

Decision 98-09-060 September 17, 1998

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

Application of Dino Bozzetto, doing business as the Los Guilicos Water Works, to sell and the Glen Ellen Water Co., LLC to buy the water system near the City of Kenwood, County of Sonoma.

**ORIGINAL**  
Application 98-01-020  
(Filed January 26, 1998)

**OPINION**

**Background**

In the valley between the Sonoma and Maacama mountains in Sonoma County, there are numerous natural warm mineral springs. One of these, located 2-1/2 miles southwest of Kenwood alongside of Sonoma Creek, was developed early this century as Guilicos Warm Springs Resort, and in 1923 the owners sank a well to contain the artesian spring. The well was used to supply warm mineral water to the swimming pool in the resort.

Later, adjacent lot owners built vacation cabins and, having no water source other than to sink individual wells or depend upon the creek, the owners sought an accommodation from Mrs. Mabel Miller, then the resort owner. Later a nominal charge was made. In 1946, Mrs. Miller sold the resort and her small water distribution system (known as Los Guilicos Water Works) to Mr. and Mrs. Harold Morton. After 1946, the Mortons added new concrete swimming pools (in 1954, 1955, and 1959), and to obtain pressure for the delivery system added a 16,000-gallon reservoir on a hill in the 20-acre resort. The tank has a relay which activates a pump at the well, and three-inch lines lead up to the reservoir. Morton, apart from the resort property, also owned land to the east across Warm Springs Road from the resort, and as an inducement to buyers he

sold lots from this adjacent land offering water from his system, and installed distribution pipes to deliver the water. By 1979, there were 20 cabins, all metered, on his system, and some of these cabins had been reconstructed to afford all year use.

In 1979, Morton sold his resort and the Los Guilicos Water Works to Dino Bozzetto. Bozzetto added customers until there were 23 services served from 21 meters when Bozzetto, in 1986, attempted to raise water rates. This prompted some customers to file a complaint with the Commission, leading to Decision (D.) 88-01-015 (Stanley Burns et al. v. Dino Bozzetto dba Los Guilicos Water Works (1988) 27 CPUC2d 279). This decision declared the water system to be a public utility, and by Resolution No. W-3443 (April 26, 1989), a rate increase was authorized.

In 1990, Bozzetto sold the resort and Los Guilicos Water Works to Lawrence and Melanie Blum (D.92-09-008). That decision determined that the water system consisted of a 10% proportionate share of the reservoir, pumps, and mains within the resort, and the distribution system outside the resort, and had a dedicated right to 10% of the water produced from the artesian well in the resort. Rates for the 23 customers were based upon a rate base as of December 31, 1990 of \$9,637.

For reasons not set forth, the Blum purchase subsequently fell through and the resort and water system reverted back to Bozzetto.

### **The Present Application**

By this application, the Glen Ellen Water Co., LLC, a California limited liability company whose managing partner is John M. Pflueger (a noted San Francisco architect whose practice is now located in Glen Ellen), proposes to acquire the Los Guilicos Water Works from Bozzetto. The buyer will also acquire the resort property and the resort business in separate transactions with Bozzetto.

A.98-01-020 ALJ/JBW/eap \*

Buyer intends incorporation of the well, reservoir, pumps, and in-resort distribution system interests presently held by Bozzetto apart from Los Guilicos Water Works into the Glen Ellen Water Co., LLC. as a further investment into Glen Ellen Water Co., LLC., so that hereafter the resort (with its swimming pools and grounds) will become a further customer of Glen Ellen Water Company, LLC. The 90% interest of the water supply will also become the property of Glen Ellen Water Co., LLC.

The Advisory Branch of the Water Division has prepared the following Estimated Summary of Earnings reflecting these changes:

**ESTIMATED SUMMARY OF EARNINGS**

**OPERATING REVENUES**

Metered customers	\$9785
Flat Rate customers	0
Resort customers	3145
Total Revenues	\$12930

**OPERATING EXPENSES**

Purchased Power	973
Employee Labor	106
Materials	50
Contract work	600
Management Salaries	980
Transportation	625
Other Plant Maintenance	0
Office Salaries	347
Professional Services	50
Insurance	4775

A.98-01-020 ALJ/JBW/eap \*

General Expenses	77
Regulatory Expenses	0
Sub total	\$8582
Depreciation Expenses	966
Property Tax	322
Payroll Tax	148
Income Taxes	800
Total Deductions	\$10818
<b>NET REVENUES</b>	<b>\$ 2112</b>
<b>RATE BASE</b>	
Average Plant	43890
Average Depreciation Reserve	23766
Net Plant	20124
Less Advances	0
Contributions	0
Plus Working Cash	0
Materials and Supplies	0
Total Rate Base	20124
<b>RATE OF RETURN</b>	<b>10.50%</b>

This summary shows that the existing customers (indicated as "metered" under the Operating Revenues section) would not see a rate impact from the sale. While the rate base will be substantially increased because of addition of additional plant, in essence, the resort, now to be a customer of the water system,

will be paying for water and will bear the impact of the sale transaction.<sup>1</sup> The 1989 authorized rate of return of 10.50% will also be continued. While purchased power would increase by approximately 23.5% (the average percentage of water used by the resort in 1996 and 1997 is about that percentage), all other expenses would remain at the 1989-91 levels.

In discussions with the buyer's attorney, Administrative Law Judge (ALJ) Weiss was advised of the buyer's acceptance of the Estimated Summary of Earnings.

The customers were informed of the proposed sale. A problem of shared lines was resolved by Bozzetto to the satisfaction of one customer who had responded. A bacteriological examination report from Brelje and Race Laboratories answered another customer's question satisfactorily.

#### Discussion

Rule 6.1 of the Commission's Rules of Practice and Procedure requires the Commission to preliminarily determine the category of applications filed after January 1, 1998 and whether or not a hearing was indicated. By Resolution ALJ 176-2986 adopted February 4, 1998, the Commission preliminarily designated the captioned application as "Ratesetting" with the probability that no hearing would be required. Commissioner Henry M. Duque and ALJ John B. Weiss, were designated as the Assigned Commissioner and ALJ, respectively.

While a Prehearing Conference was set by the Assigned Commissioner for June 12, 1998, through inadvertence, the parties did not appear. However, the questions that were to be addressed were subsequently resolved by telephone,

---

<sup>1</sup> The resort will be served by a 2-inch meter. The service charge for the 2-inch meter per year would be \$1579.00. The resort will pay a quantity rate of \$3.16 per 1000 gallons.

obviating a need for a Scoping Memo or further Ruling by the Commissioner. As no issues remained there was no need for a hearing and the ALJ proceeded ex parte adhering to the preliminary designation of the proceeding as a ratemaking.

The design of Public Utilities (PU) Code §§ 851-854 is to prevent the impairment of the public service of a utility by its transfer into the hands of parties incapable of rendering adequate service at reasonable rates or upon terms which would produce the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 CRC 520). Accordingly, no sale of property burdened with public use is legal, or of any validity whatever, except that the authority to make such sale is first given by the Commission (Henderson v. Oroville-Wyandotte Irr. Dist. (1931) 213 C.514). In addition, where a change in ownership of a public water supply system is to occur after January 1, 1998, Section 116540(a) of the California Health and Safety Code requires the prospective buyer to demonstrate to the State Department of Health Services that he possesses adequate financial, managerial, and technical ability to assure proper service. Glen Ellen Water Co., LLC must obtain and submit to the Commission a letter from the Department of Health Services setting forth this finding as a condition of Commission approval of its application.

In the present situation, Bozzetto has sought to sell the water system (and the resort) without resolution in the past. This is another opportunity, and while neither the buyer nor buyer's managing partner has had any direct experience in operating a water company, the managing partner has had extensive real estate development experience and has spent significant time with Bozzetto and those previously contracted by Bozzetto to perform maintenance work on the system, and has acquired knowledge of the system and its maintenance requirements. The buyer will close the acquisition of the system by paying Bozzetto the full purchase price of \$64,000 in cash, funding its purchase by equity investment with

no noncurrent liabilities. There are no customer deposits to establish credit; there are no main-extension advances; and the condition of this fairly simple system is good. The buyer accepts that rates for the future are to be based upon rate base of the system. The well will become the property of the buyer.

The sale and transfer of this system (when combined with the additional equity investment the buyer will make with addition of the resort's well, water rights, pumps, reservoir and piping to the purchased utility) will make for stability and viability of this small utility and is in the public interest.

As a condition to the sale's approval by the Commission, Bozzetto should make remittance to the Commission of the Public Utilities Commission Reimbursement fees he was required by law to have collected from his customers to the date the sale is consummated.

Once the sale is consummated as provided in the order that follows, Bozzetto should be relieved of his public utility service obligation in the Los Guilicos Water Works' service territory.

#### **Findings of Fact**

1. Los Guilicos Water Works is a public utility water system presently serving 23 customers outside the periphery of the resort.
2. The water works of the Bozzetto system presently consist of a dedicated right to 10% of the flow of water obtainable from the resort's artesian well, and similar limited share rights to a 16,000 gallon storage tank, pumps and in-resort connection pipes, and to a water distribution system serving the 23 customers outside the periphery of the resort.
3. The buyer intends, as a part of his acquisition of the resort through an associated limited liability entity of which he is the managing partner, to add as an equity investment in Glen Ellen Water Co., LLC, the resort's interest in the water rights, well, pumps, storage reservoir and connecting pipes.

4. The resort will become a customer of Glen Ellen Water Co., LLC, taking delivery through a two-inch meter at rates set forth above.

5. There is no known opposition to the proposed sale and transfer.

6. It can be seen with reasonable certainty that the sale and transfer presents no significant adverse impact upon the environment.

7. Upon completion of the sale and payment by Bozzetto to the Commission of the collected Public Utilities Reimbursement fees, Bozzetto can be relieved of his public utilities obligations for water service to the 23 customers of the Los Guilicos Water Works.

8. As the buyer is qualified and able to operate the system without adverse risk to the customers, the sale and transfer are in the public interest.

9. Because the public interest would best be served by expeditious transfer of the system, the ensuing order should be made effective in the date of issuance.

10. The buyer accepts the Estimated Summary of Earnings set forth in the foregoing opinion, and that future rates will be based upon the rate base set forth therein.

#### **Conclusions of Law**

1. A public hearing is not necessary.

2. The sale and transfer should be authorized provided the State Health Department finds the buyer qualified pursuant to provisions of Section 116540(a) of the California Health and Safety Code.

### **O R D E R**

#### **IT IS ORDERED that:**

1. After Glen Ellen Water Co., LLC has submitted to the Commission a letter from the State Department of Health Services indicating the Department's conclusion that Glen Ellen Water Co., LLC possesses adequate financial,



managerial, and technical capability to operate the Los Guilicos Water Works system it proposes to acquire, and within 6 months after the effective date of this order, Dino Bozzetto, doing business as Los Guilicos Water Works, may sell and transfer to Glen Ellen Water Co., LLC, the water system set forth in the application.

2. Within 10 days of the actual transfer, Bozzetto shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification.

3. After acquisition of Los Guilicos Water Works and the resort, and transfer to Glen Ellen Water Co., LLC of the resort's water facilities as an equity additional investment, the buyer shall enter, as of the date of consummation of the sale and transfer, Total Plant in Service of \$43,890, Depreciation Reserve of \$23,766, and Rate Base of \$20,124 in its books of account and in the Annual Report it files with the Commission.

4. After the sale and transfer is consummated, Glen Ellen Water Co., LLC will continue the existing \$183 per year service charge to the present or future 23 metered customers outside the periphery of the resort; will establish a \$1979.00 per year service charge to the resort; and will continue the quantity charge of \$3.16 per 1,000 gallons for all customers including the resort, until authorized a change by the Commission.

5. Bozzetto shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees required by law to have been collected to the date of consummation of the sale and transfer.

6. Upon completion of the sale and transfer authorized by this Commission order, and payment to the Commission of the Public Utilities Commission Reimbursement Fees to the date of consummation of the sale and transfer,

A.98-01-020 ALJ/JBW/eap\*

Bozzetto shall stand relieved of his public utilities service obligation in the Los Guilicos Water Works' service territory.

7. This decision closes the proceeding.

This order is effective today.

Dated September 17, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners