

Decision 99-04-057 April 22, 1999

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

In the Matter of the Application of West San Martin Water Works, Inc., for Authority under Public Utilities Code Section 851 to Sell a Portion of Its Public Utility Water System in San Martin, Santa Clara County, California, to the San Martin County Water District.

Application 98-12-019  
(Filed December 18, 1998)

**ORIGINAL**

**OPINION**

**Statement of Facts**

The area in and around the small rural community of San Martin, approximately 20 miles south of San Jose in Santa Clara County, is served by two small water systems, San Martin County Water District (District), and West San Martin Water Works, Inc. (WSMWW).

Historically, the two systems were separated by Old Monterey Highway, WSMWW's service territory to the West and the District territory to the East. District is the successor to San Martin Water Works (SMWW), a privately owned public utility system essentially serving two areas east of the highway. This old public utility was ill managed, and both of its areas were poorly served by inadequate mains and poorly developed sources of supply. In the late 1970 period, the Commission authorized WSMWW to encroach into the western portion of SMWW's service territory in response to Santa Clara County's Transportation Agency's (Agency) urgent need for a water supply for its facilities east of the highway. Agency, as a contribution in aid of construction constructed a 12-inch main from WSMWW's facilities west of the highway, under the highway, and eastward in San Martin Avenue to County's facilities. WSMWW

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was further authorized to extend lateral 8-inch mains from this 12-inch main north and south and to acquire customers from the SMWW's western area.

In 1988, after a court appointed conservatorship was unable to obtain funding to rehabilitate the remainder of the SMWW system, and following an election, the County Supervisors approved formation of District. In 1993, the Court authorized sale of SMWW, and by Decision (D.) 93-09-011, the Commission authorized transfer of the SMWW to District, exclusive of the WSMWW's encroachments and facilities east of the highway.

In 1996, after District seized the 12-inch main contributed by County to WSMWW years earlier, the dispute over ownership and rights to serve was brought to the Commission (C. 96-06-042), resulting in D.97-02-040 which essentially affirmed the position of WSMWW. That decision was the subject of an application for rehearing still pending before the Commission.

In order to bring their dispute to a conclusion, WSMWW has agreed to sell the approximate 3,500 ft. 12-inch main in San Martin and Murphy Avenues, and the approximate 4,150 ft. of 8-inch lateral mains off the 12-inch main in Depot and Llagas Avenues, to District, and with the right, title and interest in the mains to relinquish all obligations to provide water service from these mains. As the 10 customers presently receiving public utility water service from WSMWW would thereafter receive water service from the District, the public would be adequately protected.

By the captioned application, WSMWW seeks Commission authorization to sell this portion of its public utility water system to District. The purchase price is \$45,000. In addition, District would pay WSMWW \$15,000 for water supplied to District in the periods May 27, 1996 to March 10, 1997, and June 1, 1997 to January 22, 1998.

The parties state that a sale would resolve all issues between the parties. To that purpose, they have entered into a Sale and Purchase Agreement dated April 2, 1999 and signed by the parties. Supervisor Donald F. Gage of the Santa Clara Board of Supervisors, by a letter dated April 6, 1999, urges the Commission to approve WSMWW's application at the earliest possible opportunity and thereby resolve the issues.

The application proposes that the proceeding be characterized as "ratesetting" and asserts that hearings on the application are unnecessary. 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 176-3007 dated January 7, 1999, 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 176-3007.

#### **Discussion**

Public Utilities (Pub. Util.) 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 utilities 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, it has agreed to acquire the disputed mains, facilities, and customers east of the Old Monterey Highway as set forth in the Sale and Purchase Agreement contained in the WSMWW's application, and after consummation of the transaction to acquire and serve the customers involved:

The purchase price was that first stated in negotiations between the parties several years ago under the aegis of Commissioner Duque and Administrative law Judge Weiss, and is reasonable. Encouraging also are the agreement's provisions for future cooperation between the parties as to provision of back-up supplies in times of shortage, and for resolution of disputes in the future. A clear demarcation line between the two utilities' service areas would be restored at Old Monterey Highway as well, and this would be of benefit to both parties.

Notice of the captioned application appeared in the Commission's Daily Calendar of December 24, 1998. No protests have been received. No hearing is necessary and the order that will be issued should be made effective immediately so that the sale and transfer can be accomplished as quickly as possible.

#### **Findings of Fact**

1. WSMWW is a private investor owned public water utility as defined in Pub. Util. Code § 241, subject to the jurisdiction of the Commission.
2. District is a county water district formed pursuant to the provisions of the County Water District Law (California Water Code §§ 3000, et seq.).
3. WSMWW is in possession of certain water mains, laterals, and customers which have been the subject of a dispute between the parties.
4. D.97-02-040 addressed the issues, but in itself the decision is the subject of an unresolved application for rehearing by the District.
5. The parties have entered into a Sale and Purchase Agreement by which District would purchase the mains and acquire 10 customers from WSMWW at a price acceptable to both parties.
6. The Sale and Purchase Agreement of April 2, 1999 signed by the parties resolves all issues and disputes, and D. 97-02-040 should be vacated.

7. This proposed transaction is in the public interest. Accordingly, the application by WSMWW for authorization to sell the portions of its public utility water system set forth in the Sale and Purchase Agreement should be approved.

8. The order that follows should be made effective upon signature.

**Conclusions of Law**

1. A public hearing is not necessary.

2. The application by WSMWW should be approved, and upon consummation of the sale and transfer, the public utility obligations of WSMWW east of Old Monterey Highway in the vicinity of San Martin Avenue should be cancelled.

3. 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, West San Martin Water Works, Inc. (WSMWW) is authorized to sell to the San Martin County Water District (District) the 12-inch main in San Martin Avenue and Murphy Avenue, and the two 8-inch lateral main in Depot Avenue and Llagas Avenue, in San Martin, and to transfer the 10 customers presently served from those mains, all as set forth in the Sale and Purchase Agreement contained in Application 98-12-019.

2. Within 10 days of the actual consummation of the sale and transfer, WSMWW shall notify the Commission's Executive Director in writing of the date on which the sale and transfer was consummated, and a true copy of the instrument effecting the sale and transfer shall be attached to the written notification.

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3. Within 60 days of consummation of the sale and transfer, WSMWW shall file with the Commission an Advice Letter Map in form required by General Order 96-A, setting forth the new Old Monterey Highway demarcation limit of its service territory in the vicinity of San Martin Avenue.

4. Upon completion of the sale and transfer, and compliance with the other provisions of this order, WSMWW shall stand relieved of its public utility water service obligations in the portion of its service territory East of Old Monterey Highway transferred to District.

5. Decision 97-02-040 is vacated.

6. Application 98-12-019 is closed.

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

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