

Decision 98-05-053 May 21, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Watertek Inc. for approval of acquisition of Spreckels Sewer System and rate request of \$37.70 per month for residential service and industrial rates.

Application 97-10-051  
(Filed October 21, 1997)

**ORIGINAL**

**O P I N I O N**

Raymond L. Smith, for Watertek Inc., applicant.  
Joseph W. Riggs, for Spreckels Development Company and  
Robert R. Nielsen, for Tanimura & Antle, Inc., interested parties.  
Daniel R. Paige, for Water Division.

**Summary**

This decision grants Watertek Inc. (Watertek) the authority to acquire and operate the Spreckels Sewer System in the town of Spreckels in Monterey County.

**Background and History**

The Spreckels Sugar Company (Spreckels Sugar) built a sugar plant in the town of Spreckels in 1898. Spreckels Sugar operated the sugar plant until 1982, when it shut down its sugar processing operations in Spreckels. Although Spreckels Sugar stopped processing sugar in Spreckels, it continued to operate the Spreckels plant to package sugar processed at other facilities of Spreckels Sugar until approximately 1994.

Holly Sugar Company purchased Spreckels Sugar in 1996. Holly Sugar Company elected not to purchase the plant facility at Spreckels. All of the assets

of Spreckels Sugar that were not purchased by Holly Sugar Company were transferred to Spreckels Development Company Inc. (Spreckels Development).

The Spreckels Sewer System provided free-of-charge sewer service to the town of Spreckels and the Spreckels Sugar plant facilities. The town of Spreckels consisted of approximately 200 residences for the employees of Spreckels Sugar and a few commercial establishments.

While Spreckels Development still owns the Spreckels Sewer System, it is operated by Watertek through an agreement.

### **Watertek**

Watertek is a regulated sewer utility serving approximately 419 customers in the Oak Hills community and approximately 179 customers in the Indian Spring Ranch and Heritage Park subdivisions near Salinas in Monterey County.

### **Purchase and Sale Agreement**

On October 6, 1997, Watertek entered into Purchase and Sale Agreement (Agreement) with Spreckels Development to buy the Spreckels Sewer System.

Concurrently with the signing of the Agreement with Watertek, Spreckels Development also entered into agreement to sell the Spreckels Real Property to Tanimura & Antle, Inc. (T&A),<sup>1</sup> a California corporation.

According to the Agreement, Watertek will pay \$66,000 for the sewer system which includes:

- a. The machinery, equipment, and other property for operating the sewer system.
- b. The real property on which two sewer ponds are situated.

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<sup>1</sup> Spreckels Real Property is operated by Spreckels Industrial Park, LLC, a wholly owned subsidiary of T&A.

- c. Pipelines for carrying waste water.
- d. A license for Watertek to operate the system.

Watertek financed the purchase of the System through a five-year debt agreement with Spreckels Development.

The Agreement requires Watertek to make every reasonable effort to modify the sewer system, within five years of the close of escrow, to phase out the use of the two sewer ponds either through a pipeline connection to another sewer system or through any other means.

The Agreement provides that T&A or its designee shall have an option to purchase the sewer ponds and/or the sewer assets.

#### **Application**

Following the signing of the Agreement, Watertek filed this application seeking an ex parte Commission order approving the purchase of the Spreckels Sewer System. Watertek also seeks authorization to charge \$37.70 per month for sewer service.

On January 13, 1998, the Ratepayer Representation Branch (RRB) of Commission's Water Division filed an advice of participation memorandum requesting a hearing in the proceeding.

#### **RRB's Report**

RRB conducted its investigation regarding the requested relief. Based on its investigation, RRB issued its report containing its recommendations.

RRB believes that Watertek's application should be rejected because Watertek entered into a long-term debt with Spreckels Development without seeking approval of the Commission as required by Public Utilities (PU) Code § 818.

RRB expresses concern about the provisions in the Agreement which give T&A the option to buy either the entire Spreckels Sewer System or a portion of it.

While RRB believes that the owner of Watertek, Ray Smith, is qualified to operate the sewer system, RRB contends that the requested rate of \$37.70 per month for the service is excessive.

In response to RRB's concern regarding acquisition of long-term debt, Watertek filed an amendment to its application requesting Commission approval of its debt agreement.

### Hearings

A prehearing conference in the proceeding was held on February 4, 1998, in Salinas before Administrative Law Judge (ALJ) Garde.

Also, a duly noticed public participation hearing and an evidentiary hearing were in Salinas on March 2, 1998 and March 25, 1998, respectively.

In addition, two telephonic evidentiary hearings were conducted by the ALJ from his office on April 1, 1998 and April 27, 1998. The matter was submitted upon receipt of the transcript on May 1, 1998.

At the evidentiary hearing, RRB recommended that the Commission adopt one rate for all three sewer systems operated by Watertek. Because RRB's proposal required rate revisions in Watertek's other two systems which are not the subject of this application, the ALJ directed RRB to propose rates for the Spreckels System on a stand-alone basis.

After the evidentiary hearing, RRB and Watertek had negotiations and reached a settlement regarding appropriate rates for the Spreckels Sewer System. Table 1 shows the original estimates of Watertek and RRB as well as the agreed-upon results of operation for the Spreckels Sewer System.

TABLE 1

## WATERTEK, INC.

Summary of Earnings for Spreckels System  
(Operating Ratio Method)

	Utility Estimated		Branch Estimated		Recommended and Agreed upon Rates
	Present Rates	Requested Rates	Present Rates	Requested Rates	
<b>OPERATING REVENUES</b>					
Metered Service	\$ -	\$ -	\$ -	\$ -	\$ -
Flat Rate Service	-	105,703	-	99,029	95,891
<b>TOTAL REVENUE</b>	<b>\$ -</b>	<b>\$ 105,703</b>	<b>\$ -</b>	<b>\$ 99,029</b>	<b>\$ 95,891</b>
<b>OPERATING EXPENSES</b>					
Purchased Water	\$ -	\$ -	\$ -	\$ -	\$ -
Purchased Power	11,771	11,771	6,981	6,981	6,981
Contract Work	7,000	7,000	6,211	6,211	6,211
Other Volume Related Expense	2,400	2,400	600	600	600
Transportation	4,745	10,400	9,819	9,819	9,819
Other Plant Maintenance	7,200	7,200	4,800	4,600	4,800
Employee Labor	9,984	9,984	9,984	9,984	9,984
Office Salaries	11,304	11,304	7,486	7,486	7,486
Management Salaries	15,600	15,600	15,600	15,600	15,600
Office Services and Rentals	-	-	-	-	-
Office Supplies and Expense	11,629	11,629	9,925	9,925	9,925
Professional Services	273	273	273	273	273
Insurance	3,742	3,742	2,786	2,786	2,786
PUC Fees	1,586	1,586	-	-	-
General Expenses	1,300	1,300	1,068	1,207	1,202
Uncollectables	-	3,000	-	820	794
Regulatory Expense	1,480	1,480	45	45	45
Subtotal	\$ 90,014	\$ 98,669	\$ 75,580	\$ 76,539	\$ 76,508
Depreciation Expense	\$ 3,300	\$ 3,300	\$ 924	\$ 924	\$ 924
Property Tax	660	660	787	787	787
Payroll Tax	4,408	4,408	3,952	3,952	3,952
Franchise Fees	-	2,114	-	1,981	1,918
Income Taxes	300	300	800	2,451	1,856
<b>TOTAL DEDUCTIONS</b>	<b>\$ 98,682</b>	<b>\$ 109,451</b>	<b>\$ 82,043</b>	<b>\$ 86,633</b>	<b>\$ 85,945</b>
<b>NET REVENUE</b>	<b>\$ (98,682)</b>	<b>\$ (3,748)</b>	<b>\$ (82,043)</b>	<b>\$ 12,396</b>	<b>\$ 9,946</b>
Operating Ratio expressed as Margin on Operating Expenses	(loss)	-3.8%	(loss)	16.2%	13.00%

### **Amendment to The Agreement**

As stated earlier, RRB had expressed concerns about certain provisions of the Agreement. RRB issued a second report (Exhibit 3) which contained the following recommendations regarding modifications to the Agreement:

- "a. Because the proposed debt will benefit ratepayers by reducing Watertek's cost of capital and will not create an unreasonable financial risk, it should be authorized to incur debt in the amount of \$66,000 at an interest rate of six percent per year with the loan to be repaid in ten years.
- "b. Watertek should revise its Purchase and Sale Agreement to delete all provisions giving any other entity an option to acquire the sewer system. Any provision binding Watertek to the term of a future sale and transfer of utility property without the Commission's approval is illegal and should be deleted.
- "c. Watertek should revise its Purchase and Sale Agreement to delete any provision relating to phasing out the use of ponds for disposal of sewerage or connecting with the Monterey Regional Water Pollution Control Agency, or some other facility. The ponds are an integral part of the sewer system and plans to replace them could have serious financial impact on ratepayers, thus requiring prior Commission approval."

Based on RRB's recommendations, Watertek and T&A agreed to amend the Agreement. The amendments to the Agreement are included in Appendix B to this order.

The Amended Agreement adopts the recommendations made by RRB. RRB has reviewed the amendments to the Agreement and recommends that the Commission approve the Amended Agreement.

### **Joint Request For Adoption Agreed-Upon Terms**

During the evidentiary hearing on April 27, 1998, all parties to the proceeding requested that the Commission:

- a. Adopt the agreed-upon results of operations by Watertek and RRB;

- b. Approve the Amended Agreement between Watertek and T&A;
- c. Grant Watertek the authority to acquire and operate the Spreckels Sewer System; and
- d. Approve the rates for sewer service contained in Appendix A.

### **Discussion**

Because all parties to the proceeding request that the Commission adopt the agreed-upon terms, we will treat the request by parties as a motion to adopt an all-party settlement.

While Watertek has been operating the Spreckels System, it did not have detailed recorded information to develop accurate estimates for operating expenses and ratebase. The agreed-upon summary of earnings contained Table 1 is the best estimate of operating expenses that could be developed on the available recorded data. The summary of earnings shown in Table 1 proposes a revenue requirement based on operating ratio method because sufficient data for developing an estimate for ratebase is not available. We believe that in absence of complete recorded information, the revenue requirement proposed in Table 1 is reasonable.

We have analyzed the settlement mindful of the directives set forth in our decision in San Diego Gas & Electric Company's general rate case, D.92-12-019, 46 CPUC2d 538 (1992).

- a. The settlement commands the support of all parties to the proceeding;
- b. Each party was adequately represented. We are confident that RRB adequately represented the interest of the ratepayers;
- c. Our independent review has revealed that no terms of this settlement contravene any statutory provision or any decision of the Commission; and
- d. This settlement with its table conveys to us sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and affected ratepayers. By adopting this stipulation, we fulfill our primary obligation of setting just and reasonable rates.

We believe that the settlement offered by all parties satisfies the above requirements. Therefore, we will approve and adopt the settlement.

While we approve the rates for Watertek based on the available data, we expect Watertek to maintain a complete record of its operating expenses. We will allow Watertek to file an application for rate revision once it has accumulated recorded information on operating expenses for a 12-month period.

**Waiver of 30-Day Waiting Period Under PU Code § 311**

PU Code § 311(d) requires that:

"The administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the administrative law judge shall be filed the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part thereof. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the findings, opinion, and order of the commission." (Emphasis added.)

In addition, Rule 77.2 et seq. of the Commission's Rules of Practice and Procedure allow parties to file comments on the ALJ's proposed decision.

All parties to the proceeding have agreed to waive the 30-day waiting period required by PU Code § 311 and to waive the opportunity to file comments on ALJ's proposed decision. Accordingly, this matter will be placed on the Commission's agenda directly for prompt action.



**Findings of Fact**

1. All parties in the proceeding have reached a settlement on all issues in this proceeding and request that the Commission:

- a. Adopt the agreed-upon summary of earnings by Watertek and RRB;
- b. Approve the Amended Agreement between Watertek and T&A;
- c. Grant Watertek the authority to acquire and operate the Spreckels Sewer System ; and
- d. Approve the rates for sewer service contained in Appendix A.

2. The settlement meets the requirements of the Commission's Rules of Practice and Procedure.

3. The terms of the settlement do not contravene any statutes or Commission decisions, and the settlement conveys sufficient information to enable the Commission to discharge its regulatory obligations.

4. The agreed-upon summary of earnings provides a reasonable estimate of revenue requirement based on the available data.

**Conclusions of Law**

1. The settlement should be approved.
2. Since all issues in this proceeding are resolved through a settlement, this order should be made effective today.

**O R D E R**

**IT IS ORDERED that:**

1. Within six months of the effective date of this order, Spreckels Development Company, Inc. may transfer the Spreckels Sewer System assets to Watertek, Inc. (Watertek) in accordance with the sale and purchase documents attached to the application as amended by Appendix B to this order.

2. As a condition of this grant of authority, Watertek shall assume a public utility obligation to Spreckels Sewer System's customers and shall collect and remit all user fees required under Public Utilities Code § 401 et seq.

3. Not later than ten days after the transfer, Watertek shall file an advice letter which will include the service area map for the Spreckels Sewer System and the tariff schedule included in Appendix A.

4. Concurrently, with the advice letter filing required by Ordering Paragraph 3, Watertek shall submit a separate compliance letter providing notification of the date on which the transfer was consummated and a true copy of the sale and transfer instrument(s).

5. Watertek shall track its revenues, expenses, and investments separately for the Spreckels Sewer System.

6. Application 97-10-051 is closed.

This order is effective today.

Dated May 21, 1998, at San Francisco, California.

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

APPENDIX A

WATERTEK, INC.

Schedule No. 2

FLAT-RATE SERVICE (T)

APPLICABILITY

Applicable to all flat-rate service. (T)

TERRITORY

Subdivisions of Oak Hills and Indian Springs,  
and the community of Spreckels, in the vicinity of  
Salinas, Monterey County. (T)  
|  
(T)

RATES

	<u>Per Quarter</u>		<u>Per Month</u>
	<u>Oak Hills</u>	<u>Spreckels</u>	<u>Indian Springs</u>
For each residential and small commercial service connection .....	\$ 64.66	\$ 107.00 (N)	\$ 33.00
For each service connection of a school ..		160.00	
For each service connection of a commercial establishment with 4 or more employees .....		214.00	
For each industrial service connection .....		641.00 (N)	

SPECIAL CONDITIONS

1. All bills are subject to the reimbursement fee set forth in Schedule No. UF. (D)
2. Customers may remit quarterly bills in three equal installments on the first day of the month. (N)  
(N)

(END OF APPENDIX A)

A.97-10-051 ALJ/AVG/jva

**APPENDIX B**

# **SPRECKELS INDUSTRIAL PARK, LLC**

**P.O. Box 4070  
Salinas, CA 93912**

**Phone: 408-455-3640**

**Fax: 408-455-3652**

**The Honorable Armand V. Garde  
California Public Utilities Commission  
505 Van Ness Avenue, Room 5009  
San Francisco, CA 94102**

**RE: Application by Watertek, Inc.  
Application #A.97-10-051**

**Dear Judge Garde:**

**I am writing in connection with the above-captioned matter, and am enclosing herewith for the record the final revised letter agreement between SIP and Watertek. This letter, referred to therein as the "Amended Watertek-SIP Agreement," amends and augments the October 6, 1997 letter agreement between SIP and Watertek (referred to in the attached as the "Watertek-SIP Initial Agreement"). The amended Watertek-SIP Agreement reflects the changes recommended by Mr. Dan Paige and his staff. Specifically, the term of the Watertek-SIP Note has been extended from five to ten years. Additionally, any option-exercise by SIP will be subject only to PUC approval. The maximum option exercise price shall be not more than \$66,000.**

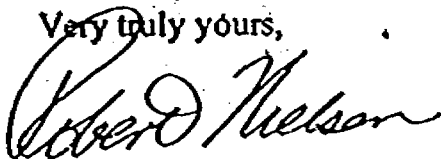
**Additionally, Mr. Paige correctly noted to us that the first line on page 2 of the amended Watertek-SIP agreement needs to be corrected to read as it does in the enclosed material; i.e. providing that the deed of trust will be recorded on or after the date on which the California PUC approves Watertek's rate request.**

**Mr. Smith has signed the enclosed document, as has the undersigned in behalf of Spreckels Industrial Park, LLC. I believe that this completes the record as far as SIP is concerned. We look forward to Commission approval of Watertek's application, and thereafter being able to record the deed of trust securing payment of the Watertek-SIP Note.**

We appreciate very much the assistance and guidance from Mr. Paige and his staff, and we also are grateful for your direction and oversight on this matter.

Please feel free to contact me should you have any questions, or should you need any further information.

Very truly yours,



Robert R. Nielsen  
Secretary

RRN/jmh

cc (w/enclosure): Mr. Dan Paige  
Mr. Ray Smith  
Mr. Joe Riggs

# SPRECKELS INDUSTRIAL PARK, LLC

P.O. Box 4070  
Salinas, CA 93912

April 10, 1998

Mr. Ray Smith  
Watertek, Inc.  
2398 N. Main Street  
Salinas, CA 93906

Dear Ray:

I am writing with regard to (1) the March 20, 1998 P.U.C. Water Division Ratepayer Representation Branch staff Recommendations, a copy of which is attached hereto as Annex A (the "Staff Recommendations"), and (2) our October 6, 1997 letter of agreement, a copy of which is attached hereto as Annex B (the "Watertek-SIP Initial Agreement"). The purpose of this letter is to respond to the Staff Recommendations and cure the defect in the Watertek-SIP Initial Agreement caused by our failure to obtain prior approval of the Watertek-SIP Initial Agreement from the California Public Utilities Commission. Accordingly, this letter memorializes our discussions and confirms our agreement to amend the Watertek-SIP Initial Agreement along the lines suggested in the Staff Recommendations. Specifically, we agree as follows (using terms as defined in the Watertek-SIP Initial Agreement):

## 1.0 Watertek Financing

- 1.1 The Watertek-SIP Note is hereby modified to provide that its term shall be ten (10) years.
- 1.2 The deed of trust securing the Watertek-SIP Note (the form of which deed of trust is attached as Exhibit D to the Watertek-SIP Initial Agreement) shall be executed and recorded by Watertek and SIP after the California PUC approves the sale of the Sewer Assets to Watertek (including

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execution of said deed of trust) and on or after the date on which the California PUC approves Watertek's current request for rates to serve the community of Spreckels.

## 2.0 SIP Option

- 2.1 Any option granted by Watertek to SIP for SIP to purchase the Sewer Assets under Paragraph 2 on page 2 of the Watertek-SIP Initial Agreement shall (a) be only for a period ending on the later of (1) the 10th anniversary of the Watertek Closing Date or (2) Watertek's closing the Sewer Ponds, and (b) also be exercisable, if sooner, upon default by Watertek of its obligations under the SIP Watertek Loan; provided, however, that in any case, such options shall only be exercised by SIP pursuant to prior approval of such exercise by the California PUC under then-applicable law (for so long as Watertek may be regulated by the California PUC). The price to be paid by SIP for purchase of the Sewer Assets pursuant to such option-exercises shall be not more than \$66,000.
- 2.2 The Memorandum of Option referenced in Paragraph 3 on page 2 of the Watertek-SIP Initial Agreement shall be modified to reference that it is also governed by this letter agreement.
- 2.3 The option granted to SIP pursuant to Paragraph 5 on page 3 of the Watertek-SIP Initial Agreement shall be exercisable only at a purchase price equal to the higher of net book value or fair market value, as contemplated in said Paragraph 5; provided, however, that such option-exercise by SIP shall only be pursuant to prior approval of such exercise by the California PUC under then-applicable law (for so long as Watertek may be regulated by the California PUC).

## 3.0 Other Sewer Support

Any action by Watertek to have sewer service provided by means of the Monterey Regional Water Pollution Control Agency or otherwise, as contemplated in Paragraph 4 on page 2 of the Watertek-SIP Initial Agreement, and/or



Watertek's obligations to comply with its commitments and obligations under the SDC-Watertek Agreement, as contemplated in Paragraph 8 on page 2 of the Watertek-SIP Initial Agreement, shall in each case, only be pursuant to the approval of the California PUC under then-applicable law for so long as Watertek may be regulated by the California PUC.

The Watertek-SIP Initial Agreement, as modified by this letter agreement, embodies the entire agreement between Watertek and SIP with regard to the financing of Watertek's purchase of the Sewer Assets (and is hereinafter referred to as the "Amended Watertek-SIP Agreement").

If the foregoing accurately reflects the terms of the Amended Watertek-SIP Agreement, kindly please countersign the enclosed copy of this letter and return it to the undersigned at your earliest convenience.

Very truly yours,

SPRECKELS INDUSTRIAL PARK, LLC

By: 

Robert R. Nielsen  
Secretary

Accepted and agreed to

April 17, 1998

WATERTEK, INC.

By: 

Raymond Smith  
President

RRN/jmh