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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Western Water Holdings, LLC, PWC Merger Sub, Inc., Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) for Authority for Western Water Holdings, LLC to Acquire and Control Park Water Company and Apple Valley Ranchos Water Company.

Application 11-01-019
(Filed January 21, 2011)

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

1. Summary

This scoping memo identifies the issues to be considered in this proceeding, sets a procedural schedule and determines the category of the proceeding and the need for hearings pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules). It determines that hearings are not necessary and that the proceeding is submitted today.

1. Background

Park Water Company (Park) wholly owns and operates Apple Valley Ranchos Water Company (Ranchos). Both are Class-A water utilities regulated by the California Public Utilities Commission (Commission). Western Water Holdings LLC (Holdings), PWC Merger Sub Inc (Merger Sub), Park and Ranchos (collectively "Applicants") filed a joint application seeking Commission authorization for Merger Sub to merge with and into Park and for Holdings to thereby acquire and control, directly or indirectly, Park and Ranchos ("the

Transaction”). Both Merger Sub and Holdings are wholly owned subsidiaries of Carlyle Infrastructure Partners Western Water L.P. (CIP Western Water) which is wholly owned by a group of investment fund vehicles associated with Carlyle Infrastructure Partners L.P. (collectively “Carlyle Infrastructure”). (Application at 1.)¹ As further explained in the application, this Transaction is intended to provide an orderly transition from the close control of Mr. Henry Wheeler to a new owner, CIP Western Water.

3. Categorization and Need for Hearings

This scoping memo confirms the Commission’s categorization of this proceeding as ratesetting as preliminarily determined in Resolution ALJ-136-3268, dated January 27, 2011. This determination is appealable under the provisions of Rule 7.6. This scoping memo determines that hearings are not necessary and therefore modifies the preliminary determination in the resolution. (See Rule 7.5.) This modification will be subject to confirmation by the Commission by resolution or the final decision in this proceeding. The application appeared on the Commission’s daily calendar.

4. Record and Restrictions on *Ex Parte* Communications

This Scoping Memo adopts a schedule that excludes formal hearings. (See Rules 7.1(a) and 7.3(a) and Rule 7.5.) The record will be composed of all documents filed and served on parties. By two ruling the assigned Administrative Law Judge (ALJ) required applicants to supplement the record. The two filed supplements are included in the record. The record therefore

¹ The application further describes Carlyle Infrastructure Partners, L.P., “and the associated investment fund vehicles that together comprise Carlyle Infrastructure [are all] privately held Delaware limited partnerships.” (Application at 6.)

includes any testimony and exhibits served by the applicants concurrent with the filed application or by later filing.

In a ratesetting proceeding with no evidentiary hearings *ex parte* communication is permitted without reporting, pursuant to Rule 8.3(d). We chose to impose here the usual reporting requirements (*see* Pub. Util. Code § 1701.3(c) and Rules 8.2, 8.3, and 8.5) which are applicable to ratesetting proceedings with evidentiary hearings. That is, notice, reporting requirements and equal time requirements, remain in effect for this proceeding. Parties shall electronically serve the assigned Commissioner and Judge all three-day notices required by Rule 8.2(c)(2) for all *ex parte* meetings with decisionmakers.

5. Scope

Interested parties were provided an opportunity to comment on what issues should be included in the scope of this proceeding in their protests to the application and at the prehearing conference. The principal issue is whether the Transaction, the proposed transfer of control, is in the public interest. In determining this, the Commission must ensure that the the Transaction is consistent with the law and does not restrict the Commission's future authority or discretion. One legal issue identified by intervenors is whether the transfer of control would invalidate or otherwise compromise certain water rights held by Ranchos. Thus, the retention and avoidance of any impairment to those water rights is germane to finding to the Transaction in the public interest.

6. Standards of Review

Applicants bear the burden of proof in this application.

Transfer of Control

We must first determine whether this Transaction for a merger and transfer of control are consistent with the law and in the public interest. Pub.

Util. Code § 851, in relevant part, requires Commission approval before a public utility may sell the whole or any part of its system; § 852 requires a public utility to secure Commission authority before acquiring any capital stock of any other public utility; § 854(a) requires Commission authorization before any person or corporation may acquire or merge with any public utility; and § 854(d) requires the Commission to consider reasonable “options” to the applicants’ proposal recommended by other parties, in order to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal. The Commission has long interpreted the above code sections to prohibit acquisitions, mergers, and transfers of control unless the Commission finds the proposed transaction to be either “in the public interest,” or “not adverse to the public interest.” For example § 854(c) more specifically articulates requirements for approving a transfer of a large energy large or communications utility to “find, on balance, that the merger, acquisition, or control proposal is in the public interest.” The detailed tests in § 854(c) are not legislatively mandated for this proceeding.

Settlement

We must also apply the Commission’s Rules which specifically address the requirements for adoption of proposed settlements in Rule 12(d)1, that is, whether the settlement is reasonable, in light of the whole record, consistent with the law, and in the public interest.

7. Schedule and Submission

No hearings are necessary. Applicants and the Commission's Division of Ratepayer Advocates filed a proposed settlement on July 1, 2011 following a properly noticed settlement conference. Timely comments were filed by the Town of Apple Valley and the settling parties timely replied. No further action is necessary before the Commission may act on this application and therefore this proceeding is deemed submitted today. This proceeding will be concluded in the fourth quarter of 2011 and thus within 18 months of filing.

8. Final Oral Argument

Pursuant to Rule 13.13(b), a party in a ratesetting proceeding has the right to make a final oral argument before the Commission if the final oral argument is requested within the time and manner specified in the scoping memo or later ruling. However, no evidentiary hearings were held in this proceeding and Rule 13.13(b) indicates that a party's right to make a final oral argument ceases to exist when there are no hearings. As provided for in Rule 13.13(a), the Commission may still, on its own motion or upon the recommendation of the assigned Commissioner or ALJ, schedule a final oral argument.

9. Presiding Officer

Pursuant to Rule 13.2, ALJ Douglas M. Long is designated as the presiding officer.

IT IS RULED that:

1. Application 11-01-019 is categorized as ratesetting. This ruling is appealable within 10 days under Rule 7.6.
2. The Commission's preliminary determination that hearings are necessary is modified; hearings are not needed. This is subject to confirmation by Commission resolution or the final decision in this proceeding.

3. The issues to be considered are those described in Section 5 of this ruling.
4. The standards of review for this proceeding are those described in Section 6 of this proceeding.
5. Application 11-01-019 is submitted today.
6. Rules 8.2, 8.3, and 8.5 governing *ex parte* communications continue to apply to this proceeding as described in Section 4 of this ruling.
7. Administrative Law Judge Douglas M. Long is designated as the presiding officer.

Dated September 19, 2011, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner