

Decision 84-12-051 December 19, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application)
of CAMPTON HEIGHTS WATER SERVICE,)
a California public utility corpora-)
tion, and the CITY OF FORTUNA, a)
municipal corporation, for authority)
for the utility to sell its CAMPTON)
HEIGHTS WATER SERVICE to the CITY.)

Application 84-07-046
(Filed July 16, 1984)

INTERIM OPINION

Purpose of Application

By this application, Campton Heights Water Service (Utility) seeks the authority required by Public Utilities (PU) Code § 851 to sell its public utility water system to the City of Fortuna (City), Humboldt County.

Description of Applicants

Utility is a California corporation serving water in portions of the City of Fortuna and adjacent territory in Humboldt County. Utility presently provides water service to approximately 1,000 single family residential and 25 commercial and governmental customers. At the end of 1983, utility plant amounted to \$479,621 and accrued depreciation \$238,816, for net plant of \$240,805. Advances for construction totaled \$63,472, resulting in a net book cost of \$177,333.

City is located approximately 15 miles south of Eureka. It operates a municipal water system that serves approximately 2,000 customers and has been furnishing water service for approximately 25 years.

Reasons for Sale

City desires to acquire Utility's water system so as to enjoy the economies of operation that can be realized by combining management of the City's system with that owned by Utility.

The majority of the stock of Utility is owned by Clara B. Kendall, the President of Utility. Clara B. Kendall is over 70 years of age and has experienced health problems in recent years. For that reason, she desires to retire from all active business pursuits as soon as practicable. Utility has adopted a plan of complete liquidation under Section 337 of the Internal Revenue Code and proposes to distribute to its shareholders all of its rights to receive the installment payments and to dissolve upon completion of the proposed sale to the City.

Agreement for Sale and Purchase

The agreement for sale and purchase provides for the sale of the water system to the City for a purchase price of \$453,852 to be paid by the City in monthly installments of \$4,165.82 each including interest on unpaid principal at 10.13 percent per annum over a period of 25 years.¹ No portion of the purchase price may be pre-paid by the City. No portion of the purchase price is being paid for plant which was contributed to Utility.

Upon acquisition of the Utility's water system, the City will assume all outstanding obligations (Advances for Construction) of Utility under main extension agreements between Utility and others.

¹ As this interest is incurred on a California municipal debt, the parties anticipate that it would be exempt from federal and state income taxes. The transaction is contingent on receipt of an opinion from bond counsel to that effect.

Utility is holding credit deposits from customers totalling approximately \$1,800. Utility will return all of said deposits to the appropriate depositors prior to the closing date.

Rates and Service

Utility's charges for water service are based on a combination of a service charge and quantity rate, whereas the City has a minimum charge-quantity rate type charge. Utility rates are somewhat higher than City's. A customer using 6,500 gallons per month would pay \$11.25 under the Utility's rate schedule but only \$7.51 under City's. City proposes to apply Utility's existing rates, rather than City's, in the area served by the facilities being acquired. City agrees however, to supply water to Utility's former customers at reasonable and uniform rates without discrimination between customers. The City does, however, reserve the right to alter the rates it charges those customers in the future.

During the 25 years that City has rendered water service, according to the application, it has made substantial improvements to its water system in order to provide good and reliable service to its water customers. It is the understanding of the applicants that acquisition of Utility's water system by the City will not adversely affect the quality of water service which the customers of Utility have been accustomed to receive.

Public Utilities Commission Reimbursement Fee

The Utility has, according to its Tariff Schedule UF, been collecting the 1-1/2% surcharge levied on sales of water pursuant to PU Code § 433. The Utility would calculate all water sales collected by it from January 1, 1984, to the closing date of the transaction and shall remit the fee to the Commission within thirty days of the closing date. It is estimated that said fee would not exceed \$2,000.

Regulatory Considerations

During the course of a telephone conversation in response to a request by the Administrative Law Judge (ALJ) that cost data omitted from the filed annual report be supplied, the ALJ suggested to Utility's attorney that the high ratio of the purchase price to book cost, might be a cause of concern to the Commission. In response, the attorney addressed a letter to the Commission, stating that the parties had alternate procedures available to them to accomplish the transfer but also presenting arguments in favor of the transaction which he felt would alleviate the Commission's concern. Rather than summarizing his arguments, and thereby removing their tone, the letter is being included in this decision as Appendix A.

Discussion

The agreement as negotiated would effect the transfer of the Utility's public water company at a price in excess of its depreciated book value.² This fact, in and of itself, is not a cause of concern to the Commission, notwithstanding the tenor of the discussion between the ALJ and the Utility's attorney, as reflected in Appendix A. On this point our decision making record is clear. We have routinely approved transfers involving acquisition prices which exceed recorded net book or depreciated rate base valuation of the facilities to be sold and transferred,³ where we have also made a specific finding under Public Utilities Code § 851 that the transfer would not be adverse to the public interest (e.g., Finding of Fact 10, D.84-11-016).

In such instances it has been our policy to approve the transfer per se in the interest of avoiding delay, but to defer the ancillary issue of whether the gain on sale belongs to shareholders or ratepayers, to our ongoing proceeding in A.83-04-37, where the issue has been briefed by interested parties. That is the approach we will follow in this case. Rather than delay approval of this sale and transfer transaction between the City and the Utility, by this interim decision we will authorize its consummation, while reserving disposition and accounting of the gain over depreciated original cost until further order after resolution of the same issue in the A.83-04-037 proceeding. Pending said resolution, and as a condition of being relieved of its public utility obligation, Utility will be required to record the gains in an appropriate suspense account and retain them in that account until further Commission order.

² The balance in Account 250 (Depreciation and Amortization Reserves, Utility Plant) as of year-end 1983, was \$238,816. The agreed-upon purchase price is \$453,852.

³ D.84-08-126 in A.83-04-37 (PG&E and the City of Redding);
D.84-11-016 in A.83-03-12 (PG&E and the City of Ukiah).

One additional matter requires discussion. As a result of the transfer, one group of City's customers will be paying higher rates than the others. This is due to the fact, previously noted, that after the transfer City proposes to apply Utility's existing rates (rather than City's lower rates) in the area served by the facilities it is acquiring. However, having approved the voluntary transfer, on the basis of the application jointly filed by City and Utility, we have no post-transfer public utility jurisdiction over the City to impose a requirement of systemwide rate uniformity. In approving this particular transfer, however, we have explicitly considered the fact that Utility's present customers will experience neither a post-transfer decrease in rates nor a post-transfer increase in rates over and above the Utility's existing applicable rates.⁴

Findings of Fact

1. Campton Heights Water Service, a corporation, is proposing to transfer its public utility water system to the City of Fortuna for a purchase price of \$453,852.
2. The furnishing of water service by City in the area being transferred will not result in rates and charges to customers in this area in excess of those presently paid to the Utility.
3. There is no known opposition to the proposed sale and transfer.
4. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of these particular facilities alone may have a significant effect on the environment.
5. The proposed sale and transfer of these particular facilities alone, under all the conditions applicable, would not be adverse to the public interest.

⁴ We take cognizance of the City's representation that it is willing to covenant that it will supply customers in the Utility's service area without discrimination between such customers.

6. The gain in the sale price of \$215,036 over net book value should be held by Utility in a suspense account pending further order of the Commission in ongoing proceedings in A.83-04-37.

Conclusions of Law

1. A public hearing is not necessary.
2. The application should be granted as provided in the following order.

INTERIM ORDER

IT IS ORDERED that:

1. Within six months after the effective date of this order Campton Heights Water Service (Utility) may sell and transfer to the City of Fortuna (City) the water system facilities set forth in their July 3, 1984 agreement annexed to and made a part of their application as Exhibit A.
2. Within 10 days of the actual transfer, Utility shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument of transfer shall be attached to the written notification.
3. Within 30 days of the actual transfer, Utility shall remit to the Commission the annual fee owing pursuant to P.U. Code § 431 et seq. ✓
4. Within 10 days of the actual transfer, Utility shall record the gains accruing over net book value from this sale and transfer, in an appropriate suspense account and retain them in that account until further Commission order.

5. Upon resolution of the gain on sale issue and the issuance of an appropriate order, pursuant to Ordering Paragraph 4 above, Utility will stand relieved of its public utility obligations in connection with water service in the area served by the transferred facilities.

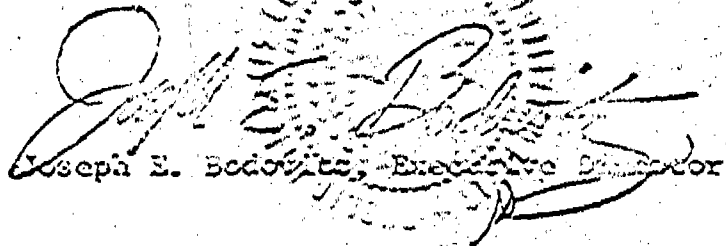
6. The application is granted as set forth above.

This order is effective today.

Dated DEC 19 1984, at San Francisco, California.

DONALD VIAL
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
FREDERICK R. DUDA
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bedowitz, Executive Director

WILLIAM G. FLECKLES
SUITE 206
320 TAMALPAIS DRIVE
CORTE MADERA, CALIFORNIA 94025TELEPHONE
(415) 924-5300

August 14, 1984

*File in A 84-07-046*Mr. Parke L. Boneysteele
Administrative Law Judge
California Public Utilities Commission
350 McAllister Street, Room 3075
San Francisco, CA 94102Re: Application No. 84-07-046
Campton Heights Water Service
My File No. 4565(b)

Dear Sir:

Per your recent request, I am forwarding Schedule A-3 for inclusion in the 1983 Annual Report of Campton Heights Water Service.

During our telephone conversation earlier this date, you remarked to me that statements have been attributed to some members of the Commission indicating reluctance to authorize transfer of a utility for a price greater than depreciated Book Cost. My response to you was that "Book Cost" is not fair value and no one can reasonably anticipate a negotiated sale of a utility for a price which the parties do not believe fairly reflects "fair value." In the pending Application, the utility owners have agreed to sell to the City on an installment basis--which enables the City to acquire the system on a "pay-as-you-go" basis and assures that the burden of the system acquisition will be cast on the actual users of the system throughout the installment term--which is in contrast to what would occur if the full purchase price had to be paid as a condition to transfer.

It strikes me that if the Commission should actually adopt a policy of refusing to authorize utility transfers unless the price represented depreciated Book Cost, the parties could legally avoid Commission participation by resorting to condemnation followed by a stipulated judgment which would essentially incorporate the terms of an agreement between the parties. In that regard, I call your attention to People vs City of Fresno (1967) 62 Cal. Rptr. '79, where the Commission attempted unsuccessfully to set aside a judgment of condemnation pursuant to which the City of Fresno acquired the water system of Bowen Land Company, Inc., a regulated public utility water company. The company had originally agreed to sell its entire water company to the City for a fixed price.

WILLIAM G. FLECKLES

Mr. Parke L. Boneysteele
Page 2
August 14, 1984

When the utility and the City jointly applied to the Commission for approval of the sale, the Commission attempted to attach conditions to the sale agreement prior to approving it. (One such condition was a promise by the City that it would not discriminate against customers of the water system who lived outside City limits). Rather than accept the conditions, the City brought an action in Superior Court to condemn the system alleging that fair value was the same amount the parties had originally agreed should be the purchase price. The utility answered admitting that fair value was the amount alleged by the City, and an unconditioned judgment of condemnation for that amount was entered. The PUC attempted to intervene in the suit asserting numerous policy arguments, all of which were turned aside by the Court. (I recall that the Commission argued it was an "indispensible party" to the condemnation action and thus should be heard in order to protect the utility's customers. The court found that argument totally non-persuasive, concluding that the Commission had no right to appear in the action either on its own behalf or on behalf of the utility's customers.)

Although Fresno/Bowen Land was a court condemnation, the City of Fortuna could petition the Public Utilities Commission under Section 1401 et seq. to fix "just compensation." In that regard, to the extent valuation is based upon the income theory (which in turn is premised on original cost), the Commission has often rejected such approach to "just compensation." See, for example City of Riverside (Application No. 49307, CPUC Decision No. 80913) (1973) where the Commission expressly declared that the income theory of value has "little or no relationship to present market value."

I hope that you will bring the foregoing considerations to the attention of the Commission when you have completed and submitted your proposed Decision for consideration by all Commissioners.

Incidentally, I know that the City Manager of the City of Fortuna is generally aware of the Bowen Land Company case and is prepared to recommend to the City Council that the City file formal condemnation proceedings against my client's water system if that is what it ultimately takes to assure that the City can acquire the system for the price and on the terms which are set forth in the Agreement for Sale and Purchase. (Your attention is called to Article VI, 3b, of that Agreement wherein, in contrast to the City of Fresno's reluctance to agree not to discriminate among customers, the City of Fortuna is willing to covenant that it will supply water to the CHWS customers "at reasonable and uniform rates and without discrimination as between such customers.")

WILLIAM G. FLECKLES

Mr. Parke L. Boneysteele
Page 3
August 14, 1984

All things considered, it would certainly appear that a negotiated agreement between a public agency such as the City and the owners of a public utility which reflect a true fair value should be encouraged by the Commission. That is because only such an agreement can (1) be drawn to protect the interests which are the special concerns of the Commission, and (2) provide for installment payments which will relieve the citizens of a public agency purchaser of heavy up-front cash burdens. In my opinion, the Agreement which has been submitted in connection with the above referenced Application will accomplish both those ends.

Yours very truly,


William G. Fleckles

WGF/lf

cc: Mr. Samuel L. Stone
Mr. Robert M. Davis
Mr. Ronald Kendall

(END OF APPENDIX A)

ALJ/ra

ORIGINAL

Decision 84 12 051

DEC 19 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application) of CAMPTON HEIGHTS WATER SERVICE,) a California public utility corpora-) tion, and the CITY OF FORTUNA, a) municipal corporation, for authority) for the utility to sell its CAMPTON) HEIGHTS WATER SERVICE to the CITY.)

Application 84-07-046
(Filed July 16, 1984)

INTERIM OPINION

Purpose of Application

By this application, Campton Heights Water Service (Utility) seeks the authority required by Public Utilities (PU) Code § 851 to sell its public utility water system to the City of Fortuna (City), Humbolt County.

Description of Applicants

Utility is a California corporation serving water in portions of the City of Fortuna and adjacent territory in Humbolt County. Utility presently provides water service to approximately 1,000 single family residential and 25 commercial and governmental customers. At the end of 1983, utility plant amounted to \$479,621 and accrued depreciation \$238,816, for net plant of \$240,805. Advances for construction totaled \$63,472, resulting in a net book cost of \$177,333.

City is located approximately 15 miles south of Eureka. It operates a municipal water system that serves approximately 2,000 customers and has been furnishing water service for approximately 25 years.

6. The gain in the sale price of \$215,036 over net book value should be held by Utility in a suspense account pending further order of the Commission in ongoing proceedings in A.83-04-37.

Conclusions of Law

1. A public hearing is not necessary.
2. The application should be granted as provided in the following order.

INTERIM ORDER

IT IS ORDERED that:

1. Within six months after the effective date of this order Campton Heights Water Service (Utility) may sell and transfer to the City of Fortuna (City) the water system facilities set forth in their July 3, 1984 agreement annexed to and made a part of their application as Exhibit A.
2. Within 10 days of the actual transfer, Utility shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument of transfer shall be attached to the written notification.
3. Within 30 days of the actual transfer, Utility shall remit to the Commission the annual fee owing pursuant to P.U. Code § 431 et seq.
4. Within 10 days of the actual transfer, Utility shall record the gains accruing over net book value from this sale and transfer, in an appropriate suspense account and retain them in that account until further Commission order.