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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the Commission's)
own motion into whether the Bidwell)
Water Company misused its Safe)
Drinking Water Bond Act Surcharge)
Revenues and has violated rules, orders,)
and decisions of the Commission.)

FILED
PUBLIC UTILITIES COMMISSION
APRIL 9, 1997
SAN FRANCISCO OFFICE
1.97-04-013

ORIGINAL
ORDER INSTITUTING INVESTIGATION

INTRODUCTION

The California Public Utilities Commission (Commission) regulates water companies pursuant to the California Constitution, Article XII, Public Utilities Code Sections 701 and 2701 et seq., and General Order (G.O.) 103. Statutory law and Commission orders require water companies under the jurisdiction of the Commission to follow lawful public utility practices

REGULATORY HISTORY OF BIDWELL WATER COMPANY

Bidwell Water Company (Bidwell) was created in 1931, with the joining of Greenville Water Company and Round Valley Water Company. The current shareholders, Thomas J. Jernigan and Vicky K. Jernigan, bought the utility during this transition by Decision (D.) 88028, dated October 25, 1977. Mr. Jernigan had 18 years of experience managing the Malaga County Water District before coming to Greenville. He also managed Bidwell for 18 months before buying it. During the late 1970's, the Department of Health Services ordered Bidwell to treat its water. This brought about the need to install filtration equipment and to overhaul the system. In 1980, and 1981,

Jernigan supervised the construction of the new system that was financed by a Department of Water Resource (DWR) loan under the Safe Drinking Water Bond Act (SDWBA). Today, this utility has 500 plus customers.

SAFE DRINKING WATER BOND ACT LOAN

In 1979, Bidwell served approximately 463 residential and commercial customers from an aged, decaying water system. At that time, the Jernigans requested and were granted a SDWBA loan from the California Department of Water Resources. By D.90714, dated August 28, 1979, the Commission approved a 35-year loan to Bidwell of \$557,230 and a commensurate special use surcharge on all water customers' bills to enable repayment by the utility. During Bidwell's 1996 general rate increase request investigation, the assigned staff auditor discovered that Bidwell apparently continuously under-funded its SDWBA Account for the years 1979 through 1995 (not all collected surcharge revenues were applied to the account as proceeds to enable repayment).

THE INVESTIGATION

A copy of the staff auditor's report accompanies the declaration which provides the probable cause to enter the orders we do today concerning interim accounting and fiscal controls in connection with issuing this investigatory proceeding. The staff documents several problems with the way Bidwell allegedly maintained its SDWBA Account, including:

Bidwell failed to deposit all of the SDWBA Surcharge Revenue from 1979 through the present in its SDWBA Account; and,

Bidwell failed to reduce its tax liability by taking the Investment Tax Credit on the plant financed by the loan as utilized in its SDWBA Account.

Although the staff's declaration covers aspects of Bidwell's operations and accounting aside from SDWQA loan repayment-accounting issues, this OII will focus only on SDWQA loan issues; the other items covered address general audit and revenue

requirement matters and the Water Division can through other processes reconsider and/or adjust the revenue increase granted by Resolution W-3999 in September, 1996.

The staff concludes that Bidwell's SDWBA Account was under-funded by \$218,873.59 including principal and interest. The staff recommends that Bidwell be ordered to:

File a report with the Commission within 60 days of issuance of an OII detailing how it plans to deposit the \$218,873.59 of missing funds in its SDWBA Account;

Immediately deposit its SDWBA Account into a Trust Account that withdrawals can only be made to repay the loan;

File monthly progress reports with the Commission detailing its progress with depositing the missing SDWBA Account Funds; and,

Deposit all SDWBA Surcharge Revenue that it collects in its SDWBA Trust Account on the day that it is collected.

On September 4, 1996, the Commission issued Resolution W-3999, that granted Bidwell an increase in rates of 66.6%, or additional annual revenues of \$56,210. The Resolution also noted that the Commission's investigation revealed a number of irregularities in Bidwell's SDWBA Account. The Resolution indicated that separate Commission action would soon follow to address Bidwell's SDWBA Account problems, but it expressly ordered Bidwell to deposit \$800 above the actual SDWBA Surcharge Revenues collected in its SDWBA Account.

On October 4, 1996, Bidwell responded to the staff's draft audit report. In its response, included with staff's report, Bidwell made a number of assertions, most of which can be aired at a hearing.

The staff says that it reviewed Bidwell's response and requested support for Bidwell's calculations, and that while Bidwell did provide some documents, those

documents did not support any of the numbers submitted by Bidwell in its response. Bidwell, staff says, failed to support any of its numbers and refused to meet with staff to justify any of the calculations included in its response.

DISCUSSION

The Commission has broad powers to supervise and regulate water utilities in the state, and may do all things "necessary and convenient" in the exercise of its power and jurisdiction. (Public Utilities Code Sec. 701.) Included among its powers is the power to impose fines of up to \$20,000 per offense for violations of Commission rules, orders or directions. (Public Utilities Code Sec. 2107.) Where the violations are ongoing, each day they continue is a separate and distinct offense. (Public Utilities Code Sec. 2108.)

The staff's declaration states that Bidwell has and continues to violate the Commission's 1979 order to "establish and maintain a separate balancing account which shall include all billed surcharge revenue and the value of investment tax credits on the plant financed by the loan as utilized." (See D.90714/ mimeo p. 17/ Ordering Paragraph 4.) Also, staff concludes that other accounting requirements have not been followed.

Bidwell's apparent position that it could be justified in past years of offsetting historical general operating losses against SDWBA surcharge revenues requires comment. This notion is directly contrary to the Commission's long standing policy and the judicial case law against retroactive ratemaking. And it is contrary to the Commission order approving the imposition of the special surcharge on customers. If Bidwell was not collecting enough general revenue from its customers, it could have requested rate increases from the Commission rather than using specially earmarked funds for loan repayment that do not belong to Bidwell, and which were by Commission order to be applied to the special account to fund repayment of the loan from the state under the SDWQA.

For these reasons we find there is good cause to believe that this utility is operating in a way that violates Commission rules, orders and decisions, and in so doing threatens essential services. If SDWQA load repayment surcharge funds are diverted, it

can lead to a potentially service-threatening solvency problem. In view of the allegations in the staff's declaration, the Commission institutes this investigation to determine whether Bidwell is unresponsive and in violation of Commission rules, orders and decisions.

Based on the staff's declaration, we find good cause to impose some requirements on the respondents today in order to ensure that any underfunding of the account to repay the SDWQA loan does not continue. Any underfunding or misapplication of surcharge revenues is a serious matter, for besides enforcement sanctions, it can jeopardize the financial solvency of the utility. The orders entered today are not onerous - they are just prudent precautions. If the respondents fail to fully abide by the orders to establish trust accounts for the disbursement of all SDWQA loan surcharge revenue, we expect staff to consider the range of enforcement options, including seeking injunctive civil relief to secure compliance through the court and/or prosecution under Public Utilities Code Section 2110.

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations and practices of the respondents, Thomas and Vicky Jernigan, as individuals having control and management decisionmaking in connection with Bidwell Water Company, and the Bidwell Water Company, a corporation, to determine whether respondents have misappropriated and failed to remit collected surcharge revenues of up to \$218,873.59, including interest, to repay the Safe Drinking Water Bond Act loan, and whether any other provisions of Commission decisions concerning the SDWQA loan have been violated.

2. Respondents are ordered within twenty business days after personal service of this order on at least one of the individual respondents, to place all Safe Drinking Water Bond Act surcharge funds to repay the loan in the interest bearing Trust Account, with an independent fiscal agent and instructions that the agent may only use the funds for repayment of the Safe Drinking Water Bond Act loan. No funds are to be used for any purpose other than to pay back the Safe Drinking Water Bond Act Loan and

the trust or fiscal services agreement shall not be terminated until further order of the Commission (the general form of acceptable Fiscal Services Agreement is attached).

3. Within ten business days of service of this order on at least one the respondents, they shall provide a copy of the proposed Trust or Fiscal Services Agreement for the Safe Drinking Water Bond Act Trust Account ordered in Ordering Paragraph 2 to the Director of the Water Division for review. The form of Trust Agreement ultimately entered by the respondents in compliance with Ordering Paragraph No. 1 shall be a form approved in writing by the Director of the Water Division.

4. Until further order of the Commission, and starting fifteen business days of service of this order on Bidwell Water Company, Respondents shall remit any and all Safe Drinking Water Bond Act loan surcharge revenues, plus an additional \$800 a month, as ordered by Resolution W-3999, to the fiscal agent from the Safe Drinking Water Bond Act Trust Account ordered in Ordering Paragraph 32 within 30 days following receipt of surcharge revenues from the customers.

5. Within thirty business days of service of this order on the respondents they shall provide to Consumers Services and Water Division staff: a) a table that shows all Safe Drinking Water Bond Act Surcharge Revenue Billed during 1996, less bad debt, billed by month, that ties back to its General Ledger to the Water Division Director; b) a table that shows all deposits, interest earned and withdrawals from its Safe Drinking Water Bond Act Account by month for the year 1996.

6. Respondents are put on notice that, unless they show cause to the contrary, Bidwell Water Company, its officers and directors may be ordered to repay the surcharge revenues of up to \$218,873.59, including interest, to the fiscal agent, and that they as individuals may be fined to the full extent permitted by the Public Utilities Code and subject to other action or remedies to secure compliance and protect ratepayers.

7. An evidentiary hearing shall be held to allow Respondents an opportunity to appear and show cause why the order entered today in paragraphs 2 through 4 should not be permanent, and why the respondents should not be, pursuant to Public Utilities Code Sections 2107 and 2108, fined for their failure to comply with Commission rules and orders.

8. A pre-hearing conference shall be held prior to the evidentiary hearing for the purpose of determining if staff has additional evidence to advance, and to set a schedule for the exchange of written testimony and address any discovery issues. Staff's Financial Report attached to its declaration addresses a few issues beyond SDWQA loan accounting matters, and those other matters will be pursued by the Water Division in connection with revisiting the utility's revenue requirement adopted in Resolution W-3999.

9. Until the matter involving the Commission investigation into the underfunding of the Bidwell Water Company's Safe Drinking Water Bond Act Trust Account is settled, the Jernigans shall not sell and/or transfer the ownership and operation of the Bidwell Water Company, and any application to transfer control or assets shall be consolidated with this proceeding for review and decision.

The Executive Director shall cause a certified copy of this order and staff's declaration to be personally served upon respondents: Thomas J. and Vicky K. Jernigan, Bidwell Water Company, 125 Round Valley Road, Greenville, CA 95947.

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

FISCAL SERVICES AGREEMENT

1. This Agreement is entered into this date between the _____, hereafter referred to as Depositor, and _____, hereafter referred to as Fiscal Agent. The purpose of this Agreement is to assist Depositor in meeting the repayment provisions of Loan Contract (Loan Contract) between Depositor and the State of California, Department of Water Resources, hereafter referred to as Department. This Loan Contract requires the Depositor to engage the services of a Fiscal Agent to assist in accumulating funds sufficient to repay principal and interest to the Department.

IMPORTANT NOTICE TO FISCAL AGENT

This constitutes written notice pursuant to Commercial Code section 9302(1)(g)(III) that the Department has a security interest in the deposit account which is the subject of this Agreement. Depositor has granted the security interest to the Department to secure performance of the obligations imposed by the Loan Contract between Depositor and the Department.

2. FISCAL AGENT agrees to act as Trustee for loan repayment funds deposited and perform services and is authorized by Depositor to act as follows:

- A. Upon opening the account, promptly send a copy of the signature card to the Department and thereafter send a year-end statement of the account balance until the loan is repaid in full to:

Department of Water Resources
Bond Financing and Administration
Post Office Box 942836
Sacramento, California 94236-0001

The signature card is to show Fiscal Agent authorization only for withdrawal.

- B. Receive _____ (specify monthly, quarterly, etc.) remittances from Depositor as specified in paragraph 3.b. below into an account established for purposes of this Agreement only.
- C. Assist and advise Depositor to take into consideration rates of return on funds deposited into the account in determining reserve deposits required by the Loan Contract and paragraph 3.a. below.
- D. Debit this account and transmit loan principal and/or interest payments to the Department in accordance with the terms of the Loan Contract summarized below (provided sufficient funds are in the account):

Principal (estimate)	\$ _____
Interest Rate	_____
Loan Repayment Term	_____
First Semi-annual P&I Due Date	_____
Interest Payments During Construction	Variable _____
Semi-annual P&I Payments (estimate)	_____
Reserve fund (estimate)	_____

These terms and conditions may be subject to amendment as provided in the Loan Contract.

- E. Promptly notify the Department of any 30-day delinquency of remittances from Depositor. Notice shall be directed to:

Department of Water Resources
Water Project Contract Accounting Office
Loan Contract _____
Post Office Box 942836
Sacramento, California 94236-0001

- F. Promptly notify the Department if Reserve fund provided for in paragraph 3(e) falls below or is not accumulating sufficiently to meet the required minimum at the time indicated.
- G. Release no funds from Depositor's account except as provided in subparagraph (d) above without written consent of the Department. Signature authority for withdrawal of funds shall remain with the Fiscal Agent, not the Depositor.
- H. Upon request of the Department or Depositor, provide the Department with a full statement of Depositor's account and a copy of the signature card: _____

3. DEPOSITOR agrees to perform as follows:

A. RESERVE FUND

1. Accumulate a Reserve fund of at least _____ semi-annual payments in the amount specified above in subparagraph 2.d. to meet the conditions of Article _____ of the Loan Contract. This Article requires accumulation of a Reserve fund of at least two semi-annual loan payments during the first ten years of the repayment period, except where Depositor's revenues are based on the quantity of water served its customers, in which case a reserve of at least four semi-annual payments shall be accumulated during the ten years. At least half of the required reserve fund must be on deposit by the time the first 10 semi-annual payments are made. Once accumulated, the Reserve fund must be maintained at that level until the loan is repaid in full.

FISCAL SERVICES AGREEMENT

2. Deposit an average of \$_____ per _____ (frequency) beginning _____ (date) into an account established with the Fiscal Agent for purposes of this Agreement, in amounts necessary to meet the Reserve Fund requirement.

Depositor may maintain the Reserve Fund in a separate, higher yield account(s) subject to the same withdrawal conditions as other funds on deposit under this Agreement.

3. The Reserve fund may be established in lump sum at the Depositor's option. If electing this option, Depositor will make a deposit of \$_____ with the Fiscal Agent by _____ (date). Terms of such deposit account are as follows: _____

B. PRINCIPAL AND INTEREST

1. Deposit an average of \$_____ per _____ (frequency) beginning _____ (date) in order to meet the semi-annual principal and/or interest payments due to the Department under the Loan Contract. This amount may be adjusted to reflect changes in terms of the Loan Contract agreed to by the parties thereto.

2. Compensate Fiscal Agent for services as follows: _____

3. Promptly furnish Fiscal Agent with copies of any amendments to the Loan Contract, especially any changes in repayment terms, principal amount, or interest rate.

4. This Agreement shall terminate when the loan and interest are repaid to the Department in full or upon 90 days written notice of termination by either party transmitted to the other party. Fiscal Agent and Depositor shall notify the Department immediately upon receipt of issuance of 90-day notice of termination. At the time of termination any remaining balance not owed to the Department pursuant to the Loan Contract, less any accrued service charges, shall be returned to the Depositor.

5. This Agreement shall not be amended without written approval of the Department.

6. The special Account(s) established for purposes of this Agreement is/are identified as follows: _____

7. In performing its services hereunder, the Fiscal Agent shall incur no liability to Department for the funds deposited hereunder or the amount of any payment to be made by Depositor to the Department provided the actions of the Fiscal Agent are taken in good faith.

(Depositor)

(Mailing Address)

(City) (State) (Zip Code)
Telephone number (____) _____
By _____
(Signature)

(Print Name)

(Title)

(Fiscal Agent)

(Mailing Address)

(City) (State) (Zip Code)
Telephone number (____) _____
By _____
(Signature)

(Print Name)

(Title)

Approved:
STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

By _____
Title Chief
Bond Financing and Administration Office
Date _____