

Decision 82 11 021 NOV 3 1982

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of STIRLING BLUFFS CORPORATION,)
a California corporation, for an)
order authorizing the sale and)
transfer to Pacific Gas and)
Electric Company of an operative)
water right.)

Application 82-05-08
(Filed May 5, 1982)

O P I N I O N

By application filed May 5, 1982, Stirling Bluffs Corporation (Stirling) seeks Commission authorization to sell and transfer certain operative water rights to Pacific Gas and Electric Company (PG&E).

Stirling owns and operates a water system, the Stirling City System, which furnishes service to approximately 160 active service connections in unincorporated territory in Butte County. Under a contract entered into with PG&E, Stirling is obligated to sell and transfer certain operative water rights to PG&E in exchange for PG&E's promise to pay Stirling \$375,000 in installments and to deliver to Stirling at a point in PG&E's Hendricks Canal near Stirling City a maximum of 365 acre-feet of water per year without charge. Stirling requests ex parte approval by the Commission of the proposed sale and transfer.

Stirling anticipates that following receipt of the requested authorization it will construct in the vicinity of Stirling City a plant and storage facility for treating and storing all water obtained from PG&E, that it will construct a pumping station and pipeline to transport water from the point of delivery to the treatment plant and storage facility, that it will construct

transmission facilities necessary to transport such treated water to Stirling's 8-inch transmission main running from its distribution and storage reservoir to the Stirling City distribution system or to transport such treated water directly to the Stirling City distribution system, that it will thereafter transfer such water rights to PG&E and satisfy all requirements of the Stirling City System through water so obtained from PG&E, and that it will then abandon the existing flume, ditch, distribution and storage reservoir, and the unused portion of the 8-inch transmission main.

Stirling proposes to convey to PG&E the rights, with a priority dating prior to February 8, 1904, to divert a year-round continuous flow of up to 465 miner's inches of water measured under a 4-inch pressure (9.3 cubic feet per second) of the natural flow of the West Branch of the Feather River at a diversion point located in the Northeast Quarter of the Northeast Quarter of Section 4, Township Twenty-Four North, Range Four East, M.D.B. & M. for lumber mill operation and domestic purposes. From the diversion point described above, the water is presently conveyed by a canal system, consisting of a flume and ditch, running approximately four miles to the Stirling City distribution and storage reservoir located approximately one mile north of Stirling City.^{1/} The water is then conveyed from the reservoir through the 8-inch transmission main to the Stirling City distribution system.

^{1/} Stirling proposes to convey the water right and any or all other water rights which Stirling may have relating to the diversion and canal system from the West Branch to Stirling City and vicinity.

The water rights and the real properties on which the canal system, reservoir, and 8-inch main are located were acquired by Stirling's predecessor 75 or more years ago as part of its purchase of large acreages of land in Butte County. Stirling owns the water rights outright and has easements with respect to the remaining properties so described. The flume and ditch have required continuing maintenance in recent years which at times has been difficult and costly. Owing in part to those maintenance problems, Stirling entered into the contract with PG&E. Since the water rights to be conveyed to PG&E were acquired long ago, their original cost is not known.

Stirling states that the contract was the result of arm's-length negotiations between PG&E and Stirling's predecessor in interest, Diamond International Corporation. Stirling believes that the contract and its terms are fair, just, and reasonable. Stirling desires to proceed with the contractual arrangements and acquire the new source of supply from PG&E. Stirling concludes that the transfer of the water rights to PG&E, the payments by PG&E to Stirling, and the delivery by PG&E to Stirling of not to exceed 365 acre-feet of water per year without charge at the point designated in the contract will all be in the public interest.

Finally, since Stirling will not transfer the water rights to PG&E until after Stirling has completed construction of the pumping, conveyance, treatment, and storage facilities required upon delivery of water from PG&E, Stirling asks that the requested authorization remain open at least through December 31, 1984.

By ruling dated August 13, 1982, the assigned administrative law judge indicated to Stirling that further information was required

before any determination could be made that ex parte treatment of the application is appropriate. Specifically, Stirling was requested to provide the administrative law judge the following information:

1. The specific benefits which will accrue to Stirling's customers given Commission authorization of the proposed sale and transfer;
2. The extent to which utility customer funds were used to acquire the operative water rights at issue and the extent, if any, to which such customers will realize benefits from appreciation in the value of the water rights; and
3. The estimated impact on current rates occasioned by the proposed improvements to the Stirling system.

By letter dated September 8, 1982, Stirling provided the following responses:

1. The specific benefits which will accrue to Stirling's customers given Commission authorization of the proposed sale and transfer.

"At the present all water furnished to Stirling's customers is chlorinated but not filtered. As pointed out in the application, following authorization and sale of the water rights to Pacific Gas and Electric Company ("PGandE"), Stirling will construct a filter plant and other facilities with the funds paid it by PGandE and with funds heretofore advanced or to be advanced to Stirling by its parent, Diamond International Corporation. The new filter plant, built in part with funds received in consideration of sale of the water rights, will assure a treated, potable supply of water to Stirling's customers in accordance with applicable rules of the State Department of Health Services. Stirling's

customers will also be assured of a firm supply of water from PGandE without charge. It will no longer be necessary for Stirling to rely on the old, four-mile, worn-out flume and ditch system as its source of supply. Continued operation of the flume and ditch is subject to outages in the wintertime caused by flooding and freezing. Thus the uncertainties resulting from forced reliance on the flume and ditch will come to an end. Finally, the customers will benefit from having the entire system metered."

2. The extent to which utility customer funds were used to acquire the operative water rights at issue and the extent, if any, to which such customers will realize benefits from appreciation in the value of the water rights.

"Stirling's predecessors in interest acquired large acreages of land and water rights in 1901 and 1902. The specific water rights which are the subject of the application and which Stirling proposes to convey to PGandE were confirmed by an adjudication in 1904. Thereafter, a lumber mill and water system were constructed which made use of the water rights. Since Stirling City was a so-called 'company town,' it was not until mid-century that the customers became 'utility customers.' Consequently if any funds were involved in acquiring the water rights, they were advanced not by customers of the water system, but by Stirling's predecessors. Indeed it is impossible to state now whether any funds were in fact attributable to acquisition of the water rights. Upon conveyance of the water system to Stirling by Diamond, the water rights were included, again, at no cost to Stirling or its customers.

Consequently we can state categorically that no 'utility customer funds were used to acquire the operative water rights.' Customers will reap the full benefit from the appreciation of the water rights in that the \$375,000 consideration to be paid to Stirling by PGandE therefor will be devoted to construction of the new filter plant and related facilities. While other funds will be required to pay the full cost of the filter plant, were it not for the sale to PGandE, the filter plant probably would not be built."

3. The estimated impact on current rates occasioned by the proposed improvements to the Stirling system.

"Owing to depreciation accruals and real property taxes on the filter plant and related equipment, Stirling anticipates that its expenses will approximately double. However, operation and maintenance expenses will remain approximately the same. It is clear that even under existing circumstances, in order to break even, some increase in Stirling's rates is a necessity in order to meet current expenses. It is also clear that a further increase will be necessary upon construction of the filter plant. We recognize, however, that the cost of the filter plant and the small number of customers of the Stirling system make it highly unlikely that Stirling will ever recover anything like a reasonable return on rate base. If the sale of the water rights to PGandE is not made and the filter plant not constructed, extensive repairs and replacements to the flume and ditch will be necessary in order to keep them in operation. We estimate that the cost of such repairs and replacements will be at least \$500,000,

so that, no matter what happens, the Stirling customers are faced with substantial rate increases."

No protests to Stirling's application were received. Based upon information presented in the application and supplied in response to the administrative law judge's ruling, it is appropriate to grant ex parte treatment of Stirling's request. We conclude that transfer by Stirling to PG&E of the water rights described in the application is just, reasonable, and in the public interest. Accordingly, we will grant the appropriate authority.

Findings of Fact

1. Under the proposed contract, Stirling will sell and transfer the rights to a year-round continuous flow of up to 465 miner's inches of water from the Feather River in exchange for PG&E's promise to pay Stirling \$375,000 in three installments and to deliver to Stirling at a designated point a maximum of 365 acre-feet of water per year without charge.

2. The contract between Stirling and PG&E is the product of arm's-length negotiation.

3. Currently, all water furnished to Stirling's customers is chlorinated but not filtered; following authorization and sale of the water rights to PG&E, Stirling will construct a filter plant and other facilities with the funds paid it by PG&E and with funds advanced or to be advanced to Stirling by its parent, Diamond International Corporation.

4. The new filter plant, built in part with funds received in consideration of sale of the water rights, will assure a treated, potable supply of water to Stirling's customers in accordance with applicable rules of the State Department of Health Services.

5. Stirling's customers will be assured of a firm supply of water from PG&E without charge.

6. It will no longer be necessary for Stirling to rely on the old, four-mile, worn-out flume and ditch system as its source of supply; continued operation of the flume and ditch is subject to outages in the wintertime caused by flooding and freezing; thus, the uncertainties resulting from forced reliance on the flume and ditch will come to an end.

7. The customers will benefit from having the entire system metered.

8. No utility customer funds were used to acquire the operative water rights.

9. Customers will reap the full benefit from the appreciation of the water rights in that the \$375,000 consideration to be paid to Stirling by PG&E will be devoted to construction of the new filter plant and related facilities.

10. If the sale of the water rights to PG&E is not made and the filter plant not constructed, extensive repairs and replacements to the flume and ditch will be necessary in order to keep them in operation.

11. The cost of such repairs and replacements will be at least \$500,000.

Conclusions of Law

1. The terms of the proposed contract between Stirling and PG&E are fair, just, and reasonable.

2. Transfer by Stirling to PG&E of the water rights described in the application is in the public interest and should be approved.

3. Authorization of the transfer should remain in effect through December 31, 1984.

4. In the absence of protests, the application should be granted on an ex parte basis.

O R D E R

IT IS ORDERED that:

1. Stirling Bluffs Corporation (Stirling) is authorized to sell and transfer to Pacific Gas and Electric Company (PG&E) the water rights described in the contract between Stirling and PG&E.

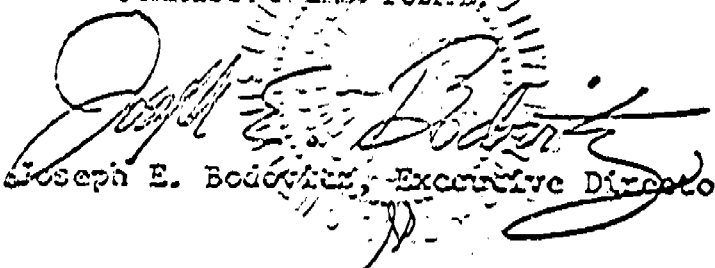
2. The authority granted by this decision shall remain in effect through December 31, 1984.

This order becomes effective 30 days from today.

Dated NOV 3 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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


Joseph E. Bodevick, Executive Director

5. Stirling's customers will be assured of a firm supply of water from PG&E without charge.

6. It will no longer be necessary for Stirling to rely on the old, four-mile, worn-out flume and ditch system as its source of supply; continued operation of the flume and ditch is subject to outages in the wintertime caused by flooding and freezing; thus, the uncertainties resulting from forced reliance on the flume and ditch will come to an end.

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8. No utility customer funds were used to acquire the operative water rights.

9. Customers will reap the full benefit from the appreciation of the water rights in that the \$375,000 consideration to be paid to Stirling by PG&E will be devoted to construction of the new filter plant and related facilities.

10. If the sale of the water rights to PG&E is not made and the filter plant not constructed, extensive repairs and replacements to the flume and ditch will be necessary in order to keep them in operation.

11. The cost of such repairs and replacements will be at least \$500,000; ~~in any event, the Stirling customers are faced with substantial rate increases.~~ RK

Conclusions of Law

1. The terms of the proposed contract between Stirling and PG&E are fair, just, and reasonable.

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