

ORIGINAL

Decision 90 01 032 JAN 24 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Crystal Falls Water Company, a corporation, to sell and Tuolumne Regional Water District to buy water system in Tuolumne County. (U 178 W)

Application 89-04-057 (Filed April 26, 1989; amended September 29, 1989)

Neil Burckart, for Crystal Falls Water Company; and Daniel Gallery, Attorney at Law, for Tuolumne Regional Water District; applicants. Dominic Salluce, for himself, protestant.

O P I N I O N

This is an application in which Crystal Falls Water Company (Crystal Falls) seeks authority to sell its public utility water system to Tuolumne Regional Water District (District).

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in Sonora on September 21, 1989. The matter was submitted on October 2, 1989, to afford Crystal Falls the opportunity to file an amendment to the application which was timely filed.

Background

The Commission received several protests to the application after notice of its filing was served on Crystal Falls' customers. Two of the protests were withdrawn prior to the hearing. One protestant, Dominic Salluce (Salluce), filed an appearance and presented testimony. Salluce's opposition is based on two contentions: (1) The price being paid by District is too high, and (2) District failed to provide factual information about the transaction to its electorate. One member of the public, Paul Terrazas (Terrazas), gave a sworn statement in opposition to the application. Terrazas contends that District has not established

that the proposed acquisition would be of any benefit to its existing customers.

Crystal Falls and District presented evidence in support of the application.

Material Issue

The material issue presented in this proceeding is: Should District be authorized to acquire Crystal Falls?

Discussion

a. Purchase Price

On March 28, 1989, Crystal Falls and District entered into an agreement in which District agreed to purchase Crystal Falls for \$1,382,000. Salluce does not oppose the concept of the acquisition of Crystal Falls by District. He contends that the proposed transaction is unreasonable because District is paying too much money for the acquisition.

In 1988, District hired the firm of Brown and Caldwell to prepare a valuation report on Crystal Falls. Brown and Caldwell prepared the report using the following measures of valuation: Original cost less depreciated utility plant; original cost less depreciated rate base; cash flow value, both actual and projected; reproduction costs new less depreciation; utility plant and comparable sales. The values in the report ranged from \$141,000 under the original cost less depreciated rate base method to \$2,800,000 under the reproduction cost new less depreciation method.

Salluce, using the lower figures in the Brown and Caldwell report, argues that District is paying too much money for Crystal Falls. The chief economist for Brown and Caldwell, who qualified as an expert witness on valuation, testified that the purchase price was fair and reasonable.

Where permission is sought to sell a public utility water system, the Commission's consideration of purchase price does not focus on whether the seller or buyer has made a good or bad deal,

but on whether the price will affect the buyer's ability to conduct and continue the public utility operation.

"It is a well settled principle of public utility law that one element to be considered in determining whether operating rights should be granted, transferred or subject to different control is the ability, including financial ability, to conduct or continue the public utility operation. (Certificates: Org Electric Corp. (1912) 1 CRC 253, 257, 267; Our Town Water Co. (1972) 73 CPUC 417; Wells Water Co. (1968) 68 CPUC 713; Dyke Water Co. (1957) 56 CPUC 109, 113; Peninsula Motor Express (1955) 54 CPUC 3; C. D. Gulick (1925) 26 CRC 312; Marin County Electric Railway (1914) 4 CRC 503, 507. Transfers: Southern California Mountain Water Co. (1912) 1 CRC 520; Cable & Wireless Communications, Inc. (1989) Decision (D.) 89-06-025 in A.89-02-044, Finding 7; Raymond L. Smith (1986) D.86-12-051 in A.86-08-041, Finding 16; ATL, Inc. (1958) 56 CPUC 269; La Frenz (1966) 65 CPUC 368; Walnut Creek Water Co. (1926) 28 CRC 686, 688.)" (Santa Barbara Cellular, Inc. D.89-09-092 in A.89-04-059, dated September 27, 1989, at p. 3.)

The record indicates that District has assets of more than \$35,000,000. It has a reserve of \$7,072,182 for capital improvements. The purchase price for acquiring Crystal Falls would come out of this reserve. District also has a reserve of \$657,526 for debt service.

The record also shows that if District acquires Crystal Falls no present customer of District would have his or her rates increased. Crystal Falls' customers would pay a lesser amount under District's rates.

It is clear from the foregoing that if the proposed transaction is authorized, District will have the ability, including financial ability, to continue water service to the customers of Crystal Falls without impairing its ability to serve present customers. Whether District struck a good or bad bargain

in the amount to be paid for the purchase of Crystal Falls is a political question between its Board of Directors and electorate. There is no compelling evidence in this record upon which the Commission should intrude on the District's power to purchase Crystal Falls at an amount its Board of Directors deems reasonable.

b. Failure to Provide Information

Salluce contends that District failed to provide factual information to its electorate about the transaction here under consideration. In response to a question by the ALJ, Salluce indicated he could not prove that District did anything illegal with respect to the transaction.

"ALJ JARVIS: You're talking about honest disclosure. You're here testifying. You have the opportunity to have witnesses. I can issue subpoenas. Now, if you have evidence, I will hear it. If you are conjecturing, that is inadmissible.

"I just want the record to be clear whether you have any specific evidence and can point to any actions under the government code under which this district would operate that there is something illegal in the transaction that I could consider in what they did?

"THE WITNESS [Salluce]: I have no proof that that was in fact -- I have no proof that that happened."

Again to what extent and in what manner District should have publicized the transaction is a political one between District's Board of Directors and its electorate. Since District acted in accordance with the law there is no reason for the Commission to scrutinize the actions of District's Board of Directors.

c. Benefits to Existing Customers

Terrazas contends that District has not established that the proposed transaction will benefit District's present customers. There is no merit in this contention.

As indicated, present customers will continue to pay existing rates. The record indicates that Crystal Falls is strategically located with respect to service areas presently operated by District. Acquisition of Crystal Falls will permit District to incorporate the system with District's other service areas. Contemplated cross-connections and extensions with the Crystal Falls' system will provide higher flows and pressures in parts of District's other service areas, will help reduce costs, and will promote efficiency in the operation of water service in the area.

Assuming, arguendo, that a criterion for transfer is benefit to District's existing customers, that criterion has been met under the facts established in the record.

Comments

The ALJ filed his proposed decision on December 20, 1989 and it was mailed to the parties on that date. Salluce filed comments to the proposed decision on January 8, 1990. District timely filed a reply to the comments on January 16, 1990. (January 14th was a Sunday and January 15th was a legal holiday.) District's reply supports the proposed decision.

Salluce's comments merely reargue matters correctly decided adversely to his position in the proposed decision. No factual, legal, or technical error is set forth. The proposed decision of the ALJ is adopted.

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

Findings of Fact

1. Crystal Falls is a public utility water corporation as defined in Public Utilities (PU) Code § 241. It was granted a certificate of public convenience and necessity in D.72987 in A.49236, dated August 29, 1967.

2. Crystal Falls serves approximately 1,400 customers in Tuolumne County near Sonora. Its water system consists generally

of 13 parcels of land, 3 public utility easements, 7 wells, the right to 55 miner's inch days of water from Tuolumne County Water System, 8 pumps, 2 water treatment plants, 14 tanks and reservoirs with a total storage capacity of 2,237,000 gallons, 139,970 feet of water mains, 1,400 meters, and approximately 125 fire hydrants.

3. District is a public agency organized under the laws of California. It operates water and sewer systems in various parts of Tuolumne County. As of June 30, 1988, it had assets of \$35,674,763. Included in the assets is a reserve of \$7,072,182 for capital improvements. There is also a reserve of \$657,526 for debt service.

4. On April 18, 1989 Crystal Falls and District entered into an agreement under which District agreed to purchase Crystal Falls for \$1,382,000. The agreement also provides that District will assume the following obligations of Crystal Falls:

a. Crystal Falls Safe Drinking Water Loan Contracts with State Department of Water Resources, as follows:

- (1) Contract No. E51024, dated August 3, 1981, in the original principal amount of \$741,394, with a repayment period of 35 years, and interest at 6.5%, payable in semi-annual installments of approximately \$26,970 each. The balance due as of January 1, 1989 was \$704,099.67.
- (2) Contract No. E51058, dated June 30, 1986, in the original principal amount of \$43,826, with a repayment period of 30 years, and interest at 8.5%, payable in semi-annual installments of approximately \$2,029.69 each. The balance due as of January 1, 1989 was \$43,114.40.

b. Main Extension Contracts of Crystal Falls.

- (1) Contract with Robert E. Cowden, Jr., effective August 1, 1980, for a refundable advance of \$14,888 to

extend service to 20 customers, refundable to Cowden in payments of 22% of revenues therefrom per annum for 20 years, commencing on the date of the first refund payment, under which a balance of \$12,589 remained as of August 16, 1988.

- (2) Contract with Ken Kirkpatrick, effective December 1, 1981, for a refundable advance of \$30,590.34 for the extension of service to nine customers in Oakhaven Pines, refundable to Kirkpatrick in payments of 22% per annum of revenues therefrom for 20 years commencing on the date of the first refund payment, under which a balance of \$24,635.53 remained as of August 16, 1988.

c. Other Contractual Obligations of Crystal Falls.

- (1) June 2, 1982 agreement for purchase of water system in Mono Vista from Mono Vista Water Company for the sum of \$34,151.89, payable from 22% of the water system revenue for 20 years, and the balance thereafter in five annual installments. A balance of \$22,181.38 remained on the purchase price as of January 1, 1989.
- (2) June 15, 1983 promissory note to Ray A. Perry for purchase of Oak Garden Water System with payments of \$150 per month, interest free. The balance remaining as of August 16, 1988 was \$3,176.45.
- (3) February 26, 1988 promissory note of \$60,000 to Harvey Beauchamp, Jr. for purchase of his five miner's inches water contract with the county, with interest at 8.998% per annum, payable at \$1,000 per month. The balance remaining as of January 1, 1989 was \$51,250.

- (4) January 19, 1988 promissory note to El Capitan National Bank for purchase of 1988 Ford F350 4x4, original principal amount of \$16,590.20 with interest at 11.38% with monthly payments of \$431.84. The unpaid balance as of January 1, 1989 was \$11,927.68.

5. District wants to unify selected water systems within the county to provide a consistent, potable water supply at a reasonable cost to Tuolumne County water users. Crystal Falls' service area is situated in a strategic location inside District's service area. District desires to acquire Crystal Falls because it would be a large step forward in helping District meet its goal. District's desire to acquire Crystal Falls is based on its goal of providing the best available service to the public at the lowest cost. Acquisition of Crystal Falls will enable District to incorporate that system with District's other service areas. Contemplated cross-connections and extensions with the Crystal Falls' system will provide higher flows and pressures in parts of District's other service areas, will help reduce costs, and will promote efficiency in the operation of water service in the area. District has full-time management and maintenance staffs capable of operating Crystal Falls. All of District's customers will pay the same rates. Crystal Falls' customers will receive a decrease in rates, as a result of the proposed acquisition. District's present customers will continue to pay the rates they are now paying.

6. District has the resources and experience to acquire and adequately operate Crystal Falls' water system as part of District's water system.

7. Crystal Falls is not holding any deposits from customers and none is anticipated.

8. PU Code § 431 directs the Commission to fix an annual fee to be paid to the Commission by each regulated water system and that fee for 1989 has been set at 1.5% of all water revenues collected by each water utility for the year. It is reasonable to

require the payment of such fees as may be owing as a condition of transfer.

9. The proposed transfer of Crystal Falls' water system to District is not adverse to the public interest.

10. 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.

Conclusion of Law

The application should be granted.

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

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order Crystal Falls Water Company (Crystal Falls), a corporation, may sell and transfer the assets of its public utility water system to Tuolumne Regional Water District (District) in accordance with the terms of the application.

2. Within 30 days of the sale and transfer hereby authorized, Crystal Falls shall notify the Commission in writing of that fact.

3. Within 30 days of the sale and transfer of the assets of Crystal Falls to District, District 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.

4. The foregoing authority is conditioned upon District's assuming liability for all refunds under main extension agreements between Crystal Falls and others existing on the date District acquires the assets of Crystal Falls. District shall provide the

Commission with satisfactory proof of such assumptions within 30 days of the acquisition.

5. Upon compliance with all of the conditions of this order, including the payment of the fee provided in PU Code § 411 for year 1989, and such other period as may occur until the sale and transfer are consummated, Crystal Falls shall stand relieved of its public utility obligations and may discontinue service concurrent with the commencement of service by District as contemplated in the agreement between the parties.

6. The authority granted in Ordering Paragraph 1 shall expire on December 31, 1990 if it has not been exercised by that date.

This order is effective today.

Dated JAN 24 1990, 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.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

WB