

Decision 82 12 074 DEC 15 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Salinas Utilities Services to sell and Toro Treatment Company to buy the sewer system in the unincorporated area of Monterey County.

Application 59928
(Filed September 9, 1980)

Brian Finnegan, Attorney at Law, for Toro Treatment Company, applicant.
Lloyd W. Lowrey, Attorney at Law, for Toro Park Home Association, interested party.

O P I N I O N

By this application, Salinas Utilities Services (seller) seeks authority to sell to Toro Treatment Company (buyer) the sewer system (system) located in an unincorporated area southwest of Salinas in Monterey County and to be relieved of its public utility responsibilities.

The system has two 250- x 300-foot oxidation ponds and approximately 30 acres of spray fields.¹ The system equipment consists of a comminutor, trash screen, two 10 hp aerators, one 5 hp standby aerator, a 10' x 22' x 8' chlorination chamber with gas chlorinator, and two pumps outfall line and 141 spray heads. The system has a rated capacity of 320,000 gallons per day with a 240,000-gallon per day permitted discharge. It has 6,436 feet of 12", 10,950 feet of 10", and 7,654 feet of 8" asbestos cement pipe. There are approximately 760 service connections. ✓

Under the terms of the agreement purchase, all of the above assets are to be transferred to buyer. As outlined in Exhibit 1, 2, and 3, attached to the application, buyer is to pay seller \$80,000 in cash and either (1) assume \$107,000 indebtedness or (2) issue a note in the principal amount of \$107,000 against the outstanding indebtedness of seller. The assumed debt or note is to be secured by the lien of a deed of trust on substantially all the real property and other fixed assets being acquired by Toro Utility Service (Toro), payable in equal semiannual installments of principal and interest over 11 years at 11.5% per year on the unpaid balance.

¹ Since the filing of the application, the acreage of the spray fields has been increased from 30 acres to approximately 49 acres to meet the minimum permitted discharge as required by the Regional Water Quality Control Board. The 30 acres are leased from Merrill Farms and Leroy Hitchcocks for five years commencing February 15, 1977, at \$3,000 per year, with a five-year option to renew. The additional 19 acres are leased from Merrill Farms for 10 years with two five-year options at \$4,200 per year for the first five years. The option provides that future rents shall be mutually agreed upon.

The application states that all refunds due on main extension advances have not been paid on a current basis and that some are overdue. Under the terms of the purchase agreement, the buyer is to assume all existing refund contracts and pay all past due refunds. The past due refunds are to be paid as agreed upon with the holders of the contracts. Future refunds are to be paid when due.

The application also alleges that the buyer's principals have expended approximately \$100,000 in upgrading the utility's facilities in contemplation of the acquisition, that such improvements were necessary on an emergency basis due to the poor condition of the system, and that the system is presently in good condition.

It is alleged that the seller desires to dispose of the system because the system is operating at a loss and that the buyer desires to acquire the system with the belief that it can be operated profitably with local management, refurbished facilities, and additional service connections. It is also alleged that buyer's personnel have been operating the system since approximately March 1, 1979 and that they have the necessary technical and managerial experience. The buyer will be a corporation formed expressly for the purpose of operating the system and will not engage in any other business.

A duly noticed public hearing was held February 5, 1981 at Salinas. Approximately 20 members of the public were in attendance. The matter was submitted on that date subject to a directive that the buyer file current financial statements to complete the record.

Two members of the public made statements. One presented a list of questions that were formulated for the Commission's consideration. The members of the public expressed their concern over the financial health of the purchasing corporation and its ability to render public utility sewer service.

Testifying for the buyer was President Gillott and Richard Dante, a consulting engineer. Gillott reiterated the reasons for acquiring the system contained in the application. He stated that Toro has been operating the system since March 1979, that it would not be necessary to use a management company as originally thought, that it would adopt the presently filed tariffs of seller, and that it would honor outstanding refunds agreements and other obligations. He also stated that the system is in its best condition since its installation. Gillott agreed to furnish, as a late-filed exhibit, an income statement for the period ending December 31, 1980.²

Dante testified that he was employed by the buyer on an "as needed basis". He stated that a projected 167 new connections would add 48,000 gallons of sewage per day. He stated that although the plant has a rated capacity of 320,000 gallons per day, the California Regional Water Quality Control Board limits the plant discharge to 270,000 gallons per day. He also stated that the additional 19.8 acres for field spray, as testified to by Gillott, will double the system's field spray capacity. With this additional acreage he believes the plant could handle more than the projected additional load.

² To date this financial information has not been filed.

After the hearing, counsel for the seller and buyer asked exactly what financial information was desired to complete the record. He explained that he was informed by the accountant that the sewer company's income and expenses were recorded on the same set of books with a sister company, Salinas Hills Water Company.

Counsel was advised that Rule 36 of the Commission's Rules of Practice and Procedure require financial statements to accompany the transfer request. Because the 1979 and 1980 annual reports had not been filed, as required, the administrative law judge requested the Revenue Requirements Division accountants to review the application and advise what further information would be necessary to process the application.

On March 31, 1981 the California Regional Water Quality Control Board, Central Coast Region (Board), agreed to consider modifying its Cease and Desist Order prohibiting additional discharges to the sewer system and allow 30 additional residential connections for waste discharge. The conditions for consideration of any modification included a showing that (1) a transfer of ownership had been approved by the Public Utilities Commission, (2) sufficient capacity exists to allow the additional connections and still remain under the 190,000-gallon per day flow limit authorized by the Board's waste discharge requirements in Order No. 80-37, and (3) the utility had complied with Section 2244.3 of the California Administrative Code.

On March 4, 1981 a staff auditor met in Salinas with Gillott who agreed to promptly furnish copies of a current balance sheet, income statement, and a statement of changes in financial position for Salinas. On April 1, 1981 the staff informed seller's counsel of the March 4 meeting and advised that its understanding was that:

1. The amount due Mutual Life Insurance Company of New York (MONY) on an unsecured note was \$107,000 and that MONY had paid an additional \$46,000 in delinquent taxes which it did not expect to recover.
2. The outstanding balance of main extension contracts was \$152,000.
3. The shareholders of Toro would not be personally liable for the debts assumed by the purchasers.
4. The purchasers no longer planned to invest an additional \$100,000 in the new company.

No reply to staff's request to confirm its understanding was received.

On May 27, 1981 the staff wrote seller requesting data relative to the outstanding main extension contracts and the loan from MONY. No reply was received.

On May 28, 1981, after advance arrangements had been made with the utility's accountant, a staff accountant visited seller but again found the books had not been currently posted and the financial information was not available.

On June 24, 1981 staff again notified seller's counsel of the information it deemed necessary to effect the transfer.

On September 2, 1982 seller's counsel was again advised by staff of the need for the information in order to proceed with the proposed transfer. To date there has been no response.

In addition to the communications by mail, the staff contacted the seller and/or counsel by telephone on numerous occasions. In each instance the requested information was promised to be forthcoming. It has not been received.

By letter dated November 18, 1982, applicant's counsel filed an income and balance sheet for the year ending September 30, 1982. The information submitted was incomplete. The accountancy corporation that prepared the documents submitted contained the following comment:

"Management has elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the results of operations of Salinas Utility Services. Accordingly, these financial statements are not designed for those who are not informed about such matters."

Throughout, applicants have been vague and have shown a complete lack of concern. This is particularly true of how the advances for construction and the debt to MONY are to be handled. This apparent lack of interest in and furnishing the information necessary to process the application may indicate that the interest in operating the sewer operation will last only until the scheduled building activities are completed.³ At that time any interest in the system and paying off its debts will cease, leaving the problem of finding someone interested in operating the system on a long-time basis.

Based on the buyer's and seller's apparent lack of interest in proceeding with the transfer, we conclude that the application should be denied.

Findings of Fact

1. Seller and buyer have failed to supply information necessary for evaluation of their proposed transaction.
2. It cannot be determined whether the proposed transaction is in the best interests of system's creditors and ratepayers.

³ We note that the principals in the buyer and seller have interests in real estate development.

Conclusion of Law

The application should be denied.

O R D E R

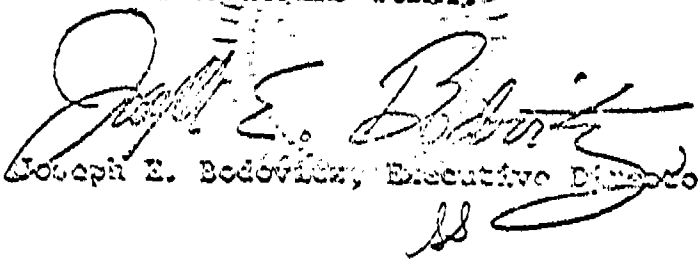
IT IS ORDERED that Application 59028 is denied.

This order becomes effective 30 days from today.

Dated DEC 15 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. Bodovick, Executive Director

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