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Decision No. 82383

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ROYAL OAKS WATER SYSTEM, and JOSEPH C. SMYTH and VICTOR D. KLIEWER, for an order authorizing the sale and transfer to JOSEPH C. SMYTH and VICTOR D. KLIEWER of the water distribution system and certificate of public convenience and necessity.

Application No. 54135
(Filed June 27, 1973;
amended September 19, 1973
and November 5, 1973)

O P I N I O N

Maurice E. Smith, doing business as Royal Oaks Water System (seller), seeks authority to be relieved of his public utility obligation by transferring his entire water system to Joseph C. Smyth and Victor D. Kliewer, a joint venture partnership (purchasers), who jointly seek authority to acquire Royal Oaks Water System. A copy of the purchase agreement is attached to the application.

Notice of the application was published in the Commission's Daily Calendar on June 29, 1973. No protests have been received.

Seller operates as a public utility water system described as residential in and about the unincorporated community of Oakhurst, Madera County. It has 53 inactive service connections and serves 45 customers. As of December 31, 1972 its undepreciated cost of water plant in service amounted to \$55,550.85 with a depreciation reserve of \$11,749.75 resulting in a net plant cost of \$43,801.10. Its 1972 Annual Report also shows that there were no customer deposits or advances for construction as of December 31, 1972.

The certificate of public convenience and necessity was granted to Maurice E. Smith by Decision No. 72838 dated August 1, 1967 in Application No. 49395. Seller was a respondent in Case No. 9283, among other respondents, which was an investigation by the Commission into the operations, service, etc. of Royal Oaks Water System. Decision No. 80133 in Case No. 9283 dated June 1, 1972 ordered seller herein, among other things, to submit a plan and schedule for augmentation of the water supply and storage facilities to the Commission. Seller states that he is desirous of relieving himself of the burden incident to the operation of the utility in that he is unable to properly supervise its operations.

The purchasers have been operating the utility according to the application and are fully aware of all the circumstances, facts, and liabilities surrounding its operation. Joseph C. Smyth is a registered engineer of the State of California, doing business as Joseph C. Smyth and Associates with offices located in Oakhurst. Victor D. Kliewer is a businessman and resident land developer in eastern Madera County. Both men reside in the area and state that it is their intention to acquire several water systems in eastern Madera County and to improve their service by combining them for efficiency in operation. Smyth's financial statement shows that he has a net worth of \$209,218 as of July 31, 1973. Kliewer's financial statement shows that he has a net worth of \$342,327 as of August 31, 1973.

Seller and purchasers have entered into an Agreement of Sale, subject to the approval of this Commission, which was executed on November 1, 1973 for the sale of all the properties, franchises, operative rights, and assets comprising seller's water system, excluding accounts receivable, choses in action, cash on hand and in bank, unbilled revenues, and refundable deposits made by customers for a purchase price of \$22,000. Seller is to retain

and refund to seller's customers all refundable deposits, if any. Said purchase price is payable from the gross revenues of the utility. Purchasers are to pay seller 22 percent thereof for a period of not to exceed 20 years or until said sum has been paid in full, whichever shall be the sooner, with the proviso that if the purchasers should divest themselves of any substantial interest in the utility, then and in such event the entire remaining balance shall be paid to seller prior to the conveyance of such interest. A full description of the properties to be transferred is contained in Exhibit A attached to the agreement.

Since Joseph C. Smyth and Victor D. Kliever have been operating Royal Oaks Water System subsequent to the issuance of Decision No. 80133 in Case No. 9283 as stated in the Agreement of Sale and, since Maurice E. Smith cites Decision No. 80133 as containing the reasons for his desire to be relieved of his public utility obligations and since both parties to the Agreement of Sale believe the sale to be in the public interest, we are of the opinion that the sale should be authorized.

After consideration, the Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment, and that the proposed transfer is not adverse to the public interest. The Agreement of Sale should be approved and considered as evidence of long term indebtedness in the amount of \$22,000 in accordance with Section 818 of the Public Utilities Code. The money, property, or labor to be procured or paid for by the issue of evidence of indebtedness herein authorized is reasonably required for the purposes specified herein. A public hearing is not necessary.

We conclude that the proposed sale and transfer is in the public interest and the application should be granted subject to the conditions of the following order. Both seller and purchasers will be required to give notice of completion of the transfer to the Commission.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties to be transferred.

Joseph C. Smyth and Victor D. Kliewer are placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before March 1, 1974 Maurice E. Smith (seller) may sell and transfer the water system assets and certificate referred to in the application to Joseph C. Smyth and Victor D. Kliewer, a joint venture partnership (purchasers).
2. As a condition of this grant of authority, purchasers shall assume the public utility obligations of seller within the area served by the water system being transferred.
3. Within ten days after completion of the transfer, purchasers shall notify the Commission, in writing, of the date of the transfer and of the assumption of the obligations set forth in paragraph 2 of this order.
4. Purchasers shall submit a plan and schedule for augmentation of the water supply and storage facilities of Royal Oaks Water System in accordance with Ordering Paragraph No. II, 2.a. of Decision No. 80133.

5. Purchasers shall either file a statement adopting the tariffs of seller now on file with this Commission or refile under their own names those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.

6. On or before the end of the third month after the date of actual transfer purchasers shall cause to be filed with the Commission, in such form as it may prescribe, an annual report covering the operations of seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. Purchasers shall maintain their records in accordance with this Commission's prescribed Uniform System of Accounts for Class D Water Utilities.

8. On or before the date of actual transfer, seller shall deliver to purchasers, and the latter shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

9. On or before the date of actual transfer, seller shall refund all customers' deposits and advances for construction, if any, which are due and payable as of the date of transfer. All unrefunded deposits and advances shall be transferred to purchasers who shall be responsible for their refund when due.

10. Within ten days after the completion of the transfer seller shall notify the Commission, in writing, of the date of transfer, of the refunding of the deposits, and of the date upon which purchasers shall have assumed operation of the water system. A true copy of the instruments of transfer shall be attached to the notification.

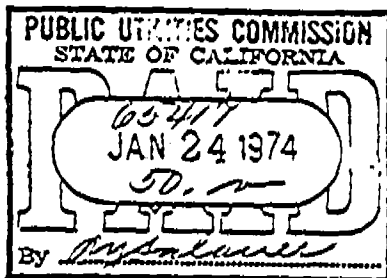
11. Upon compliance with all of the terms and conditions of this order, seller shall be relieved of his public utility obligations in connection with the water system transferred.

12. The Secretary is directed to make personal service of a copy of Decision No. 80133 upon Joseph C. Smyth and Victor D. Kliever.

13. On or after the effective date of this order and on or before March 1, 1974, for the purposes specified in this proceeding, transferee may issue an evidence of long term indebtedness in the principal amount of not exceeding \$22,000.

14. The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$50. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 22nd day of JANUARY, 1974.



William L. Stinson
President
William J. Stinson
William J. Stinson
William J. Stinson
Commissioners