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Decision 96-11-056 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Stephen C. & Nancy R. )  
Phillips, doing business as Phillips )  
Water Service, to sell and Edward J. )  
Nessinger, dba Nessco H2O, to buy the )  
water system in Sonoma County. )

Application 96-04-003  
(Filed April 2, 1996)

O P I N I O N

ORIGINAL

Statement of Facts

By Decision (D.) 58642 issued on June 23, 1959, J. Howard and Nita Phillips obtained a certificate of public convenience and necessity to construct and operate a public utility water system under the name of Phillips Water Service to serve an unincorporated 40-acre parcel of land they owned adjacent to and westerly of the community of Pengrove in Sonoma County. The parcel of land was divided into 32 lots of approximate acre size to be sold as sites for single family residences. The water system subsequently was constructed and placed in operation.

By D.84-11-085 issued November 21, 1984, J. Howard and Nita Phillips received authorization to transfer the Phillips Water System to their son Stephen C. Phillips, who, in association with his wife Nancy R. Phillips, has operated the water system since. Because of failing health the Phillips are unable to operate the system any longer, and in December of 1995 made an agreement to sell the water system to Nessinger for \$18,000, subject to Commission authorization. Nessinger took over operation of the system as of January 1, 1996.

Nessinger's primary occupation is as co-owner of Nessco Construction, an underground construction company incorporated as of April 1996. Previously he owned Nessco Landscape and Supply.

Today the Phillips system facilities are on three lots sited in Parcels 21 and 22 of Phillips Acres' Map of Record of

Survey, and recorded as part of Parcel No. 47-310-44 in Sonoma County Official Records. The system includes three 10-inch wells (depths: 550-200-200 feet), a 15 HP booster pump of 450 gpm capacity, with three storage tanks with a total capacity of 61,000 gallons, and distributes water through 2,400 feet of mains to 27 metered customers. The water treatment is by chlorine injection. A 1,000-square foot building is part of the facility. There are no customer deposits or main extension advances. The system serves two fire hydrants.

It is represented that the original cost of the property is \$13,500 with a depreciation reserve as of December 31, 1994 of \$19,386.

By the captioned application the parties seek authorization for the proposed sale of Phillips Water Service. Notice of the application appeared in the Commission's Daily Calendar of April 3, 1996, and the parties have notified the customers of the utility. No protests have been received.

Discussion

Without first having secured authorization from the Commission, Public Utilities Code §§ 851 and 854, respectively, provide that no public utility shall sell its system, and that no person or corporation shall acquire any public utility. In transfers of ownership of a public utility as is proposed by this application, the function of the Commission is to protect and safeguard the interests of the public. The concern is to prevent impairment of the public service by the transfer of utility property and functions into the hands of a party incapable of providing adequate service at reasonable rates or upon terms which would bring about the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 CRC 520). The Commission wants to be assured that the purchaser is financially capable of the acquisition and of satisfactory operation thereafter.

Considering that the present owners are in failing health and unable to maintain the small water system, it would certainly be in the public interest to transfer the system to another operator, provided that the new operator has the operational skills and financial ability to undertake the operation.

Nessinger has operated the system since January of 1996, and this experience coupled with his underground construction company experience and associated license would appear to suffice with respect to the fairly basic water system here involved. However, Nessinger's present financial position indicates that there is no available personal financial reservoir should it be necessary to offer financial aid to the water system. The purchase price is \$18,000 with interest of 12% per annum. Monthly payments for this purpose are \$300 which Nessinger has been making since January of 1996. It appears to be reasonably possible that the purchase price can be financed out of earnings from the system itself. A Summary of Earnings Analysis for Test Year 1994 adopted by staff in Resolution W-3899 effective March 4, 1995 (Commission Conference of December 21, 1994) indicates that on annual revenues forecast of \$17,780 and total deductions forecast at \$13,110, there is a potential net revenue of \$4,670. In addition, the operating expenses allocate \$2,500 for management and office salaries and a Depreciation Allowance of \$1,260. Accordingly, apart from other expenses, there is a potential amount of \$8,430 that could be applied to meet the \$3,600 annual purchase obligation. As Nessinger could control such an allocation by personally operating this relatively simple small system, and has a personal interest and sees an investment potential, we will authorize the sale and transfer. While not the most optimum resolution of the problem, it is a reasonable one. Finally, Nessinger understands that rates will be based on the depreciated original cost of the plant, excluding contributed plant, and not on the purchase price.

Nessinger also agrees to adopt the presently filed tariffs of the system which the Phillips will furnish to him.

Findings of Fact

1. The water system is a public utility within the jurisdiction and regulation of this Commission.
2. The present owners are in failing health and are unable to continue to maintain and operate the system.
3. The prospective purchaser has operating experience with the system as well as associated underground construction experience which would be beneficial in operating the small system.
4. It appears that a leveraged purchase of the system is feasible, based upon the Summary of Earnings Analysis of Commission Resolution W-3899 which was adopted in the Commission Conference of December 21, 1994 to be effective March 4, 1995.
5. A transfer of the system to the purchaser proposed would be in the public interest.
6. It can be seen with reasonable certainty that the sale and transfer as proposed to Nessinger presents no significant impact on the environment.
7. The sale and transfer should be conditioned upon payment to the Commission by the sellers of the Public Utilities Commission Reimbursement Fees collected up to the date the sale and transfer is consummated.
8. The purchase price does not exceed the net book cost.
9. Because the public interest would best be served by having the sale and transfer take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. A public hearing is not necessary.
2. The sale and transfer should be authorized.
3. Upon completion of the sale and transfer, the Phillips should be relieved of their public utility water service obligations in the Phillips Water Service area.

O R D E R

IT IS ORDERED that:

1. Within three months after the effective date of this order, Stephen C. and Nancy R. Phillips (the Phillips) may sell and transfer to Edward J. Nessinger, doing business as Nessco H2O (Nessinger) the public utility water system known as the Phillips Water System (the System) in accordance with the terms of their application.

2. Within ten days of the actual transfer, the Phillips shall notify the Commission in writing of the date the transfer is consummated. A true copy of the instruments effecting the sale and transfer shall be attached to the written notification

3. The Phillips shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected to the date of the sale and transfer.

4. Upon completion of the sale and transfer authorized by this Commission order and payment of the fees stated in Ordering Paragraph 3, the Phillips shall stand relieved of their public utility water service obligations in the Phillips Water Service area.

5. Application 96-04-003 is closed.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON  
President  
DANIEL Wm. FESSLER  
JESSIE J. KNIGHT, JR.  
JOSIAH L. NEEPER  
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.