

Decision 00-04-016 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Rosella Water Company through its Receiver, the Ponderosa Community Services District, to Sell Water System in Tulare County.

Application 99-09-043
(Filed September 23, 1999)

O P I N I O N

Summary

This decision authorizes Rosella Water Company to sell and Ponderosa Community Services District (Ponderosa) to purchase the Rosella water system (Rosella system).

Background

Rosella is a Commission-regulated public utility water system serving 117 customers in the community commonly known as Ponderosa in the mountains east of the City of Porterville on State Route 190. The Rosella system operates under a court-ordered receivership.

Ponderosa is Rosella system's receiver. Ponderosa is a community services district under the Community Services District Law (California Government Code, Title 6, Division 3), and its boundaries correspond generally to the Rosella system service area.

In 1996, Tulare County public health authorities filed a suit in Tulare County Superior Court against Rosella Water Company, Inc., and its purported owners, charging abandonment of the Rosella system and requesting appointment of a receiver to assume possession and operation of the Rosella system. On October 30, 1996, the court issued its Stipulation and Order Appointing a Receiver in Case No. 96-175503, designating Ponderosa as Rosella

system's receiver. The Commission subsequently issued Resolution W-4053 on July 16, 1997 recognizing Ponderosa as the court-appointed receiver, and Ponderosa continues today in that capacity.

Ponderosa, acting as receiver on Rosella Water Company's behalf, proposes to sell and, acting on its own behalf, to purchase, the Rosella system.

Discussion

Distinguishing with precision among the entities in this application is difficult because Rosella Water Company's control has a confused history in the Commission's records. Rosella was certificated in 1963 by Donald Geoffrey Carter (Donald Carter) and Rosella M. Carter as individual co-owners under the name Rosella Water Company to serve property they were developing.¹ Advice letters from 1963 through 1990 were consistently signed by Donald Carter as owner or co-owner.

The Commission noted in a 1978 complaint proceeding decision, "Defendant's [Rosella Water Company's] annual reports to the Commission show that defendant is owned by Carter Enterprises, Inc. Any transfer of defendant's assets is void since defendant's owners did not secure authorization to do so under Section 851 of the Public Utilities Code."² The last pre-receivership annual report currently in the Commission's records was filed in August, 1991 and shows Rosella Water Company as unincorporated and owned by DMC Enterprises, Inc., with Donald G. Carter as the party responsible for operations. DMC was a real estate development firm and Donald Carter was its

¹ Decision (D.) 66304.

² D.88335.

president.³ If Rosella Water Company has been incorporated at some point with or without Commission authority, no readily available record of that act is to be found in the Commission's files. However, Ponderosa retained an independent certified public accountant to prepare a financial statement for Rosella Water Company, Inc. for the year ended June 30, 1998 and included the result as Exhibit C to the Application. According to the notes to that financial statement,

The receiver has been unable to receive any historical legal documents from the owners to provide for the filing of necessary corporate tax forms and documents with the Internal Revenue Service, Franchise Tax Board and California Attorney General. Therefore no income tax or franchise tax has been paid during the period November 6, 1996 through June 30, 1998 by the receiver. The California Attorney General suspended [Rosella Water Company, Inc.] on January 15, 1997, for lack of proper filing.

Donald Carter controlled and operated the system until some date up to his death in approximately 1992, after which his son Donald Geoffrey Carter (Geoffrey Carter) appeared in a general rate case proceeding as the person controlling and managing the Rosella system. The Commission noted the discrepancy and again observed that there had been no application under the provisions of Public Utilities Code Sections 851 or 854(a) to make the change of control official.⁴

Geoffrey Carter continued to manage and operate the Rosella system until 1995. He is alleged to have abandoned the Rosella system in late-1995, whereupon Tulare County public health authorities filed suit in Tulare County Superior Court against "Rosella Water Company, Inc., Donald Geoffrey Carter,

³ Application 98-07-062.

⁴ D.92-09-042.

Doretta Carter, William A. Carter and Does I through X." The court's Stipulation and Order Appointing a Receiver observes, "Defendant Donald Geoffrey Carter is the President and Corporate Agent of the Defendant Rosella Water Company, Inc., and has the authority to represent, make admissions on behalf of and bind the Defendant Rosella Water Company, Inc." Doretta Carter and William A. Carter, Ponderosa's counsel states, are Donald Carter's adult children and Geoffrey Carter's siblings. Their ownership interest in the Rosella system, if any, is not further explained.

Ponderosa attaches to the Application a May 23, 1996 sales contract between Rosella Water Company and Ponderosa purporting to formalize a sale of the business and real property to Ponderosa for \$1. The contract is executed by Geoffrey Carter as sole owner of the business Rosella Water Company (not the corporation). Two copies of an accompanying bill of sale are signed by Geoffrey Carter and William Andrew Carter, respectively, and cover the sale of all non-real property from Rosella Water Company, Inc. [sic] to Ponderosa. To further confuse matters, there are also grant deeds from Rosella Water Company, Inc. to Ponderosa for one lot and several easements. Some grant deeds are signed by Geoffrey Carter and separate copies show what may be William Carter's signature, some have voided notarizations on one or both copies, and none are recorded. These documents are incomplete, contradictory, and in several ways inconsistent with the Superior Court's receivership order. We view them as unreliable and give them little weight here.

The Rosella system had a troubled history before going into receivership, having been the subject of several Commission decisions⁵ citing, *e.g.*, service

⁵ See, *e.g.*, D.81122, D.88335, D.90-01-022, and D.92-09-042.

problems, plant inadequacies, affiliate transaction irregularities, and non-compliance with Commission orders. In Resolution W-4053 recognizing Ponderosa as the court-appointed receiver, the Commission cited Small Water Branch's belief that Ponderosa had the experience and capability to operate the Rosella system. Ratepayer Representation Branch of the Commission's Water Division wrote to the assigned administrative law judge on October 7, 1999, stating that it has investigated the Application and believes the public would be properly served by granting *ex parte* the authority Ponderosa requests. We agree. Ponderosa has controlled and operated the Rosella system since late-1996 as the court-appointed receiver, and was its *de facto* operator for nearly a year before that. Ponderosa has no formal complaints pending against it. There is no indication that Ponderosa would be other than a fully capable and responsible operator for the future.

Having acknowledged that it would be in the public interest for Ponderosa to assume permanent control of the Rosella system, we turn to the question of how that could be accomplished. Public Utilities Code Section 851 provides,

No public utility... shall sell, lease assign, mortgage, or otherwise dispose of or encumber the whole or any part of its... plant, system or other property necessary or useful in the performance of its duties to the public... without first having secured from the commission an order authorizing it so to do.

And, under Section 854(a),

No person or corporation... shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission.

In evaluating applications such as this one, we are generally presented with reliable documentation describing the terms of the sale, typically including a purchase agreement between parties known to represent the owner and the buyer and conditioned upon Commission approval. That is not the case here.

Ponderosa also acknowledges the exceptional nature of its proposal to represent both buyer and seller and would have us conditionally authorize the transfer as a prerequisite for it to return to Superior Court. That would be consistent with the Superior Court's receivership order:

"[T]he receiver shall perform such services until such time as the Court determines that the Rosella Water System should be returned to the possession of the Defendants or the receiver can arrange, by purchase, eminent domain proceedings or other appropriate court order or action, for the ownership and permanent operation and maintenance of the Rosella Water System by the receiver, another local public entity with authority to provide such services or by an appropriate homeowners association, mutual water company or other non-profit organization with authority to operate the water system.

Considering the poor sales documentation we have been presented with, conditional approval would also be consistent with the Commission's jurisdiction, which is limited in matters of title and contract:

[T]he Commission is charged with determining whether or not the transfer of a public utility is adverse to the public interest and is not the forum in which questions of title to real property should be litigated (*Petition of Golconda Utilities Co.* (1968) 68 Cal. P.U.C. 296, citing *Hanlon v Eshelman*, (1915) 169 Cal. 200).

We will grant the authority requested in the Application. Rosella Water Company, represented by Ponderosa or whatever other individual or entity the court determines appropriate, may sell and Ponderosa may buy the Rosella water system. Because Ponderosa is a community services district, Ponderosa's taking ownership of Rosella would remove the system from the Commission's jurisdiction. As a condition of the authority we are granting, when the transaction is complete Ponderosa must notify the Commission and provide

documentation of the court's action, and shall withdraw and cancel Rosella Water Company's public utility tariffs.

Notice of the Application appeared on the Commission's Daily Calendar of September 27, 1999, and copies of the Application were served on the last known addresses of Donald Carter, Doretta Carter, and William Andrew Carter. The only response was Ratepayer Representation Branch's supporting letter. Ponderosa's voters, who are also Rosella's customers, approved in a 1996 district election Ponderosa's expanding its powers to include supplying water for domestic use, *i.e.*, taking over the Rosella system. The status of Ponderosa's efforts as Rosella system's receiver has been a regular agenda item at Ponderosa's board of directors meetings since receivership began in 1996. There is no known opposition to Ponderosa's assuming permanent responsibility for the Rosella system.

Procedural Considerations

In Resolution ALJ 176-3024, the Commission preliminarily categorized this as a ratesetting proceeding, and preliminarily determined that a hearing would not be necessary. There are no material facts in dispute, no protests have been received, and there is no known opposition to granting the relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

This is an uncontested matter which pertains solely to water corporations. Accordingly, pursuant to Public Utilities Code Section 311(g)(3), the 30-day period for public review and comment need not apply. However, because of the uncertainties surrounding Rosella's ownership, the assigned administrative law judge elected to serve copies of the draft decision on Ponderosa and Ratepayer Representation Branch, and to Donald Carter, Doretta Carter, and William Andrew Carter at their last known addresses. No comments were received.

Findings of Fact

1. Ponderosa is and would continue to be a fully capable and responsible operator for the Rosella system.
2. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. The Commission should authorize Ponderosa to acquire the Rosella system, but condition that approval on Ponderosa's obtaining as well Superior Court approval to consummate the transaction.
2. Pursuant to California Health and Safety Code Section 116525, a change in ownership of a public water system shall, and a change in regulatory jurisdiction may, require application for a new operating permit from the California Department of Health Services.
3. A public hearing is not necessary.
4. The Application should be granted as set forth in the following order.
5. The order that follows should be made effective immediately to allow Ponderosa to complete the transaction without delay.

O R D E R

IT IS ORDERED that:

1. Rosella Water Company is authorized to sell and Ponderosa Community Services District (Ponderosa) is authorized to purchase the Rosella water system as proposed in Application 99-09-043. This authorization shall expire if not exercised within one year of the effective date of this order.
2. As a condition of this grant of authority, Ponderosa shall also obtain Tulare County Superior Court approval to consummate the transaction.
3. When Ponderosa has obtained Tulare County Superior Court's approval and otherwise completed the transaction, Ponderosa shall provide a compliance letter to the Water Division notifying the Commission of the date on which the

transfer was completed, attaching copies of the sale and transfer instrument(s) and documentation of the Superior Court's approval, accepting full and permanent responsibility for providing water service to customers of the Rosella system, and remitting to the Commission all user fees due under Public Utilities Code Section 401 et seq. up to the date of transfer. Ponderosa shall at the same time file a separate advice letter withdrawing and canceling Rosella Water Company's public utility tariffs.

4. Upon completion of the transfer in conformance with this order and Ponderosa's assumption of responsibility for the Rosella system, Rosella Water Company shall have no further public utility obligations in connection with the Rosella water system.

5. Application 99-09-043 is closed.

This order is effective today.

Dated April 6, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners