

Decision 98-09-038 September 3, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Ambler Park Water Utility, a California corporation, and California-American Water Company (U 210 W), a California Corporation for an order authorizing (A) Ambler Park Water Utility to sell and transfer and California-American Water Company to purchase and receive the water utility assets of Ambler Park Water Utility, including the properties used in its water utility business, and (B) Ambler Park Water Utility 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 Ambler Park Water Utility, and (D) the commencement of service in the Ambler Park Water Utility service area by California-American Water Company, and (E) California-American Water Company, Monterey Division, to amortize the acquisition adjustment by reason of this transaction adjustment pursuant to the methodology authorized previously by the Commission for the California-American Water Company.

ORIGINAL

Application 97-07-058
(Filed July 31, 1997)

Lawrence D. Foy; Steefel, Levitt & Weiss by Lenard G. Weiss,
Attorney at Law; Dave Stephenson for California-American Water
Company; and Con Cronin, for Ambler Park Water Utility,
applicants.

Mike Weaver, for Highway 68 Coalition; Gerri Bolles, for Corral De
Tierra Villa Homeowners' Association; David Dillworth, for
Responsible Consumers of Monterey Peninsula; and Richard
Hughett, for himself, interested parties.
Raymond A. Charvez, for Water Division.

O P I N I O N

Summary of Decision

This decision authorizes Ambler Park Water Utility (Ambler) to sell its water system to California American Water Company (CalAm) and to be relieved of its public utility responsibility. Ambler and CalAm are jointly referred to as applicants.

Background

Ambler serves approximately 390 customers in an unincorporated area of Monterey County near the City of Salinas. Ambler's service territory includes Ambler Park subdivision, Rim Rock subdivision, and Rancho El Toro Country Club.

Ambler was incorporated in July 1975. It is regulated by the Commission as a Class D water utility.

CalAm is a Class A water utility serving various districts in Northern and Southern California, including, in its Monterey Division, the cities of Monterey, Pacific Grove, Carmel-by-the-Sea, Del Rey Oaks, Sand City, portions of Seaside, and certain unincorporated portions of Monterey County.

CalAm was incorporated in December 1965 for the purpose of acquiring the water system of California Water and Telephone Company. The Commission approved the acquisition by Decision (D.) 70418, 65 CPUC 281. Subsequently, CalAm has acquired various small water utilities.

CalAm is currently providing meter reading and customer billing services to Ambler for which CalAm is being reimbursed by Ambler. Ambler's customers remit their payment for water services to Ambler, not to CalAm. CalAm has been providing this service to Ambler since 1996 pursuant to an agreement.

On March 28, 1996, CalAm and Ambler entered into an agreement for the purchase of the assets of Ambler by CalAm (Agreement). The Agreement is

attached to the application as Exhibit 1. According to the Agreement, CalAm will pay Ambler \$276,398 (Ambler's ratebase as of December 31, 1991) plus a premium of \$55,279 or a total sum of \$331,677 for Ambler's water utility assets.

Although Ambler's water system is not interconnected with the Monterey Division system, after the acquisition by CalAm, Ambler's water system will become a part of CalAm's Monterey Division. Applicants state that CalAm will operate the Ambler water system as a stand-alone system, and that it will not be connected to the Monterey Division water system.

Requested Relief

Applicants filed this application requesting an ex parte order authorizing:

- a. CalAm to acquire Ambler's water system assets pursuant to the Agreement,
- b. CalAm to serve Ambler's service area;
- c. CalAm to amortize the \$55,279 premium it is paying over rate base for Ambler's system; and
- d. Ambler to be relieved of its public utility obligations.

Applicant's Proposed Ratemaking Treatment for the Acquisition of Ambler's System

As stated earlier, CalAm has agreed to pay \$55,279 in excess of ratebase for Ambler's water system. This premium will be treated as an acquisition adjustment. CalAm proposes to amortize this acquisition adjustment below the line over 25 years, the remaining tax life of the property to be acquired. CalAm states that the tax saving resulting from amortization of the acquisition adjustment will be reflected for book purposes.

CalAm plans to continue to charge, until January 1, 2000, Ambler's current rates, which were authorized in D.96-12-004 for the service it will provide in Ambler's service area. The rates authorized in D.96-12-004 were based on a rate of return on ratebase of 13.25% which is an appropriate rate of return for a

Class D water utility. CalAm recognizes that it should earn a return on ratebase in Ambler's service area at a rate more appropriate for a Class A water utility. However, CalAm believes that the rates for Ambler's service area should not be reduced at acquisition because CalAm plans to invest approximately \$100,000 to bring Ambler's system into compliance with the health and safety standards. CalAm's planned system improvements are included in Exhibit 9 attached to the application. According to CalAm's calculation, the system improvements to Ambler's system would increase the ratebase for the system and reduce the rate of return to 9.25%.

Request for Hearing

On August 24, 1997, Mike Weaver, Chairman of the Highway 68 Coalition, requested a hearing in this proceeding. In his request for hearing, Weaver requested that:

1. The Commission allow the customers of Ambler an opportunity to explore the possibility of forming a mutual water company.
2. The Commission not allow CalAm to apply to Ambler's customers the graduated rate structure which is currently used by CalAm's Monterey Division.
3. As a condition of approval of the requested transfer of ownership, the Commission impose a limit on the number of service connections in Ambler's service area to the current level of 387 connections.
4. The Commission require an environmental review of the proposed transfer under the California Environmental Quality Act.

Also, by a letter dated September 15, 1997, several customers of Ambler requested the Commission to hold a hearing in this application.

Hearings

A duly-noticed prehearing conference was held on November 13, 1997, before Administrative Law Judge Garde in Ambler's service area. The prehearing conference was followed by a public participation hearing (PPH).

An evidentiary hearing in the matter was held in Monterey on February 5, 1998. The matter was submitted on March 27, 1998, upon receipt of concurrent briefs.

At the PPH, several customers praised the service provided by Ambler. The customers, however, were concerned that CalAm would divert the water supply in Ambler's service area to CalAm's service area in Monterey through an interconnection and that certain water production costs for service in the Monterey Bay Area, including the cost of construction of the proposed Carmel Dam, would be charged to Ambler's current customers.

CalAm stated that it was not going to interconnect Ambler's service area with its current Monterey Division service area. CalAm also stated that it would operate the Ambler service area on a stand-alone basis and that no water production cost from the Monterey Division would be transferred to Ambler's customers.

Ratepayer Representation Branch's Report

The Ratepayer Representation Branch (RRB) of the Commission's Water Division made its analysis of the proposed relief sought by applicants. RRB concluded that the proposed transfer will not have an adverse impact on Ambler's customers. RRB recommends that the proposed transfer be approved subject to the following conditions:

1. CalAm should be required to provide RRB by December 31, 1998, a report on the additional plant improvements, including the capital expenditures related to the plant improvements, which are put in place

to bring Ambler service area into compliance with health and safety standards.

2. CalAm should be required to provide RRB within six months of transfer, the system journal entries reflecting the recording of the acquisition adjustment.
3. CalAm should be required to propose in its next general rate case application for the Monterey Division a rate design for the Ambler service area.
4. CalAm should be required to address Highway 68 Coalition's request to form a mutual water company.

Discussion

We will address each issue raised by Highway 68 Coalition and RRB.

Formation of a Mutual Water Company

Highway 68 Coalition requests that this proceeding be delayed to allow the formation of a mutual water company. RRB supports Highway 68 Coalition's position.

While we are not necessarily opposed to the formation of mutual water company by Ambler's customers, we note that Con Cronin, the current owner of Ambler, testified that he intended to honor his agreement with CalAm to sell his water system to CalAm. Cronin also testified that he did not intend even to discuss the sale of his system to Highway 68 Coalition.

Public Utilities Code Section 851 provides that a sale of a public utility, in whole or in part, may be made only with consent of the Commission. In Hanlon v. Eshleman (1915) 169 Cal 200, 203, the California Supreme Court stated:

The provision that an owner may not sell without the consent of the commission implies that there must be an owner ready to sell and seeking authority to do before the commission is called upon to act.

Based on the testimony of Cronin, there is no willing seller. Thus, the Commission could not require Cronin to sell to a mutual water company. (Alan and Allan Corp. (1976) 81 CPUC 24.)

Given Cronin's position, Ambler's customers can only form a mutual water company by exercising eminent domain or condemnation powers. We see no reason to delay the transfer of the system to CalAm because Ambler's customers could exercise their condemnation power against CalAm just as it could have over Ambler. We will deny Highway 68 Coalition's request to delay the transfer of Ambler's system to CalAm.

Rate Structure

Highway 68 Coalition requests that the graduated rate structure which is currently used for CalAm's Monterey Division not be applied to Ambler's customers.

In addition, RRB requests that CalAm be required to propose a rate design for the Ambler service area in its next general rate case application for the Monterey Division.

CalAm proposes no changes to Ambler's rate structure until January 1, 2000. CalAm plans to file a general rate case application for its Monterey Division requesting rate changes effective January 1, 2000. The issue of rate design will be addressed in that proceeding.

Moratorium on New Connections

Highway 68 Coalition requests that as a condition of approval of the requested transfer of ownership, the Commission impose a moratorium on new service connections in the Ambler service area. According to Highway 68 Coalition, CalAm's proposed acquisition has a hidden agenda to enlarge Ambler's service area to include the nearby, extensive undeveloped acreage owned by Bollenbacher and Kelton, Inc.

Highway 68 Coalition states that water supply in Ambler's service area is limited and that addition of new customers may result in the system running out of water.

Applicants disagree with Highway 68 Coalition's position about the water supply situation in Ambler's service area. Applicants cite the Hydrologic Update Study conducted by FugroWest, Inc. for the Monterey County Water Resources Agency (Ref. Item F). The study concluded that there is adequate water supply in Ambler's service area.

Also, while Highway 68 Coalition contends that Ambler's water supply is limited, its witness Weaver conceded during cross-examination that Ambler has never run out of water, even during the last drought. Since CalAm does not plan to interconnect Ambler's service area with its service area in the Monterey region, there is little possibility of water supply problems in Ambler's service area.

Next, we will consider Highway 68 Coalition's concern about expansion of Ambler's service area to the property owned by Bollenbacher and Kelton, Inc. Highway 68 Coalition is surmising that CalAm has a hidden agenda to expand its service area. It has not provided any basis to lead us to the same conclusion. However, even if Highway 68 Coalition's assumption regarding service area expansion is correct, CalAm will still have to seek approval of the Commission for expansion of its service through an advice letter. Adequacy of water supply would be one of the factors considered by the Commission before authorizing the expansion of the service area. We will not adopt Highway 68 Coalition's recommendation regarding placing a moratorium on service connections as a condition of approving the transfer of the water system.

RRB's Request for Reports

RRB requests that CalAm be required to provide RRB with reports on the treatment of acquisition adjustment and system improvements to bring Ambler's service area into compliance with health and safety standards.

In its application, CalAm states that it will perform certain plant improvements within three months of acquiring Ambler's system. The proposed plant improvements are listed in Exhibit 9 attached to the application.

We expect CalAm to complete the proposed improvements within three months of the completion of the transfer. Within 45 days upon completion of the proposed improvements, CalAm should provide a report to the Director of the Water Division on the system improvements put in place. The report should include the actual costs of the improvements made. If the improvements are not put in place within three months of the effective date of this order, CalAm's report should also include an explanation for the delay.

As to the proposed treatment of the acquisition adjustment, we note that it is consistent with the treatment approved by the Commission in D.70418 which authorized the acquisition of the water system of California Water and Telephone Company by CalAm. As requested by RRB, we will require CalAm to provide journal entries reflecting the recording of the Ambler acquisition adjustment to the Director of the Water Division within six months of the effective date of this order.

Finally, we will discuss the issue of gain on sale. As discussed above, Ambler's owners will receive \$55,279 above Ambler's ratebase of \$276,398, i.e., the owners of Ambler will realize a gain on sale of \$55,279.

As to the treatment of gain on sale, the Commission in D.89-07-016 (Re Ratemaking Treatment on Capital Gains (Appendix A) 32 CPUC2d at pp. 240-242) stated that gain on sale of utility plant shall accrue to the shareholders to

the extent that the remaining ratepayers are not adversely affected when the sale is to a public entity. That same policy applies when the sale is to other than a public entity "when the conveying utility was relieved of its public utility obligation to serve the geographic region being conveyed." California Water Service Company (1994) 56 CPUC2d 4, 12-13; California Water Service Company (1993) 47 CPUC2d 580, 599. In this situation, the entire Ambler system is being transferred and there will be no remaining ratepayers. Accordingly, the entire gain on sale will be retained by Ambler's owner.

Environmental Review

Highway 68 Coalition requests that an environmental review under CEQA of the proposed transfer be performed.

The application before us concerns only the transfer of ownership of Ambler's facilities to CalAm. Although the Commission has in certain circumstances decided that an environmental review must be performed when utility assets are transferred, we do not believe that an environmental review is either warranted or required in this case under either CEQA or Rule 17.1 of the Commission's Rules of Practice and Procedure. This case is logically similar to D.97-07-019, where we concluded that a transfer of utility facilities was not a "project" as defined in CEQA. Today's decision does not identify any issues that might trigger an environmental review. CalAm will continue to operate Ambler as a stand-alone system, current rates will remain in effect until the year 2000, and water supply sources will not change.

Future proposals that may have an environmental effect will require separate action by the Commission or other agencies, and those events may require separate evaluation under CEQA. Highway 68's claims that CalAm's acquisition will result in an expansion of the current Ambler service territory is speculative, and in any event any such expansion would likely require separate

Commission approval. CalAm does plan system improvements to Ambler's service area, and those improvements, depending on their nature, may require separate Commission approval. However, as currently described by CalAm, those improvements would be exempt from environmental review pursuant to Class 2 exemptions included in Rule 17.1(h).

We conclude that this application involves a change in ownership that does not constitute a project under CEQA. Our determination here is similar to our decisions in other applications for changes in ownership of utility property approved by the Commission in the past (See for example D.94-04-042, D.94-04-083, D.95-10-045).

Commission Policy

In 1979, the Commission adopted a policy of encouraging the acquisition of small water companies by larger water companies. The Commission reiterated this policy in D.92-03-093, 43 CPUC2d 589. The proposed transfer of ownership of a Class D water company to a Class A water company is consistent with that policy.

CalAm is a Class A water company in good standing with the Commission for reasons stated earlier. CalAm's ownership of Ambler is not adverse to public interest. We will approve the transfer.

Comments on ALJ's Proposed Decision

ALJ proposed decision was filed and mailed to the parties on May 28, 1998. Highway 68 Coalition and Richard Hughett have filed comments on the proposed decision. CalAm filed reply comments. After reviewing the comments, we believe that only one issue needs to be addressed.

Richard Hughett points out that during the public participation hearing, Larry Foy, Vice-President of CalAm, stated that:

"...And we have agreed with the individuals with that concern and request that the Commission place as part of this purchase that condition, the water will not be exported from this operating system." (Tr. PHC p. 2)

Richard Hughett requests, among other things, that as a condition of approval of the transfer of ownership of Ambler's water system, the Commission prohibit any interties between Ambler's water system and CalAm's other water systems.

We have verified Richard Hughett's assertion and have added the appropriate Finding of Fact and Ordering Paragraph to prohibit interties between Ambler's water system and CalAm's other water systems.

We have also elaborated upon the applicability of the need for environmental review of the transfer. Other than the changes discussed above, we are issuing the decision as proposed.

Findings of Fact

1. CalAm and Ambler seek an ex parte order of the Commission granting authorization for:
 - a. CalAm to acquire Ambler's assets;
 - b. CalAm to serve Ambler's service area;
 - c. CalAm to amortize the \$55,279 premium it is paying over rate base for Ambler's system; and
 - d. Ambler to be relieved of its public utility obligations.
2. Highway 68 Coalition requests that the Commission delay its action in the matter to allow Ambler's customers to form a mutual water company.
3. The owner of Ambler is not willing to sell the system to the yet-to-be-formed mutual company.
4. Given the position of Ambler's owner regarding the sale of the system to a mutual water company, Ambler's customers could only acquire Ambler's system through eminent domain.

5. Ambler's customers could exercise their powers of condemnation over CalAm just as well as they could have over Ambler.

6. Highway 68 Coalition requests that CalAm not be allowed to apply to Ambler's customers the graduated rate structure which is currently used for CalAm's Monterey Division.

7. CalAm does not propose to modify rates for Ambler's customers until January 1, 2000, when it files a general rate case application for its Monterey Division.

8. Highway 68 Coalition requests that as a condition of approval of the requested transfer of ownership, the Commission impose a moratorium on new service connections in the Ambler service area.

9. Highway 68 Coalition contends that CalAm's proposed acquisition of Ambler's system has a hidden agenda to enlarge Ambler's service area to include the nearby, extensive undeveloped acreage owned by Bollenbacher and Kelton, Inc.

10. The Hydrologic Update Study conducted by FugroWest, Inc. for the Monterey County Water Resources Agency concludes that there is adequate water supply in Ambler's service area.

11. Highway 68 Coalition requests that an environmental review of the proposed transfer be performed.

12. The proposed transfer is not a project under CEQA.

13. CalAm's proposed treatment of acquisition adjustment is consistent with the treatment approved by the Commission in D.70418 which authorized the acquisition by CalAm of California Water and Telephone Company.

14. RRB requests that CalAm be required to provide journal entries reflecting the recording of the Ambler acquisition adjustment.

15. Requiring CalAm to provide RRB journal entries regarding Ambler's acquisition adjustment will enable RRB to ensure that the acquisition adjustment is being recorded correctly.

16. Within three months of the completion of the transfer of the system, CalAm proposes to make certain system improvements in Ambler's service area.

17. RRB requests that in order to ensure that CalAm has made the necessary system improvements, CalAm be required to provide a report on the system improvements in place.

18. The proposed transfer of Ambler's system is consistent with the Commission's policy of promoting acquisition of small water systems by large water companies.

19. As a condition of approval of the proposed transfer of ownership of Ambler's water system, CalAm has agreed not to intertie Ambler's water system to any other water system of CalAm.

Conclusions of Law

1. The proposed transfer of Ambler's water system to CalAm should be approved.

2. Highway 68 Coalition's requests should be denied.

3. CalAm should be required to provide RRB journal entries reflecting the recording of Ambler's adjustment.

4. CalAm should be required to file a report on the planned system improvements to Ambler's system.

5. The rates in Ambler's service area should not be reconsidered until the Commission reviews the January 1, 2000 general rate case application for CalAm's Monterey Division.

6. An environmental review under CEQA of the proposed transfer of ownership is not required.

7. Any proposal by CalAm to expand the Ambler service area will require the Commission's approval and a separate CEQA evaluation.

8. This order should be made effective immediately to enable CalAm to acquire and operate Ambler's water system expeditiously.

9. Where the utility operations are to be sold to a nongovernmental buyer but the seller will no longer remain in the utility business, the gain on sale belongs to the shareholders of the seller.

O R D E R

IT IS ORDERED that:

1. Within 180 days of the effective date of this order, Ambler Park Water Utility (Ambler) may transfer its water system to California American Water Company (CalAm) in accordance with the Agreement for Purchase included in Exhibit 1 attached to the application.

2. Within ten days of the transfer, Ambler shall write to the Commission stating the date of transfer and attach a copy of the transfer document.

3. Within ten days of the transfer, Ambler shall remit to the Commission all user fees collected up to the time of transfer.

4. Upon compliance with this order, Ambler shall be relieved of its public utility designation.

5. Within six months of the effective date of this order, CalAm shall file with the Director of the Commission's Water Division, journal entries reflecting the recording of Ambler's acquisition adjustment.

6. Within 45 days of the completion of the proposed plant improvements listed in Exhibit 9, CalAm shall file with the Director of the Commission's Water Division a report on the system improvements made to Ambler's water system since the transfer.

7. Within 30 days of the completion of the transfer, CalAm shall file, with the Commission, tariff schedules and service area map for its Monterey Division.

The filing shall be in accordance with the Commission's General Order 96-A.

8. The rates for water service in Ambler's service area shall not be revised until January 1, 2000.

9. CalAm is prohibited to intertie Ambler's water system to any other water system of CalAm.

10. This proceeding is closed.

This order is effective today.

Dated September 3, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners