

Decision 99-02-077 February 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BRIAN KERCHENKO doing business as HACIENDA WATER COMPANY to sell and RUSSIAN RIVER COUNTY WATER DISTRICT to buy the water system in Sonoma County.

Application 99-01-009
(Filed January 11, 1999)

O P I N I O N

Statement of Facts

H.B. Smith and his wife Eve, having constructed and operated a public water system to serve the Hacienda Subdivision in or near the community of Forestville in Sonoma County, sought and obtained authorization from the Commission by Decision (D.) 34183 in May of 1941, to sell their public utility system to M.F. Pelletti, George Hasek, and Louis Evangelisti, as equal 1/3 partners. The system was styled as "Hacienda Water Company" (Hacienda).

In 1946, by D.3941 Pelletti and his wife were authorized to sell their 1/3 interest to Hasek.

In 1976, by D.89064 Hasek was authorized to sell his 2/3 interest to Brian Kerchenko. Evangelisti having died, his 1/3 interest was held by his estate. Since then Kerchenko has operated the system.

Today, because he no longer is able to run the system in a profitable manner or remain current in the water quality requirements, Kerchenko desires to dispose of the system. The Russian River County Water District (District), a county water district organized under the State of California Statutes, existent over 10 years, and presently serving over 1,000 customers in areas adjacent to

Hacienda, desires to acquire the Hacienda system. The system needs modifications and repairs to bring it up to Commission General Order (GO) 103 standards. District has funds available under combined loans and grants from the U.S. Department of Agriculture-Rural Development. The estimated cost for these modifications and repairs is \$1 ½ million.

The Hacienda system today consists of a well, two pumps, five tank sites with six storage facilities of 56,7000 gallons total capacity, 16,000 feet of mains, 165 services served through 159 meters, and one 2-inch wharf hydrant. The original cost of the system is \$134,291 with a depreciation reserve of \$35,515, resulting in a net book of \$98,776.

By an Agreement for Acquisition of Assets made as of November 3, 1997, Kerchenko, dba Hacienda, and the District agreed upon a sale of the operative rights, wells, tanks, water mains and services, and connection lines, with District to take over provision of public water service for the future. The sale price is \$85,000 in cash. District will operate using Hacienda's current charges for the immediate future. The closing date for the sale is March 5, 1999. To the extent the assets or property of the system are community property, Judith Roe Kerchenko, spouse of Brian Kerchenko, as of November 3, 1997, has consented to the transfer pursuant to the agreement.

By the captioned application Kerchenko and District seek Commission authorization pursuant to Public Utilities (Pub. Util.) Code §§ 851 through 854 for the sale and transfer. The customers have had notice of the proposed sale and transfer. Notice of the filing of the application appeared in the Commission's Daily Calendar of January 14, 1999. 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.

By Resolution ALJ 176-3008 dated January 20, 1999, the Commission preliminarily categorized this proceeding as ratemaking and determined that hearings were not necessary. No protests have been received. Given this status, public hearings are not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3008.

Discussion

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 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 has joined Kerchenko to acquire the Hacienda system.

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 permitting 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 over all public interest. If deemed necessary, the Commission may impose conditions and unless the parties accept the conditions, the proposed sale and transfer cannot be legally consummated.

The Legislature not having exercised its constitutional authority to grant the Commission jurisdiction over a County Water 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 as 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 would be considered adverse to the public interest, and the Commission can either refuse approval or impose conditions. However, the district could then abandon the proposed voluntary acquisition effort, and proceed in eminent domain (Code of Civil Procedure § 1240.010). In such case, the Superior Court determines the just compensation to be paid the utility owners and the Commission has no standing (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 the Commission finds no basis for either denial of the application or for the imposition of conditions. The purchase price is less than book value and is acceptable to both parties. Most important, the District intends to upgrade the system to G.O. 103 Standards, and has taken steps to obtain the needed financial assistance to do so. The ratepayers will benefit from new adequately sized mains and fire protection. With 10 years experience in operating water systems the District should provide excellent service. 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).

During analysis of the application and in reviewing prior Commission records of the Hacienda system, the ALJ ascertained that Kerchenko was not the sole owner of record of the system; that the estate of Louis Evangelisti still had claim to a 1/3 interest. Attorney Merrill of the law firm of Merrill, Arnone & Jones, LLP, attorneys for District, was contacted, and arranged for the three heirs of record to the Evangelisti estate to sign quit claims to any further interest, thereby leaving Kerchenko in sole possession of Hacienda. Copies of these documents have been received by the Commission and are included in the application file.

Upon payment to the Commission of the Public Utilities Reimbursement Fees collected to the date of the consummated sale and transfer, Kerchenko can be relieved of further public utility obligations with regard to the Hacienda system, and the Certificate of Public Convenience and Necessity (CPCN) he holds can be canceled.

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 water system (See 26 ops. Atty. Gen. 7 (1955)). Accordingly, apart from authorization from the Commission for District's acquisition of the system transferred by this sale, District must also apply to and satisfy DHS's requirement that District "possesses adequate financial, managerial, and technical capability to assure the delivery of pure, wholesale, and potable drinking water (CHSC § 11650(a)).

Finally, the order that will be issued should be made effective immediately so that the sale and transfer can be accomplished prior to the March 5, 1999 closing date of the parties' Agreement for Acquisition of Assets.

Findings of Fact

1. Hacienda is a private investor owned water public utility as defined in Pub. Util. Code § 241, and is subject to the jurisdiction of the Commission.

2. District is a County Water District in existence over 10 years and with experience in serving customers.

3. The District and Kerchenko, now the sole owner of Hacienda, have agreed that the system will be sold and transferred to District for the agreed upon purchase price of \$85,000 in cash.

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

5. Before operating the system District is required to comply with Section 116540 of CHSC.

6. District has access to funding needed to rehabilitate the Hacienda system to G.O. 103 Standards.

7. Acquisition of the Hacienda system by District would not be adverse to the public interest.

8. Authorization for the sale and transfer as proposed in the application by the parties should be made effective as expeditiously as possible to enable the parties to meet their March 5, 1999 closing date, and to permit District to commence rehabilitation of the system.

9. Payment to the Commission of the Public Utilities Reimbursement Fees due to the date of closing and transfer must be made by Kerchenko before he can

be relieved of his public utility obligations with regard to the Hacienda system, and his CPC&N can be canceled.

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, the CPC&N held by Kerchenko should be canceled.
3. Before undertaking actual operation of the water system after the sale and transfer, District should obtain a permit to operate the 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 after the effective date of this order, Brian Kerchenko, doing business as Hacienda Water Company (Kerchenko), is authorized to sell the water system to the Russian River County Water District (District) for \$85,000 in cash.
2. Within ten days of the actual sale and transfer of the system, District shall notify the Commission in writing of the date on which the sale and transfer was consummated, and shall attach to the written notification a true copy of the instrument effecting the sale and transfer.
3. Kerchenko shall make remittance to the Commission of the Public Utilities Reimbursement Fees collected to the date that the sale and transfer is consummated.

4. Upon completion of the sale and transfer as authorized by this Commission order, and remittance to the Commission of the fees set forth in Paragraph 3 of this Order, Kerchenko shall stand relieved of his public utility water obligations and his Certificate of Public Convenience and Necessity shall be canceled.

5. Application 99-01-009 is closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

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