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Decision 97-08-021 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Tahoe Park Water Company, Inc., to sell and Tahoe Park Utility Company to buy the Water System in Placer County.

Application 97-02-039
(Filed February 28, 1997)

Application of Lake Forest Utility Company, Inc., to sell and Tahoe Park Utility Company to buy the Water System in Placer County.

Application 97-02-040
(Filed February 28, 1997)

ORIGINAL

OPINION

Statement of Facts

In 1908, two individuals, Lambert and Detwiler, developing a 640-acre area in the Tahoe Park area on the northwest shore of Lake Tahoe in Placer County, California, installed a water distribution system to serve their development. In 1917, Lambert sold to Detwiler, but on Detwiler's death in 1939 the utility system passed back to Lambert, with subsequent transfers to Bolton (1952), to Kaastrup (1960), to Farr (1976) who incorporated the system as Tahoe Park Water Company, Inc. (Tahoe Park), before transferring it to David Robertson in 1986, the present owner.

In 1911, Matt Green installed a water distribution system to serve a subdivision at Lake Forest on the northwestern shore of Lake Tahoe in Placer County, California. In subsequent transfers, the utility was sold to Green (1950), to McClure (1983) who incorporated the system as Lake Forest Water Company (1986) before selling the system to Lake Forest Utility Company, Inc. (Lake Forest), the latter wholly owned by David R. Robertson.

Today, Tahoe Park serves approximately 498 residential customers (29 metered) in an area described as Tahoe Park, Miramar Heights, Sierra Estates, Nielsen, and Skyland subdivision near Tahoe City. Lake Forest today serves approximately 113 customers (1 metered) in an area described as Lake Forest, on Lake Tahoe Unit #1, and Tahoe Island Park subdivisions near Tahoe City.

Robertson, sole owner of both utilities, desires to dispose of them to pursue other interests. Richard Dewante, a consulting engineer and partner in Dewante & Stowell, Inc. of Sacramento, with a stated net worth exceeding a half million dollars, desires to purchase both utilities. Dewante is a registered civil engineer with 19 years' experience in the design of water and wastewater facilities, and holds a Grade 3 water treatment operator's license. Accordingly, Dewante has organized and qualified a new California corporation, Tahoe Park Utility Company (Utility Co.) to acquire Tahoe Park and Lake Forest.

On April 3, 1996, Robertson's two utilities, Tahoe Park and Lake Forest each entered an Agreement of Sale with Dewante's Utility Co. whereby both Robertson's utilities would be sold and transferred to Utility Co. In addition, Robertson's Tahoe Park entered into a separate Agreement of Sale the same April 3, 1996, whereby Tahoe Park would sever the 0.43-acre real property parcel at 1759 Washoe Way which includes Tahoe Park's garage and office, and sell this parcel and building to Richard and Ann Dewante, as husband and wife, leaving the latter two to negotiate an easement with Richard Dewante's Utility Co. to accommodate the utility system spring, well, and water supply, treatment, storage, and distribution facilities and equipment which are located on the 0.43-acre parcel.

The application lists the respective original costs of the Tahoe Park and Lake Forest systems as being \$984,862 and \$72,471, with respective depreciation reserves stated as \$315,364 and \$46,592. These result, as stated in the application, in respective net book costs of \$669,498 and \$25,879.

The stated sale price for the Tahoe Park system is \$740,745 (this is \$71,249 over original cost less depreciation and contributions) to be met as follows: \$185,000 down; assumption of the Department of Water Resources (DWR) loan of \$303,720 and a main

extension agreement of \$82,025, and the remaining \$170,000 by a seller carried 130 month note at 8% per annum interest.¹

The stated sale price for the severed 0.43-acre garage-office real estate parcel is \$150,000 to be met with nothing down and a 130-month note to seller Tahoe Park at 8% per annum interest and secured by a collateral assignment of all Utility Co. stock and a deed of trust on the real property. Original cost and depreciation is not stated.

The stated sale price of the Lake Forest system is \$115,000 cash. (This is \$89,121 over original cost less depreciation.)

Dewante has stated in writing his understanding that rates for each system will be based upon the depreciated original cost less contributions, and not on the purchase prices. Transfers of title would be by grant deed applicable to each utility system, and include all wells, their sites, tanks, equipment, easements, and rights to appropriate or divert water. There are no customer deposits to establish credit. All refunds on main extension advances are current, and Dewante agrees to pay remaining balances as they become due.

Utility Co. states it will adopt the presently filed tariffs of Tahoe Park and Lake Forest.

While the respective system sales agreements provide that the buyer would inform the respective utility customers of the applications to sell and transfer, as of May 30, 1997 no notice had been provided the ratepayers. There was notice of the

¹ The parties would allocate the respective purchase prices as follows:

	<u>Lake Tahoe</u>	<u>Lake Forest</u>
Easements and interests in land:	\$ 15,000	\$ 15,000
Buildings and depreciable assets:	635,745	75,000
Intangibles:	70,000	25,000
Vehicles:	17,000	-
Equipment:	<u>3,000</u>	<u>-</u>
	\$740,745	\$115,000

proposed transactions in the Commission's Daily Calendar of March 4, 1997. The buyer has since agreed to provide notices to all customers.

By the applications, the parties ask ex parte authorization for the transactions, and the seller upon compliance with a Commission authorization seeks to be relieved of all public utility obligations related to the systems being transferred.

Discussion

In private investor sale and transfer of public utilities, 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 parties incapable of performing an adequate service at reasonable rates or upon terms which could bring about the same undesirable result. (So. Cal. Mountain Water Co. (1912) 1 CRC 520). We want to be assured that the purchaser is financially capable of the acquisition, and that after the acquisition he will be able to provide a satisfactory operation.

For reasons that will become apparent, we will first address the proposed Lake Forest sale. While the personal financial statement and professional engineering background of Dewante offer assurance of both financial and operational ability to operate the Lake Forest system, we are concerned at the magnitude of the \$89,121 premium over the stated net book of \$25,879. This latter figure appears to be at variance with other figures submitted. The December 31, 1995 Annual Report attached to the Lake Forest application sets forth that gross plant in service was \$112,023. This \$112,023 included "transportation equipment" stated to be \$21,823. The Lake Forest assets listed as included in the proposed sale specifically exclude the utility's 1994 Ford F-350, one-ton, 4-wheel drive truck. Under the application listing, it is stated: "Transportation Equipment: None."² Using the 1995 Annual Report Schedule B - Water Plant In Service

² In deleting this Ford truck from the assets to be sold, Tahoe Park apparently has overlooked the provisions of Public Utilities (PU) Code § 851 which provides that no public utility may sell or dispose of the whole or any part of its "plant, system, or other property necessary or useful in the performance of its duties to the public" without first having secured from the

Footnote continued on next page

total of \$112,023, and deleting the \$21,823 transportation item (Acct. 341), we obtain \$90,200 for plant in service which after deduction of the Schedule C Depreciation Reserve \$46,592 leaves an approximate net book of \$53,600 rather than the \$25,879 of the application narrative. This would make the premium closer to \$61,000 rather than the \$89,121. The rate base as reported elsewhere in the workpapers of Advice Letter 30 was \$49,205. Accordingly, the spread or premium would not be excessive were all other things satisfactory. But the sale would leave Lake Forest without transportation equipment. We see no reason to conclude that such 4-wheel drive equipment during snow storms in this mountain area would not be needed and useful as in the past and for that reason, absent some showing to the contrary, the Commission would not under PU Code § 851 authorize Robertson's proposed severance of the 1994 Ford truck from property necessary or useful in the utility's performance of its duties to the public.

As structured, the Commission cannot authorize the Lake Forest sale. Similar concerns affect the Tahoe Park application. The sole owner of Tahoe Park, Robertson, is really proposing to position the Tahoe Park sale so as to realize personally a total of \$505,000 from the sale: \$185,000 immediate cash, and \$320,000 in monthly payments at 8% per annum interest over an approximate 10+ year period. This \$505,000 would be realized on a utility net plant of \$232,620 (using the December 31, 1995 Annual Report Schedules B and C figures for Water Plant in Service and Depreciation Reserve, and excluding the DWR plant and Main Extension Agreement).³

Commission an order authorizing it to do so. Any sale or disposition made otherwise is void. The truck has obviously been necessary and useful and was carried on the list of assets which are reflected in the rate base on which ratepayers rates are set. No authorization has been sought other than as may be inferable from the present application.

	<u>Tahoe Park</u>	<u>Skyland/Neilsen</u>	<u>Consolidated</u>
Plant In Service	\$358,533	\$37,980	\$396,513
Dep. Reserve	<u>126,951</u>	<u>36,942</u>	<u>163,893</u>
Net Book	\$231,582	\$ 1,038	\$232,620

To accomplish this result Robertson would remove from the Tahoe Park system the 0.43-acre lot with its garage and office (and on which lot the spring, a well, and water supply treatment, storage, and distribution facilities and equipment of the Tahoe Park system are also sited) and separately sell the severed package to the Dewantes as husband and wife, leaving it to Dewante to negotiate with his new utility company an easement for the Tahoe park spring, well, etc.⁴

The problem with this plan is that this is real property which has been on the utility's books as necessary and useful for the utility to perform its duties to the public it serves.⁵ It has provided garage housing for the utility's transportation equipment. It has been carried as part of the Utility Water Plant In Service (Schedule B - December 31, 1995 Annual Report, Accounts 303 and 304) from which the utility's rate base is largely derived. Taxes and depreciation have been part of the business expense of the utility paid by the ratepayers.

Absolutely nothing is stated in the application to support or make any showing that now, somehow, this property is no longer "necessary or useful" to the Tahoe Park system in the performance of the utility's duties to the public.

But the problem does not end there. Assuming that it could be shown that the property is now no longer necessary or useful to the system and the Commission concurred, the net gain on sale that would be realized over the apparent approximate \$18,000 original cost of the property could not be paid to Robertson.

⁴ The Sales Agreement states (page 2, para. 5.e): "It shall be the sole responsibility of the Buyer to negotiate any easements with the Tahoe Park Utility Company."

⁵ The December 31, 1995 Annual Report shows:

Acct. 303	Land	\$21,208
Acct. 304	Structure	66,123

The application apportions the sale price proposed as:

Land	\$ 15,000
Structure	135,000

In 1995, the Legislature added Article 3.5 to the PU Code. PU Code §§ 789.1 and 790 in brief summation note the continuing need of water corporations for funds to meet the demand for new infrastructure, for upgrades, etc., and require that the net proceeds from the sale of public water utilities property which is no longer necessary or useful must be invested at the interest rate prescribed by the Commission for memorandum accounts, and that the proceeds be a source of capital for the utility to invest in needed utility plant. Any balances left of these net proceeds and interest thereon not reinvested in the utility plant after eight years must be allocated to the ratepayers.

While the Commission has jurisdiction under PU Code § 790(d) to exempt a water corporation with 10,000 or fewer service connections from the requirements of Article 3.5, the Commission can find no grounds to justify consideration of any exemption here. Not only is the real property necessary and useful to the system, the system needs modification and repairs to bring it up to General Order 103 standards, and the application clearly states that the source of funds to do this work is unknown. One of the expectations when the initial DWR loan was obtained was that the system would be metered. Today there are only 29 meters in place with another 467 unmetered service connections.

For these reasons, the applications for sale of Tahoe Park and Lake Forest, which include sale of the 0.43-acre lot property, and for the severance of the Ford truck from the Lake Forest utility assets cannot be authorized, and the Commission will deny the two applications without prejudice. As the "Exceptions" referred to on page 2, paragraphs 5.b and c of the real estate sale agreement, and referred to as "Exhibit B", were not attached to that agreement;⁴ in view of our conclusions otherwise which result

⁴ The Real Estate Sales Agreement refers to a number of "Exceptions" listed on "Exhibit B attached hereto and incorporated by this reference," and refers to payments and prorated payments to be made. This exhibit was not attached to the agreement.

in denial of both applications, we see no necessity or purposes in pursuing issues these "Exceptions" might raise.

Findings of Fact

1. Both Tahoe Park and Lake Forest water systems are water public utility corporations within the jurisdiction of the Commission. Both utilities are wholly owned by Robertson.
2. On April 3, 1996, Tahoe Park and Lake Forest entered into separate agreements of sale whereby both utilities would be sold to Utility Co., a newly formed California corporation wholly owned by Dewante.
3. The Lake Forest system would be sold excluding the utility's 1994 Ford truck.
4. The Tahoe Park system would be sold excluding the real estate where upon the garage and office building, as well as a spring, well, and other system facilities, are located.
5. Tahoe Park on April 3, 1996 entered into a Sales Agreement with Richard and Ann Dewante whereby the real estate including the real estate on which the garage-office building and the spring, well, and other Tahoe Park system facilities are located would be sold separately to Richard and Ann Dewante as husband and wife.
6. The Ford truck is property of Lake Forest, included in its water plant in service, and is necessary and useful in performance of Lake Forest's public utility obligations to its customers.
7. The real property including the garage-office building and the spring, well, and other facilities are property of Tahoe Park, included in its water plant in service, and are necessary and useful in performance of Tahoe Park's public utility obligations to its customers.
8. Neither the Ford truck nor the real property may be severed and disposed of without prior authorization from the Commission pursuant to provisions of PU Code § 851.
9. Were authorization granted to sever and sell the real property from Lake Tahoe's system, the net gain proceeds over original cost would go into a memorandum account

with interest to be accrued for use as a capital fund for infrastructure additions and repairs for an eight-year period after which any balance remaining would, pursuant to provisions of PU Code §§ 789.1 and 790, be allocated to ratepayers.

10. Given the need of Lake Tahoe for modification and repairs, with no apparent source of funds to accomplish this work, it would be irresponsible for the Commission to exempt the severance and sale of the Lake Tahoe real property from provisions of PU Code §§ 789.1 and 790.

11. A public hearing is not necessary.

12. The order that follows should be made effective immediately to reduce costs and avoid confusion between the parties involved.

Conclusion of Law

The applications should be denied without prejudice.

O R D E R

IT IS ORDERED that:

Application (A.) 97-02-039 and A.97-02-040 are denied without prejudice.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners