

Decision 98-11-048 November 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Application of Sorsoli Family Residual Trust and Sorsoli Family Survivor Trust sole owners of the shares of Sorsoli Water Co., Inc., dba as Sorsoli Water Co., Inc. to sell and Indian Valley Community Services District, a Public Entity, to buy the shares of the Sorsoli Family Residual Trust and the Sorsoli Family Survivors Trust and to operate the water system in Crescent Mills, Plumas County, California.

Application 98-06-011
(Filed June 10, 1998)

OPINION

Statement of Facts

By Decision (D.) 38436 issued November 27, 1945, the Commission's predecessor, The Railroad Commission, granted a certificate of public convenience and necessity to operate a public utility water system in the area of the unincorporated town of Crescent Mills, Plumas County, under the fictitious firm name and style of Sorsoli Water Company to Arthur and Marian Sorsoli. On April 21, 1980, the water system was incorporated under the laws of California with an authorized capital of 2,500 shares of common stock, no-par value, of which 500 shares were validly issued, fully paid and nonassessable, all held today by Sorsoli Family Residual Trust and Sorsoli Family Survivors Trust (the Trusts). The incorporated entity was styled Sorsoli Water Co., Inc. (the Company).

By D.92932 issued April 21, 1981, the Company was authorized to borrow \$103,600 from the California Department of Water Resources (CDWR) under the California Safe Drinking Water Bond Act of 1976 (SDWBA) to finance water

system improvements. As the result of depletion of SDWBA funds, delay was experienced before funds again became available. By then, costs had increased, and by D.85-03-055 issued March 20, 1985, the Company was authorized to borrow a total of \$113,678 from CDWR to effect the improvements. Today there is a balance outstanding on the loan of \$100,079.

The Trust owners of the aging system, lacking resources to continue operations or to undertake upgrading estimated to cost \$852,000, on March 3, 1998 entered into a stock purchase agreement (the Agreement) with Indian Valley Community Service District (District), a public entity formed by action of the Plumas County Board of Supervisors on December 3, 1974. By terms of the Agreement, District would acquire all 500 issued and outstanding shares of the Company from the Trust owners for a total purchase price of \$75,000. The Company acquired by District would remain responsible for the CDWR outstanding balance. \$25,000 of the purchase price was deposited in escrow pending Commission approval of the sale. The \$50,000 balance will be paid in equal annual installments of \$25,000 with interest of 7% (beginning March 1, 1999), secured by District's negotiable promissory note.

The water system obtains its supply from an abandoned mine shaft with the Company being entitled to a flow of approximately 58.5 gallons per minute (0.13 Ccf) pursuant to water rights granted in the Indian Creek Adjudication, February 1947 (Plumas Superior Court, Hepler v. Wright, Case No. 1624, March 19, 1914). The system includes 1.3 acres of land, a Treatment Plant/Building, 2 storage reservoirs (300,000-gallon capacity), 6,300 feet of mains, treatment equipment, and serves 66 metered and 8 flat rate services as well as 8 fire hydrants. District presently proposes to adopt the presently filed tariffs of the Company. The Company, with customer deposits of \$665 outstanding, will refund these when due.

The original cost of the system is approximately \$157,015, and the depreciation reserve as of December, 1997, was \$68,241, resulting in a net book balance of \$88,774.

The Company on August 19, 1998, mailed a "Notice to Customers" advising the customers of the pending sale. Notice of filing of the application appeared in the Commission's Daily Calendar of June 12, 1998. No protests have been received.

As relevant to proceedings filed on or after January 1, 1998, Rule 6.1 of the Commission's Rules of Practice and Procedure requires the Commission to preliminarily determine the category of the proceeding and whether or not a hearing is indicated.

In Resolution ALJ 176-2995 dated June 18, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2995.

Discussion

Public Utilities (PU) Code § 851 requires that no public utility other than a common carrier by railroad may sell the whole or any part of its system necessary or useful in the performance of its public duties without first having obtained authorization to do so from this Commission.

While District is not subject to the jurisdiction, regulation, supervision, or control of the Commission, here it joins the Trusts for the limited purpose of satisfying the requirements of Rule 35 of the Commission's Rules of Practice and Procedure regarding requisition or control of public utility.

In the usual private investor transfer and sale proceeding, the function of the Commission is to protect and safeguard the interest of the public. The

concern is to prevent impairment of the public service by the transfer of utility property and functions into the hands of parties 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 wants to be assured that the purchaser is financially capable of the acquisition and of satisfactory operation thereafter, and that the transfer will be in the overall public interest. If deemed necessary, the Commission may impose conditions on the sale and transfer proposed, and unless the parties accept the conditions, the proposed sale and transfer cannot be consummated.

The Legislature not having exercised its constitutional authority to grant the Commission jurisdiction over a Community Services District, as in the instance of the proposed buyer here, our considerations necessarily differ. Although in a voluntary sale of a regulated public utility to a district, the valuation must be subject to Commission approval, our interest as to the purchase price is limited. If so high that it could create an untenable and precarious financial condition for the district as would serve to jeopardize future operations, adequate service, or force unreasonable or discriminatory rates for the erstwhile public utility customers, the sale could be considered adverse to the public interest. The Commission in such an instance may either refuse approval or impose conditions. However, even were the Commission to deny authorization for a voluntary sale or impose conditions, a district can abandon the proposed voluntary sale acquisition, and proceed unilaterally to simply take the public utility system by eminent domain (Code of Civil Procedure § 1240.010). In such case, the Superior Court determines the just compensation to be paid the utility by the district, and the Commission has no standing and is not even entitled to be heard, either on its own behalf or on behalf of the public

utility customers involved (People ex rel. PUC v. City of Fresno (1967) 254 Cal. App. 2d 76; petition for hearing denied by Supreme Court November 22, 1967).

In this proceeding the Commission does not conclude that a basis exists for either denial of the application or for the imposition of conditions. The purchase price is approximately 10% less than the net book value and is acceptable to the Company. In addition, the District intends to upgrade the system, stating the need and opportunity to serve the water needs of residents within its service area. District has access to funds through a number of potential funding sources not available to the Company: general obligation bonds, revenue bonds, local improvement bonds, and loan and grant funds through the U.S. Department of Agriculture. The ratepayers will benefit while, at least for the present, retaining the same rates. As to the future, the ratepayers are assured that their rates must be fair, just, and non-discriminatory (American Microsystems, Inc. v. City of Santa Clara (1982) 137 Cal. App. 3d 1037, 1041).

One last consideration should be addressed. Effective January 1, 1998, Section 116540 of the California Health and Safety Code (CHSC) became effective. Under that Code, any water system delivering water to the public must obtain a permit to do so, and pay the applicable fees to the Department of Health Services (DHS). As relevant here, CHSC § 11650 (a) applies to any change of ownership occurring after January 1, 1998, and apparently applies to any governmental entity (See 26 Ops. Atty. Gen. 7 (1955)). Accordingly, in addition to the authorization from the Commission for District's acquisition and operation of the Company and its utility system, District must apply to and satisfy DHS's requirement that it "possesses adequate financial, managerial and technical capability to assure the delivery of pure, wholesome, and potable drinking water" (CHSC § 11650 (a)).

Satisfied of the desirability of the proposed transfer, and of the financial and technical competency of District to operate the water system in the public interest, and in the absence of any known opposition to the proposed transfer and sale, it will be authorized. Finally, the order that will be issued should be made effective immediately so that the transfer can be accomplished and personnel can become familiar with the operation of the system before onset of winter conditions in the mountain area.

Findings of Fact

1. The Company is a private investor owned public utility under Commission jurisdiction providing service to approximately 74 customers in the area of Crescent Hills in Plumas County.
2. District is a Community Services District organized in 1974 in Plumas County by the County Board of Supervisors.
3. District and the Trusts owning all 500 issued and outstanding shares of the Company entered an Agreement whereby District will take over the position of the Trusts' shareholders and control of the Company after Commission authorization to do so, and thereafter own and operate the water system.
4. The agreed upon purchase price is less than the net book value.
5. Although ratepayers of the Company were notified of the proposed sale and transfer, and notice appeared in the Commission's Daily Calendar, no protests or comment has been received.
6. By acquiring the Company and its assets and liabilities, District also assumes through the Company the balance of the CDWR's SDWR loan, and the obligation to continue payments on the loan.
7. The District must also obtain a permit to operate the water system from the DHS.

8. District has access to funding resources to enable it to do needed upgrading to the water system.

9. District for the present will retain existing rates of the Company.

10. The acquisition of the Company by District would not be adverse to the public interest.

11. Any authorization for the sale and transfer should be effective as expeditiously as possible so that District personnel can become familiar with operation of the system before onset of winter conditions in Plumas County.

Conclusions of Law

1. A public hearing is not necessary.

2. The application should be approved, and upon consummation of the sale and transfer and payment to the Commission of the Public Utilities Reimbursement Fees collected to the date of the Sale and Transfer, the Trusts should be relieved of their public utility obligations, and their certificate of public utility obligations, and their certificate of public convenience and necessity cancelled.

3. Before commencing actual operation of the water system, District should obtain a permit to operate a public water system from DHS pursuant to the requirements of CHSC § 11650 (a).

4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Within three months of the effective date of this order, the Sorsoli Family Residual Trust and the Sorsoli Family Survivors Trust (the Trusts) are authorized to sell their 500 outstanding issued shares of common stock of the Sorsoli Water

Co., Inc. to the Indian Valley Community Services District (District); thereby transferring ownership and control of the water company to the District under the terms and conditions stated in the parties' Stock Purchase Agreement signed March 23, 1998 and attached to the application as Exhibit A.

2. Within ten days of the actual transfer, District shall notify the Commission in writing of the date on which the transfer was consummated, and a true copy of the instrument effecting the Sale and Transfer shall be attached to the written notification.

3. The Trusts shall make remittance to the Commission of the Public Utilities Reimbursement Fees collected to the date the Sale and Transfer is consummated.

4. Upon completion of the Sale and Transfer authorized by this Commission order and remittance of the fees set forth in Paragraph 3, the Trusts shall stand relieved of their public utility water service obligations, and their certificate of public convenience and necessity shall be cancelled.

5. Application 98-06-011 is closed.

This order is effective today.

Dated November 19, 1998, at San Francisco, California.

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