

Decision 99-04-006 April 1, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Searles Domestic Water Company (U-368-W), IMC Global Inc., and GSA Holdings LLC for authority to merge Searles Domestic Water Company with Searles Domestic Water Company LLC and to transfer control of Searles Domestic Water Company to GSA Holdings LLC.

Application 99-01-024
(Filed January 14, 1999)

ORIGINAL

O P I N I O N

1. Summary

As part of a corporate reorganization, applicants seek transfer of control of Searles Domestic Water Company (Searles), a public utility water company serving 1,100 customers in San Bernardino County. The application is unopposed. The application is granted.

2. Nature of Application

Searles, IMC Global Inc. (IMC) and GSA Holdings LLC (GSA Holdings) jointly request approval for the transfer of control of Searles from IMC to GSA Holdings. As part of the transaction, Searles will be merged with a limited liability company, Searles Domestic Water Company LLC (Searles LLC).

Searles was formed in the early 1940s as an outgrowth of commercial operations to recover minerals and chemicals from brine pumped from Searles Lake, a dry lakebed in San Bernardino County. To provide water to operate plants and to provide potable water to employee families located in communities along the lake's west shoreline, Searles was organized as a California corporation and was granted a certificate of public convenience and necessity by Decision

(D.) 36822 on January 12, 1944 (amended on March 19, 1944 by D.36936 to revise the service area). Searles provides water service to the communities of Argus, Trona, Pioneer Point, South Trona, Westend and Point of Rocks, all in the unincorporated area of Trona.

IMC is one of the world's leading producers of crop nutrients for agriculture, operating retail and wholesale distribution networks throughout the United States.

GSA Holdings was formed to hold the assets and liabilities of a number of subsidiaries of IMC that are engaged in the production of soda ash and boron. The holding company will facilitate the corporate reorganization envisioned in the Recapitalization Agreement dated December 24, 1998. The Recapitalization Agreement is attached to the application as Exhibit C.

The Recapitalization Agreement describes a series of transactions that have the effect of transferring ultimate control of Searles from IMC to GSA Holdings. The primary purpose of the recapitalization is to allow Mincorp-I LLC, a Delaware limited liability company, to invest in a number of companies (now subsidiaries of IMC) engaged in the production of soda ash and boron.

Searles is associated with mineral extraction operations in its vicinity and was acquired by IMC as part of its acquisition of those operations. (See D.98-03069 (March 26, 1998).) As a result of the Recapitalization Agreement, Searles will be merged with Searles LLC, which in turn (following the merger of IMC Chemicals Inc. into Global Soda Ash LLC) will be wholly owned by Global Soda Ash LLC. Because Global Soda Ash LLC is a wholly owned subsidiary of GSA Holdings, GSA Holdings will exercise ultimate control over Searles.

3. Effect on Service and Rates

Applicants state that, in the framework of the transactions described in the Recapitalization Agreement, the transfer of control of Searles and the merger of

Searles and Searles LLC are relatively minor byproducts of the other transfers that are the focus of the agreement, i.e., increased investment in IMC subsidiaries engaged in the production of soda ash and boron.

Applicants state there will be no change in the services or rates provided by Searles after the completion of the transactions. According to applicants, the transactions will be wholly transparent to customers, and services will continue to be provided in accordance with Searles' existing terms of service and applicable Commission regulations.

Applicants state that a settlement agreement applicable to Searles that was approved by the Commission in D.94-01-042 (January 19, 1994) will remain in full force and effect and will not be affected by the proposed transactions. The settlement agreement, negotiated by the company and our Water Division staff, caps the price of purchased water based on measurable indexes and provides for reasonableness review of Searles operations from time to time. At the request of Water Division staff, applicants also confirm that there will be no change in rate base value, as defined in Public Utilities (Pub.Util.) Code § 2720, after completion of the transactions.

In that transfer of control of Searles to GSA Holdings is involved as a corollary of the Recapitalization Agreement, applicants have filed this application pursuant to Code § 854 for authorization of the proposed transfer. Pub.Util. Code § 854, as relevant here, provides that no corporation, whether or not organized under the laws of California, shall control any public utility organized and doing business in California without first having secured authorization to do so from the Commission. Any acquisition of control without prior authorization is void and of no effect.

Rule 6.1 of the Commission's Rules of Practice and Procedure require the Commission to preliminarily determine the category of the proceeding and

whether a hearing is indicated. By Resolution ALJ 176-3009 adopted February 4, 1999, the Commission preliminarily designated this application as "Ratesetting," with the probability that no hearing would be required. No protests have been received, and the contemplated corporate reorganization appears to be noncontroversial. Given this status, a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3009.

4. Environmental Consideration

Under the California Environmental Quality Act (CEQA), the Commission must consider the environmental consequences of projects that are subject to its discretionary review. (Pub. Res. Code § 21080.) As pertinent to this application, CEQA defines "project" as an activity that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and that involves the issuance of a lease, permit, license, certificate; or other entitlement for use by one or more public agencies. (Pub. Res. Code § 21065.)

Here, approval of a transfer of utility property involves issuance of an "entitlement for use" under CEQA, but it does not cause any direct physical change in the environment, because the transfer is a purely legal happening. (See Pacific Gas and Electric Co., D.97-07-019, 1997 Cal. PUC LBXIS 584.) Moreover, there do not appear to be any foreseeable indirect physical changes in the environment due to the transfer.

We conclude that the application does not constitute a "project" as defined in CEQA, and no further actions under CEQA are required. We note that, even were we to conclude that the transfer of control or merger qualified as a "project" under CEQA, the transfer and merger would qualify for a categorical exemption

from the requirements of CEQA. The CEQA Guidelines (14 Cal. Code of Regs. §§ 15000, et seq.) provide for such an exemption if it can be seen with certainty that there is no possibility that the proposed transfer or merger may have a significant effect on the environment, and the transfer of control and merger involve no change in use beyond previously existing uses. (14 Cal. Code of Regs. §§ 15061(b)(3), 15301(b).) The facts underlying this application meet both conditions.

5. Discussion

Pub. Util. Code § 854 requires prior authorization of the Commission for any transfer of control of a public utility. This is because it is the function of the Commission to protect the public interest and prevent impairment of the public service by a 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.)

In this application, there is no evidence that the transfer of ultimate control to a related corporate holding company would in any way be injurious to the public interest. We are assured by the parties that Searles' existing terms of service will continue and that all applicable regulations will be observed. No change will be made to the service or rates provided by Searles. The price Searles will pay for water will continue to be calculated using the power and payroll cap provided by the settlement agreement approved in D.94-01-042, and will continue to be subject to reasonableness review by the Commission in any future rate proceeding initiated by Searles.

Accordingly, the application is approved, subject to the conditions set forth in the ordering paragraphs.

6. Expedited Treatment

Applicants requested approval of this application before March 15, 1999, when the proposed transactions were scheduled to close. Since the application was not filed until January 14, 1999, the Commission was unable to accommodate a March 15 approval date. The application could not be acted upon until after the date for comments or protests (February 25, 1999), and then was subject to a 30-day public review and comment period. (Pub. Util. Code § 311(g).) Based on a procedural inquiry on this point by the administrative law judge (ALJ), counsel for applicants acknowledged that the preferred date could not be met, and that the proposed transactions would be structured to accommodate later action by this Commission.

Findings of Fact

1. Searles is a public utility providing water service to approximately 1,100 customers in communities on the west shoreline of Searles Lake in San Bernardino County.
2. Searles is a California corporation. Its immediate corporate parent is IMC Chemicals Inc., a subsidiary of Harris Chemical North America, Inc., which in turn is a subsidiary of IMC Inorganic Chemicals Inc., which is a direct subsidiary of IMC.
3. Under the Recapitalization Agreement, Searles will be merged with a limited liability company, Searles LLC, and control of the utility will be transferred to GSA Holdings.
4. There will be no change in the services or rates provided by Searles and no change in rate base value, as defined in Pub. Util. Code § 2720, after the completion of the proposed transactions.

5. The settlement agreement applicable to Searles that was approved by the Commission in D.94-01-042 will remain in full force and effect and will not be affected by the proposed transactions.

Conclusions of Law

1. The application should be approved.
2. The Rule 36(a) requirement for submission of financial documents should be waived as to GSA Holdings since it is a recently formed entity without a balance sheet or income statement.
3. Rules 2.2, 2.4, 15, 16, 17, 35, and 36 should be waived as to Searles LLC since that entity had not yet been formed at the time of this application, but will be established in connection with the transactions in the Recapitalization Agreement.
4. The application does not constitute a "project" as defined by CEQA; in any event, it can be seen with certainty that there is no possibility that the proposed transfer or merger may have a significant effect on the environment, and the transfer of control and merger involve no change in use beyond previously existing uses.
5. Pursuant to California Health and Safety Code, Section 116540(a), upon change of ownership after January 1, 1998, a public water system must obtain a permit from the Department of Health Services.
6. The effective date of the order that follows should be the date of signature, in order that the parties may promptly carry out the proposed transfer of control.

O R D E R

IT IS ORDERED that:

1. The application whereby Searles Domestic Water Company (Searles) will be merged with Searles Domestic Water Company LLC, with direct corporate control transferred from IMC Global Inc. to GSA Holdings LLC, as set forth more fully in the application and the Recapitalization Agreement, is approved.

2. Within six months after the effective date of this order, GSA Holdings LLC may acquire control of Searles, as set forth more fully in the application and the Recapitalization Agreement; the transfer of control is conditioned upon continuance through GSA Holdings LLC of the terms of the settlement agreement approved in Decision 94-01-042 as regards caps on the purchase price of water paid by Searles.

3. Within 10 days of the consummation of the merger and transfer of control of Searles, Searles shall notify the Director of the Commission's Water Division, in writing, of the date that such merger and transfer of control was consummated.

4. Application 99-01-024 is closed.

This order is effective today.

Dated April 1, 1999, at San Francisco, California.

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