

Decision 89 04 004 APR 12 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint)
Application of DIA Holdings)
(Overseas) B.V., a Netherlands)
company, and Del Oro Water Co.,)
Inc., a California corporation,)
(U-61-W) for Authority to Transfer)
all of the Capital Stock of)
Stirling Bluffs Corporation, a)
California corporation, (U-62-W))
to Del Oro Water Co., Inc.)

ORIGINAL

Application 88-03-031
(Filed March 13, 1988)

William G. Fleckles, Attorney at Law, for
Stirling Bluffs Corporation, and Robert
S. Fortino, for Del Oro Water Company,
applicants.
Willard W. Connor, for Stirling Bluffs Rate
Payers, protestant.
Gordon C. Thomas, for himself, interested
party.
Jasjit S. Sekhon, for the Commission
Advisory and Compliance Division.

O P I N I O N

This is an application in which Del Oro Water Co., Inc. (Del Oro) seeks to acquire control of Stirling Bluffs Corporation (Stirling Bluffs) which is a public utility water corporation through the purchase of Stirling Bluffs' capital stock from DIA Holdings (Overseas) B.V. (DIA).

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in Stirling City on November 15, 1988. The proceeding was submitted subject to the filing of transcript, which was received on December 5, 1988.

Discussion

Stirling Bluffs and Del Oro operate public utility water systems in Butte County. Del Oro serves approximately 3400 service connections in and around the unincorporated area of Magalia. Stirling Bluffs serves approximately 165 service connections in Stirling City. The systems are about 10 miles apart. They are not connected.

Notice of the filing of the application was served on each Stirling Bluffs customer. The Commission received petitions signed by 78 persons who requested a public hearing because they were fearful that the proposed transfer of control might deprive them of historical water rights. The Commission Advisory and Compliance Division Water Utility Branch (Water Branch) also indicated it had some concerns about the transaction. The presiding ALJ calendared the matter for hearing.

In the course of the hearing, witnesses for Del Oro testified that any proposed sale or use of Stirling Bluffs' water for other than use in Stirling City would only occur if Stirling City's water needs were met and the water was surplus. Del Oro also stipulated that the transaction could be conditioned on certain requirements set forth by the Water Branch.

No other points require discussion. The Commission makes the following findings and conclusions.

Comments

The ALJ filed his proposed decision in this proceeding on March 6, 1989. The Water Branch filed comments which relate to an alleged ambiguity in an ordering paragraph based on the stipulation between it and Del Oro. Additional language was proposed. Del Oro has notified the Commission that it does not object to the additional language. It will be included in the ordering paragraph.

Findings of Fact

1. Stirling Bluffs is a water corporation as defined in Public Utilities Code § 241 subject to the jurisdiction of the Commission. It serves approximately 165 service connections in Stirling City.

2. DIA is a Netherlands corporation qualified to do business in California. In Decision (D.) 87-12-062 in Application (A.) 87-12-072, dated December 27, 1987, the Commission authorized DIA to acquire control of Stirling Bluffs through the acquisition of all of its capital stock.

3. Del Oro is a water corporation as defined in Public Utilities Code § 451 subject to the jurisdiction of the Commission. It serves approximately 3400 service connections in and around the unincorporated area of Magalia.

4. On February 11, 1988, Del Oro and DIA entered into an agreement, subject to the approval of the Commission, under which DIA would sell all of the outstanding shares of Stirling Bluffs' capital stock to Del Oro for \$185,000, which was to be evidenced by a promissory note. Portions of the agreement provide as follows:

"1.2 . . . The Note shall be credited with all sums reasonably incurred by Corporation to obtain the consent of PG&E to effectively divert the Surplus Water (as defined in the Note) to other than Stirling City water users."

* * *

"9.1 Corporation [Stirling Bluffs] shall continue to honor all extant customer credit deposits after Closing.

"9.2 Corporation [Stirling Bluffs] shall continue to supply water to the best of its abilities to its customers as of the Closing date, shall otherwise comply with conditions pertaining to the service of water set forth in any order of the Commission, and shall supply water subject to reasonable and uniform rates, rules and regulations to additional connections within the service area of Corporation after such connections are legally made."

5. Stirling Bluffs has had an agreement with Pacific Gas and Electric Company (PG&E) under which PG&E would provide Stirling Bluffs with 365 acre-feet of water per year at a specified diversion point. On August 30, 1988, PG&E entered into a "Consent to Assignment" with Stirling Bluffs and Del Oro which provided for the continuation of the delivery of water if this application is approved and the establishing of a second diversion point. The "Consent to Assignment" provides in part that:

"..., provided, however, that no amount of water may be diverted and/or delivered at the point described in Recital 10 if such water is required to meet the needs of customers desiring and/or receiving water service within STIRLING's Service Area."

6. On March 25, 1988, Stirling Bluffs and Del Oro entered into an operation contract under which Del Oro has been conducting the maintenance, repair, daily operations and customer billing for Stirling Bluffs.

7. As of December 31, 1987, Del Oro had total fixed assets of \$1,995,264.

8. Del Oro has the ability, including financial ability, to acquire control of Stirling Bluffs and continue its operations.

9. The proposed transfer of control of Stirling Bluffs from DIA to Del Oro is not adverse to the public interest.

10. It is reasonable to include in the ensuing order a provision, stipulated to by the parties, that Stirling Bluffs shall retain and not transfer any of the 365 acre-feet of annual water rights which it has from PG&E unless it is authorized to do so by the Commission.

11. It is reasonable to include in the ensuing order a provision, stipulated to by the parties, that the rate treatment in D.88-05-026 of the \$375,000 paid to Stirling Bluffs by PG&E for the sale of water rights is final and not subject to future reconsideration.

12. It is reasonable to include in the ensuing order a provision, stipulated to by the parties, that there should be recorded easements or recorded transfers of title of the land used as sites for Stirling Bluffs' plant, transmission and distribution lines. A copy of the recorded easements or recorded transfers of title to the utility should be filed with the Commission.

13. The parties stipulated that the authority requested herein should not become effective until Stirling Bluffs filed its 1987 annual report. Official notice is taken that the 1987 annual report was filed with the Commission on November 29, 1988.

14. The issuance of a promissory note by Del Oro, a public utility, to DIA as a part of the acquisition transaction requires a certificate by the Commission, pursuant to PU Code § 816 et seq. and the payment of fees pursuant to PU Code § 1904(b).

15. The proposed security issue is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.

16. Because the public interest would best be served by having the sale and transfer take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. The application should be granted with conditions.
2. Del Oro should be authorized to issue a promissory note for \$185,000.

This authorization is not a finding of the value of the rights and properties to be transferred.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, Del Oro Water Co., Inc. (Del Oro) may acquire control of Stirling Bluffs Corporation (Stirling Bluffs) by the purchase of all of Stirling Bluffs' outstanding capital stock from DIA Holdings (Overseas) B.V. (DIA) in accordance with the terms of the application, subject to the following express conditions:

- a. Stirling Bluffs shall retain and not transfer any of the 365 acre-feet of annual water rights to which it is entitled from Pacific Gas and Electric Company (PG&E) unless it is authorized to do so by the Commission.
- b. The treatment for rate making purposes in D.88-05-026 of the \$375,000 paid to Stirling Bluffs by PG&E for the sale of water rights is final and not subject to future reconsideration. The right granted by that decision to establish the book value of the original water rights is hereby extinguished.
- c. Stirling Bluffs and any other necessary party shall cause to be recorded easements or the transfers of title to land for all of the easements and land used for Stirling Bluffs' plant, transmission and distribution lines. A copy of the recorded easements and/or transfers of title shall be filed with the Commission's Water Utilities Branch.

2. Within 30 days after the transfer of capital stock hereby authorized, Del Oro shall notify the Commission in writing of that fact.

3. The authority granted by this order shall expire on December 31, 1989, if it has not been exercised by that date.

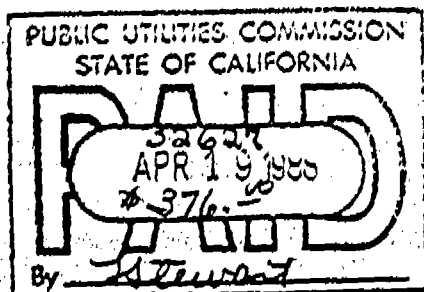
4. The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer pays \$376 set by PU Code § 1904(b).

In all other respects this order is effective today.

Dated APR 12 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda
being necessarily absent, did
not participate.



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

Victor Weisser
Victor Weisser, Executive Director

Decision PROPOSED DECISION OF ALJ JARVIS (Mailed 3/6/89)

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Dated _____, at San Francisco, California.