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Decision 91-12-031 December 18, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Post Water Company to sell, and Friden Avenue Water Co. to buy seller's water system in Tulare County.

Application 90-08-071 (Filed August 31, 1990)

ORIGINAL

In the Matter of the Application of FRIDEN AVENUE WATER COMPANY, a corporation, and CALIFORNIA WATER SERVICE COMPANY (U 60 W), a corporation for an order authorizing (1) the sale and transfer to California Water Service Company of the water system of Friden Avenue Water Company, (2) the discontinuance of service by Friden Avenue Water Company in the territory now served by it, and (3) the commencement of service in said territory by California Water Service Company at the rates then effective in the Visalia District of California Water Service Company.

Application 91-05-011 (Filed May 7, 1991)

OPINION

Statement of Facts

By Decision (D.) 64832 dated January 22, 1963, the Commission granted George F. Stover a certificate of public convenience and necessity to construct and operate a public utility water system in Tract No. 359 located about seven miles east of Visalia, in Tulare County. In 1970, Stover gave the system to his grandchildren, the Kings. By D.90703 dated August 28, 1979, the Commission both recognized this prior transfer to the Kings and authorized a sale of the system to Kenneth and Norma Post, who changed its name to Post Water Company (Post).

The system today serves 48 flat-rated customers. Water is supplied from a single well equipped with a 7-1/2 horsepower

submersible pump. Water is delivered through a 5,000-gallon pressure tank and approximately 1,900 feet of 4-inch and 6-inch asbestos-cement mains. The Water Utilities Branch of the Commission Advisory and Compliance Division (Branch) states that because the system lacks a second independent source of water supply, and has no measuring device to record the quantity of water produced by its well, the system fails to meet the requirements of General Order No. 103. While Post's water has tested satisfactorily to date, the Tulare County Department of Health Services is seeking further testing and analysis. Branch also believes that the low pump efficiency indicates that repairs or replacement may soon be necessary.

In the past, at some point in time the Posts failed to pay property taxes on the parcel of land on which the system's well and pressure tank are located. This led the County to sell the 50 by 130-foot property in a tax sale for \$5,000 to one George Wu acting as agent for Friden Avenue Water Company (Friden), a California corporation formed in August of 1990 by John G. Keller of La Habra. By grant deed on August 9, 1990, Wu transferred title to Friden, his principal, for \$6,000. The \$1,000 difference was Wu's commission. Friden also obtained Post's interest in the remaining assets of the water system.

Following the filing of Application (A.) 90-08-071, which seeks Commission sanction of the system transfer to Friden, Branch conducted an investigation and on December 24, 1990 issued a report. That report concluded that a transfer to Friden would not be in the public interest; that the proposed management, located 200 miles distant in La Habra with no water management experience, and only \$200 in cash, would not be viable. Concurrently, system customers were complaining to Branch of a rate increase notice advising of increases from \$6 to \$30.50 per month that Keller intended to implement. These increases were consistent with those proposed in an application submitted to, but rejected by, the

Docket Office on October 22, 1990. Docket rejected the application based on the fact that Friden was not a regulated entity when it attempted to file.

Fortunately, intervening events have served to help resolve this situation. A large land parcel located adjacent to the southern boundary of the Post service area is now being developed. It will be served by California Water Service Company (Cal-Water). Cal-Water's new mains will be in close proximity; and it would be practical to interconnect to the Post system. In that way, Post's customers would obtain the reliable service and large water source capacity of a major water utility. Cal-Water serves approximately 21,000 customers in the immediate area. Keller's attorney approached Cal-Water and offered to sell the Post system for in excess of \$40,000.

Cal-Water rejected the Keller proposal as excessive. However, with encouragement from Branch and after further consideration, Cal-Water and Keller negotiated an agreement, subject to Commission approval, for Cal-Water to acquire all the Post system property, franchises, operative rights, and assets (except accounts receivable, unbilled revenue, cash, and refundable deposits) from Friden for a cash price of \$25,500.

Accordingly, on May 7, 1991, Friden and Cal-Water filed A.91-05-011 seeking Commission authorization pursuant to Public Utilities (PU) Code § 851 for a sale and transfer of the system, authorization for Friden to discontinue public utility service in the area, and for Cal-Water to integrate the water system being acquired into its Visalia District system and to apply Visalia District rates.

Notice of the captioned applications appeared in the Commission's Daily Calendar contemporaneously with their filing, and notice of the Friden-Cal-Water application was mailed to each customer. No protest has been received.

Discussion

This consolidated proceeding involves two proposed transfers of the subject public utility water system.

Keller's corporation Friden acquired the water production, pumping, storage, pressure, and related facilities together with the 50- by 30-foot property used for these public utility facilities by means of a tax sale after the Posts failed to pay assessed taxes on the land. Every tax on real property is a lien against the property assessed. (Govt. Code § 2187.) The usual method of enforcement in the event of nonpayment of the tax ultimately is a sale of the real property, and the result is that the purchaser at the tax sale receives title to the property.

The question for the Commission is whether a tax sale resulting from nonpayment of taxes assessed on public utility property must first be authorized by the Commission in order for the sale to be valid. Section 851 of the PU Code provides, among other things:

"No public utility...shall sell...any part of its...system...without first having secured from the Commission an order authorizing it to do so."

The meaning is perfectly clear. But equally clear is the fact that its provisions cannot be applied literally to acquisitions through tax sales. It would be virtually impossible for the Commission to consider in advance the appropriateness of the sale of the tax sale properties. Fortunately, we do not have to address that issue here. As the situation has developed, the end result is essentially a back-to-back set of transfers, Post to Friden and Friden to Cal-Water. Post has effectively abandoned the system. Losing its only pump and tank makes that obvious. Friden stepped in to provide interim service for Post. Now Friden will step aside and allow Cal-Water to take over.

The end result will be better service conditions, efficiency in operations, reliability, and elimination of prospective duplications of water systems.

Cal-Water is an experienced operator, financially responsible, and adequately equipped to take over the service obligation with competent operating, maintenance, engineering, water quality control, accounting, and billing departments. A typical customer on a 6,000-square foot lot would have his water service rates increased from \$6 to \$11.38 per month under Cal-Water operations.¹ However, Post's rates are obviously inadequate, having remained unchanged for over 15 years. Given those circumstances, application of Cal-Water's Visalia District rates to Post's customers would be reasonable and fair.

One issue does remain in determining the correct value for plant-in-service. D.64832 dated January 22, 1963, which certified the system, stated that the utility plant cost to initiate service to the first unit of 26 lots in the 110 lot service area would total \$16,850, while the cost to complete the plant to serve the full 110 lots would be \$28,717. The Stover Water Company filed annual reports for years 1973 to 1979 inclusive. These reports show the original cost of water plant facilities (wells, pumping equipment, and mains) to total \$9,809.28 for service to the 26 lots of the first unit. The cost of the 50-by 130-foot lot on which the well, pump, etc. were installed was not included in the \$9,809.28. Thus, the cost of the lot at that time must have been \$7,040 (the difference between \$16,850 and \$9,809.28). Cal-Water therefore should record on its books this land at the \$7,040 original cost, not its present assessed value.

¹ Friden in October, 1990, sought to increase the monthly rates from \$6 to \$30.50.

The staff report of December 24, 1990, reconstructed current net plant (exclusive of the land). The Commission approved Advice Letter No. 5, Stover's most recent rate increase, by Resolution W-1813 on October 21, 1975. Those rates were based on an average 1975 plant of \$9,809, an average accumulated depreciation of \$3,925 and a depreciation expense of \$206 per year. The depreciation rate calculates out to 2.1% annually. As of December 31, 1990, the plant facilities had been in service since the beginning of 1963, or 28 years. The accumulated depreciation against the original cost of \$9,809 would be \$7,118.

The staff report also assumed that no new water plant was added after the original installation for 26 lots. After the Posts acquired the utility, they filed an annual report for 1980 but thereafter failed to maintain records of plant investment, depreciation rates used, and accumulated depreciation. Post's 1980 annual report did reflect expansion of the system that year to 43 lots, but failed to reflect the additional investment in mains and services needed to effect this expansion. The 1980 report also failed to record the additional pipe used for these extended mains.² At present there are 48 lots served, an increase of 22 over the original 26.

The Stover's annual reports show that the original cost of the water mains in service for the original 26-lot unit was \$4,344. This averages to \$167 per lot. But it also includes the higher cost of 550 feet of 6-inch transmission main to serve the 1,324 feet of 4-inch distribution main involved. D.64832 noted that expansion of the system beyond the original 26 lots to serve the full 110 lots authorized would cost an additional \$11,867

² The 1980 report merely repeated the same 1874-feet of pipe reported previously by Stover since 1973, although it did report 43 lots served.

(\$28,717 = \$16,850 = \$11,867). Obviously, this would be primarily 4-inch mains and services. This \$11,867 would average out to \$141 per lot. We will use this \$141 average cost estimate to apply to the 22 lots added since 1987 to the original 26-lot installation, to arrive at the additional plant investment required to serve these lots. The bulk of these additions were made in 1980. This additional plant is estimated at \$3,102 (22 x \$141 = \$3,102). Against this, as of December 31, 1990, we will adopt additional accumulated depreciation of \$651 (1980 - 1990 = 10 years x 2.1% x \$3,102 = \$651).

Cal-Water should therefore record on its books that, as of December 31, 1990, total original plant cost was \$12,911, accrued depreciation was \$7,769 with net plant of \$5,142. As stated earlier, the land value should be recorded as \$7,040. Any more recent unlisted plant additions may also be added as incurred.

Friden paid \$6,000 for the Post system at the sale and will sell it to Cal-Water for \$25,500, thereby realizing a \$19,500 gain. The Commission has previously allocated gains on sale to a utility and its shareholders where, as is the situation here, there is a liquidation of the selling utility and there are no remaining ratepayers left to Friden; and Cal-Water, the transferee, assumes the obligation to serve all the former Friden customers together with ownership of the system (Campton Heights Water Service (1985) 17 CPUC 2d 245).

In view of the uncertainties in the present situation, with dangers to continued service to the customers, this consolidated back-to-back transaction should be authorized on an expedited basis.

Findings of Fact

1. Post is a small public utility water system serving 48 customers in Tulare County under authority granted by this Commission.

2. A transfer of used and useful public utility property without first securing authorization for the transfer from this Commission is void and of no effect under PU Code § 851.

3. Because of unpaid taxes, the land belonging to Post has been sold for taxes.

4. Post did not protest the sale.

5. Cal-Water is a large public water utility providing service in a number of districts in California, including its Visalia District.

6. Because of the development of a large land parcel adjacent to Post's service area, a parcel to be served by Cal-Water's Visalia District, it would be practical to interconnect Cal-Water's mains to those of Post's, thereby integrating Post's customers and giving them reliable services and a more secure water supply.

7. Cal-Water has adequate financial resources to acquire and operate the water system.

8. In realization of this desirable resolution of a difficult situation, the tax purchaser of Post's facilities and Cal-Water have agreed, subject to Commission authorization, to a back-to-back sale and transfer of the Post facilities from the tax purchaser to Cal-Water for \$25,500.

9. There is no known opposition to this proposed transfer, and no reason to delay granting the authority requested.

10. The proposed sales and transfers on a back-to-back basis are not adverse to the public interest.

11. A public hearing is not necessary.

12. There is no possibility that the transfers may have a significant effect on the environment.

13. Upon acquisition, Cal-Water should record on its books that as of December 31, 1990, original plant cost was \$12,911, accumulated depreciation was \$7,769, and net plant was \$5,142; with land original cost of \$7,040.

14. It is reasonable and just that Cal-Water apply its Visalia District rates after acquisition and integration of the Post system.

15. Following consumation of the back-to-back sales Post should be relieved of its public utility water service obligations applicable to the subject service territory.

16. PU Code § 431 directs the Commission to fix an annual fee to be paid to the Commission by each regulated water system and the fee for 1990 and 1991 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.

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

Conclusions of Law

1. The proposed sales and transfer represented by A.90-03-071 and A.91-05-011 should be authorized on the express condition that all fees due the Commission pursuant to PU Code § 431 be paid to the respective dates of transfers.

2. The applications should be granted as hereafter provided.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order Post Water Company (Post) may transfer its public utility water system in Tract No. 359 located about 7 miles east of Visalia to California Water Service Company (Cal-Water) in accordance with the terms set forth in the application, except as herein modified.

2. Post shall pay to the Commission before the respective transfers become effective all fees due under Public Utilities Code § 431.

3. Within 30 days of the respective effective date of sale and transfer, Post and Cal-Water shall notify the Commission in writing of the fact that the respective sale and transfer has been consummated, and within such period each shall file with the Commission a true copy of each instrument by which such transaction has been accomplished, including an inventory of assets transferred.

4. Upon completion of the sales and transfers authorized by this order, Post and Friden shall respectively stand relieved of their public utility water service obligations in the present Post service area on Tract No. 359.

5. Cal-Water shall record the original costs, accumulated depreciation, and net plant figures set forth in Finding 13 in its books of account, and consolidate them into the Visalia District figures used in the Annual Reports it files with this Commission; with these exceptions the authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred for ratemaking purposes.

6. Cal-Water shall treat the Post system as part of its Visalia District for ratemaking and other regulatory purposes, and shall furnish water service to each customer within the area presently served by Post at the rates and in accordance with the effective rules applicable to its Visalia District.

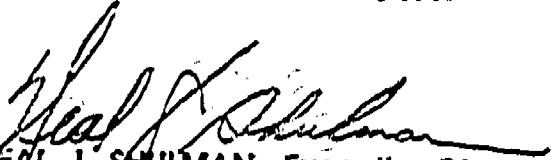
7. The gain on sale realized from the Friden to Cal-Water sale and transfer shall, pursuant to Campton Heights Water Service (1985) 17 CPUC 2d 245, accrue to Friden and its shareholders.

8. The authority granted in Ordering Paragraph 1 shall expire 6 months from the effective date of this order if it has not been exercised by that date.

This order is effective today.

Dated December 18, 1991, at San Francisco, California.

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


NEAL J. SHULMAN, Executive Director

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