

ORIGINALDecision No. 70555

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint
 Application of BUMGARDNER WATER
 CO., INC., a California
 Corporation, and the CITY OF
 MODESTO, a Municipal Corpora-
 tion, for an Order Pursuant to
 Sections 851-853 and 1001-1005
 of the Public Utilities Code
 Authorizing the Sale of all
 Properties (with limited specific
 exceptions) of BUMGARDNER WATER
 CO., INC., to the CITY OF
 MODESTO, a Municipal Corpora-
 tion, and Terminating the Duty
 of BUMGARDNER WATER CO., INC.,
 a California Corporation, to
 Operate a Public Utility,
 Applicants.

Application No. 48251
 (Filed February 14, 1966)

O P I N I O N

Bumgardner Water Co., Inc. (Bumgardner) seeks authority to sell, and City of Modesto (City) seeks authority to acquire, certain real and personal property comprising Bumgardner's public utility water systems located in and about the City of Modesto.

A purchase agreement, a copy of which is attached to the application and designated as Exhibit "A", was entered into between Bumgardner and City on February 8, 1966. The agreement provides that for the sum of \$270,000 Bumgardner will sell to City all of the real and personal property, with certain listed exceptions, of its two water systems. The property to be transferred includes nine parcels of real property, all wells, structures and improvements thereon, all pumping equipment, reservoirs, tanks, transmission and distribution mains, meters, valves, hydrants, services, stock-on-hand, office equipment, service equipment, a pickup truck, all maps

and drawings of the systems and facilities, and all other personal property except: one 1964 Ford Station Wagon, one 1963 Cadillac Sedan, notes receivable, unused insurance premiums, leasehold for premises at 1125 11th Street, Modesto, unused prepaid rental for above leased premises, cash on hand, accounts receivable, monies due from State of California, and the certificate of public convenience and necessity. The depreciated original cost of seller's utility plant was approximately \$143,090 on December 31, 1965.

The agreement further provides that all advances made by customers to Bumgardner shall be refunded to said customers on or before the effective date of the sale excepting, however, any advanced deposits held by Bumgardner to guarantee payments of bills. Bumgardner shall pay to City the total sum of all advanced deposits held as of the effective date of the sale and City shall assume all obligation and responsibility for said advanced deposits. Bumgardner's balance sheet shows that on December 31, 1965, there were customer deposits of \$3,626.70, prepaid water bills of \$2,711.26 and advances for construction of \$88.69.

The properties to be transferred comprise two separate and unconnected water systems. Unit No. 1 serves 595 customers within approximately 480 acres in the northwest portion of the City of Modesto. Unit No. 2 serves 1,191 customers within 1,040 acres partially surrounded by and adjacent to the southern portion of the City of Modesto.

The application states the reason Bumgardner desires to sell the water systems is that George I. Bumgardner, its president, has for many years been the sole managing agent of the utility, both prior to and subsequent to its incorporation, and he desires to retire from his business activities, and that the utility does not

have other full-time personnel with which to replace his services. It states that City desires to acquire the water systems because it is presently engaged in the production and distribution of water; it currently serves customers adjacent to the areas served by Bumgardner; it is the policy of the City that its water system supply users of water within the City of Modesto and in areas adjacent thereto which may be subject to annexation, and it is the desire of City in acquiring the water systems to render a more uniform supply and distribution of water to the users generally in the City and territory adjacent thereto.

We find that:

1. The terms of the purchase agreement adequately protect deposits made by customers to Bumgardner.
2. The amount of money received by Bumgardner as advances for construction is so small that Bumgardner will be able to refund all such advances prior to the consummation of the sale of the water systems.
3. City has the ability to acquire and operate the Bumgardner water systems without interruption in service.
4. Upon the consummation of the proposed transfer Bumgardner will no longer be engaged in performing public utility service.
5. Subject to the conditions set forth in the order which follows the proposed sale and transfer will not be adverse to the public interest.

We conclude that the application should be granted as provided by the following order and that a public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. Within one year after the effective date of this order, Bumgardner Water Co., Inc. (seller), a corporation, may sell and transfer to the City of Modesto (purchaser) the properties referred to herein, substantially in accordance with the terms described in the agreement attached to the application herein and designated as Exhibit A, but subject to the conditions of this order.

2. Before the transfer of its water system assets, seller shall refund all advances for construction or shall deposit a sufficient sum of money in escrow with a suitable bank, trust company or other licensed escrow agent, with escrow instructions for payment of the refunds of extension agreements, and shall file a copy of said escrow agreements, or statement that all advances have been refunded, with the Commission within ten days thereafter.

3. 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 seller, including such claims as may exist in territory outside of the boundaries of purchaser; and (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 inside and outside of the city 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.

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

5. Within five days after the date of actual transfer, seller shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect such transfer.

The effective date of this order shall be established by supplemental order herein after compliance with paragraphs 2 and 3 of this order.

Dated at San Francisco, California, this 12th day of APRIL, 1966.

Frederick B. Holluff
President
John E. Mitchell
Auguston
William L. Bennett
Commissioners

Commissioner George G. Grover
present but not voting.