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Decision 90-11-047 November 21, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CALIFORNIA WATER SERVICE COMPANY, a)
corporation, for an order author-)
izing (1) the sale and transfer to)
the City of Daly City of public)
utility property of Applicant in the)
City of Daly City, and (2) the)
discontinuation of service by)
Applicant in certain territory in)
the City of Daly City.)

OP

Application 83-03-82
(Filed March 30, 1983)

In the Matter of the Application of)
COUNTY WATER COMPANY, INC., a Public)
Utility, and the CITY OF PARAMOUNT,)
for authority to sell its system to)
the City of Paramount and for)
authority to cease operation in said)
area and to be relieved of its)
public utility operation in said)
area.)

Application 84-08-112
(Filed August 30, 1984)

In the Matter of the Application of)
SAN JOSE WATER COMPANY (U 168 W), a)
corporation, for an order author-)
izing (1) the sale and transfer to)
the City of Santa Clara of public)
utility property of Applicant in the)
City of Santa Clara, and (2) the)
discontinuance of service by)
Applicant in certain territory in)
the City of Santa Clara.)

Application 85-05-013
(Filed May 3, 1985)

FINAL OPINION

Statement of Facts

By an interim decision in each captioned case,
(D.) 84-07-105 in Application (A.) 83-03-082, D.84-11-095 in
A.84-08-112, and D.85-06-128 in A.85-05-013, the Commission
authorized California Water Service Company (Cal Water), County

Water Company, Inc. (County Water), and San Jose Water Company (SJWC), respectively, to sell part or all of each's water system serving within each governmental entity's municipal area. Each decision relieved that utility of further public utility obligations in connection with the respective service area being transferred.

The interim decision in each of the captioned proceedings, while authorizing the requested sale and transfer, further provided that the utility record the gain accruing from each transaction in a suspense account pending further order from the Commission. There were no protests to these applications.

Order Instituting Investigation 88-11-041 was opened specifically "to reconsider the rule of D.85-11-018 (City of Redding), regarding the ratemaking treatment of gains realized in certain sales of utility property to a municipality or other public entity." By D.89-07-016 in that proceeding the Commission changed the City of Redding rule, and unanimously determined the disposition of the gain or loss from a sale of utility property in cases which meet all of the following criteria: (1) the sale is to a municipality or other public or governmental entity such as a special utility district; (2) the sale involves all or part of the utility's distribution system located within a geographically defined area; (3) the components of the system are or have been included in the utility's rate base; and (4) the sale of the system is concurrent with the utility's being relieved of and the municipality or other agency assuming the public utility's obligations to the customers within the area served by the system. The holding of D.89-07-016 is that if ratepayers did not directly contribute capital to the system sold; and if there are no adverse impacts on the remaining ratepayers, the gain or loss is to accrue to utility shareholders.

By D.89-12-053 on December 18, 1989, the Commission granted a rehearing in respect to the disposition of gain issue

determined in A.83-05-004 consistent with the policies adopted in D.89-07-016. By D.89-12-053, the assigned Administrative Law Judge (ALJ) was directed, with regard not only to disposition of the gain in A.83-05-004, but also with regard to gain or loss dispositions which had been deferred in other cases, to require the utility to make a showing whether:

1. The ratepayers contributed any capital to the system sold.
2. There were any adverse effects on the utility's remaining ratepayers which were not fully mitigated.

If a material issue of fact arose, the matter was to be set for hearing. To the extent practical, cases were to be consolidated in the interest of administrative economy.

The present three proceedings are concerned with some of these pending gain/loss final disposition matters. In each of the three captioned proceedings, the applications reveal that as to each of the transactions the utility involved realized a capital gain, lost the facilities involved in the respective sale and transfer from rate base, lost some minor annual revenue, and also lost an inconsequential number of customers.¹

At the request of the ALJ, for each of the three captioned matters a utility representative (Myia Fraser, Chief

¹ Cal Water - Daly City (A.83-03-82): Gain \$24,995; net book of sold plant \$35,000; lost annual revenue \$12,000, loss of 64 customers.

County Water - Paramount (A.84-08-112): Gain \$13,366; net book of sold plant \$21,634; lost annual revenue \$10,534, loss of 39 customers.

SJWC - Santa Clara (A.85-05-013): Gain \$153,870; net book of sold plant \$71,130; lost annual revenue \$85,000; loss of 292 customers.

Accountant for County Water; Francis S. Ferraro, Vice President, Cal Water; and Fred R. Meyer, Vice President, Regulatory Affairs, for SJWC) has declared under penalty of perjury that the utility's remaining ratepayers contributed no capital to the respective water systems sold. In none of the situations involved in these cases did the value of the property sold or the lost revenues involve large sums of money (See Footnote 1). In addition, the lost revenues are offset by reduced operational expense saved by the sales of the systems and the elimination of any return on the utility's investment.

Discussion

Basically, D.89-07-016 in R.88-11-046 recognizes the factual circumstance that the sale and transfer of part or all of a utility's service facilities, together with termination of its responsibility to serve in the future, are essentially at least a partial liquidation of the public utility. The selling utility's business is diminished in terms of assets, customers, and revenues by such a sale and transfer.

In each of the three captioned transactions the remaining ratepayers had contributed no capital to the system being sold and transferred. Furthermore, the small amounts of money involved in the value of the system sold and the revenues foregone demonstrate that there were no adverse effects on the remaining ratepayers from the transactions in each instance. There were also inconsequential losses in customers. Accordingly, there could be no significant or adverse economic impact on remaining customers in each instance,²

² This contrasts with the situation in each of the three cases cited and distinguished in D.89-07-016. There, App. of Dyke Water Co. (1964) 63 CPUC 641, App. of Plunkett Water Co. (1966) 65 CPUC 313, and App. of Kentwood in the Pines (1963) 61 CPUC 629, were cited as examples of significant adverse effects to remaining

(Footnote continues on next page)

and each utility continued able to serve its remaining customers without adverse effect, no diminution in quality of service, and no economic harm to be mitigated.

On balance, therefore, the ratepayers having contributed no capital to the respective system sold, and there being no significant adverse economic impact to the ratepayers from any of these transactions, the ratepayers are in the same position before and after the sale. The conditions set down in D.89-07-016 of the rulemaking proceeding are met for the respective capital gain after taxes in each of the three captioned cases to accrue to that respective utility and its shareholders.

Given the clearly minuscule impact to remaining ratepayers of these transactions, and there being no material issue of fact involved, there exists no need for a hearing in any of the captioned cases.

Findings of Fact

1. In the three captioned proceedings, while authorized by an interim decision in each proceeding to proceed with the proposed sale and transfer to a municipality of a water distribution system within a defined geographic area or municipal limits, and where the system sold consisted of part or all of the utility's respective local system, transactions since consummated, the utility was ordered in each interim decision to record the capital gain in a memorandum or suspense account until further Commission order.

(Footnote continued from previous page)

ratepayers; where major portions of the utilities were to be sold resulting in significant rate increases or inadequate service consequences to the remaining ratepayers. In each of the cited examples, the resulting precarious financial condition of the remainder would have jeopardized future operations (i.e., significant adverse economic impacts for remaining ratepayers).

2. D.89-07-016 in R.88-11-046 determined that when ratepayers have not contributed capital to a system sold, and any significant adverse impacts resulting from the sale to the remaining ratepayers are fully mitigated, a capital gain or loss from sale of utility property which meets all the criteria of D.89-07-016 shall accrue to the utility and its shareholders.

3. Ratepayers contributed no capital to the systems herein sold and transferred to the municipalities involved.

4. In each of the three captioned applications, the remaining ratepayers are not adversely affected as the gains represent very small amounts of money, and the revenue losses are similarly insignificant.

5. The facts and results of these transactions provide no significant adverse effect on each utility's remaining ratepayers requiring mitigation.

6. The facts and results of these transactions serve to bring the loss/gain disposition issue in each within the scope of D.89-07-016 in R.88-11-046.

Conclusions of Law

1. Pursuant to the Commission's determination in D.89-07-016 in R.88-11-046, the gains realized by the utilities on the sale of the water distribution systems in the captioned applications should accrue to the utilities and their shareholders.

2. A public hearing is not necessary.

FINAL ORDER

IT IS ORDERED that the gain realized on the sale of each water distribution system in the captioned applications, A.83-03-82, A.84-08-112, and A.85-05-013, shall respectively accrue

A.83-03-82 et al. ALJ/JBW/pc

to California Water Service Company, County Water Company, Inc.,
and San Jose Water Company, and their shareholders.

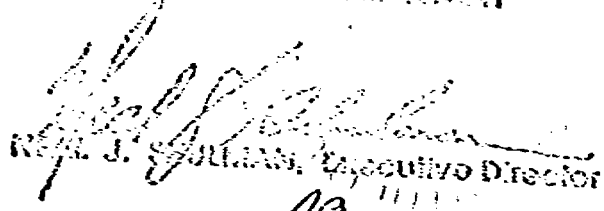
This order is effective today.

Dated November 21, 1990, 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 ONLY


R. J. SULLIVAN, Executive Director