

Decision 99-07-041 July 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Dominguez Water Company (U-330-W) and Coast Springs Water Company (U-130-W) for Approval of the Acquisition of the Utility Assets of Coast Springs Water Company by Dominguez Water Company.

Application 99-02-005  
(Filed February 5, 1999)

**OPINION ADOPTING SETTLEMENT**

**1. Summary**

We conclude that the all party settlement filed in this proceeding is in the public interest and we approve it, thereby authorizing Dominguez Water Company (Dominguez) to acquire Coast Springs Water Company (Coast Springs) under the terms of the settlement.

**2. Procedural and Factual Background**

Dominguez and Coast Springs jointly filed an application on February 5, 1999, seeking approval of their proposal for Dominguez to acquire the utility assets of Coast Springs, a privately owned Class D water utility which serves approximately 237 customers in and around the community of Dillion Beach in Marin County. Dominguez, a wholly owned subsidiary of Dominguez Services Corporation (DSC), is a Class A water company and currently provides water to approximately 34,600 customers in two operating divisions.<sup>1</sup>

<sup>1</sup> In addition to Dominguez, DSC owns and operates ten small water systems in southern Kern County (through its Kern River Valley (Kern River) subsidiary) and four small water systems in northern Los Angeles County (through its Antelope Valley (Antelope) subsidiary). These small water systems serve approximately 5,250

*Footnote continued on next page*

Dominguez' South Bay division is located in southern Los Angeles County and serves about 32,400 customers, most of them within the City of Carson, the City of Torrance, and a modern industrial subdivision in the City of Compton. Dominguez' Redwood Valley division, located in northern California, serves about 370 customers in two of Sonoma County's Russian River communities (the town of Armstrong Valley, north of Guerneville and Ranch Del Paradiso, a subdivision of the town of Duncan Mills) and approximately 1,250 customers in Lake County in the town of Lucerne.<sup>2</sup>

Dominguez currently is operating Coast Springs under a Limited Services Agreement dated September 30, 1998. Under the agreement, Dominguez also acts as the system representative in matters concerning the Department of Health Services (DHS). Coast Springs has experienced numerous water quality and service problems in recent years, several of which have resulted in DHS citations. Moreover, as a result of water supply problems, DHS has placed a moratorium on all new service connections within the service territory.

On February 18, in Resolution ALJ 176-3010, we preliminary categorized this application as ratesetting and preliminarily determined that no evidentiary hearings would be necessary. On February 24, the Ratepayer Representation Branch of the Commission's Water Division (RRB) filed a timely protest;

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customers. On February 5, 1999, Dominguez, Antelope, Kern River, and California Water Service Company filed a joint application at the CPUC for approval of their merger. The application, A.99-02-004, is pending.

<sup>2</sup> We approved Dominguez' acquisitions of these three small water systems in Decisions (D.) 98-11-018 and 98-11-019. On February 5, 1999, Dominguez and Hawkins Water Service filed a joint application at the CPUC for Dominguez to acquire Hawkins, a Class D water utility in Sonoma County. That proceeding, A.99-02-003, is pending.

consequently, a prehearing conference (PHC) was set for April 7. At the PHC before the assigned administrative law judge (ALJ) and Commissioner Duque, the assigned Commissioner, the parties stated they had commenced preliminary settlement discussions and hoped to reach a settlement of all issues raised by the application within the ensuing month.<sup>3</sup> On April 9, Commissioner Duque issued a scoping memo that designated ALJ Vieth as the principal hearing officer, identified the issues to be decided and established a procedural schedule. The schedule provides for a Commission decision by July 22, 1999, or in no event later than 18 months from the date of filing of the application, in accordance with Pub. Util. Code § 1701 et seq. and Article 2.5 of our Rules of Practice and Procedure.<sup>4</sup>

On May 14, the parties filed the settlement at issue here. No person or entity has intervened to oppose. However, one landowner in the service area has written to urge we condition approval upon the use of a portion of the proceeds of sale to construct the facilities necessary to remove the DHS moratorium and correct other service deficiencies resulting from a claimed lack of compliance with our order in D.76638.

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<sup>3</sup> The owner of Coast Springs, Lawrence R. Vanoni, has been in poor health for some years. Pursuant to written authorization from Pamee Tina Collete, the owner's daughter and his Attorney-in-Fact, Dominguez appeared for and represented Coast Springs at the PHC.

<sup>4</sup> Unless otherwise indicated, all subsequent citations to sections refer to the Pub. Util. Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

### **3. The Proposed Acquisition**

Applicants propose that Dominguez purchase from Coast Springs and Coast Springs sell to Dominguez, for the purchase price of \$180,000 in cash, all Coast Springs' utility assets, including land and plant (valued at \$178,767). The Asset Purchase Agreement is Exhibit D to the Application. Dominguez would also assume Coast Springs' obligations arising out of its Safe Drinking Water Bond Act (SDWBA) Loan. Upon the transfer to Dominguez of Coast Springs' Certificates of Public Convenience and Necessity, Coast Springs' public utility obligations would cease. Dominguez would assume those public utility obligations and all direct control of the public water system.

### **4. Highlights of the Settlement**

The settlement resolves all issues pending in this consolidated proceeding, including the following:

Ratebase. The parties agree Dominguez should be authorized to record as ratebase for Coast Springs the sum, \$178,767.

Rates: The parties agree Dominguez should not apply for a general change in rates for Coast Springs before 2004 (applicants had proposed to defer a rate change application until 2002). When it files, Dominguez should demonstrate that the operational synergies and efficiencies of \$17,000, forecasted in Exhibit F to the Application, have been achieved. Dominguez also should use its own capital structure to calculate the requested rate of return for Coast Springs. The effect of a lower cost of equity (based on a Class A rather than a Class D equity structure) will be a lower rate of return.

Improvements. The parties agree Dominguez should make all necessary improvements to remove the moratorium placed on Coast Springs by the DHS, as well as all future improvements necessary to maintain service to Coast Springs' customers.

**5. Standard for Review of All Party Settlements**

663 We review settlements, initially, for compliance with Article 13.5 of our Rules. The parties have followed the procedural requirements set out in those rules and we consider, next, the substantive conditions for our approval. When, such as here, a settlement is presented as an "all party" settlement, we review it for conformance with the broad guidelines we adopted in Re San Diego Gas and Electric Company, D.92-12-019, 46 CPUC 2d 538 (1992). Those guidelines require that we be satisfied that:

- a. a proposed all party settlement commands the unanimous sponsorship of all active parties to the instant proceeding;
- b. the sponsoring parties are fairly reflective of the affected interests;
- c. no term of the settlement contravenes statutory provisions or prior Commission decisions; and
- d. the settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests.

**6. Discussion**

**6.1 Compliance With the All Party Settlement Guidelines**

We find that the settlement meets each of the four guidelines articulated above. We note Dominguez, Coast Springs, and RRB are the only parties, since no other person or entity has sought to intervene. The executed settlement is unopposed. We are persuaded that utility and ratepayer interests have been asserted by and are adequately represented by these three parties. To the extent permitted by statute and our rules, in our review of the proceeding we have considered the informal correspondence received from non-parties.

In recent years, both this Commission and the Legislature have favored the acquisition of small Class C and D water companies by larger Class A water

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companies. Such acquisitions generally result in an improved ability to meet the financial and managerial challenges caused by California's aging water infrastructure and by more stringent federal and state water quality laws. A number of factors combine to underscore the positive nature of this acquisition. Coast Springs' current owner is in poor health and is unable to operate or maintain the system. Dominguez has proven experience operating and maintaining small water systems, including Coast Springs, and has the technical, managerial, and financial capability to operate and maintain Coast Springs on an ongoing basis.

We are aware that water quality and service problems have plagued Coast Springs over the years. The application states Dominguez has begun replacement of the utility's Canyon storage tank, in the few months since it assumed interim management of the water system, and claims other improvements will follow. The settlement is more specific: Dominguez is to make the improvements necessary to remove the DHS moratorium and to maintain service to Coast Springs' customers, but the rates we approved for Coast Springs by Resolution W-4010, dated November 26, 1996 will remain in effect at least until 2004. These are important products of the settlement since they are so directly related to the ability of the water system to provide the service its customer base reasonably expects. Accordingly, within six months of the effective date of this decision, we will require Dominguez to report to our Water Division on the status of the moratorium and to make subsequent reports annually, until the moratorium abates.

Applicants' rate impact analysis forecasts that the acquisition will have a positive impact on Coast Springs' revenue requirement, resulting in revenue savings of approximately \$17,000 by 2004. Under the settlement, those savings are to be documented in the Dominguez 2004 general rate case application filing.

We also note that Coast Springs' existing customer base will benefit from Dominguez lower cost of capital with respect to financing future capital improvements. Dominguez' existing -- and future -- Redwood Valley division customer base will benefit from increased operational efficiencies and synergies, economies of scale, and enhanced emergency response capabilities.

Following acquisition, while the management and operations of Coast Springs will be merged into Dominguez' Redwood Valley division, Coast Springs will remain a separate rate district. The parties agree the ratebase valuation of Coast Springs' assets land and plant assets should be recorded as \$178,767. The present ratebase is \$125,000. Section 2720 requires an additional showing where the ratebase valuation sought is greater than Reproduction Cost Net Less Depreciation (RCNLD) for the system. That is not the case here, since applicants' undisputed calculation of RCNLD is \$204,867.

Finally, as the guidelines require, we retain jurisdiction to fully consider the merits of any future application for a rate change or for any other authority requiring our approval.

## **6.2 Other Service Issues**

As noted above, one customer has written to complain about service and to recommend we condition approval of the acquisition upon construction of certain facilities from a portion of the proceeds of sale. The customer alleges, among other things, that water pressure is insufficient at two subdivision extensions (Oceana-Marin Unit No. 3 and Oceana-Marin Unit No. 4) we approved in D.76638, dated December 30, 1969. The customer and Coast Springs are litigants in a lawsuit referenced in the Purchase Agreement. Pursuant to the terms of the Purchase Agreement, documentation that the lawsuit has been settled or dismissed is to be furnished to Dominguez at the time of closing.

The specifics of the dispute between the customer and Coast Springs are not before us. Nonetheless, we are concerned by an allegation that a 30-year old decision has been ignored, particularly when three years ago, in Resolution W-4010, we said: "There are no outstanding Commission orders requiring improvements." (Resolution W-4010, p. 2.) Therefore, we will require Dominguez, within 6 months of the effective date of this decision, to report to our Water Division on the status of compliance with D.76638 and to provide an engineering study for any work still uncompleted.

### **6.3 Environmental Review**

The Commission's staff has determined that the transfer of control proposed by applicants constitutes "a project" under the California Environmental Quality Act (CEQA), Pub. Resources Code § 21000 et seq. However, since it can be seen with certainty that no significant effect on the environment could result from our granting the authorization, the proposed project itself qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA guidelines. Therefore, no further environmental review by the Commission is required.

### **6.4 Conclusion**

We conclude that the settlement together with the record in this proceeding provide sufficient information to permit us to make an informed evaluation that adoption of the settlement is in the public interest. We conclude that the settlement should be adopted and Dominguez should be authorized to acquire Coast Springs pursuant to the terms of the settlement.

## **7. Health and Safety Code Compliance**

Health and Saf. Code § 116525 requires the owner of a public water system to obtain a permit to operate the system from the DHS and the ensuing sections



establish the application and review processes. As recently amended, Health and Saf. Code § 116540(a) provides:

*"No public water system that was not in existence on January 1, 1998, shall be granted a permit unless the system demonstrates to the department that the water supplier possesses adequate financial, managerial, and technical capability to assure the delivery of pure, wholesome, and potable drinking water. This section shall also apply to any change of ownership of a public water system that occurs after January 1, 1998."* (Emphasis added.)

Accordingly, upon the change of ownership, Dominguez must comply with Health and Saf. Code § 116525 et seq.

#### **8. Draft Decision**

The draft decision of ALJ Vieth was mailed to the parties for comment as required by the scoping memo. Dominguez timely filed comments which pointed out several clerical errors in the draft decision and we have corrected these errors. Because this is an uncontested matter pertaining solely to water corporations, the public review requirements are not applicable. (See § 311 (g)(3).)

#### **Findings of Fact**

1. Dominguez, Coast Springs, and RRB, the three parties to this proceeding, have settled all issues and memorialized their agreement in the settlement filed on May 14, 1999.
2. The settlement is unopposed.
3. The settlement is an all party settlement.
4. To the extent permitted by statute and our rules, in our review of this proceeding we have considered the informal correspondence received from non-parties.

### Conclusions of Law

1. The settlement complies with Article 13.5 of the Commission's Rules of Practice and Procedure and meets the all party settlement guidelines outlined in Re San Diego Gas & Electric Co., supra.

2. The settlement should be adopted.

3. The acquisition and transfer of control is a "project" that qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA guidelines.

4. Pursuant to Health and Saf. Code § 116540(a), upon change of ownership after January 1, 1998, a public water system must obtain a permit from the DHS.

### O R D E R

IT IS ORDERED that:

1. The settlement executed by Dominguez Water Company (Dominguez), Coast Springs Water Company (Coast Springs) and the Ratepayer Representation Branch of the Water Division, filed May 14, 1999, is approved.

Pursuant to the terms of the settlement:

- a. Coast Springs is authorized to sell its utility assets to Dominguez and Dominguez is authorized to acquire Coast Springs' utility assets
- b. Dominguez is authorized to assume the Safe Drinking Water Bond Act obligations.
- c. Coast Springs' Certificates of Public Convenience and Necessity shall be transferred to Dominguez and upon such transfer, Coast Springs' obligations as a public utility shall terminate.
- d. The ratebase value of Coast Springs' land and plant utility assets is set at \$178,767.
- e. Dominguez shall not apply for a general change in rates for Coast Springs before 2004 and in such future application,

shall use its own capital structure to calculate the rate of return for Coast Springs.

- f. Dominguez shall make all improvements necessary to remove the moratorium placed on Coast Springs by the Department of Health Services.
- g. Dominguez shall make all future improvements necessary to maintain service to the customers of Coast Springs.

2. Within six months of the effective date of this order, Dominguez shall report to the Water Division of the California Public Utilities Commission (Water Division) on the status of the Department of Health Services moratorium. Dominguez shall make an annual report thereafter until the moratorium abates.

3. Within six months of the effective date of this order, Dominguez shall report to the Water Division on the status of compliance with Decision 76638 and provide an engineering study for any uncompleted work.

4. Application 99-02-005 is closed

This order is effective today.

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

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners