

Decision 97-09-095 September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BISHOP WATER COMPANY, a California corporation, and CALIFORNIA-AMERICAN WATER COMPANY (U 210 W) a California corporation, for an Order authorizing: A. Bishop Water Company to sell and transfer to California -American Water Company utility assets of Bishop Water Company including the properties used in its water utility business; and B. Bishop Water Company to withdraw from the water utility business; and C. California-American Water Company, Monterey Division, to engage in and carry on the water utility business of Bishop Water Company; and D. California-American Water Company to assume certain obligations of Bishop Water Company; and E. California-American Water Company, Monterey Division to annex the area generally known as the Laguna Seca Ranch subdivision into the Bishop sub-unit.

ORIGINAL

Application 97-04-030
(Filed April 7, 1997;
Amended July 14, 1997)

O P I N I O N

Statement of Facts

In the early 1960 period F. C. Bishop and his wife, either themselves or through their wholly-owned B-F Properties, Inc. (a real estate development firm), owned a substantial portion of the Laguna Seca Ranch situated approximately six miles east of Monterey, in Monterey County, California. In January of 1962, the Bishops organized the Bishop Water Company (Bishop), a California corporation, to provide public utility water service in a proposed 46 lot, 35 acre portion of the Ranch known as Tract No. 405, Laguna Seca ranch Estates Unit No. 1. By Decision (D.) 64314 issued September 25, 1962, Bishop was granted a Certificate of Public Convenience and Necessity to construct and operate a public utility water system in that Tract. The Water System's service area was expanded over the years. By October of 1996, Bishop was serving approximately 133

residential and business customers in the area generally referred to as Laguna Seca Ranch Estates Nos. 1 and 2, Laguna Seca Office Park, and the York School.

California-American Water Company (Cal-Am), a Class A water public utility, serves several localities in California. Its Monterey Division serves the cities of Monterey, Pacific Grove, Carmel-by-the-Sea, Del Rey Oaks, Sand City, portions of Seaside, and unincorporated portions of Monterey County. The service territory of Cal-Am's Monterey Division is contiguous to Bishop's service area.

Bishop's water production and distribution system is comprised of several wells, storage tanks, a treatment plant, and associated mains, hydrants, meters, and related appurtenances, and title to well parcels and easements. Pursuant to an operating agreement between Cal-Am and Bishop dated September 1, 1996, Cal-Am, since September 3, 1996, has continued to operate the Bishop water production and distribution systems, including all billing functions.

On September 1, 1996, Cal-Am and Bishop made an agreement whereby Cal-Am is to acquire the service area and operating assets of Bishop. Upon consummation of this agreement, Cal-Am proposes to integrate the Bishop service area into its Monterey Division (Division) for operational purposes to the extent consistent with conditions imposed by the Monterey Peninsula Water Management District (District), and to provide service at Bishop's tariff rates which it will retain.¹ Bishop then proposes to withdraw from the utility business.

District is an instrumentality created in 1978 by the Legislature (Statutes of 1977, Chapter 527) with extensive powers to deal with water supply and use in its local area. Cal-Am has a Water Distribution System permit from District. On January 25, 1996,

¹ Bishop on April 23, 1997, submitted an Advice Letter to the Commission to increase rates to recover increased operating expenses and plant investments, and to earn an adequate rate of return. Bishop's existing rates had become effective on May 6, 1996 (Decision (D.) 92-03-093). By Resolution W-4054 effective August 1, 1997, new tariff rates were authorized. Bishop was further authorized to file an Advice Letter to recover costs up to \$450,000 for a proposed storage tank and a booster station, or a new water supply well, after it has completed the plant additions and placed them in service.

Cal-Am filed an application with District to amend its permit to expand Cal-Am's operation to include Bishop, and requested District to issue a Negative Declaration as the Lead Agency under the requirements of the California Environmental Quality Act (CEQA). Cal-Am also sought District's approval to annex Laguna Seca Ranch subdivision (Subdivision) (embracing 253 residential units, an 18-hole golf course, a golf course clubhouse, and open space) into the Bishop service area, a 565-acre addition.

On April 15, 1996, District approved a Cal-Am acquisition of Bishop, subject to conditions accepted by Cal-Am. On May 1, 1996, District prepared a Negative Declaration for the project and filed a Notice of Determination to comply with CEQA. Final confirmation of approval by District was made May 21, 1996.

Subsequently, based upon a Final Environmental Impact Report of Monterey County, District on October 21, 1996, approved annexation of Subdivision into Bishop's service area to increase system capacity limit for Bishop from 200 to 295 acre-feet, and expansion capacity limit from 194 to 454 connections. A Notice of Determination was filed to comply with CEQA, and as of October 21, 1996, an amended Final Condition of Approval was issued by District. The essential conditions can be summarized as follows: Bishop (including Subdivision) is to be operated as an independent "sub-unit" of Cal-Am's Monterey Division to be served exclusively by production from wells and facilities in that sub-unit up to a maximum of 295 acre-feet per year with a maximum of 454 meters with special sub-unit accounting and reporting. No interties (emergency or otherwise) to Cal-Am's adjacent Monterey District are allowed.

On April 7, 1997, the present application was filed. It was amended on July 14, 1997. By this application, Cal-Am (with concurrence by Bishop) seeks authorization from the Commission to acquire Bishop's assets; assume certain Bishop obligations for provision of water service;² integrate Bishop into its Monterey Division subject to

² These existing service agreements include (a) an amended and restated agreement of December 13, 1995, between BMIF Monterey County Limited Partnership; Bishop, McIntosh & McIntosh; and Bishop Water Company; (b) that Fourth Amendment to Lease and Agreements Related to Water made effective August 12, 1994, between Bishop, McIntosh & McIntosh; Nick

Footnote continued on next page

District's conditions; annex Subdivision into Bishop; and authorization for Bishop to withdraw from utility service and obligations. The purchase price is \$52,576 (the rate base as of December 31, 1995) subject to adjustments for additions and/or retirements after January 1, 1996. Cal-Am, as to the Bishop ratepayers, would adopt Bishop's tariff rates.³

Notice of the application and amendment appeared in the Commission's Daily Calendars of April 15, 1997, and July 18, 1997, respectively. Customers were informed by a letter of the proposed acquisition. No protests or comments have been received.

Discussion

Public Utilities (PU) Code § 851 provides that no public utility other than a railroad may sell its system without first having secured from the Commission an order authorizing it to do so. 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 performing an 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 seeks reasonable assurance that the purchasing party is financially and technically capable of the acquisition and satisfactory operation of the company thereafter.

In the present instance, we have that assurance. Cal-Am is a Class A water public utility with extensive experience in the operation of water utility service in a number of California localities. As its Balance Sheet and Statement of Income and Retained Earnings (Exh. 6) evidence, it is financially capable of the acquisition and satisfactory operation thereafter.

D. Lombardo, Inc.; Bishop Water Company; and BMIF Monterey County Limited Partnership; and (c) agreements between Bishop Water Company and its customers for the provision of water service.

³ See footnote 1.

The price to be paid for the company is that of Bishop's rate base and is reasonable. Acquisition of Bishop by Cal-Am is in accord with the Commission's policy of encouraging the acquisition or merger of small water public utilities by the larger Class A water public utilities. The annexation is in accord with the policy of the District⁴ since the Bishop supply source is outside the Monterey Peninsula Water Resources System, and users will continue to be supplied from the Bishop system source.⁵ With no intertie to be permitted to Division's system, the annexation will not impact Division's draw from the Monterey Peninsula Water Resources System.

Annexation of Subdivision into Bishop is desirable and in the public interest as it will bring public utility water service to the Subdivision's residents and to the golf course clubhouse and adjacent open space. The irrigation for the golf course will continue to come from wells operated by the golf club owner, and these wells may be interconnected with the Bishop System to allow either party to temporarily draw on the other when wells are unavailable or in an emergency. Annexation further follows Commission and District policy to encourage consolidation of smaller units into larger, more economically feasible units. Although as an area contiguous to the Bishop service territory, and as an area not theretofore served by a public utility of like character, Commission authorization for Bishop to extend into Subdivision is not required pursuant to the provisions of the second paragraph of PU Code § 1001, in view of Bishop's request, the Commission will make the authorization as being in the public interest.

⁴ The District's policy is to discourage annexations of property into the Cal-Am system if the annexation would result in an increased burden on the water supplies that are relied upon by the Cal-Am system (i.e., the Monterey Peninsula Water Resources System). District also encourages annexation of smaller systems to larger systems where both parties are willing, except where the result is substantial additional cost to the customers.

⁵ Bishop's water supply source is from wells completed in the Laguna Seca Ground-Water Subbasin. This subbasin is located outside of the Monterey Peninsula Water Resource System.

All issues considered, the Commission concludes that the sale and transfer of Bishop's assets to Cal-Am, with the assets to be operated as a sub-unit of Division subject to District's conditions, would not be adverse to the public interest.

The Legislature having established Public Utilities Commission Reimbursement Fees to be collected pursuant to provisions of PU Code §§ 431 et seq., upon payment by Bishop to the Commission of the fees required to be collected to the date of consummation of the sale and transfer of the Bishop system assets to Cal-Am, Bishop should be relieved of its water public utilities obligations to the ratepayers in its service area.

Findings of Fact

1. Bishop and Cal-Am are water public utilities subject to the control and regulation of this Commission.
2. Bishop is extending into Subdivision, a contiguous area not heretofore served by a public utility of like character.
3. Bishop and Cal-Am have contracted for Cal-Am to acquire all Bishop's assets, and for Bishop to withdraw from the public utility water business.
4. Cal-Am has agreed to assume certain service agreements of Bishop.
5. The purchase price is to be the rate base of Bishop, adjusted for retirements and additions to the date of consummation of the proposed sale and transfer.
6. District is in accord with the proposed Subdivision extension and the acquisition of Bishop assets by Cal-Am.
7. There is no known opposition to the proposed sale and transfer.
8. The proposed extension and the proposed sale and transfer of Bishop's assets to Cal-Am are not adverse to the public interest.
9. It is reasonable to require the payment of all PU Code § 431 fees required to have been collected by Bishop up to the actual date of consummation of the sale and transfer as a condition of relief of Bishop from its public utility obligations.
10. Cal-Am will operate the Bishop assets and service territory, including Subdivision, as a sub-unit of Division.

11. There may be no interties of any sort between the Bishop sub-unit and Cal-Am's Division.

12. For the present the tariff rates adopted for Bishop by Commission Resolution No. W-4054 dated August 1, 1997, will be in effect in the Bishop sub-unit under Cal-Am.

13. Because Cal-Am has operated the Bishop utility under contract since September 3, 1996, and 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 proposed extension of Bishop into Subdivision should be authorized.

3. The proposed sale and transfer of Bishop's assets to Cal-Am should be authorized, with Cal-Am to operate the thereby acquired Bishop assets and service territory, including Subdivision, as a sub-unit of Cal-Am's Division, subject to District's conditions.

4. Cal-Am should be authorized to assume the Bishop service agreements described in the purchase agreement.

5. Upon payment to the Commission of the PU Code § 431 fees collected to date of consummation of the sale and transfer, Bishop should be relieved of its water public utility obligations with respect to the water system.

O R D E R

IT IS ORDERED that:

1. Within three months after the effective date of this order, Bishop Water Company (Bishop) is authorized to extend its service territory into the Laguna Seca Ranch Subdivision (Subdivision), and annex that area into Bishop.

2. Within six months after the effective date of this order, Bishop is authorized to sell and transfer, and California-American Water Company (Cal-Am) is authorized to

purchase and acquire the public utility assets of Bishop in accordance with the terms of the captioned application.

3. Within 30 days of the extension authorized by Ordering Paragraph 1, Bishop shall file by Advice Letter a revised service territory map reflecting the annexation of Subdivision into Bishop.

4. Within 30 days of the actual sale and transfer authorized by Ordering Paragraph 2, Bishop shall notify the Commission in writing of the date on which the sale and transfer was consummated. A true copy of the instrumentality effecting the sale and transfer shall be attached to the written notification.

5. As of the date of the consummation of the sale and transfer, Bishop shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected to that date.

6. Upon compliance with all the provisions of this Order, Bishop shall stand relieved of its water public utility obligations with regard to the Bishop service territory.

7. Cal-Am shall operate the former Bishop utility operations as a sub-unit of its Monterey Division (Division), subject to the Conditions of Approval (dated April 15, 1996, and October 21, 1996) set forth by the Monterey Peninsula Water Management District, and included as Exhibit 3 to the captioned application.

8. Cal-Am shall either file a statement adopting Bishop's Tariff rates as set forth by Resolution W-4054 dated August 1, 1997, and Bishop's other 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.

9. Before the transfer occurs, Bishop shall deliver to Cal-Am, and Cal-Am shall retain, all records of the construction and subsequent operation of the water system.

10. Within 90 days after actual transfer, Cal-Am shall file in proper form an annual report on Bishop's operations from the first day of the current year through date of transfer.

11. Cal-Am shall use its existing corporate identification number (U-210 W) in connection with the authority issued in this proceeding. The number shall appear in the

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caption of all original pleadings, and in the title of pleadings that may be filed in existing cases before the Commission.

12. This proceeding is closed.

This order is effective today.

Dated September 24, 1997, at San Francisco, California.

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

President P. Gregory Conlon,
being necessarily absent,
did not participate.