sale, purchaser only agrees to serve sellers' present customers, which appears to be detrimental to others who might have a right to future water service within sellers' dedicated area of service. Also, in that contract, purchaser agrees not to discriminate against sellers' present customers in regard to rates and conditions of service only so long as there is any unpaid balance owing on the purchase price. Purchaser's witness testified, however, that it is the intention of the City to serve all territory in sellers' present area and to apply rates without discrimination.

The Commission finds that:

1. Upon filing of a stipulation by purchaser regarding service obligations and absence of discrimination between customers inside and outside purchaser's boundaries, the proposed transfer will not be adverse to the public interest.
2. The proposed purchase agreement does not provide adequate protection to present and future customers within sellers' dedicated area of service from discrimination in regard to rates and conditions of service.

The Commission concludes that the proposed transfer should be authorized, subject to the conditions set forth in the order to follow.

The action taken herein is not to be construed as a finding of the value of the properties to be transferred.

O R D E R

IT IS ORDERED that:

1. Within one year after the effective date of this order, Earl J. Gillette, Dean J. Gillette and David B. Gillette (sellers), individuals doing business as La Verne Heights Domestic Water Company, may transfer and sell to the City of La Verne (purchaser) their public utility water system located in and about the area known as La Verne Heights, essentially in accordance with the terms and conditions of the agreement, Exhibit A attached to the application, and subject to the conditions of this order.

2. The foregoing authority is conditioned upon the filing in this proceeding of a stipulation by purchaser that:

- (a) Purchaser will be subject to all legal claims for water service which might have been enforced against sellers, including such claims as may exist in territory outside of the boundaries of purchaser.
- (b) As to the rates, rules and conditions of service which purchaser will apply within the service area of the system herein authorized to be transferred, it will not discriminate between service rendered outside of the city boundaries and service rendered inside of said boundaries, except insofar as it may adjust such outside rates and charges to offset any reasonable tax burden sustained by water users within the city boundaries in subsidizing the operation of purchaser's water system.

3. On or before the date of actual transfer, sellers shall return to main extension agreement holders any refunds due as of July 1, 1964 and shall return to customers any refundable deposits made to establish credit.

4. Within six months after the date of actual transfer, sellers shall file in this proceeding written notification of the refunding of advances and deposits, the date of transfer, and the date upon which purchaser shall have assumed operation of the water system authorized herein to be transferred. A true copy of the instrument or instruments of transfer shall be attached to the written notification.

5. Upon compliance with all of the conditions of this order, sellers shall stand relieved of all of their public utility obligations in the area served by the transferred system, and may discontinue service concurrently with the commencement of service by purchaser.

The effective date of this order shall be established by supplemental order herein, after purchaser shall have complied fully with the requirements of ordering paragraph 2.

Dated at San Francisco, California, this 9th day of November, 1964.

Fredrick B. Holdoff
President
Joseph E. Mitchell
Carroll W. [unclear]
William H. [unclear]
Commissioners

I dissent.
George E. Grover