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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 PARK WATER COMPANY (U 314 W) and the )  
 VANDENBERG VILLAGE COMMUNITY )  
 SERVICES DISTRICT for an order )  
 authorizing the transfer of Park's )  
 Vandenberg Water and Disposal )  
 Divisions. )

OCT 17 1988

Application 88-08-037  
 (Filed August 16, 1988)

OPINIONStatement of Facts

A California corporation, Park Water Company (Park) today owns and operates public utility systems under the jurisdiction of this Commission in Los Angeles, Ventura, and Santa Barbara Counties in California, and in the State of Montana. In Santa Barbara County, Park's Vandenberg Water and Disposal Divisions provide service in and around Vandenberg Village, a residential subdivision community approximately three miles north of the City of Lompoc.

Vandenberg Village Community Services District (District), organized and existing under and by virtue of the laws of the State of California (see provisions of the Community Services District Laws; Government Code §§ 61000, et seq.), was established in 1983 for the purpose of acquiring and operating Park's Vandenberg Water and Disposal Divisions. The District's jurisdiction is substantially coextensive with the authorized service territories of the Water and Disposal Divisions.

On July 2, 1984, District's Board of Directors passed a resolution of intention to acquire these Park Vandenberg divisions by eminent domain proceedings, and thereafter to this end the

District's voters authorized a \$4 million bond issue. On August 2, 1984, District filed a petition of the second class, Application 84-08-007, with this Commission pursuant to provisions of Public Utilities (PU) Code §§ 1401 et seq., asking this Commission to fix the just compensation to be paid. Following delays requested by the respective attorneys for both parties, the duly noticed public hearing was held before Administrative Law Judge (ALJ) John B. Weiss on September 12, 13, and 14, 1985.

On July 29, 1987, the Commission issued Decision (D.) 87-07-080 which determined that the just compensation to be paid by the District for the lands, property, and rights of Park's Vandenberg Water and Disposal Divisions, as of August 2, 1984, was \$3,985,755. Although District's original bond issue was then insufficient to cover the just compensation and necessary operating reserves, District nonetheless determined to proceed, and on June 28, 1988, District's voters authorized an additional \$1.4 million bond issue for this purpose.

On August 12, 1988, under shadow of a threat of eminent domain, and in order to avoid the further litigation associated with eminent domain and its attendant costs, Park and District entered into an agreement providing for the sale and transfer, subject to Commission approval, of Park's Vandenberg Water and Disposal Divisions to District. The agreed upon sale price would be the \$3,985,755 earlier determined to be just compensation applicable to an eminent domain taking. Accordingly, on August 16, 1988 Park and District joined in filing this application pursuant to PU Code §§ 851 et seq., seeking approval from the Commission for the proposed sale and transfer.

The agreement provides that Park will sell all the lands, properties, and rights comprising its two Vandenberg Divisions. Among the physical plant assets District will acquire are facilities built with \$248,000 of advances still subject to refund. Park will retain these main extension contracts and the refund

obligations connected with them. All customer deposits to guarantee payment of water and sewer bills will be refunded by Park, less any outstanding balances due. Maps of the respective Division service territories are contained in Park's tariff on file with the Commission. Ad valorem taxes will be prorated as of the date of conveyance. Upon acquisition District will thereafter provide the water and sewer services now supplied by Park and will provide for future needs. Concurrent with the sale and transfer Park seeks to be relieved of its public utility duties and obligations within the Vandenberg Village Districts.

Notice of the application appeared in the Commission's Daily Calendar of August 19, 1988. No protest has been received.

Discussion

No protest having been received, and considering continued strong local voter support for District acquisition of the systems, we will proceed ex parte in this proceeding. No competition is involved and no change in rates is being sought. A public hearing is unnecessary.

A community service district is an agent of the state specially formed for local performances of proprietary utility functions, including water and disposal services, within a local community area (Gov. Code §§ 61100 and 61600). Such a district may purchase or employ eminent domain to acquire real or personal property of every kind to accomplish these functions (Gov. Code § 61610), although just compensation must be made for any taking.

In the present situation the District has pursued its option to have this Commission determine the just compensation that would be applicable were the District to proceed in Superior Court to take by eminent domain. Against such a backdrop of potential eminent domain action, a utility and a district are often willing to negotiate a voluntary sale, thereby avoiding the necessity of a lengthy condemnation proceeding with its attendant legal expense. Such is the situation here.

While PU Code § 851 provides that no public utility other than a common carrier by railroad may sell the whole or any part of its system or property useful in the performance of its public utility service without first obtaining authorization to do so from this Commission, under present operation of law, where a community services district is to be the purchaser, the consideration is substantially different than instances where the sale is between private parties. In the common transfer proceedings between private parties, the function of the Commission is to prevent the impairment of the public service of a utility which could result from the transfer of utility property into the hands of parties incapable of performing an adequate service at reasonable rates or upon terms which would bring about the same undesirable result (Southern Cal. Mountain Water Co. (1912) 1 CRC 520). But such concerns are not the determinant where a community services district is involved. If the Commission were to impose terms not acceptable to a district, the proposed sale could be abandoned and the district could resort to its eminent domain alternative (See People ex rel. PUC v City of Fresno (1967) 254 CA 2d 76; petition for hearing denied by Supreme Court 11/22/67). Furthermore, after transfer and sale to a district, the customers transferred must continue to receive service and rates that are "fair, reasonable, just, and nondiscriminatory." (See Hansen v City of San Buenaventura (1985) 213 C Rptr. 859.) In the present proceeding the purchase price is one this Commission has determined to be just compensation (Vandenberg Village Community Services District (1987) D.87-07-080), and reflects an acceptable measure of market value. By their August 12, 1988 agreement the District will continue to provide the water and disposal services presently provided by Park. It is anticipated that all current employees will be retained by the district after the closing and will suffer no loss of benefits. All customer deposits held by Park will be refunded. There is no

reason to anticipate any significant adverse impact or environmental effect to result from district operation of the systems.

Water and sewer utilities subject to Commission jurisdiction were required by the Legislature beginning January 1, 1983 to impose user fees of 1-1/2 percent on customers' bills (see PU Code §§ 401 et seq., but particularly § 433). As Park has gross revenues exceeding \$750,000 annually, it is required to pay those fees to the Commission quarterly. With the end of Commission jurisdiction at the time of transfer, collection of these fees will no longer be required. But, for that portion of the quarter in which the transfer occurs, Park will be required to collect and remit these fees before Park can be relieved of its public utility responsibilities with respect to the Vandenberg Divisions.

Incidental to this transaction is the fact that the sale will result in a gain being realized by Park over original cost less depreciation of the system being transferred. Consistent with our decision in Campton Heights (1985) D.85-03-036, that a public utility selling and transferring an entire public utility system retains any gains realized over net book resulting from such a disposition, Park's shareholders will be entitled to this gain.

The parties request expeditious approval of the application in order that District may act by October 26, 1988 to retain the favorable rate at which it has arranged to issue its bonds. Accordingly, this order will be made effective immediately.

Findings of Fact

1. Park provides public utility services in various areas of California including water and sewer services at Vandenberg Village in Santa Barbara County.
2. District, a duly constituted community services district in Vandenberg Village, was organized by the voters of that area for the purpose of acquiring by eminent domain or otherwise Park's Water and Disposal Divisions at Vandenberg.

3. By D.87-07-080 District obtained from this Commission a finding that the just compensation to be paid Park for the lands, property, and rights of Park's Vandenberg Water and Disposal Divisions is \$3,985,755.

4. Rather than incur the additional litigation expense of an eminent domain proceeding over an acquisition, Park and District have determined upon a voluntary purchase and sale, albeit under threat of eminent domain, and to that end have made an agreement by which District will purchase the two systems.

5. The purchase price agreed upon by the parties is reasonable.

6. It can be seen with reasonable certainty that there is no possibility that the sale and transfer of these systems may have a significant effect on the environment.

7. As a public utility continuing after this sale and transfer to operate elsewhere in California with other public utility systems, Park remains responsible to the Commission for remittance of the Public Utilities Commission Reimbursement Fees collected up to the date of sale and transfer.

8. There is no known opposition to the sale and transfer proposed.

9. The purchase price includes a gain over original cost less depreciation of the entire water and disposal systems being sold and transferred.

10. In D.85-03-036 (Campton Heights) it was determined that since in "liquidation" proceedings where an entire utility system is sold and transferred, no ratepayers remain to the seller in that territory (the transferee having assumed all obligations to serve the seller's former customers together with ownership of the system) and seller's former customers are not separated from the system, no jeopardy to ratepayers' interests result from release to the seller of such gains above depreciated rate base in the sale

price. Such being the situation here, Park's shareholders are entitled to the gain on sale.

11. After consummation of the sale and transfer Park will provide no further public utility water or disposal services in the Vandenberg Village area; the District having assumed these duties and obligations.

12. Expeditionary approval of this proposed transaction is in the public interest in that District will then be able to act quickly so as to retain its favorable bond financing rate.

Conclusions of Law

1. A public hearing of this application is not necessary.
2. The application should be approved.
3. Upon completion of the sale and transfer, and remittance of pending Public Utilities Commission Reimbursement Fees collected to date of sale and transfer, Park should be relieved of its public utility water and disposal duties and obligations in the Vandenberg Village area.

ORDER

IT IS ORDERED that:

1. Within 6 months after the effective date of this order, Park Water Company (Park) may sell and transfer to the Vandenberg Village Community Services District (District) its Water and Disposal Divisions at Vandenberg Village in Santa Barbara County as set forth in their August 12, 1988 agreement annexed to and made a part of their application as Exhibit B.

2. Within 10 days of the actual transfer Park shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument affecting the sale and transfer shall be attached to the written notification.

3. Park shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected to the date of sale and transfer, along with its other fee remittances, at the next quarter following the date of sale and transfer.

4. Upon completion of the sale and transfer authorized herein, and remittance of the Public Utilities Commission Reimbursement Fees collected, Park shall stand relieved of its public utility duties and obligations in connection with water and disposal services in the Vandenberg Village area of Santa Barbara County.

This order is effective today.

Dated OCT 14 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
C. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

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

*Victor Weiss*  
Victor Weiss, Executive Director

*AB*