

Decision No. 71158

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the BANNING WATER COMPANY, a California corporation, for an Order Authorizing Sale of Substantially All Its Assets to the City of Banning, a municipality, and Relieving Banning Water Company of Its Obligations and Liabilities as a Public Utility.

Application No. 48551
(Filed June 13, 1966)

O P I N I O N

Banning Water Company (seller), a corporation, seeks authority to sell and transfer its water system and other assets to the City of Banning (buyer) and to be relieved of all public utility liability and obligation upon the transfer of seller's property to buyer. Buyer joins in this application.

Seller on December 31, 1965, had 4282 active service connections, including 257 to public fire hydrants, by which it served domestic and irrigation water to customers inside and outside the boundaries of the City of Banning.

On December 31, 1965, seller and buyer entered into an agreement, a copy of which is attached to the application, providing for the sale of the water system. The agreed purchase price is \$2,200,000 cash plus or minus the following: (1) Net additions from December 31, 1965, to closing; (2) Net change in Account No. 131, Material and Supplies, from December 31, 1965, to closing; (3) Plus 98 percent of unpaid charges for water service which were billed not more than sixty days prior to closing; (4) Less present value of refundable advances in aid of construction at closing, which present value on December 31, 1965 amounted to \$41,828.58;

and (5) Less existing customer service deposits as of closing, which on December 31, 1965 were \$7,281.

Seller's annual report to this Commission for the year 1965, hereby incorporated as a part of this record by reference, shows, as of the end of that year, utility plant in service in the amount of \$2,031,055.67, total utility plant in the amount of \$2,036,234.18, a reserve for depreciation of utility plant of \$514,523.61, contributions in aid of construction amounting to \$48,646.86, advances for construction in the amount of \$122,101.28 and customers' deposit totalling \$7,281.

Seller alleges that it regards the negotiated sale to buyer as being in the best interest of all parties and of the general public. Buyer has determined on the basis of independent studies and analyses of seller's operation and properties that the public interest and necessity requires that buyer acquire the water system and facilities of seller. On September 27, 1963, buyer filed an action in the Superior Court for Riverside, California, No. 80222, against seller seeking to acquire in eminent domain all of the water system and assets of seller. Thereafter, seller and buyer engaged in extended negotiations in order to develop a fair and agreed value for said assets, and said parties have now entered into an agreement of sale.

The agreement sets forth that buyer shall assume existing customer service deposit obligations as of closing and that buyer shall assume the obligation of seller under all refund agreements for construction advances on the condition that all unexpended funds or bonds received under such agreements shall be transferred or assigned to buyer at closing.

Inasmuch as seller's dedicated area of service is not entirely within the city boundaries of buyer, the transfer authorized herein will be conditioned upon the filing of certain stipulations by buyer to protect the interests of customers outside the city boundaries.

Precedent to closing and transfer of seller's assets is the authorization and sale of revenue bonds by buyer in the amount of at least \$2,440,000, on or before November 30, 1966, and approval of the transfer on the terms set forth in the agreement "by two-thirds of the issued and outstanding shares of Seller".

The Commission finds that:

1. The terms of the purchase agreement adequately protect the interest of customers and refund contract holders in deposits and advances of seller to be assumed by buyer.
2. Buyer has the ability to acquire and operate seller's water system without interruption in service.
3. Upon the consummation of the proposed transfer seller will no longer be engaged in performing public utility service.
4. 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, Banning Water Company (seller), a corporation, may sell and transfer

to the City of Banning (buyer), a municipality, the properties referred to herein, substantially in accordance with the terms described in the agreement attached to the application herein and designated as Appendix A, but subject to the conditions of this order.

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

- (a) Buyer 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 purchaser's boundaries.
- (b) As to the rates, rules and conditions of service which buyer will apply in the service area of the system herein authorized to be transferred, it will not discriminate between service rendered outside its city boundaries and service rendered inside 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 in subsidizing the operation of the city's water system.

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

4. Within ten 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 paragraph 2 of this order.

Dated at San Francisco, California, this 33rd day of AUGUST, 1966.

[Signature]
President

[Signature]

[Signature]

Commissioners

Commissioner George G. Grover
present but not voting.

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.