

Decision 83 12 054 DEC 20 1983

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of )  
 LAKE MARIE WATER COMPANY, INCORPORATED, )  
 and SOUTHERN CALIFORNIA WATER COMPANY )  
 for an order or orders (a) authorizing )  
 the sale of certain assets of Lake Marie )  
 Water Company, Incorporated to Southern )  
 California Water Company; (b) authoriz- )  
 ing Southern California Water Company to )  
 render water service to the public in )  
 the area served by Lake Marie Water )  
 Company, Incorporated at the rates of )  
 Lake Marie Water Company, Incorporated )  
 to discontinue rendering water service )  
 in such area and relieving Lake Marie )  
 Water Company, Incorporated of further )  
 utility obligations; and (c) authorizing )  
 Southern California Water Company to )  
 issue shares of its Common Stock in an )  
 amount determined by dividing certain )  
 amounts shown on the balance sheet of )  
 Lake Marie Water Company, Incorporated )  
 on the last day of the month preceding )  
 the Closing Date by the book value per )  
 share of Southern California Water )  
 Company's Common Stock on the last day )  
 of the month preceding the Closing Date.)

Application 83-08-67  
(Filed August 24, 1983)

O P I N I O N

Lake Marie Water Company, Incorporated (seller) owns and operates a public utility water company serving 190 metered customers and a flat rate irrigation customer in an unincorporated area of Santa Barbara County, south of the City of Santa Maria. Seller's 1982 annual report to the Commission shows that it provided service to 176 commercial customers, 6 industrial customers, and 9 irrigation customers as of December 31, 1982. Southern

California Water Company (buyer) provides public utility water service in Los Angeles, San Bernardino, Orange, Imperial, Ventura, Riverside, Lake, Santa Barbara, San Luis Obispo, Contra Costa, and Sacramento counties, including a service area located approximately one mile from seller's service area. Buyer also provides public utility electric service in the Bear Valley area of San Bernardino County.

Exhibit C attached to the application is a purchase agreement in which buyer proposes to buy all of the properties owned by seller which are necessary for the operation of seller's system. The acquisition does not include seller's cash and accounts receivable.

The agreement provides that the purchase price will be established at the month end prior to the closing of the agreement. That price will be the cost of utility plant less accrued depreciation, less advances for construction, less contributions in aid of construction, plus materials and supplies, less Account 100.5 (acquisition adjustment), less Account 301 (organization expense). Based upon that value buyer proposes to issue common shares of stock to seller in a private intrastate offering which initially will not be registered under the federal Securities Act of 1933. The value per share would be determined by dividing the shareholder's equity, shown on buyer's balance sheet on the last day of the month prior to the closing date, divided by the number of shares outstanding on that date. Seller has the right to require buyer to register those shares for resale at buyer's expense.

The agreement also provides that buyer will make refund payments on all main extension refund contracts entered into between the seller and the Atlantic and Pacific Building Corporation (APB) based upon 22% of revenues on and after the closing date with the consent of APB. Exhibit 1, buyer's letter to the Commission, states that buyer will require written confirmation of APB's prior verbal approval of that arrangement as a condition of the sale. The purchase contract also provides that with the consent of the Gilliland Oil & Land Company (GOL) seller will convert the balance on outstanding main extension contracts held by GOL into contributions in aid of construction. Exhibit 1 states that GOL is affiliated with seller.

Water Purchase and Sales Agreement

The application states that the seller entered into an agreement to sell water to buyer at a rate of 55.8¢ per hundred cubic feet (Ccf) on a standby basis in accordance with the terms of a water purchase and sale agreement attached to the purchase agreement as Exhibit D. However, that agreement was entered into by GOL, as seller, and by buyer. The agreement is summarized below. GOL owns and operates a water well on its Martin Ranch. The 1,092 gallons per minute (gpm) delivery capacity of GOL's well exceeds the requirements of its ranch operations.

The peak daily demand on the system being purchased by buyer is 250 gpm. That system is supplied by two wells with capacities of 274 gpm and 52 gpm. The latter well needs extensive repairs which are estimated to cost \$80,000. The cost of making those repairs would be an unduly burdensome expenditure for buyer to assume at this time. The system's main well supply fails

from time to time. Buyer would need a standby water supply to provide service when the main well was taken out of service for repairs and the second well could not meet system demands.

GOL would be willing to supply up to 288,000 gallons of water per day to a 500,000-gallon reservoir (which is part of the system being sold to buyer) from its Martin Ranch well through approximately 2,800 feet of GOL's 5-inch transmission line. The delivery rate of water may be greater than the daily average of 200 gpm to meet shorter term system peaking demands. But such water deliveries would be made only if the buyer's main well fails and the deliveries would be limited to meeting system demands in excess of the capacity of the remaining system well. Buyer would be required to expeditiously complete necessary repairs to limit those deliveries. The agreement also provides for adjusting the \$0.5581/Ccf delivery charge for water delivered by 78.7% of the percentage change in electric rates from a base of \$0.0731 per kilowatt-hour for the power supplied to the Martin Ranch well. The agreement has a five-year term.

By letter to the Commission dated October 26, 1983 (Exhibit 2) seller states that the water will be sold as surplus water by GOL rather than by seller and that those sales would be exempt from regulation under Public Utilities (PU) Code Section 2704 based on the holding in Frank Rogina v Mendocino State Hospital, et al. (1953) 53 CPUC 108. Seller argues that both in this case and in Rogina there is no intention to dedicate properties in service to the general public and that the sale of surplus water was involved in both cases.

Advances for Construction

In Exhibit 3, received November 15, 1983, seller provided details of the status of its main extension contracts issued to APB and GOL. On June 30, 1983 seller's balance sheet showed outstanding advances on the APB contracts of \$33,700. Unpaid 22% of revenue refunds due on those contracts totaled \$20,251 on that date.

On June 30, 1983 outstanding advances on the GOL contracts totaled \$29,789.<sup>1/</sup> No refunds have been paid on those contracts. Seller was \$6,053 in arrears on refund payments on those contracts through December 31, 1981.

Effect of Transfer on Buyer

Table 1 on the next page reflects the pro forma impact of the transfer, if made on June 30, 1983, which is extracted from Exhibit G attached to the application.

Notice

Notice of the filing of the application appeared on the Commission's Daily Calendar of August 31, 1983. No protests were received.

Discussion

For the year ending June 30, 1982 buyer's net income was \$4,751,458. For the six months ended June 30, 1983 seller lost \$7,815. Seller has been unable to meet its refund obligations. The recital contained in the water purchase and sale agreement indicates the need for a major expenditure for rehabilitating or adding to the water supply of the system

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<sup>1/</sup> The GOL contracts were for installation of special facilities to the Martin Ranch and for oil operations.

TABLE 1

PRO FORMA BALANCE SHEET REFLECTING  
EFFECT OF PROPOSED TRANSFER ON BUYER

As of June 30, 1983

<u>Assets</u>	<u>SoCal</u>	<u>Lake Marie</u>	<u>Total</u>
	(Dollars in Thousands)		
Utility Plant	\$179,893.0	\$380.6	\$180,273.6
Less: Reserve for Depreciation and Amortization	<u>43,634.0</u>	<u>133.1</u>	<u>43,767.1</u>
Net Utility Plant	136,259.0	247.5	136,506.5
Other Investments	574.0		574.0
Current Assets	9,555.0		9,555.0
Deferred Charges	<u>657.0</u>		<u>657.0</u>
Total	<u>\$147,045.0</u>	<u>\$247.5</u>	<u>\$147,292.5</u>
<u>Capitalization and Liabilities</u>			
Common Stock	\$ 10,073.0	\$ 47.8 <sup>a/</sup>	\$ 10,120.8
Premium on Capital Stock	6,676.0	104.4 <sup>a/</sup>	6,780.4
Retained Earnings	<u>15,349.0</u>		<u>15,349.0</u>
	32,098.0	152.2	32,250.2
Preferred Stock	11,190.0		11,190.0
Long-term Debt	43,114.0		43,114.0
Current Liabilities	16,677.0		16,677.0
Other Credits			
Advances for Construction	31,441.0	33.7	31,474.7
Contrib. in Aid of Construction	9,376.0	61.6	9,437.6
Deferred Income Tax	3,033.0		3,033.0
Other	<u>116.0</u>		<u>116.0</u>
	43,966.0	95.3	44,061.3
Total	<u>\$147,045.0</u>	<u>\$247.5</u>	<u>\$147,292.5</u>

<sup>a/</sup> Based on applicants' estimate that 9,555 shares of SoCal \$5 par value common stock would have been issued on June 30, 1983 at a book value of \$15.93 per share.

proposed to be transferred. That agreement is designed to provide the system with an emergency supply of water when the main well on the system fails<sup>2/</sup> and the remaining well cannot meet system demands. The agreement is a stopgap arrangement. If the transfer is executed buyer will have the obligation of improving the acquired system supply. This can be accomplished by one or more of the following alternatives: (a) repairing one or both of the existing wells; (b) interconnecting the acquired system to its nearby Santa Maria District system; and (c) developing additional sources of supply.

The water purchase and sale agreement is designed to provide the transferred system with an emergency supply of surplus water. In the event of failure of the main well on the acquired system, buyer is obligated to expeditiously put it back in service. Such sales by GOL to buyer are exempt from regulation by this Commission.

The proposal for repayment of the APB main extension contract balances based on 22% of future revenues should be approved with APB's consent. That restructuring of the contracts will reduce the rate base and in turn reduce the revenue requirement for the acquired system in a future rate case. We will also approve of the reclassification of the amounts advanced by seller's affiliate into contributions in aid of construction, with GOL's consent.

Buyer's proposal to adopt seller's rates for service to the acquired system is reasonable. The basis proposed for issuance of stock for the acquired assets is reasonable. Buyer is put on notice that for ratemaking purposes we recognize only the net book value of utility facilities in rate base.

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<sup>2/</sup> Seller's annual reports show that GOL periodically has had to provide water to seller.

Findings of Fact

1. Seller is a California corporation operating as a public utility water corporation subject to the jurisdiction of this Commission.

2. Buyer is a California corporation operating as a public utility water corporation and as a public utility electric corporation subject to the jurisdiction of this Commission.

3. Buyer and seller have entered into an agreement providing for the sale of seller's operating water system facilities. Seller proposes to issue its common stock to seller in a private intrastate offering. The basis for the stock issuance is contained in Section 2.2 of Exhibit C, Agreement for the Purchase and Sale of Assets, attached to the application.

4. Seller's affiliate, GOL, proposes to sell its surplus water to buyer if the main well supply for the system being transferred fails and if the second supply on the system cannot meet system demands. The terms of the five-year agreement for such water sales are contained in Exhibit D, Water Purchase and Sale Agreement, attached to the Purchase and Sale of Assets Agreement.

5. Buyer should augment the water supply for the acquired system prior to the expiration of the water sales agreement.

6. Seller is delinquent in paying refunds on advances for construction contracts which are payable to APB. The water system sale agreement requires APB's approval to accept repayment of the unrefunded balance on its main extension contracts with seller based upon 22% of revenue refunds accrued after the system is transferred to buyer.



7. Seller is delinquent in paying refunds on advances for construction contracts which are payable to its affiliate, GOL. The water system sale agreement requires GOL's approval to treat the unrefunded balances on its main extension contracts as contributions in aid of construction.

8. The terms of the transfer and sale agreement including the proposed treatment on advances for construction on contracts held by APB and by GOL are just and reasonable.

9. Buyer proposes to adopt seller's rates for the acquired system. Those rates are just and reasonable.

10. The transfer and sale of the system would not be adverse to the public interest.

11. There is no known opposition and no reason to delay granting the authority requested.

12. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. The proposed transfer and sale should be authorized subject to buyer's payment of the fee required by PU Code Section 1904.1. That amount would have been \$306 for a transfer made in July 1983. The actual fee should be based on the adjusted month end values determined in accordance with Section 2.2 of the agreement at a rate of \$2 per \$1,000 of stock to be issued.

2. Buyer should be authorized to adopt seller's rates for water service for the acquired system.

3. The water purchase and sale agreement between buyer and GOL will provide the system with an emergency supply of

surplus water for up to five years. Such sales are exempt from Commission regulation.

4. The proposed treatments of advances for construction contained in Exhibit C attached to the application are reasonable provided that APB and GOL consent to those changes in terms.

5. A public hearing is not necessary.

6. The following order should be made effective today to expedite transfer of control of the system to a buyer with the resources needed to make necessary water supply improvements.

O R D E R

IT IS ORDERED that:

1. On or before one year after the effective date of this order, Lake Marie Water Company, Incorporated (seller) may transfer the water system designated in the application to Southern California Water Company (buyer). The transfer and sale shall be made effective upon payment to the Commission of the \$306 fee, adjusted in conformity with the requirements contained in Conclusion of Law 1 in this decision.

2. Buyer is authorized to issue its common stock in conformity with Section 2.2 of the purchase and sale of assets agreement (Exhibit C) attached to the application.

3. Buyer is authorized to purchase emergency surplus water from GOL in conformity with the water purchase and sale agreement (Exhibit D attached to Exhibit C).

4. Before the transfer occurs, seller shall deliver to buyer, and buyer shall keep, the necessary consents from the Atlantic and Pacific Building Corporation and from the Gilliland Oil & Land Company for the modifications in the terms of

the main extension contracts described in Sections 8.6 and 9.9, respectively, of Exhibit C.

5. As a condition of this grant of authority, buyer shall assume the public utility obligations of seller, shall assume liability for refunds of all existing customer deposits, and shall notify the affected customers.

6. Within 10 days after transfer buyer shall write the Commission, stating the date of transfer and the date of the requirements of Ordering Paragraph 5 were completed.

7. Buyer shall either file a statement adopting seller's tariffs or refile those tariffs under its own name as prescribed in General Order Series 96. Rates shall not be increased unless authorized by this Commission.

8. Before the transfer occurs, seller shall deliver to buyer, and buyer shall keep, all records of the construction and operation of the water system.

9. Within 90 days after actual transfer buyer shall file, in proper form, an annual report on seller's operations from the first day of the current year through date of transfer.

10. When this order has been complied with, seller shall have no further obligations in connection with this water system. This order is effective today.

Dated DEC 20 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

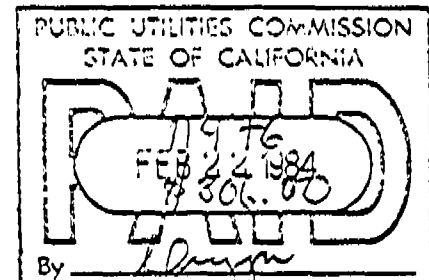
VICTOR CALVO

FRISCILLA C. CREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners



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

*[Signature]*  
Joseph E. Bodovitz, Executive Director