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Decision 91-11-074 November 20, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of)	Application 90-10-029
Suburban Water Systems (U-339-W))	(Filed October 9, 1990)
for Authority to Sell Certain)	
Utility Property.)	

OPINION

Suburban Water Systems (applicant) seeks retroactive authority pursuant to Public Utilities (PU) Code § 851 to sell a parcel of real property located in the City of Whittier. For the reasons set forth below, we defer decision on the application at this time and direct the administrative law judge to conduct evidentiary hearings to further consider the facts of this transaction.

Background

Applicant seeks retroactive authority to sell approximately 5,339 square feet of real property located at 8410 Painter Avenue in Whittier. The sale of the property was made to the City of Whittier Redevelopment Agency (WRA) in December 1989 for \$210,000 cash.¹ WRA states that it requires the property for redevelopment purposes in connection with the Whittier Earthquake Recovery Redevelopment Plan.

The property was acquired in 1939 by applicant's public utility predecessor, the Whittier Water Company, at a cost of \$436. The property has not been depreciated, and its book value at the time of sale in 1989 was the same as the original cost. The

¹ Counsel for applicant states that the failure to seek prior authority from the Commission for this sale was inadvertent and arose because of a misunderstanding of the requirements for seeking Commission authority for sales made under threat of condemnation.

property has been included in applicant's rate base since its acquisition.

A small commercial building was constructed on the property in 1950 and was used as a bill payment office by applicant until 1970, when the building was abandoned and retired from applicant's utility plant accounts. A booster pump facility was constructed on the property in 1939, and a second booster pump was installed in 1965. Both booster pump facilities continue to be used in applicant's public utility services.

Applicant states that it declined to sell the property to WRA in 1988, but it agreed to do so a year later when WRA instituted proceedings to acquire the property by condemnation. As part of the sales agreement, applicant negotiated a grant of easement permitting the utility and its successors to continue to maintain and operate the two water booster pumps located on the property.

Position of the Applicant

Applicant requests approval of the sale of the property on a retroactive basis for the following reasons:

1. The property was necessary and useful to applicant in its public utility services only because of the existence of the booster pump facilities on the property;
2. The booster pump facilities will remain the property of applicant and will continue to be used in the performance of its public utility services;
3. An easement across the property has been granted to applicant for entry to the booster pump facilities for purposes related to ownership, operation, and maintenance.

In view of this, applicant argues that there will be no effect, adverse or otherwise, on utility customers as a result of the sale of the property to the WRA.

Alternatively, applicant in a motion to dismiss argues that the sold property is not "necessary or useful" to the conduct of applicant's public utility services. Only the booster pumps were necessary and useful to utility service. Since the booster pump operation is unaffected by the sale, applicant requests a finding that the real property was not necessary and useful, and that therefore Commission approval of its sale is not necessary. (PU Code § 851.)

The application was filed on October 9, 1990. Notice of the application appeared in the Commission's Daily Calendar on October 18, 1990. No protest to the application was received.

Discussion

Disposition of this application requires analysis of two issues:

1. Was the property in question "necessary or useful" in the performance of applicant's duties to the public so as to require Commission approval under PU Code § 851 for the sale or other disposition of the property?
2. Assuming that the sale is found to be proper, should the more than \$200,000 capital gain on sale go to the utility, and thereby be made available for assignment to its shareholders, or should the gain flow through to ratepayers through a rate base offset or other means?

In the past, gain on sale of real property by a water company has accrued to ratepayers on the theory that utility risk on land is limited to the purchase price, while ratepayer risk includes all expenses relating to insuring the land and otherwise maintaining it for utility use. (In re San Jose Water Company, Decision (D.) 89-10-037.) On the other hand, in In re California Water Service Company, D.90-11-047, we found that if ratepayers had contributed no capital to a purchased water utility system, and if there was no adverse economic impact on ratepayers because of the

sale, then capital gain would accrue to the utility and its shareholders. The latter decision relied on D:89-07-016, a rulemaking proceeding dealing with annexation of utility property by a municipality.

Whether either of the two cited cases apply to this situation is unknown on the basis of the record before us. Further, even if we believed one of the referenced cases did apply, the record is insufficient to calculate what contribution, if any, was made by ratepayers in the purchase, development and maintenance of the real property acquired by the Whittier agency. There may be other precedents which apply here which have not been identified. Accordingly, we wish to have a full record developed on this matter to consider the disposition of any gain on sale of the land.

Similarly, while we have the assurance of the applicant, there has been no examination of whether there are any current or long-range adverse effects on ratepayers because of the sale that have not been mitigated. We are also faced with no record to determine if the property is used and useful, or for some other reason should not receive Commission approval of the sale. Accordingly, a hearing is needed to establish if the sale should be approved.

Conclusion

Because of these unanswered questions, we direct the assigned administrative law judge to conduct an evidentiary hearing to determine (i) the interest of ratepayers, if any, in the property that is the subject of the sale; (ii) adverse effects, if any, on ratepayers because of the sale; (iii) any other factors related to whether gain on sale should accrue to shareholders or to ratepayers. We also direct the Division of Ratepayer Advocates to participate in the hearing and to recommend a course of action based on the facts and circumstances of this application.

Findings of Fact

1. Applicant seeks authority to sell approximately 5,339 square feet of real property located at 8410 Painter Avenue in Whittier, California, to WRA.

2. The property was acquired in 1939 by applicant's public utility predecessor for \$436 and has been carried on applicant's books as utility plant without depreciation since time of acquisition.

3. Applicant in 1950 constructed a building on the property for use as a bill payment office. The building was abandoned and retired from utility plant accounts in 1970.

4. Applicant built two booster pump facilities on the property, one in 1939 and one in 1965, and continues to operate these facilities.

5. The property was appraised at \$160,000 in 1989.

6. WRA purchased the real property from applicant for \$210,000.

7. As part of the sale, WRA granted to applicant an easement for ownership and operation of the two booster pump facilities on the property, along with rights of access to these facilities.

8. This application was filed on October 9, 1990. No protest has been received.

Conclusions of Law

1. The record is insufficient, and an evidentiary hearing should be conducted, to determine whether the property in question is necessary or useful in the performance of applicant's duties to the public.

2. The record is insufficient, and an evidentiary hearing should be conducted, to determine whether capital gain on sale of the real property in question should accrue to shareholders of the utility or to ratepayers.

3. This order should be effective immediately so that an evidentiary hearing may be promptly scheduled.

ORDER

IT IS ORDERED that:

1. An evidentiary hearing shall be conducted into Application 90-10-029 by Suburban Water Systems for authority to sell certain utility property and to accrue capital gain on sale for the benefit of the utility and its shareholders.

2. The Division of Ratepayer Advocates is directed to participate in the evidentiary hearings and to make recommendations with respect to A.90-10-029.

This order is effective today.

Dated November 20, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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

Neal J. Shulman
NEAL J. SHULMAN, Executive Director