

ORIGINAL

Decision No. ~~83119~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
E. S. CURTIS and MARY E. CURTIS,
doing business as SIERRA LAKES
WATER COMPANY, 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. 54668
(Filed February 19, 1974;
amended April 22, 1974)

O P I N I O N

E. S. Curtis and Mary E. Curtis (sellers), doing business as Sierra Lakes Water Company, seek authority to be relieved of their public utility obligation by transferring the entire water system to Joseph C. Smyth and Victor D. Kliewer (purchasers), a joint venture partnership, who jointly seek authority to acquire Sierra Lakes Water Company. A copy of the purchase agreement is attached to the application. By amendment to the application filed April 22, 1974, applicants seek authority to execute a long-term noninterest bearing promissory note in the amount of \$10,000, together with Deed of Trust and Assignment of Rents, copies of which are attached to the amendment.

Notice of the application was published in the Commission's Daily Calendar on February 20, 1974. No protests have been received.

Sellers operate a public utility water system for domestic purposes within an unincorporated area located 3 miles southeast of the town of Oakhurst in Madera County. It had 31 service connections as of December 31, 1973 and an undepreciated cost of water plant in

service of \$41,217 with a depreciation reserve of \$12,430 resulting in a net plant cost of \$28,787. The 1973 annual report also shows that there were no customer deposits or advances for construction as of December 31, 1973.

The certificate of public convenience and necessity was granted to E. S. Curtis and Mary E. Curtis on August 29, 1967 by Decision No. 72997 in Application No. 49088. Sellers state that they are anxious to withdraw from the public utility water business and believe it would be to the advantage of sellers' customers to have the system owned and operated by purchasers.

One of the purchasers, Joseph C. Smyth, doing business as Smyth & Associates, has entered into an operating agreement with sellers according to the 1973 annual report. The application states that the purchasers are fully aware of all the circumstances, facts, and liabilities surrounding the operation of the utility. Joseph C. Smyth is a registered engineer in the State of California, doing business as Smyth & Associates with offices located in Oakhurst. Victor D. Kliever 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. Two such systems have already been transferred to purchasers, viz., Royal Oaks Water System, Decision No. 82383 dated January 22, 1974 in Application No. 54135, and Coarsegold Highlands Water System, Decision No. 82384 dated January 22, 1974 in Application No. 54136. Application No. 54134 has been filed for the acquisition of Raymond Water Works. Smyth's financial statement shows that he has a net worth of \$209,218 as of July 31, 1973. Kliever's financial statement shows that he has a net worth of \$342,327 as of August 31, 1973.

Sellers and purchasers have entered into an Agreement of Sale, subject to the approval of this Commission, for the sale of all the water production facilities, including pumps, wells, transmission, and distribution facilities of every kind comprising the water system, and that the purchase includes, without limiting the generality of the foregoing, all operating and customer account records, maps and drawings, equipment, supplies, and materials and such lands used in connection with the operation of said water system, as specifically described in Exhibit 4-A attached to the agreement. The stated purchase price is \$12,000 payable with \$2,000 in cash upon completion of the transfer of the system and a promissory note, without interest, in the amount of \$10,000 payable in monthly payments of an amount equal to 22 percent of the gross revenue received by the utility but in no event less than \$200 per month.

Since Joseph C. Smyth has entered into a supervision and management agreement for Sierra Lakes Water Company, the sellers desire to be relieved of their public utility obligations. Both parties to the Agreement of Sale believe the transfer to be in the public interest. We are of the opinion that the sale and transfer should be authorized.

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 and Deed of Trust are not adverse to the public interest, and that the proposed note is for a proper purpose. The money, property, or labor to be procured or paid for by the evidence of indebtedness herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income. A public hearing is not necessary.

We conclude that the proposed sale and transfer is not adverse to the public interest and the application should be granted subject to the conditions of the following order. Both sellers 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 September 2, 1974 E. S. Curtis and Mary E. Curtis 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.
2. As a condition of this grant of authority, purchasers shall assume the public utility obligations of sellers 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 either file a statement adopting the tariffs of sellers 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.

5. 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 sellers for the period commencing with the first day of the current year to and including the effective date of the transfer.

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

7. On or before the date of actual transfer, sellers 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.

8. On or before the date of actual transfer, sellers 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.

9. Within ten days after the completion of the transfer sellers 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.

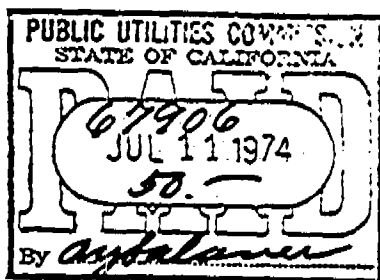
10. Upon compliance with all of the terms and conditions of this order, sellers shall be relieved of their public utility obligations in connection with the water system transferred.

11. On or after the effective date of this order and on or before September 2, 1974, for the purpose specified in this proceeding, purchasers may execute and deliver a Deed of Trust and may issue a note in the principal amount of not exceeding \$10,000. The documents shall be in substantially the same forms as those attached to the amendment to the application.

12. Purchasers shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

The authority granted by this order to issue a note 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 9th day of JULY, 1974.



Veronica L. Stevenson
President
William J. ...
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Commissioners