

MAR 12 1998

Decision 98-03-017 March 12, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of WILLIAM E. FRY and CAROL FRY and DEL ORO WATER Co., INC., (U-61-W) for orders authorizing WILLIAM E. FRY and CAROL FRY to transfer to DEL ORO WATER CO., INC., their water system and related facilities in Shasta County known as JOHNSON PARK WATER WORKS, (U-16-W) and 2) authorizing DEL ORO WATER CO., INC., a) to file a schedule of rates and charges for water service in said County; and b) to incur certain long term indebtedness and issue promissory notes and deeds of trust in connection therewith.

ORIGINAL

Application 97-10-022
(Filed October 2, 1997)

OPINION

Summary

This decision grants authority for William E. Fry and Carol Fry (the Frys) to transfer Johnson Park Water Works (Johnson Park) to Del Oro Water Co., Inc. (Del Oro). Upon consummation, Del Oro would assume the Frys' public utility obligations, Del Oro would file Johnson Park's then-current tariff rates for Del Oro's new Johnson Park Division, and Johnson Park's old tariffs would be canceled. Further, Del Oro is authorized to execute the promissory notes, deed of trust and security agreement as set forth in the application.

Discussion

Johnson Park is a Class D regulated water utility serving approximately 330 general metered customers in Shasta County adjacent to the unincorporated town of Burney. The Frys were authorized to acquire the system and its Certificate of Public Convenience and Necessity (CPCN) in 1990 by Decision (D.) 90-09-025, and have operated it as a proprietorship business since that time. They now desire to sell to Del

Oro so that they may concentrate their efforts in the operation of their other business interests.

Del Oro is a Class B regulated water utility serving approximately 5,000 customers in Butte County, 700 customers in Humboldt County, and through a wholly owned subsidiary, 1,300 customers in Nevada County. Del Oro wishes to expand its operations as a water service company into new areas, and would operate Johnson Park as a separate district.

Del Oro has a recent history of expansion. Beginning with its Paradise Pines District in 1965, it expanded through acquisition to include as operating districts the water systems of Lime Saddle Community Services District (1990), Magalia County Water District (1993) and Francis Land and Water (1996), and, as wholly-owned subsidiaries, Stirling Bluffs Corporation (1989) and Donner Lake Utility Co. (1993). There was no indication in our consideration of any of those acquisitions that Del Oro was anything other than competent and conscientious as a public utility water system operator. Neither Johnson Park nor Del Oro has pending with the Commission any formal or informal customer complaints. In Johnson Park's last general rate case (Resolution W-3580; June 19, 1991) there were no service-affecting problems or serious customer complaints.

Notice of the application appeared on the Commission's Daily Calendar of October 15, 1997, and the Frys mailed notices to all Johnson Park customers on November 14, 1997. No protests or responses were received.

Exhibit 5B to the application, Johnson Park's balance sheet as of July 31, 1997, shows net plant in service to be approximately \$85,000. By applicants' proposed Agreement to Purchase and Sell (the Agreement) attached to the application as Exhibit 3, the purchase price would be a sum equal to rate base as determined by the Commission and as adjusted for additions and betterments through the closing date. In that regard, Johnson Park has pending an informal general rate case being processed by the Commission's Water Division. Setting purchase price at rate base lays to rest any concern we might have over its effect on future rates. Terms would be \$50,000 cash and

the remainder, up to \$50,000, paid monthly pursuant to a ten-year, 8% per annum promissory note to be issued by Del Oro (Exhibit 6A).

In a separate transaction, Del Oro proposes to purchase as non-utility property a parcel of land described as approximately one-quarter acre adjoining the site of Johnson Park's storage tanks and used as a water company corporation yard. This parcel has not been included by Johnson Park as utility property in its annual reports filed with the Commission; rather, the Frys have charged to the utility an amount each year for its use. Del Oro states that it intends to continue that practice "until the number of customers...increases to the point where the inclusion in the utility's rate base of the price paid by Del Oro for said parcel will not result in an unusually large increase in rate base [and thus rates] in a single year." The purchase price, not to exceed \$40,000, is to be determined by an independent appraisal. Payment would be by \$5,000 cash and an 8% promissory note (Exhibit 6B) for the balance due in equal monthly installments over fifteen years. In D.90-09-025 we identified this parcel of land as non-utility property. We have confirmed that there is no indication in Johnson Park's annual reports filed since that time, or in its only subsequent general rate case, that its status has changed.

Del Oro seeks authorization under Public Utilities (PU) Code §§ 816 through 818 to execute the promissory notes, deeds of trust, and security agreement as set forth in the application for both utility and non-utility property.

To implement the acquisition, applicants would have all of Johnson Park's current tariffs canceled and the Frys relieved of their public utility water service obligations; Del Oro deemed to be the holder of the CPCN to provide water service to Johnson Park's service area; and Del Oro authorized to refile for its new Johnson Park District the schedule(s) of water rates, charges, and practices then in effect for Johnson Park. Del Oro would supervise the new district from its headquarters in Chico, California. For future ratemaking purposes, it would maintain separate accounting, charging to Johnson Park District a portion of its common expenses using Commission-accepted allocation methods. Any Johnson Park rate revisions authorized before the closing date to become effective after the closing date would be made effective

subsequently for Johnson Park District. Del Oro would accept responsibility for all customer deposits. There are no refundable advances for construction shown in Johnson Park's annual reports or financial statements.

Del Oro is experienced and capable of running a public utility water system, and can presumably introduce economies of scale into Johnson Park's operations. The acquisition would be largely transparent to Johnson Park customers in the near term, and favorable in the longer term. Del Oro is well-suited to acquire the Johnson Park water system and to assume the Frys' public utility responsibilities.

Findings of Fact

1. Johnson Park is a Class D regulated water utility serving approximately 330 general metered customers in Shasta County adjacent to the unincorporated town of Burney.
2. Del Oro is a Class B regulated water utility serving approximately 5,000 customers in Butte County, 700 customers in Humboldt County, and through a wholly owned subsidiary, approximately 1,300 customers in Nevada County.
3. The Frys and Del Oro have entered into the Agreement, under which Del Oro would acquire the Johnson Park water system and assume the Fry's public utility obligations.
4. The Agreement establishes the price Del Oro will pay at rate base as determined by the Commission in Johnson Park's pending informal general rate case, and as adjusted to reflect additions and betterments through the closing date.
5. The Agreement also provides for Del Oro to purchase a separate parcel of real property that serves as Johnson Park's corporation yard.
6. The Commission identified the separate parcel as non-utility property in D.90-09-025. There is no indication in Johnson Park's annual reports filed since that time, or in its only subsequent general rate case, that its status has changed.
7. Del Oro is well-suited to acquire and operate the Johnson Park water system.

8. Based on the Agreement, promissory notes, deeds of trust, and security agreement set forth in the application, the transaction presents no issues that would cause us to question whether it is adverse to the public interest.

9. Upon its transfer, Del Oro would establish Johnson Park as a separate district with the same water rates, charges and practices then in effect under the Frys. Any Johnson Park rate revisions authorized before the closing date to become effective after the closing date would be made effective subsequently for Johnson Park District unless otherwise ordered.

10. Del Oro would maintain separate accounting for the Johnson Park District for ratemaking purposes.

11. Del Oro would accept responsibility for all customer deposits.

12. There are no refundable advances for construction shown in Johnson Park's annual reports or financial statements.

13. There is no known opposition to granting the authority requested.

Conclusions of Law

1. The proposed acquisition by Del Oro of the Frys' Johnson Park water system is not adverse to the public interest.

2. Del Oro should be authorized under PU Code §§ 817 and 818 to issue a \$50,000 note payable at more than 12 months for the purchase of the Johnson Park system. The property to be paid for by the note is reasonably required for the purpose specified, and that purpose is not in whole or in part reasonably chargeable to operating expenses or income.

3. Commission authorization is not required for Del Oro to purchase the parcel described in the application as non-utility property used as Johnson Park's corporation yard, or to execute and deliver a deed of trust on the parcel. Commission authorization is required for Del Oro to issue a note payable at more than 12 months in connection with the purchase.

4. Del Oro should be authorized under PU Code §§ 817 and 818 to issue a \$35,000 note payable at more than 12 months for the purchase of the non-utility parcel used as

Johnson Park's corporation yard. The property to be paid for by the note is reasonably required for the purpose specified, and that purpose is not in whole or in part reasonably chargeable to operating expenses or income.

5. A public hearing is not necessary.
6. The application should be granted as set forth in the order that follows.

O R D E R

IT IS ORDERED that:

1. Within one year after the effective date of this order, William E. Fry and Carol Fry (the Frys) may sell to Del Oro Water Co., Inc. (Del Oro), and Del Oro may acquire, Johnson Park Water Works (Johnson Park). The sale shall be as described in Application 97-10-022 and the exhibits attached to it.
2. As a condition of this grant of authority, Del Oro shall assume the Frys' public utility obligations for Johnson Park, their liability for refunding all existing customer deposits and advances, if any, and shall assume responsibility for paying all user fees under Public Utilities Code § 401 et seq.
3. Before the transfer is complete, the Frys shall deliver to Del Oro, and Del Oro shall keep, all records of construction and operation of the water system.
4. Within 10 days after the transfer, Del Oro shall file an advice letter(s) in the form prescribed by General Order 96-A canceling Johnson Park's tariffs and simultaneously making only such revisions to Del Oro's tariffs as are necessary to establish a Johnson Park Division with the same water rates, charges, and practices as then in effect, or authorized by the Commission to be put into effect, for Johnson Park. Concurrently with this advice letter filing, Del Oro shall provide a separate compliance letter providing notification of the date on which the transfer was consummated and attaching a true copy of the sale and transfer instrument(s).
5. Del Oro shall separately track its revenues, costs, and investments related to Johnson Park Division.

6. Within 90 days after the transfer, Del Oro shall file, in proper form, an annual report on Johnson Park's operations from the first day of the year through the effective date of transfer.

7. Del Oro is authorized to issue a promissory note for an amount not to exceed \$50,000, to execute and deliver the proposed deed of trust, and to execute and deliver the proposed security agreement, all as described in the application and the exhibits attached to it, for the purchase of the Johnson Park system.

8. Del Oro is authorized to issue a promissory note as described in the application and exhibits attached to it for an amount not to exceed \$35,000 for the purchase of the non-utility parcel used as Johnson Park's corporation yard.

9. Upon completion of the transfer in conformance with this order, the Frys shall have no further public utility obligations in connection with the Johnson Park water system.

10. This proceeding is closed.

The authority to issue notes is effective when Del Oro has paid the \$170 fee required by Public Utilities Code § 1904(b). In all other respects, this order is effective today.

Dated March 12, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
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97/654-75 (810)
\$170.00 11/3.16.98

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(Filed October 2, 1997)

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9. Upon completion of the transfer in conformance with this order, the Frys shall have no further public utility obligations in connection with the Johnson Park water system.

10. This proceeding is closed.

The authority to issue notes is effective when Del Oro has paid the \$170 fee required by Public Utilities Code § 1904(b). In all other respects, this order is effective today.

Dated March 12, 1998, at San Francisco, California.

RICHARD A. BILAS
President
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