

ORIGINAL

Decision No. 87368 May 24, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the joint Application of TAHOE KEYS WATER COMPANY and TAHOE KEYS PROPERTY OWNERS' ASSOCIATION for a certificate of public convenience and necessity approving sale, transfer and operation of a public utility water corporation and associated franchise; for approval of a franchise; for approval of a tariff deviation; for authority to issue debt obligations and to encumber utility property; and to abandon public utility obligations.

Application No. 56943  
(Filed December 14, 1976)

O P I N I O N

By this application, Tahoe Keys Water Company (Company) and Tahoe Keys Property Owners' Association (Association), a California corporation, jointly<sup>1/</sup> seek an order from this Commission:

- (1) Authorizing the sale, transfer, and operation of a water system located in South Lake Tahoe, California, from Company to Association.
- (2) Approving the Agreement for Acquisition of Water System and approval of the terms and conditions of that Agreement.
- (3) Authorizing abandonment of public utility operations and obligations by Company.
- (4) Authorizing Association to borrow not more than \$200,000, to issue debt obligations, and to encumber utility property.
- (5) Approving a franchise granted by the city of South Lake Tahoe, California, to Company and the transfer and assignment of that franchise to Association.

<sup>1/</sup> Sometimes hereinafter jointly referred to as applicants.

- (6) Authorizing that acquisition and operation of the water system by Association would qualify it as a public utility, and a determination that the water system supply is restricted to present and future consumers within the certificated area.
- (7) Authorizing deviation from the filed tariffs with respect to main extensions.

Application No. 56943 was filed with this Commission on December 14, 1976. Two weeks prior to the filing of the application, on November 29, 1976, the Company mailed, by first class mail, a notice to every customer of the water system advising them of the proposed water system sale to Association. The notice stated that Company and Association were applying to the Public Utilities Commission for approval of the sale, and that any inquiries should be directed to the San Francisco office of the Public Utilities Commission.

On December 21, 1976, a notice was mailed to all nondomestic customers and governmental agencies served by the water system. This notice, in compliance with Rule 24 of this Commission's Rules of Practice and Procedure, advised those parties of the filing of the application on December 14, 1976.

On December 29 and 30, 1976, the applicants published in the Tahoe Daily Tribune a notice of the filing of Application No. 56943. The published notice advised the public that Company and Association wished to sell and purchase, respectively, the water system and that a copy of the application and related exhibits were available for examination at the San Francisco office of the Public Utilities Commission, and at the Company's office and the Association's office, both at South Lake Tahoe, California.

#### Service Area

Company's service area lies at the south end of Lake Tahoe on the California side of the lake and serves approximately 800 residences in the development known as Tahoe Keys. In addition to

providing domestic service within Tahoe Keys, the water system serves the United States Forest Service under a special contract approved by this Commission. Additionally, Company provides water service to the city of South Lake Tahoe, South Tahoe Public Utility District, Tahoe Keys Marina, Inc., Beach and Harbor Association, and Cove Townhouse No. 1, Property Owners.

The main service area of Company comprises all of that territory certificated by this Commission on December 18, 1962 in Decision No. 64682.

#### Background

This application for sale, transfer, and operation of the public utility water corporation was filed on December 14, 1976. Joint applicants, Company and Association, request ex parte treatment of the application. Although three inquiries regarding service (discussed hereinafter) were received by this Commission, no request for hearing was sought by any member of the public or other interested party. On March 14 and 15, 1977, Associate Utilities Engineer Weiss of the Commission's Hydraulic Branch personally inspected the equipment and service area of the water system and interviewed key personnel of Company and Association. After this investigation, the staff concluded that public hearings were not necessary and that the application could be processed on an ex parte basis. There is no opposition to the sale.

#### Nature of Parties

Company is a public utility corporation engaged in the business of providing domestic and fire protection water system service within a portion of the city of South Lake Tahoe, California. Company is a wholly owned subsidiary of Dillingham Development Company, and the officers of Company are employees and officers of the Dillingham parent company.

Association is a corporation organized and existing under the laws of the State of California. Association filed its Articles of Incorporation with the California Secretary of State on November 20, 1963. To date, the major function of Association has been to

provide for the maintenance, upkeep and improvement of the waterways, beaches, easements, and other common areas of Tahoe Keys. Association presently owns and operates an elaborate water purification system in Tahoe Keys. The officers of Association are elected by the members of Association who are property owners within the Tahoe Keys area.

Discussion

We are persuaded that joint applicants' request that this Commission approve the sale, transfer, and operation of the water system is warranted by the evidence and is in the public interest. Therefore, the order following will approve that Agreement for Acquisition of Water System dated October 22, 1976 and included as Exhibit 1 to Application No. 56943. Generally, that Agreement provides that for the sum of \$313,000, the Company will sell and transfer, and the Association will purchase and receive, the lands and facilities comprising two water wells, all easements within the certificated area, all pipelines, valves, hydrants, service connections, meters, and facilities located within the certificated area and owned, used, or held for use by Company in the operation of the water system serving Tahoe Keys. Additionally, all special contracts are to be assigned to Association and all revenues collected during 1977 and prior periods are to be allocated as provided for in the Agreement. Depreciated book value of the assets to be transferred is \$259,000. With the approval of the sale of the assets of Company to Association, Tahoe Keys Water Company is left with no public utility assets, and, therefore, this Commission will authorize Company to abandon its public utility obligations under Section 1001 of the California Public Utilities Code.

Likewise, with the acquisition of the properties comprising the water system serving Tahoe Keys, Association acknowledges, and this Commission so finds, that it will be considered to be a public utility corporation subject to the continuing jurisdiction of this

Commission pursuant to Section 2702 of the California Public Utilities Code. Association acknowledges that the water system service territory is restricted by Decision No. 64682 to provide service to consumers within the certificated area, except in those cases where Commission approval has been or is obtained to provide water service to persons outside that certificated area. In addition to assuming the duties and obligations of service to residential homeowners within the Tahoe Keys area, Association has agreed to continue to serve those outside entities presently being served under special contracts.

To assume the public utility obligations of Company within the certificated area, Association must have a valid franchise from the city of South Lake Tahoe. Company obtained a franchise from the city of South Lake Tahoe, California, on April 12, 1966. The franchise was issued after South Lake Tahoe was incorporated, which was after the Commission had certificated Company to construct the system. Company heretofore has not applied for a certificate to exercise the privileges under franchise as required by Section 1002 of the Public Utilities Code, but by this application it is doing so now. Company wishes to transfer the franchise to Association. We will authorize this.

Association has requested this Commission to permit it to borrow not more than \$200,000 so as to complete the purchase of the water system. In light of the fact that Association has already received \$136,000 by assessment from its members and plans to receive an additional \$184,000 over the ensuing two years, the Commission does not feel that securing a loan of \$200,000 and allowing a lien to be put on the water system in that amount will unduly cause hardship to the public utility or its customers. No liens on the system currently exist.

Applicants request that Association be authorized to publish a main extension rule as found in paragraph 6.2 of the Agreement for Acquisition and which differs somewhat from the standard main extension rule which is found in Company's tariffs. Under paragraph 6.2 of the Agreement the Association agrees to reimburse Dillingham Development Company, the owner of the remaining undeveloped land in Tahoe Keys, the entire portion of the refundable main extension construction costs attributable to each new house or new facility as the house or facility comes on line. Company's present main extension rule provides that reimbursement will be made in installment payments over a period of years out of the revenues received from service through the main in the amount of a certain percentage of the revenues until the entire cost has been reimbursed. Applicants offer no justification for a rule different than the Company's present rule and we see none. Our approval of the transaction will be conditioned on the parties' substituting Company's present main extension rule refund procedure for the refund procedure set out in paragraph 6.2.a(1) and (2) of the Agreement for Acquisition.

Rates and Charges

Company presently has on file its rates and charges with this Commission. Association has agreed to keep those filed tariffs in effect and refile those same tariffs with this Commission upon receipt of this order. Continuation of the existing rates and charges is justified.

Service Inquiries

Three inquiries regarding service were received during the pendency of this application. On December 31, 1976, an inquiry was received from a resident in the Tallac Village Unit 3 Subdivision of Tahoe Keys. The resident expressed the belief that the water supply pressure to his residence was inadequate. Staff Engineer Weiss examined the pressure and pumping capacity in the Tallac Village Unit 3 Subdivision of Tahoe Keys on March 14 and 15, 1977 and found it to be within the limits prescribed by General Order No. 103.

In addition special tests were run at the request of Company on the water pressure at this customer's residence and the results supplied to the staff indicating the pressure that service is rendered is 80 psig. However, to assure that the pressure in this section of the development remains adequate, Association will be required to periodically monitor pressure in this section, and in the event the pressure drops below 40 psig, remedial action to raise the pressure must be taken.

The Commission received two letters from residents opposing the sale of Company to Association. However, one of the residents has now sold her residence within Tahoe Keys and resides out of state. The other resident later withdrew his objection.

Regulatory Considerations

In authorizing the transfer we note that the purchase price of \$313,000 is some \$54,000 higher than the depreciated book cost of \$259,000. The Association, in exercising the authority herein granted, should clearly understand that it is the policy of this Commission to fix rates on the basis of an original cost rate base and that any plant acquisition adjustment, the portion of the purchase price in excess of depreciated book cost, is not included as an element of such rate base. The action taken herein shall not be construed to be a finding of the value of the property herein authorized to be transferred.

Findings

1. The transfer of the assets of the Company system to Association, according to the terms and conditions of this order, is not adverse to the public interest.

2. While the service facilities and pressure maintained by the water system appears to be sufficient, Association will be required to monitor water pressure, and take corrective action if necessary.

3. The proposed borrowing is for proper purposes and the money, property, or labor to be procured or paid for by the issue of evidence of indebtedness is reasonably required for purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

4. The deviation from the main extension rule proposed in the application has not been shown to be just and reasonable.

5. The present certificated area of the system is the maximum area that may be undertaken to supply consumers or the maximum number of acres that can be adequately supplied by the water system.

6. A public hearing is not necessary.

The application should be granted subject to the conditions set out in the following order.



O R D E R

IT IS ORDERED that:

1. On or before September 14, 1977, Tahoe Keys Water Company (Company) may sell and transfer the water system and other assets and rights referred to in the application to Tahoe Keys Property Owners' Association (Association) according to the terms and conditions set forth in the application subject to the condition that paragraph 6.2.a(1) and (2) of the Agreement for Acquisition of Water System, a copy of which is Exhibit 1 to the application, is first amended in writing to delete the present wording and insert therein verbatim the refund procedure as set out in the current tariff of Company pertaining to main extensions.

2. As a condition of this grant of authority, Association shall assume the public utility obligations of Company within the area served by the water system being transferred and shall assume liability for refunds of all existing customer deposits and advances pertaining to the water system being transferred. Association shall send notice of the assumption of liability for refunds to all customers affected.

3. Within ten days after completion of the transfer Association shall notify the Commission, in writing, of the date of completion and of the assumption of the obligations set forth in paragraph 2 of this order.

4. Association shall either file a statement adopting the tariffs of Company now on file with this Commission or refile under its own name those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates or service area shall be made unless authorized by this Commission.

5. On or before the date of actual transfer, Company shall deliver to Association, and the latter shall receive and preserve, all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

6. On or before the end of the third month after the date of actual transfer Association shall cause to be filed with the Commission, in such form as it may prescribe, an annual report covering the operations of Company for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. A certificate of public convenience and necessity is granted pursuant to Public Utilities Code Section 1002 to Company to exercise the rights and privileges conferred by the franchise issued pursuant to Ordinance No. 48 of the City Council of the city of South Lake Tahoe, and as a further condition to the grant of authority set out in Ordering Paragraph 1 Company is authorized and directed to transfer and assign said franchise and associated certificate to Association concurrent with the consummation of the sale of the water system.

8. Upon compliance with all the terms and conditions of this order, Company shall be relieved of its public utility obligations in connection with the water system transferred.

9. Association is hereby authorized pursuant to Sections 817, 818, and 851 of the Public Utilities Code to borrow a sum not to exceed \$200,000, to issue debt obligations and encumber utility property for the purpose as set out in the application.

- (a) Association may execute and deliver debt obligations, mortgages, or deeds of trust and security agreements in the form attached as Exhibits 5 and 6 to the application and subject to such terms and conditions including interest rate, maturity date, and such other provisions as Association may negotiate with a lender. Further, Association is authorized to execute such documents constituting periodic renewals of the principal balance remaining on this debt;

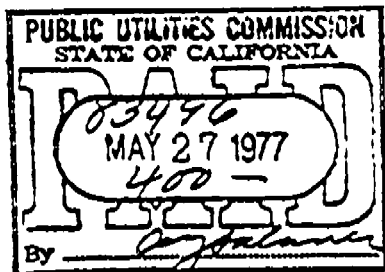
- (b) Association shall use the net proceeds from the debt obligation only for the purposes referred to in the application; and
- (c) When the final form of the borrowing and any security therefor is executed by Association and delivered to the lender copies shall be supplied to the Commission as part of this application. These submittals shall include any renewals of the debt obligation as herein authorized.

10. The authority granted by this order to issue an evidence of indebtedness and to execute and deliver an encumbering document will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code which fee is \$400. In other respects the effective date of this order shall be as stated below.

11. Association is hereby directed to periodically monitor the pressure in Tallac Village Unit 3 Subdivision, and in the event water pressure falls below 40 psig, Association is to inform the Commission of the pressure levels encountered and the remedial action contemplated.

The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 24th day of MAY, 1977.



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 Commissioners

Commissioner Robert Batnovich, being necessarily absent, did not participate in the disposition of this proceeding.