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ALJ/JBW/sld

Decision 96-12-006 December 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Ben & Michelle Ray)
 (Ray) and Mike & Diane Cahill (Cahill))
 doing business as Pierpoint Springs)
 Resort Water Company for)
 Cahill to sell and Ray to buy Cahill's)
 50% ownership of the water system)
 in Tulare County.)

ORIGINAL

Application 96-08-009
(Filed August 1, 1996)

OPINION

Statement of Facts

By Decision (D.) 60371 issued July 5, 1960, in Application 42004, John F. Lewis was granted a certificate of public convenience and necessity to construct and operate a public utility water system to be known as the Pierpoint Springs Resort Water Company in an unincorporated area including a subdivision known as Pierpoint Springs Subdivision and the vicinity, approximately 16 miles east of the community of Springville adjacent to the Sequoia National Forest in Tulare County.

Today the water system is owned and operated by Ben and Michelle Ray (the Rays) and Mike and Diane Cahill (the Cahills), each couple owning 50% of the utility. The service area encompasses 100 acres of hilly, wooded terrain. Two six-inch wells of 250 and 275 foot depth provide water to three tanks with 53,000-gallon capacity. The water is distributed to the 81 flat rated customers through 8,690 feet of cement-asbestos and plastic piping with 18 fire hydrants.

The Cahills are liquidating all assets in the area and have entered into a transfer agreement to sell their 50% interest in the jointly owned water utility to their

co-owners, the Rays. The selling price for their 50% interest is \$17,500 in cash. The original cost of the property being transferred is represented to be \$60,317 with a depreciation reserve of \$26,095, resulting in a net book cost of \$34,222. This net book cost corresponds to the Rate Base adopted in the Summary of Earnings for Test Year 1995 in Commission Resolution W-3973 adopted by the Commission on March 13, 1996.

Included by Grant Deed recorded as 96-019331 in the Official Records of Tulare County on March 20, 1996 were Lot 22 of Tract No. 490 (220-362-01) and three easements for operation and maintenance of a well, a spring, and a water storage tank, all with associated water lines, appurtenances and telemetry (220-350-04). These transfers were recorded in Book 251, Page 20 of Maps.

The customers were advised of the prospective transfer of interest in mid-1996. Notice of the application appeared in the Commission's Daily Calendar of August 7, 1996. No protests have been received.

Discussion

Public Utilities (PU) Code § 854 provides, as relevant here, that no person or corporation shall acquire or control either directly or indirectly any public utility organized or doing business in this state without first having secured authorization to do so, and that any such acquisition or control obtained without that prior authorization shall be void and of no effect. Here, the Rays and the Cahills up to the present shared control and possession.

In interpreting PU Code § 854, we have construed the word "control" to mean actual or working control rather than a power or potential to control. WUI, Inc. et al. v. Continental Tel. Corp., et al. (1979) 1 CPUC2d 579. It is the Commission's responsibility to be certain that the person assuming control or possession is capable of carrying out the utility's public utility obligations, and that the change in control is in the public interest. Re Southern California Edison Company (1991) 122 PUR 4th 225, at 288. In the present situation, there is no doubt that the Rays have the ability to operate this small water system. Ben Ray, aside from being a contractor, has been operating this

system for over 20 years. The Cahills handled the financial aspects in that time. Now the Rays will also handle the fiscal matters. The Rays understand that rates are and will be based upon the depreciated original cost of the plant without relation to the purchase price. The present tariffs continue.

Because of the Rays' familiarity with the system's operation over the years, it appears reasonably certain that the operation will continue as before with no impact upon the ratepayers. Having obtained a substantial rate increase authorization through Resolution No. W-3973 earlier this year, rate stability should continue into the immediate future. And this transfer of control indicates the reasonable certainty of satisfactory operations. The transfer should be authorized without delay.

Findings of Fact

1. The water system is a public utility system.
2. The Cahills are liquidating all their assets in the area.
3. The Rays have operated the water system for over 20 years.
4. Transfer of the water system's 50% interest held by the Cahills to the Rays will consolidate ownership and control in the Rays.
5. There is no opposition to the application.
6. The sale price, representing half of the present net book value, is reasonable.

Conclusions of Law

1. A public hearing is not required.
2. It is in the public interest that this sale and consolidation of control be authorized.
3. Upon completion of the sale and transfer of control, the Cahills should be relieved of their public utility water service obligations in the Pierpoint Springs Resort area.

ORDER

IT IS ORDERED that:

1. Within three months after the effective date of this order, Mike and Diane Cahill (the Cahills) are authorized to sell their 50% interest in the Pierpoint Springs Resort Water Company to Ben and Michelle Ray (the Rays), present owners of a 50% interest in the utility.

2. Within 10 days of the actual transfer, the Cahills shall notify the Commission in writing of the date on which the sale and transfer was consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification which shall be directed to the Executive Director of the Commission.

3. The authorization for the sale contained in this order is not a finding of the rights and property to be acquired for ratemaking purposes.

4. Upon completion of the sale and transfer authorized by this Commission order, the Cahills, as half owners doing business as Pierpoint Springs Resort Water Company, shall stand relieved of water public utility service obligations in the Pierpoint Springs Resort area.

5. Application 96-08-009 is closed.

This order is effective 30 days after the date of signing.

Dated December 9, 1996, at San Francisco, California.

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