

ALJ/JBW/jva

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Decision 99-02-025 February 4, 1999

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Gerber Water Works, Inc., a California corporation doing business as Gerber Water Works, Inc. to sell and Gerber-Las Flores Community Services District to buy the Water System in Tehema.

Application 98-08-020
(Filed August 18, 1998)

O P I N I O N

Statement of Facts

During the year 1911, the Tehema Investment Company installed a water system to serve the nonincorporated community of Gerber, nine miles from Red Bluff in Tehema County. The system was transferred successively until 1923 when it was acquired by the Lee family. Owned and operated thereafter until 1979 by various members of the Lee family, in 1979 the system was incorporated as the Gerber Water Works, Inc. (Gerber), a California corporation with Mrs. Edna B. Lee, the sole shareholder.

By Decision (D.) 88-10-015 issued October 14, 1988, the capital assets consisting of 2098 shares of no par value common stock¹ were authorized to be transferred from Mrs. Lee equally to two of her daughters, Sandra Sherrington (Sherrington) and Joan L. Bedell (Bedell). Sherrington is today the President of the corporation.

¹ By D.0875 the utility was authorized to issue 2098 shares of no par value common stock to Mrs. Lee. The corporation's articles authorized issuance of 10,000 shares of one class stock.

By 1979, the system had developed serious deficiencies including deteriorated mains, low pressure, and inadequate fire protection service. By D.91197, a Safe Drinking Water Bond Act (SDWBA) loan in the amount of \$100,075.00 from the Department Water Resources was authorized to improve the distribution system and the utility was authorized to collect a surcharge to repay the principal and interest on SWBA loan. The loan was secured by a deed of trust on two parcels of land (recorded in county of Tehama Recorder's Office - Parcel Map Book 11, pages 66 and 67, and Parcel Map Book E., page 5, respectively as to parcels one and two). The February 1, 1999 loan balance, including interest, is \$74,557.74.

Today, the system consists of a tank site and a well site; with two 12-inch diameter wells, two 15 hp pumps; two chlorinator pumps on standby; a 22,000 gallon storage tank; and 25,104 lineal feet of water mains. There are 415 services, but only 59 meters, and 15 hydrants.

Seventy percent of the existing distribution system consists of undersized steel pipe over 80 years old. Another well is needed to maintain adequate pressure and fire flow. Thirty-six additional fire hydrants should be added, and the existing storage tank needs rehabilitation. It is estimated that rehabilitation would cost \$1,840,000.

The original cost of the system, exclusive of SWBA loan improvements, is stated to be \$103,872 with a depreciation reserve as of December 31, 1996 of \$38,187, resulting in a net book of \$65,685.

Unable to fund the needed rehabilitation of the system, and now living in Fallon, Nevada, the owners of Gerber wish to dispose of the system.

The Gerber-Las Flores Community Services District (District), with approximately ten years of experience operating a District Sewer Disposal and Treatment Plant, has determined to purchase and rehabilitate the system.

District obtained the services of Michael H. Evans, ASA, to appraise the property of the system and to determine a market value. The present market value, inclusive of the improvements funded by the SDWBA loan, was determined to be \$195,000. District has obtained commitments from Rural Development for grants and loans, as well as a special Community Development Block Grant from the State to offset part of the cost of acquisition.

By the captioned application the utility corporation seeks Commission authorization pursuant to Public Utilities (PU) Code § 851 through 854 for the sale and transfer of the water system to District. The purchase price is to be \$195,000, with the present balance of the SDWBA loan to be paid off as part of the escrow arrangement. The customers have had notice and full opportunity to obtain details of the proposed sale and transfer to District through public meetings at the Gerber Community Center and by voting in the assessment proposed by the District. Notice of filing of the application appeared in the Commission's Daily Calendar of August 19, 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 176-2999 dated September 3, 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 176-2999.

Discussion

PU Code § 851 provides 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 holds an option to acquire the utility water system, including all inventory, assets, water rights, land, and plant.

In the usual private investor transfer and sale proceeding, the function of the Commission is to safeguard and protect the interest of the public. The concern is to prevent impairment of the public service by the transfer of the utility property and functions into the hands of parties incapable of performing an adequate service 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 would 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 Commissions to deny authorization for a voluntary sale or impose conditions, a district can abandon the proposed voluntary acquisition effort, 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 owners by the district, and the Commission has no standing and is not 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, apart from requiring payment to the Commission of the Public Utilities Reimbursement Fees collected to the date of the sale and transfer and satisfaction that the SDWBA loan balance and interest be paid, the Commission does not conclude that a basis exists for either denial of the application or for the imposition of other conditions. The purchase price, exclusive of that portion required to liquidate the SDWBA loan, is less than twice net book, and is the fair market price and is acceptable to the buyer. But most important, the District intends to upgrade the system to our General Order (GO) 103 standards, and has taken steps to obtain the not unsubstantial funding to do so. The ratepayers will benefit from new mains, better pressure, and fire protection, and service from an experienced operator. As to the future, the ratepayers are assured that their rates must be fair, just, and nondiscriminatory (American Microsystems, Inc. v. City of Santa Clara (1982) 137 Cal.App. 3d 1037, 1041).

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 also applies to any governmental entity acquiring a system (See 26 Ops. Atty. Gen. 7 (1955)). Accordingly, in addition to the authorization from the Commission for District's acquisition and operation of the system transferred, District must apply to and satisfy DHS's requirement that District "possesses adequate financial, managerial and technical capability to assure the delivery of pure, wholesome, and potable drinking water" (CHSC § 11650(a)).

Provided the utility corporation liquidates the current SDWBA loan balance due to the Department of Water Resources, as provided in the escrow agreement, we are satisfied of the desirability of the sale and transfer, and of the financial and technical competency of the District to operate the system in the public interest, and in the absence of any known opposition the sale and transfer will be authorized as provided in the order that follows.

Finally, the order that will be issued should be made effective immediately so that the transfer can be accomplished as quickly as possible.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Gerber is a private investor owned public water utility corporation as defined in PU Code § 241, subject to the jurisdiction of the Commission.
2. The District is a Community Services District.

3. The District and the stockholders and management of Gerber have agreed that Gerber will sell and transfer the water system it owns, including its land, building, and all water rights, to District for the purchase price of \$195,000 in cash, which amount provides for liquidation (through the escrow arrangement) of the SDWBA loan balance.

4. Although ratepayers have been made fully aware of the proposed sale and transfer, and of District plans for improvements, and notice appeared in the Commission's Daily Calendar, no protests or comments have been received.

5. District must also obtain a permit to operate the water system from the DHS.

6. District has access to funding and grant resources to enable it to upgrade the system to Commission GO 103 standards.

7. The acquisition of the system by District would not be adverse to the public interest.

8. Authorization for the sale and transfer should be made effective as expeditiously as possible to enable District to commence rehabilitation of the system.

9. Payment to the Commission of the Public Utilities Reimbursement Fees due must be made by the sellers before they may be relieved of their public utility obligations and their certificate of public convenience and necessity (CPC&N) cancelled.

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, and repayment as provided for in the escrow agreement of the balance of the SDWBA loan and

interest due to the Department of Water Resources, the CPC&N held by the sellers should be cancelled.

3. Before undertaking 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 six months of the effective date of this order, Gerber Water Works, Inc. (Gerber), a California corporation doing business as Gerber Water Works, Inc., is authorized to sell and transfer the Gerber water system to the Gerber-Las Flores Community District (District) for \$195,000 in cash.

2. Gerber, from the sale and transfer cash proceeds, through the escrow arrangement shall pay in full the outstanding balance and interest due on the Safe Drinking Water Bond Act (SDWBA) loan it has to the Department of Water Resources.

3. Within ten days of the actual transfer of the system, Gerber 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.

4. Gerber shall make remittance to the Commission of the Public Utilities Reimbursement Fees collected to the date of the sale and transfer is consummated.

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5. Upon completion of the sale and transfer authorized by this Commission order, remittance of the fees set forth in Paragraph 5 of this order, and payment to the Department of Water Resources of the SDWBA balance and interest as set forth in Paragraph 2 of this order, Gerber and its owners shall stand relieved of their public utility water service obligations, and their certificate of public convenience and necessity shall be cancelled.

6. Application 98-08-020 is closed.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners