

Decision 99-06-010 June 3, 1999

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

In the Matter of the Application of Apple Valley Ranchos Water Company (U 346 W) (U 346 S) for Authority to Transfer its Sewer Division to the Town of Apple Valley.

Application 98-09-012  
(Filed September 9, 1998)

**OPINION**

**Statement of Facts**

Apple Valley Ranchos Water Company (AVR) is a wholly-owned subsidiary of Park Water Company (Park). Prior to 1997, Jess Ranch Utilities, Inc. (JRU) was a small company providing water and sewer service to an area adjacent to AVR's service area. JRU was also wholly-owned by Park. In 1997, JRU was merged into AVR. All three utilities were subject to the control, jurisdiction, and regulation of this Commission.

In anticipation of a 1997 merger of JRU into AVR, and consonant with the recommendation of Commission Staff, (today the Ratepayer Representation Branch of the Water Division (Branch)), AVR and JRU in 1995 filed a joint application for a general rate increase to be applicable for both water and sewer service.<sup>1</sup> At the time, the JRU sewer system rates were not even covering operating costs.

As the Town of Apple Valley (Town), adjacent to both AVR and JRU service areas, at the time operated both a small water system and a large sewer

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<sup>1</sup> This was Application (A.) 95-03-012.

system, Branch had recommended that a transfer deal be worked out whereby Town would acquire the JRU sewer system (for which Town could achieve economies of scale), and AVR would acquire Town's small water system (and similarly acquire economies of scale as well as augmented water supplies).

Due to the uncertainties of the exact details of the exchange transaction at the time, the decision in the general rate application (Decision (D.) 95-12-028) left a Phase 2 proceeding open to deal with the effects of the transfer and established a Sewer Capital Memorandum Account and a Sewer Expense Memorandum Account to track the effects of the transfer of the sewer system. Sewer rates were left unchanged pending the transfer, with the difference between revenues and expenses being tracked in the Sewer Expense Memorandum Account.

Because of late discovered legal impediments to a straight exchange of the systems, the parties had to resort to a plan for two concurrent sales. An "Agreement of Purchase and Sale of Jess Ranch Waste Water System and Assessment District No. 86-1 Water System Improvements" was essentially concluded by which Town would purchase for \$1,459,127, essentially all the physical assets and capacity rights (with the exception of general plant) of the Jess Ranch sewer system from AVR. The purchase price was based upon an outside engineering firm's 1996 appraisal, with the result approximating original costs less depreciation.<sup>2</sup> Commission approval of this proposed sale and transfer of the sewer system to Town would remove any necessity to determine the sewer rate increase deferred in Phase 1 of D.95-12-028.

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<sup>2</sup> Following a noticed assessment district election in which 97% voted in favor, Town set up an assessment district to pay off the bonds to be issued to fund the purchase. The assessment district election included the JRU sewer system property owners.

The acquisition by AVR of Town's small water system and its incorporation into the AVR system is proposed to be accomplished by an Advice Letter filing.

AVR had not booked any costs into the Sewer Capital Memorandum Account and would not until it acquired the Town's water assets, anticipated to be in September 1998. As that account terminated with the effective date of D.99-03-032 in A.98-03-024 (dated March 18, 1999), no substantial balance was anticipated, and AVR proposes that when the exact amount is known that it be allowed to file an Advice Letter to roll the balance into its production cost balancing account.

The Sewer Expense Memorandum Account has tracked the difference between the sewer revenues and AVR's operating expenses for the sewer system, and as of August 17, 1998, showed an uncollected balance of approximately \$58,000. When the exact final balance is known, AVR proposes to file an Advice Letter to establish a surcharge to be in effect for one year to be applicable only to the existing customers in the prior Jess Ranch service area at the time of transfer. This surcharge would be a total of approximately \$75 per customer.

In order to obtain Commission authorization to transfer its sewer system to Town, on September 9, 1998 AVR filed the present application, A.98-09-012.

Pursuant to provisions of Rule 6.1 of the Commission's Rules of Practice and Procedure (Rules), by Commission Resolution ALJ 176-3000 adopted September 17, 1998, the application was preliminarily designated as "rate setting" with no hearing indicated. Commissioner Josiah L. Neeper and Administrative Law Judge (ALJ) John B. Weiss, respectively, were designated as the Assigned Commissioner and ALJ.

On October 8, 1998, Branch filed a protest to the application, and subsequently Apple Valley Town Council Member Loux telephoned the ALJ to

urge early resolution as the acquisition bonds had been sold and assessments were in effect on the sewer facility. At approximately the same time, Bruce Cash, representing the Jess Ranch Homeowners Association, also telephoned, expressing his organization's concerns over AVR's proposal in the application regarding the Sewer Expense Memorandum Account.

Delay followed while AVR responded to data requests from Branch, and Branch reviewed additional information on the sewer operation. On February 8, 1999, AVR's Leigh K. Jordan informed ALJ Weiss that an all-party stipulation appeared likely that would resolve all issues raised by the application, and would obviate the need for a hearing.

With a reasonable expectation of a stipulated resolution acceptable to all parties of all issues relative to the application, no prehearing conference was set by the Assigned Commissioner (Rule 6.2), nor was a Scoping Memo Ruling made for the proceeding (Rule 6.3).

After a further conference involving the four parties involved in this proceeding, on April 6, 1999, AVR, Town, Branch and the Homeowners Association, having agreed on a final resolution of the issues, submitted a Motion for Adoption of Settlement for Commission consideration, as provided for by Rule 51.1 of the Commission's Rules of Practice and Procedure (Rules).

Appended to the motion was an all-party stipulation signed by the parties.

By the Stipulation, the parties support a transfer of the sewer system to Town; support AVR's proposal to file an Advice Letter to roll the final balance of the Sewer Capital Memorandum Account into AVR's Production Cost Balancing Account, and endorse AVR's withdrawal of its request to recover from the former Jess Ranch ratepayers the balance of the Sewer Expense Memorandum Account.

**Discussion**

Public Utilities (Pub. Util.) Code § 851 requires that no public utility other than a common carrier by railroad may sell the whole or any part of its system necessary and useful in the performance of its public duties without first having obtained authorization to do so from this Commission.

In the usual private investor sale and transfer proceeding, the function of the Commission is to protect and safeguard the interest of the public. The concern is to prevent impairment of the public service by the transfer of utility property and the service functions into the hands of parties incapable of performing an adequate service at reasonable rates as upon terms which would bring about the same undesirable result (So. Cal. Mountain Water Co., (1912) 1 CRC 520).

The Legislature not having exercised its constitutional authority to grant the Commission jurisdiction over a municipal corporation operating a municipal waste water system, as in the instance of the proposed buyer here, our considerations necessarily differ in this proceeding, although the underlying concern is the public interest.

As AVR and Town in close proximity both operate water and sewer systems, it is to the advantage of both and their customers that these systems be operated as efficiently and economically as possible. AVR has the larger, more economically feasible water system, while Town has the larger, more economically feasible sewer system. AVR's sewer system (obtained as part of the JRU water and sewer package earlier) is not an economic operation standing alone, but merged into Town's substantially larger system, can produce economics of scale of benefit to all the sewer customer of both utilities. By this proposed sale, AVR benefits by a "total liquidation" of its sewer operations.

Under similar circumstances, AVR acquired Town's small water system. Such an exchange was earlier promoted by Branch and the Commission in D.95-12-028.

The purchase price of \$1,459,127 is reasonable, essentially being original cost less depreciation, and was based upon an appraisal performed by an outside engineering firm in 1996.

Satisfied of the desirability of the proposed transfer, and of the financial and technical competency of Town to operate the sewer system in the public interest, it remained only to consider the views of Branch and the Homeowners Association which essentially were concerned with the proposed disposition of the Sewer Expense Memorandum Account. That account at the time of the application reflected an undercollected balance of about \$58,000.

Four possibilities were presented:

1. Recover the balance as a lump sum exclusively from customers in Jess Ranch;
2. Recover the balance through a surcharge on general rates over a period of time exclusively from customers in Jess Ranch;
3. Recover the balance as a lump sum, or through a surcharge over a period of time from all customers in AVR's service territory; or
4. Have AVR shareholders absorb all or a portion of the balance.

The Settlement Stipulation signed by all four parties, in stating the parties lack of objection to AVR's proposal to sell and transfer to Town the sewer system, and to file an Advice Letter to roll the final balance in the Sewer Capital Memorandum Account into AVR's Production Cost Balancing Account, further provides that AVR will not recover the Sewer Expense Memorandum Account balance from the ratepayers. Accordingly, the Settlement Stipulation disposes of the central issue behind the protests to the application.

As the Stipulation satisfies the requirements of Commission Rule 51.1(e) that it be reasonable in light of the whole record, consistent with law, and be in the public interest, the motion for adoption of the all-party stipulation should be adopted. The Stipulation is attached to the order that follows as Appendix A. the sale and transfer being in the overall public interest, the application will be approved as provided in the order that follows.

Upon payment to the Commission of the Public Utilities Reimbursement Fees due to the date of closing and transfer AVR will be relieved of further public utility obligations with regard to the JRU acquired sewer system, and the Certificate of Public Convenience and Necessity (CPCN) AVR holds for the sewer system will be cancelled.

Finally, the order that follows should be made effective immediately so that the sale and transfer can be consummated without further delay. Phase 2 to D.95-12-028 should be closed.

### **Findings of Fact**

1. AVR is a private investor owned water and sewer utility as defined respectively in Pub. Util. Code §§ 241 and 2306, and is subject to the jurisdiction of this Commission.
2. Town, not subject to the jurisdiction of this Commission, operates both a water system and a sewer system.
3. In the interests of achieving economics of scale and benefit to the ratepayers involved, a sale and transfer of the small AVR sewer system to Town for incorporation into Town's large sewer system was agreed upon between AVR and Town, with support from Branch and the Commission.
4. Because of complications in completing the proposed change in ownership, D.95-12-028 in AVR's general rate application (A.95-03-012) left a Phase 2 open to

deal with the effects of the transfer, and established a Sewer Capital Memorandum Account and a Sewer Expense Memorandum Account to track the effects of the transfer.

5. The present application, A.98-09-012, was filed by AVR to obtain authorization from the Commission to sell and transfer the sewer system AVR acquired from JRU to Town.

6. By this application, AVR also sought authorization to file advice letters to roll the final balance of the Sewer Capital Memorandum Account into the AVR Production Cost Balancing Account, and to establish a one-year surcharge to existing customers in the Jess Ranch service area at time of the sale and transfer to recover the balance (approximately \$58,500 as of September 9, 1998) in the Sewer Expense Memorandum Account, thereby closing Open Phase 2 in A.95-03-012.

7. The application was protested by Branch and the Jess Ranch Homeowners Association.

8. Following negotiations, a motion was filed April 6, 1999, for adoption of an all-party Stipulation that would resolve all issues in the present proceeding.

9. The Stipulation provides that the parties agree that AVR should be authorized to sell and transfer the sewer system to Town; that AVR be authorized to file an advice letter to roll the final balance of its Sewer Capital Memorandum Account into its Production Cost Balancing Account; and that AVR withdraws its request to recover from ratepayers the Sewer Expense Memorandum Account balance.

10. The Stipulation meets the requirements of Rule 51.1(e) in that it is reasonable in light of the whole record, consistent with law, and is in the public interest.



11. Payment to the Commission of the Public Utilities Reimbursement Fees due to the date of sale and transfer must be made by AVR before it can be relieved of its public utility sewer service obligations.

### **Conclusions of Law**

1. The motion for adoption of the Settlement Stipulation should be adopted.
2. The Stipulation resolves all issues presented by A.98-09-012.
3. A public hearing is not required.
4. Phase 2 of A.95-03-012 should be closed.
5. It is in the public interest that A.98-09-012 should be granted to the extent provided in the order that follows.
6. Upon payment to the Commission of the Public Utilities Reimbursement Fees collected to the date of the sale and transfer, the CPCN for sewer service held by AVR should be cancelled and AVR relieved of further public utility service obligations for sewer service.
7. This proceeding should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The all-party motion for Adoption of Settlement filed April 6, 1999, with its attached Stipulation is granted.
2. Within three months after the effective date of this order, Apple Valley Ranchos Water Company (AVR) may sell, assign and transfer all the assets comprising its sewer system to the Town of Apple Valley (Town), as provided in the terms of their agreement attached to Application 98-09-012 as Exhibit C.
3. Within three months after the effective date of the sale and transfer of its sewer system to Town, AVR is authorized to file an advice letter to roll the final

balance of its Sewer Capital Memorandum Account into its Production Cost Balancing Account.

4. AVR is not authorized to seek recovery from ratepayers of the Sewer Expense Maintenance Account Balance.

5. With 10 days of the actual sale and transfer of the sewer system is Town, AVR 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.

6. AVR shall make remittance to the Commission of the Public Utilities Reimbursement Fees collected to the date of the consummation of the sale and transfer.

7. 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 6 of this order, AVR shall stand relieved of its public utility sewer service obligations and its Certificate of Public Convenience and Necessity for sewer service shall be cancelled.

A.98-09-012 ALJ/JBW/sid

8. Phase 2 of Application (A.) 95-03-012 is closed.
9. A.98-09-012 is closed.

This order is effective today.

Dated June 3, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
LORETTA M. LYNCH  
TAL C. FINNEY  
Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

|                                     |   |                       |
|-------------------------------------|---|-----------------------|
| In the Matter of the Application of | ) |                       |
| Apple Valley Ranchos Water Company  | ) |                       |
| (U346 W) (U3465) for Authority to   | ) | APPLICATION 98-09-012 |
| Transfer its Sewer Division to the  | ) |                       |
| <u>Town of Apple Valley</u>         | ) |                       |

**STIPULATION**

The Parties to this stipulation are Apple Valley Ranchos Water Company ("AVR"), the Town of Apple Valley ("Town"), the Ratepayer Representation Branch ("RRB") of the Water Division, and the Jess Ranch Homeowners Association ("Jess Ranch").

On August 17, 1998, AVR tendered Application 98-09-012 to the California Public Utilities Commission ("Commission") requesting authorization to transfer its sewer system to the Town and proposing disposition of the Sewer Expense Memorandum Account and the Sewer Capital Memorandum Account authorized by Decision 95-03-012. On October 9, 1998, RRB filed a protest stating its belief that hearings might be necessary, proposing to investigate the effect of the transfer on AVR's water customers of the reasonableness of the amounts recorded and methods of collecting the balances in the memorandum accounts, and requesting that a pre-hearing conference be held. Jess Ranch, which is the area served by AVR's sewer system contacted the Commission to express concern over AVR's proposal regarding the Sewer Expense Memorandum Account. Subsequently, AVR responded to data requests from RRB, and RRB has reviewed additional information concerning the sewer's operation and the proposed transfer. In addition, AVR and Town have reached an agreement which allows AVR to withdraw its request from recovery from ratepayers of any amount associated with the Sewer Expense Memorandum Account.

The Parties agree with AVR's request that it be authorized to transfer its sewer system to the Town. The Parties agree with AVR's proposal that AVR be authorized to file an advice letter to roll the final balance of its Sewer Capital Memorandum Account into its Production Cost Balancing Account. The Parties further agree that AVR withdraw its request for recovery from ratepayers of the Sewer Expense Memorandum Account balance.

Dated at Downey, California, March 24, 1999

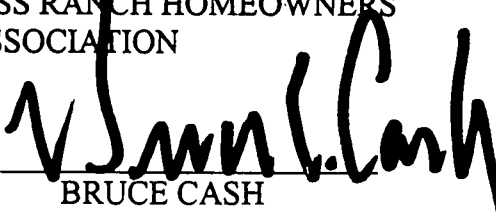
RATEPAYER REPRESENTATION  
BRANCH OF THE WATER DIVISION

By   
DANIEL R. PAIGE      MAR 29 1999

APPLE VALLEY RANCHOS  
WATER COMPANY

By   
LEIGH K. JORDAN

JESS RANCH HOMEOWNERS  
ASSOCIATION

By   
BRUCE CASH

TOWN OF APPLE VALLEY

By   
MAYOR DAVE HOLMAN

(END OF APPENDIX A)