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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of John W. Richardson, as Receiver for the Idylwild Water System, also known as Idylwild Water Company (U410W), to sell and transfer the water system to Raineri Mutual Water Company, a California Non-Profit Mutual Benefit Corporation.

Application 14-01-004
(Filed January 15, 2014)

DECISION AUTHORIZING JOHN W. RICHARDSON, AS RECEIVER FOR THE IDYLWILD WATER SYSTEM TO SELL, AND RAINERI MUTUAL WATER COMPANY, A CALIFORNIA NON-PROFIT MUTUAL BENEFIT CORPORATION TO BUY, IDYLWILD WATER SYSTEM

1. Summary

Pursuant to Public Utilities Code Sections 851-854, this decision grants authority to John W. Richardson,¹ as receiver for Idylwild Water System² to sell and, Raineri Mutual Water Company to buy Idylwild Water System in Santa Clara County, which serves a total of 42-45 connections.

¹ John W. Richardson was appointed receiver for the Idylwild Water Company by the Superior Court of the State of California – County of Santa Clara on August 9, 2011. Richardson was appointed receiver by a petition of the California Department of Public Health.

² Also known as Idylwild Water Company. Throughout this decision, the California Public Utilities Commission (Commission) refers to the utility being sold as Idylwild Water Service or Idylwild.

2. Background

On December 6, 2011, John W. Richardson, as receiver for Idylwild Water System (Idylwild) and, Raineri Mutual Water Company (Raineri Mutual)³ filed an application to sell and to buy, respectively, Idylwild in Santa Clara County.

2.1. Description of Idylwild

The owner of Idylwild, Bruce Franks,⁴ was granted a certificate of public convenience and necessity in Decision (D.) 87-07-095. Idylwild was granted a Domestic Water Supply Permit on December 2, 1994 by the California Department of Public Health (CDPH).

Idylwild provides service in the Lexington Hills area just south of Los Gatos, to approximately 44 connections. Idylwild has real property and easements, two tanks (20,000 gallon and 40,000 gallon capacity), one pump house and associated equipment, one filtration building and associated equipment, water rights, and infrastructure equipment.⁵ Water is treated via chlorination, but Raineri Mutual has submitted plans to California Department of Water Resources to construct a slow sand filtration treatment system.

The last general rate increase for Idylwild was authorized in Resolution W-4789 on September 24, 2009. This resolution authorized an increase of \$16,497 or 45.79% for test year 2009. On August 21, 2012, the California Public Utilities Commission's (Commission) Division of Water and Audits authorized a

³ John W. Richardson as receiver for Idylwild and Raineri Mutual combined are referred to as "Applicants" for the remainder of this decision.

⁴ The owner of Idylwild, Bruce Franks, passed away in 2013. The utility is currently held by the *Estate of E. Bruce Franks* (Estate) and the *Franks Living Trust Dated February 23, 1996* (Trust). Daniel Bruce Franks is the Trustee of the Estate and the Trust.

⁵ Includes items such as pipes, valves, hydrants, meters, chlorinator, and a shed.

Tier 2 Advice Letter,⁶ granting Idylwild authority to establish a \$37.81 per month surcharge to recovery receivership costs incurred from August 9, 2011 through March 31, 2012. These same rates are still in effect.

3. Request

Because the owner of Idylwild has passed away, and the utility is in receivership, the receiver and Trustee desire to dispose of Idylwild. Raineri Mutual was incorporated in May 2011 so that Idylwild's customers could purchase and operate the water utility. Prior to going into receivership, Idylwild had not been in compliance with California Department of Public Health (CDPH) requirements, and in August 2010 was cited and fined by CDPH for such non-compliance. Raineri Mutual states that it plans on bringing Idylwild into compliance with CDPH requirements. The buyer, Raineri Mutual, is a public water system incorporated as a nonprofit mutual benefit corporation under the laws of the State of California, and is in the business of providing water service to its shareholders, who are property owners in the community of Los Gatos in Santa Clara County. Applicants believe that customers of Idylwild will benefit from Raineri Mutual's plans to bring Idylwild into CDPH compliance and employment of an experienced water utility operator. Because Raineri Mutual is a new mutual water provider without previous experience, it has arranged to hire a certified water operator with the requisite qualifications. This individual, Tyler Boswell, is currently employed by the receiver to operate Idylwild, and also operates several other local water providers, therefore is familiar with and has

⁶ Tier 2 Advice Letters are effective only upon approval, but may be deemed approved and are generally subject to approval or rejection by staff pursuant to General Rule 7.6.1. A resolution of the Commission is not required for disposition of a Tier 2 Advice Letter.

experience with the operation of a water utility in this area. Raineri Mutual has also provided financial statements for 2013, showing that it is a financially viable organization.

4. Standard of Review

Proposed water utility ownership changes are reviewed under Public Utilities (Pub. Util.) Code §§ 851-854. Pub. Util. Code §§ 851-854 prohibit the sale or transfer of control of a public utility without the advance approval of this Commission.

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility,⁷ and also requires the buyer to demonstrate that the buyer's acquisition of the public utility yields a tangible benefit to the ratepayer.⁸ Using the ratepayer indifference test to assess the sale of Idylwild, the Commission should evaluate several key metrics including: (1) service quality; (2) continuity of service; and (3) the impact of the purchase price on ratebase.

We also assess whether the transaction is in compliance with California Environmental Quality Act (CEQA) requirements, and whether any required approvals of other agencies are received, when assessing whether a water utility should be disposed of.

We evaluate the proposed sale and purchase under these standards. On that basis, we determine that Raineri Mutual can assume the ownership without incurring financial difficulties. Based on Raineri Mutual's plan to hire an experienced operator, its financial viability, and plan to bring Idylwild into

⁷ Under the ratepayer indifference test, any sale of a public utility should not have any net consequences that cause the ratepayer to prefer the seller to the buyer.

⁸ See D.05-04-047 at 9-11; D.04-01-066 at 8-11; and D.01-09-057 at 26-28.

compliance with CDPH requirements, the customers of Idylwild will be well served by the change to Raineri Mutual's ownership.

4.1. How Will the Proposed Sale Affect Service Quality?

Raineri Mutual can provide management of the operations of Idylwild when the transfer of ownership is approved by the Commission. As discussed above, the service quality of Raineri Mutual will improve, because of its plans to bring Idylwild into compliance with CDPH requirements and its hiring of an experienced operator. We find that it is advantageous to the customers of Idylwild to have the transfer go into effect.

4.2. How Will the Proposed Sale Affect Continuity?

Raineri Mutual consists of the current customers of Idylwild and will be operated by the same individual who is currently operating Idylwild for the receiver. The Asset Acquisition Agreement (Agreement) ensures an orderly water system ownership transition, and thereby (1) offers continued water service by a responsible and experienced new owner, and (2) greatly reduces the chance of the water system being abandoned.

4.3. Is the Purchase Price Reasonable and Properly Calculated?

The Agreement, dated December 15, 2013, calls for a purchase price of \$16,000 for Idylwild. Based on Idylwild's 2012 Annual Report to the Commission, Idylwild has assets of \$24,268. The Commission examined available records of the water system including recent balance sheets, income statements, the Agreement, and other pertinent records, and determined that the inputs are accurate and the calculations are consistent with the statutory provision allowing these water systems to be bought for "fair market value." Even though the purchase price of \$16,000 is lower than the total assets pursuant

to Idylwild's 2012 Commission Annual Report, the price is agreeable to the buyer and the seller, and Raineri Mutual does not plan on changing the rates currently being charged customers at this time.

We cannot precisely predict the financial impact of the acquisition on any future rate change request, but, on balance, even if there is some increased cost to ratepayers in the future, we find that the sale meets the ratepayer indifference test because of the off-setting advantages of Raineri Mutual's plans to bring Idylwild into compliance with CDPH requirements and be operated by a licensed water utility operator. The buyer, Raineri Mutual, has the financial net worth to own and operate Idylwild.

4.4. Is a CEQA Review Required by the Proposed Sale?

We have reviewed the application to determine whether CEQA applies to this proposed conveyance. CEQA applies to a "project" or action, "which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change . . . [and involves] the issuance to a person of a lease, permit, license, certificate, or entitlement for use by one or more public agencies."⁹ If an application does involve a project under CEQA, our Rule 2.4 imposes other procedures and requirements on the applicant.

This application involves only a proposed change in control and operation of existing water facilities. No new construction or changes in the source of water supply are being proposed. There is no evidence of any other changes in the operation of Idylwild. Accordingly, there is no possibility that the transaction may have any significant effect on the environment.

⁹ CEQA Guidelines, CALIFORNIA CODE OF REGULATIONS TITLE 14, § 15378(a) (2003).

Based on the record before us, there is no evidence of any potential change to the environment as the result of our approval of this application.¹⁰ As a result, we conclude that our approval of the application is exempt from CEQA.

4.5. Has Raineri Mutual Received Permits Required by Other Agencies to Operate Idylwild?

Pursuant to the provisions of California Health and Safety Code (CH&S) § 116525(a), any person or entity operating a public water system must have a permit to operate that system from the CDPH. A change in ownership of a public health system requires the prospective new owner to apply to and satisfy the CDPH requirement that the new owner “possesses adequate financial, managerial, and technical capability to ensure the delivery of pure, wholesome, and potable drinking water.”¹¹

Accordingly, in addition to the authorization from the Commission for the acquisition of Idylwild, the new owner must also apply for and receive permits to operate Idylwild. In the current case, the public health agency with jurisdiction for Idylwild is CDPH. Raineri Mutual has requested issuance of permits from CDPH to operate Idylwild, but has not yet received such authority. On February 12, 2014, the assigned Administrative Law Judge (ALJ) received a letter from CDPH, stating that it had reviewed Raineri Mutual’s request and supported the transfer of Idylwild to Raineri Mutual.

¹⁰ CEQA Guidelines, CALIFORNIA CODE OF REGULATIONS TITLE 14, § 15061(b)(3) “A project is exempt from CEQA if...it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment . . .”).

¹¹ CH&S Code § 116540(a).

Because CDPH has informed the Commission that it supports the transfer requested herein, but the required permit has not yet received, we condition our authority for the sale herein on Raineri Mutual's receipt of the permit to operate Idylwild. Raineri Mutual must file a copy of such permit in this docket within 30 days of receipt of such permit. Because CDPH has informed the Commission of its support, we allow Raineri Mutual to take possession of Idylwild and collect tariffed rates from Idylwild customers prior to its official receipt of an operating permit from CDPH.

This sale is also subject to approval by the Superior Court of the State of California - County of Santa Clara (Superior Court). On January 29, 2014, the Superior Court granted the Receivers' motion for authority to sell Idylwild.

4.6. Should Raineri Mutual be Required to File an Informal General Rate Case (GRC) for Idylwild?

The buyer, Raineri Mutual, is not under the Commission's jurisdiction. Once we authorize the sale requested in the current application, and Raineri Mutual takes ownership of Idylwild, this Commission will no longer have jurisdiction over the rates charged to customers of Idylwild. Therefore, no informal GRC need be filed after Raineri Mutual takes ownership of Idylwild.

4.7. Conclusion

Both parties desire the transfer of Idylwild to Raineri Mutual. The owner of Idylwild has passed away, and Richardson, the receiver, and Trustee, desire to sell Idylwild, therefore another entity must take over ownership and operation of Idylwild. Raineri Mutual plans to bring Idylwild into compliance with CDPH requirements, hire an operator with experience, and has the financial resources to operate these systems. The terms and conditions of service will remain unchanged as a result of the acquisition. There will be no immediate change in rates.

We conclude that the proposed sale of Idylwild is reasonable, is in the public interest, and will provide tangible benefits to ratepayers, which include continued provision of quality water service by a water service provider that has the operational experience and financial ability to operate and own Idylwild. We therefore conditionally approve the application for sale of Idylwild as of the date of this decision. Since Raineri Mutual has not yet received a permit from CDPH to operate Idylwild, we condition our approval on Raineri Mutual's receipt of this permit, and require that Raineri Mutual file such permit in this docket as a condition to exercise the authority granted herein.

The sale of Idylwild will relieve the receiver of the duty to provide public utility water service to the customers of Idylwild. The conditional authority granted herein is not a finding of the value of the rights and property being sold.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3330 dated February 5, 2014, the Commission preliminarily categorized this application as ratesetting and that no hearings were necessary. Since there were no protests, the preliminary determination of ratesetting and that hearings were not necessary is confirmed herein.

6. Waiver of Comment Period

This is an uncontested matter. Accordingly, pursuant to Public Utility Code § 311(g)(3), the 30-day period for public review and comment period does not apply.

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. John W. Richardson was appointed receiver for the Idylwild by the Superior Court on August 9, 2011. Richardson was appointed receiver by a petition of the CDPH.
2. The transfer of Idylwild from Richardson, as receiver, to Raineri Mutual is desired by both parties.
3. Idylwild provides service in Los Gatos, California to 42-45 active customers.
4. Because the owner of Idylwild has passed away, and the utility is in receivership, the receiver and Trustee desire to dispose of Idylwild.
5. Raineri Mutual plans on employing an experienced and licensed operator to operate Idylwild.
6. Applicants' Agreement calls for a purchase price of \$16,000.
7. Raineri Mutual has the financial net worth and sufficient liquid assets to own and operate Idylwild.
8. The sale of Idylwild will have no significant effect on the environment.
9. Pursuant to the CH&S Code, when a change in ownership of a public water system occurs, the buyer of the public water system must apply for a new operating permit.
10. Raineri Mutual has requested, but not yet received, a permit from CDPH to operate Idylwild.
11. On February 12, 2014, the assigned ALJ received a letter from CDPH, stating that it had reviewed Raineri Mutual's request and supported the transfer of Idylwild to Raineri Mutual.
12. Idylwild and Raineri Mutual must also receive authority for the sale requested herein from the Superior Court.

13. On January 29, 2014, the Superior Court granted the Receiver authority to sell Idylwild.

Conclusions of Law

1. Transfer of ownership of Idylwild to Raineri Mutual meets the test of ratepayer indifference, in that customers will be unaffected in terms of service quality and continuity of service.

2. Raineri Mutual has the financial ability to own and operate Idylwild.

3. Because of the operator it plans on employing, Raineri Mutual will have the operational experience to own and operate Idylwild.

4. John W. Richardson, as receiver, and the Trustee of the Estate and Trust, should be conditionally authorized to sell, Raineri Mutual should be conditionally authorized to buy Idylwild.

5. After the sale of Idylwild to Raineri Mutual is final, Richardson and, the Trustee for the Estate and Trust should no longer be required to provide public utility service to the customers of Idylwild.

6. The purchase price of the system, \$16,000, is reasonable and, calculated pursuant to applicable statutes.

7. The proposed sale of Idylwild is exempt from CEQA, and no further environmental review is required.

8. Authority for Richardson as receiver and the Trustee for the Estate and Trust to sell, and Raineri Mutual to buy Idylwild should be conditioned on Raineri Mutual's receipt of a permit from CDPH to operate Idylwild.

9. Raineri Mutual should file a copy of such permit from CDPH in this docket within 30 days after receipt of such authority is granted.

10. Because CDPH has informed the Commission of its support for the transfer of Idylwild to Raineri Mutual, we allow Raineri Mutual to take

possession of Idylwild and, collect tariffed rates from Idylwild customers prior to its official receipt of an operating permit from CDPH.

11. Application 14-01-004 should be closed.

O R D E R

IT IS ORDERED that:

1. The application of John W. Richardson, receiver for the Idylwild Water Company (Idylwild), to sell, and Raineri Mutual Water Company (Raineri Mutual) to buy Idylwild, is granted, conditioned on Raineri Mutual's receipt of a permit from the California Department of Public Health.
2. Raineri Mutual Water Company must file a copy of the California Department of Public Health operating permit referenced in Ordering Paragraph 1 as a compliance filing in this docket within 30 days of receipt of such authority. This compliance filing will not reopen the record of this proceeding.
3. Raineri Mutual Water Company shall take possession of Idylwild Water Company (Idylwild) and collect tariffed rates from customers of Idylwild prior to receipt of the operating permit from the California Department of Public Health.
4. After the sale of the Idylwild Water Company (Idylwild) to Raineri Mutual Water Company is final, John W. Richardson as receiver and Daniel Bruce Franks as the Trustee for the *Estate of E. Bruce Franks* (Estate) and the *Franks Living Trust Dated February 23, 1996* (Trust), are no longer required to provide regulated water service to customers of Idylwild.
5. Within 10 days of the sale of the Idylwild Water Company to Raineri Mutual Water Company, Raineri Mutual Water Company must notify the Director of the Commission's Division of Water and Audits in writing that the sale has been completed.

6. Application 14-01-004 is closed.

This order is effective today.

Dated _____, at San Francisco, California.