

Decision 00-06-063 June 22, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Edward J. Nessinger, doing business as the Nessco Water Co. to Sell and Altos Sonoma Corporation, doing business as the Penngrove Water Company to Buy Distribution System Assets of the Water System in Sonoma County.

Application 00-02-011
(Filed February 4, 2000)

O P I N I O N

Summary

This decision authorizes Edward J. Nessinger, doing business as Nessco Water System (Nessco), to sell and Altos Sonoma Corporation (Altos Sonoma), doing business as Penngrove Water Company (Penngrove), to purchase certain of Nessco's water system assets. Following the transaction Altos Sonoma would assume Nessinger's public utility obligations and provide water service to former Nessco customers under Penngrove's rates and tariffs. Further, Penngrove is authorized to provide water without charge to two parcels in Nessco's service area as consideration for the purchase in lieu of including the nominal purchase price in rate base for future ratemaking.

Discussion

Nessco is a Class D regulated water utility serving 29 customers west of the community of Penngrove in Sonoma County. Nessco was first certificated in 1959 under the name Phillips Water Service by J. Howard Phillips and

Nita Phillips.¹ In 1984, the Commission authorized its transfer² to Stephen C. Phillips, son of the original owners, who, in association with his wife Nancy R. Phillips, operated the water system until its transfer to Nessinger in 1996.³

Altos Sonoma's Penngrove Water Company serves approximately 365 customers in and around the community of Penngrove, and approximately 66 more in a nearby smaller system. Altos Sonoma also owns and operates Kenwood Village Water Company serving 260 customers southeast of Santa Rosa.

Nessinger now desires to sell because Nessco is economically marginal as a standalone system and he would like to pursue other business interests. Altos Sonoma wishes to acquire the Nessco system because it is surrounded by the Penngrove system and integration of the two will enhance Altos Sonoma's business interests. Nessco and Altos Sonoma seek authorization for the sale and purchase under Public Utilities Code Sections 851 through 854.⁴

Altos Sonoma proposes to assume Nessinger's public utility obligations and apply Penngrove's rates and tariffs to former Nessco customers. Average total metered water charges in 1998 for Nessco and Penngrove customers were \$600 and \$666, respectively. Since Nessco's service charge is higher but its quantity rate is lower than Penngrove's, whether a given customer's bill

¹ Decision (D.) 58642.

² D.84-11-085.

³ D.96-11-056.

⁴ All references are to the Public Utilities Code except as otherwise noted.

increases or decreases as a result of the transfer will depend on the level of usage for the month.

Nessinger and Altos Sonoma warrant that there are no Nessco customer deposits to establish credit, and no main extension advances which will fall due in the future.

Penngrove proposes to supply the Nessco system from the Penngrove system. According to the Application, if Nessco were to remain independent it would be required to make Department of Health Services-mandated water quality improvements that it estimates would increase its annual revenue requirement by \$216 per customer. Nessco customers would benefit by avoiding that cost, and both sets of customers would benefit by spreading the combined systems' fixed costs over a larger customer base.

The original cost of the property being transferred is \$12,856, and the depreciation reserve as of December 31, 1998 is \$8,897, resulting in a net book cost of \$3,959. The parties have settled on a nominal purchase price of \$3,950. Under the terms of the Asset Purchase and Sale Agreement, payment in full is to be by Altos Sonoma's assumption of a Nessinger obligation to supply reasonable metered quantities of water for domestic use to two parcels, in quantities consistent with past usage, at no charge to former Nessco (then known as Phillips Water Service) owners Stephen C. Phillips and Nancy R. Phillips for life, so long as either of them resides at and/or retains ownership in the two parcels.

Ratepayer Representation Branch of Water Division (RRB) wrote a letter to the assigned Administrative Law Judge saying that it had examined the barter arrangements applicants propose as consideration for the transaction. RRB concluded that the revenue requirement generated by providing free water service to the Phillipses is approximately equivalent to the revenue requirement generated by \$3,950 in rate base value. Since Penngrove's and Nessco's

customers would for the future be shouldering the cost of providing this free water service, they would effectively be paying the cost of purchasing the Nessco system and Altos Sonoma would be paying nothing. Following discussions with RRB, Altos Sonoma wrote to the ALJ confirming that it does intend to offset the two amounts and thus would not include the \$3,950 net plant value and nominal purchase price in rate base for future ratemaking purposes. Altos Sonoma's February 24, 2000 letter to that effect is marked as Exhibit 1 and admitted into evidence. With that understanding, RRB recommended the application be approved *ex parte*.

Under the Public Water System Investment and Consolidation Act of 1997, Section 2718 et seq., the Commission must use a fair market value standard to establish rate base in setting rates for regulated systems acquired by other regulated water utilities. The Commission's observation interpreting the Act in a recent proceeding is relevant here:

We reiterate our view that we cannot conditionally approve a merger by imposing, as a mitigatory measure, a rate base valuation below the standard set out in § 2720(a). However, neither that section nor any other portion of the Act expressly requires an applicant to request such a rate base valuation or prohibits an applicant from seeking a lower rate base valuation in its application or as a product of settlement with other parties.⁵

That principle applies to this transaction as well. After discussion with RRB, Altos Sonoma is offering to exclude the \$3,950 net plant value and nominal asset purchase price from rate base for future ratemaking purposes. The increased revenue requirement from providing free water service to the Phillippes would

⁵ D.99-09-030.

be offset by the decreased revenue requirement of excluding \$3,950 from rate base, leaving future rates unaffected and customers indifferent. Altos Sonoma would benefit by preserving for future improvements \$3,950 in capital it would otherwise have to pay Nessinger for purchasing the system. Nessinger would benefit by being relieved of his obligation to supply free water from a system no longer under his control. We conclude that nothing in this aspect of the transaction should cause us to reject the proposed transfer.

Notice of the Application appeared on the Commission's Daily Calendar of February 11, 2000, and all Nessco customers were notified by mail of the application and its possible effect on them and invited to write to the Commission if they had comments or objections. No protests or responses were filed, and no letters were received other than RRB's.

To operate Penngrove and Kenwood Water Company, Altos Sonoma employs a full-time manager who holds a Class 2 operator's license, and retains a field operations contractor with a Class 3 operator's license. It is experienced and capable of running a public utility water system, and both utilities reportedly meet all regulatory requirements and are profitable. Penngrove's system is adjacent to and can be interconnected with Nessco's, and Altos Sonoma's nearby existing staff would assume operating responsibility for Nessco's customers and facilities. Thus the proposed acquisition could improve economies of scale to the benefit of customers of both utilities. Nessco's integration into Penngrove would be largely transparent to customers in the near term, and favorable in the longer term. Altos Sonoma is well-suited to acquire the Nessco water system assets and to assume Nessinger's public utility responsibilities. We will approve the proposed transaction.

Procedural Considerations

In Resolution ALJ 176-3033, 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, and no known opposition to granting the full 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 Section 311(g)(3), the 30-day period for public review and comment does not apply.

Findings of Fact

1. Nessco and Altos Sonoma have entered into an Asset Purchase and Sale Agreement pursuant to which Altos Sonoma would acquire certain Nessco water system assets and all of Nessco's customers and integrate them into its Penngrove system.
2. Upon transfer, Altos Sonoma would apply Penngrove's rates and tariffs to former Nessco customers.
3. The future cost to ratepayers of providing free water service to the Phillipses would be offset by Altos Sonoma's excluding from rate base for future ratemaking purposes Nessco's \$3,950 net plant value and nominal asset purchase price.
4. The proposed transaction is likely to provide net benefits to Nessco and Penngrove water customers.
5. Altos Sonoma is well-suited to acquire and operate the Nessco water system.
6. There is no known opposition to granting the authority requested.

Conclusions of Law

1. Altos Sonoma's proposed acquisition of the Nessco water system is in the public interest.
2. Pursuant to California Health and Safety Code Section 116525, a change in ownership of a public water system requires 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 order that follows.
5. The order that follows should be made effective immediately to allow Altos Sonoma and Nessinger to complete the transaction without delay.

O R D E R

IT IS ORDERED that:

1. Within six months after the effective date of this order, Edward J. Nessinger (Nessinger), doing business as Nessco Water System (Nessco), may sell and Altos Sonoma Corporation (Altos Sonoma) may acquire certain of Nessco's public utility water system assets and all of Nessco's customers and integrate them into Penngrove Water Company (Penngrove) as described in Application 00-02-011 and the exhibits attached to it.
2. For future ratemaking purposes, Altos Sonoma's proposal to provide water service without charge to two parcels and to exclude from rate base for future ratemaking purposes the \$3,950 net plant value and nominal purchase price for Nessco's assets is adopted.
3. As conditions of this grant of authority, Altos Sonoma shall assume Nessinger's public utility obligations, and Nessinger shall remit to the

Commission all user fees due under Public Utilities Code Section 401 et seq. up to the date of closing.

4. Before the transfer is complete, Nessinger shall deliver to Altos Sonoma, and Altos Sonoma shall keep, all records of construction and operation of the Nessco water system.

5. Within 10 days after the transfer, Altos Sonoma shall file an advice letter in the form prescribed by General Order 96 canceling Nessco's tariffs and simultaneously making only such revisions to Altos Sonoma's tariffs as are necessary to reflect Nessco's integration into Penngrove. Concurrently with this advice letter filing, Altos Sonoma shall provide a separate compliance letter to the Commission's Water Division providing notification of the date on which the transfer was consummated and attaching true copies of the sale and transfer instrument(s).

6. Within 90 days after the transfer, Altos Sonoma shall file in proper form an annual report on Nessco's operations from the first day of the year through the effective date of transfer.

7. Upon completion of the transfer in conformance with this order, Nessinger shall have no further public utility obligations in connection with the Nessco water system.

8. This proceeding is closed.

This order is effective today.

Dated June 22, 2000, at San Francisco, California.

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

President Loretta M. Lynch, being necessarily
absent, did not participate.