

Decision 89 07 027

JUL 6 1989

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DUNSMUIR WATER CORPORATION and the)
 CITY OF DUNSMUIR for authorization)
 for the CITY of Dunsmuir to acquire)
 all of the common stock of DUNSMUIR)
 WATER CORPORATION.)

Application 89-03-018
 (Filed March 14, 1989)

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OPINION

This is an application in which the City of Dunsmuir (Dunsmuir) seeks authority to acquire the Dunsmuir Water Corporation (Water Corporation) by purchasing all of Water Corporation's capital stock from Willis and Claudia Thompson (Thompsons) and to convey back to the Thompsons the Fort Jones portion of the system (Fort Jones System) until it can be sold to the City of Fort Jones.

The Commission makes the following findings and conclusion.

Findings of Fact

1. Water Corporation operates a public utility water system in Siskiyou County. The Thompsons were authorized to acquire the capital stock of Water Corporation in Decision (D.) 89958, dated February 14, 1979. Water Corporation provides water service to about 1,100 residential and commercial customers in and near Dunsmuir and to about 300 residential and commercial customers in the City of Fort Jones. Fort Jones is about 55 miles northwest of Dunsmuir.

The Dunsmuir portion of Water Corporation's system obtains all of its water from Mossbrae Springs. Water from these springs flows by gravity to a 500,000 gallon storage tank located above and west of the service area. No water treatment is necessary. A pump station is located at the north end of town. It

was recently improved and enlarged at a new location to accommodate a new subdivision and to enable Water Corporation to provide adequate pressure to existing customers in this area during periods of heavy customer use. Water is delivered to residential and commercial customers and 115 fire hydrants through 96,714 feet of water mains varying downward from a maximum of 18 inches in diameter. All except 24 customers are supplied with metered service.

A rented business office is located in Dunsmuir. Transportation equipment is presently provided by the Thompsons for Water Corporation and it is not included in the proposed sale. A very old truck, many tools and a shop and storage building are also being retained by the Thompsons.

2. Dunsmuir is an incorporated city.

3. On February 13, 1989, the parties entered into an agreement and addendums, attached to the application as Exhibit 1, in which Dunsmuir agreed to pay the Thompsons \$863,500 for the outstanding capital stock of Water Corporation. The agreement also provides that Dunsmuir will convey to the Thompsons the Fort Jones water system, a warehouse and other items of personal property. The Thompsons propose to operate the Fort Jones System as a partnership until it can be sold to the City of Fort Jones. The Fort Jones System and the warehouse have considerable market value.

4. In D.89-02-018, the Commission adopted \$298,910 as the depreciated original cost rate base for the year 1988 for the Dunsmuir portion of Water Company's system which included the warehouse.

5. Water Corporation collects a 2.0% surcharge on all water charges in Dunsmuir. These charges are paid to Dunsmuir monthly as a condition for providing water service in the city. As a successor-in-interest to the water system, Dunsmuir will not need a franchise to serve water to its own area.

6. In D.89-02-018 the Commission eliminated a \$3.60 monthly surcharge which was being paid by most of the Water Company's Dunsmuir customers. However, the general meter and flat rates were increased by 21.2%. For customers using ten units (Ccf) of water monthly, this resulted in a reduction of \$1.55 per month. Since Dunsmuir will be acquiring a water system that needs extensive main replacements, the City Manager has indicated that Dunsmuir intends to charge water customers the rate previously authorized by the Commission, including the 2.0% surcharge presently collected from residents in the city and a similar charge to customers located beyond the city limits. Thus, customers inside the city and customers outside the city would be paying the same rates.

7. In D.85-12-013 the Commission authorized Water Corporation to borrow \$588,130 from the Department of Water Resources (DWR) and to file surcharge rates to pay the principal and interest on this loan. This surcharge revenue totaled almost \$150,000 in February of 1989, when the Commission by D.89-02-018 ordered that this surcharge be discontinued. Improvements made by Water Corporation did not qualify for inclusion in the DWR loan. The surcharge funds are being held in a trust fund earning interest until further order of the Commission.

Section 10.3 of the agreement between the parties provides that:

"Dunsmuir Water Corporation has collected and [sic] funds arising from surcharges authorized by the Public Utilities Commission now held in a trust account for use and disposition only as permitted by later direction of the Public Utilities Commission. Upon the purchase of the Dunsmuir Water Corporation as provided herein, Buyer will succeed to all rights and obligations of Dunsmuir Water Corporation and Seller in respect to the surcharge funds; and Buyer hereby covenants to save, defend, and hold Seller harmless with respect to all duties, obligations, and liabilities in relation to those funds, including but not

limited to any tax liability arising therefrom or in connection therewith."

8. Water Corporation has a \$202,000 main extension advance of which the repayment period commenced running on March 5, 1981. The parties have agreed that Water Corporation will refund the portion of the advance due as of the date of transfer and Dunsmuir will refund any advances due thereafter. The \$202,000 advance is the only advance remaining on the books of the utility. Refunds are calculated under the old 22% of revenue rule. Since there are less than five customers in the subdivision involved nine years after the agreement was prepared, the liability for refunds in the future is small. Dunsmuir will assume the responsibility for existing customer deposits.

9. The application states that on January 5, 1989, Water Corporation paid \$3,778.22 to the Commission for the 1988 1.5% PUC fee applicable to all water sales. Water Corporation or the Thompsons will transmit this fee to the Commission for the period of time in 1989 that either of them own and operate the Dunsmuir or Fort Jones Systems.

10. On April 14, 1989, Water Corporation mailed a notice of the filing of the application to each of its customers. One customer, who resides outside the city limits of Dunsmuir protested on the ground that Dunsmuir would have control of his water rates and could charge him more than city residents. The Commission Advisory and Compliance Division's Water Utilities Branch (Water Branch) indicated that it opposed that portion of the application which would permit Dunsmuir to retain the approximately \$150,000 of DWR loan surcharge revenue which Water Corporation holds in a trust fund. Water Branch took the position that the monies in the trust should be returned to the customers.

11. On June 6, 1989, the Commission received a letter from Dunsmuir, which is designated Exhibit 1. The letter states in part that:

"Since the Commission's Evaluation and Compliance Division is recommending that the SDWBA trust fund money be returned and would take that position if a hearing were to be held, we have no further objection to a decision ordering that all money and interest thereon be refunded to the customers."

* * *

"Section X of the application contains a statement regarding the rates for water service. At the present time customers inside the city pay 2.0% more for water service than customers located outside of the city. The city plans to charge all existing customers both inside and outside of the city the same rates, as stated in the application. Because the rates the city would charge will no longer contain a franchise fee, a customer outside of the city may see this as an increase, but such a customer will not pay more than customers within the city."

12. If Dunsmuir acquires Water Corporation, its actions with respect to rates and other matters would be subject to review by the Superior Court. (Fellows v City of Los Angeles (1907) 151 Cal. 52; Rutherford v Oroville-Wyandotte Irr. Dist. (1923) 218 Cal. 242; Henderson v Oroville-Wyandotte Irr. Dist. (1920) 207 Cal. 215; Durant v City of Beverly Hills (1940) 39 Cal. App. 2d 133.)

13. The Commission has held that without special circumstances a mere preference between two adequate modes of protecting customers' rights is entitled to little weight. (California Pacific Utilities Co. (1964) 63 CPUC 439, 444.) This holding is applicable to the facts presented in this record.

14. It is reasonable to require that as a condition of transfer Dunsmuir shall not discriminate between customers residing within and without its city limits.

15. It is reasonable to require as a condition of transfer that Water Corporation should refund to its Dunsmuir system

customers on a prorata basis the monies held in the DWR loan trust fund.

16. A public hearing is not necessary in this matter.

17. Dunsmuir has the ability, including financial ability, to acquire the Dunsmuir system owned by Water Corporation and continue to serve its customers.

18. The proposed transfer of Water Corporation's Dunsmuir water system to Dunsmuir is not adverse to the public interest.

19. Upon acquiring the capital stock of Water Corporation, Dunsmuir should be authorized to transfer the Fort Jones water system and other assets described in the application to the Thompsons.

20. The Thompsons have the ability, including financial ability, to acquire and continue the operations of the Fort Jones water system.

21. Public convenience and necessity require that the Thompsons be authorized to acquire and operate the Fort Jones water system.

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

Conclusions of Law

1. Since the ensuing order provides for equal treatment of all water system customers and for a prorata refund of the DWR loan trust fund monies a public hearing is not required in this matter.

2. The proposed transfer should be authorized on the express condition that Dunsmuir shall not discriminate among its customers who reside within and without its corporate limits.

3. The proposed transfer should be authorized on the express condition that all monies held by Water Corporation in the DWR loan trust fund be refunded to its Dunsmuir system customers on a prorata basis.

4. The proposed transfer should be authorized on the express condition that all fees due the Commission pursuant to Public Utilities (PU) Code § 431 be paid to the date of transfer.

5. The Thompsons should be authorized to acquire and operate the Fort Jones water system.

6. The application should be granted as hereafter provided.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order Willis and Claudia Thompson (Thompsons) are authorized to sell all of the outstanding shares of the capital stock of Dunsmuir Water Corporation (Water Corporation) to the City of Dunsmuir (Dunsmuir) in accordance with the terms of the application, except as herein modified.

2. Upon acquiring the capital stock provided for in Ordering Paragraph 1, Dunsmuir is authorized to transfer to the Thompsons all of the assets of the Fort Jones water system owned by Water Corporation and other assets described in the application.

3. The authority granted in Ordering Paragraph 1 is granted on the following express conditions:

- a. Dunsmuir shall apply the same rates, rules, and conditions to customers outside of its municipal boundaries as it applies to customers inside the boundaries, except as necessary to offset any tax or assessment on customers inside the boundaries which benefits other customers.
- b. Water Corporation shall refund to its Dunsmuir system customers on a prorata basis all monies, including accrued interest, held in its DWR loan trust account.
- c. Dunsmuir shall assume any liability for refunds of main extension advances.

- d. All customer deposits held by Water Corporation shall be refunded with appropriate interest in cash in accordance with the provisions of its tariff, either (1) prior to the transfer to or (2) by Dunsmuir as each refund would, have become due under the terms of Water Corporation's tariff.
- e. Before the transfer becomes effective Water Corporation shall pay to the Commission all fees due under PU Code § 431 to the date of transfer.

4. Within 30 days of the sale and transfer of the assets of Water Corporation to Dunsmuir, Dunsmuir shall notify the Commission in writing of that fact and within such period shall file with the Commission a true copy of each instrument by which such transaction has been accomplished including an inventory of assets transferred.

5. On or after the effective date of this order, Willis Thompson and Claudia Thompson, partners, may acquire the Fort Jones System and other assets as provided in Ordering Paragraph 2.

6. As a condition of this grant of authority, the Thompsons shall assume the public utility obligations of Water Corporation's Fort Jones System, shall assume liability for refunds of all existing customer deposits, and shall notify the affected customers.

7. Within 10 days after transfer the Thompsons shall write the Commission, stating the date of transfer and the date the requirements of Ordering Paragraphs 2 and 5 were completed.

8. The Thompsons shall either file a statement adopting Water Corporation's Fort Jones System tariffs or refile those tariffs under their own name as prescribed in General Order Series 96. Rates shall not be increased unless authorized by this Commission.

9. Before the transfer occurs, Water Corporation shall deliver to Dunsmuir and Dunsmuir shall deliver to the Thompsons,

and they shall keep, all records of the construction and operation of the water system.

10. Within 90 days after actual transfer the Thompsons shall file in proper form, an annual report on Water Corporation's operations of the Fort Jones System from the first day of the current year through date of transfer.

11. The corporate identification number U-3-W of Water Corporation is revoked. The corporate identification number assigned to the Thompsons is U-414-W which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

12. Upon compliance with all of the conditions of this order, including the payment of all fees due under PU Code § 431 to the date of transfer, Water Corporation shall stand relieved of its public utility obligations and may discontinue service concurrent with the commencement of service by Dunsmuir and the Thompsons as contemplated in the agreement between the parties.

13. The authority granted in Ordering Paragraphs 1, 2, and 5 shall expire on June 30, 1990 if it has not been exercised by that date.

This order is effective today.

Dated JUL 6 1989, at San Francisco, California.

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

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


Victor Weiss, Executive Director