

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



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Application of Western Water Holdings, LLC,
PWC Merger Sub, Inc., Park Water Company
(U 314 W), and Apple Valley Ranchos Water
Company (U-346-W) 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)

APPLICANTS' REPLY TO PROTESTS

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APPLICANTS' REPLY TO PROTESTS

In accordance with Rule 2.8(e) of the Commission's Rules of Practice and Procedure ("Rules"), Western Water Holdings, LLC ("Western Water"), PWC Merger Sub, Inc. ("Merger Sub"), Park Water Company (U-314-W) ("Park Water"), and Apple Valley Ranchos Water Company (U-346-W) ("AVR"), all of which are collectively referenced herein as "Applicants," hereby reply to the protests submitted February 23, 2011, by the Town of Apple Valley ("Town") and Peter W. Allan ("Allan") and on February 25, 2011, by James & Christine Smith ("Smiths") and the Division of Ratepayer Advocates ("DRA"). Applicants submit this reply in advance of the due date under the Rules in order that Applicants' evaluation of the protests will be available for consideration prior to the prehearing conference scheduled to be held March 3, 2011, in this proceeding.

A. Summary of Applicants' Response to Protests

What the protests of the Town, Mr. Allan and the Smiths have most in common is the irrelevance of almost all their claims and arguments to this application for Commission approval of a change of ownership and control over Park Water and AVR. These protests also are replete with misstatements and misunderstandings of the facts they try to address.

DRA's protest, in contrast to the others, presents relevant issues and questions to which Applicants can and will respond promptly in hopes of addressing and resolving DRA's concerns. Applicants here reply to each of the protests in turn.

B. The Town's Protest Presents Irrelevant Claims About Investor Owned Utilities and Water Rights Transfers but Fails to Identify Issues With the Proposed Transaction That Warrant Evidentiary or Public Participation Hearings.

The predominant theme of the Town's protest is an expression of discontent at the provision of water service by an investor-owned public utility subject to the Commission's jurisdiction and not that of the Town. The Town government obviously would like to undertake a condemnation action to replace AVR with a municipally owned water utility, something that the Town tried unsuccessfully to do 20 years ago, explored and found to be beyond its means in 2005, and has now, again, hired a financial consultant to reassess. The Town, however, misunderstands the proposed transaction as being a sale of AVR – which is not being sold – and as a transfer of water rights – which is not being proposed. AVR is not even a party to the proposed transaction.

The proposed transaction involves the acquisition by Western Water of Park Water, AVR's parent. It will not result in the sale or transfer of any of AVR's assets or rights. Upon the conclusion of the transaction, AVR will continue to be a wholly-owned subsidiary of Park Water and the stock ownership, assets, and rights of AVR will remain unchanged. In particular, Applicants emphasize that the adjudicated water rights currently owned by AVR are not involved in any manner in the proposed transaction and will continue to be owned by AVR after the transaction has been completed. AVR's ability to provide service will not be compromised by any loss of water rights due to this transaction. Therefore, the proposed transaction will not affect the ability of the Town to initiate a condemnation action to acquire

AVR in the future, should it decide to do so. Accordingly, all arguments regarding the benefits of the Town owning and operating AVR's water system are completely irrelevant to the merits of the application.

In addition, having previously protested AVR's general rate case ("GRC") application (A.11-01-001), which was filed January 3, 2011, the Town asserts that the merger proposal "cannot be wholly separated" from the rate case, but offers no reason why this might be so. In fact, the Town's protest is wholly occupied with concerns unrelated to the present application.

The Town leads off its protest with a brief history of the Town's development and of AVR's provision of water service to its residents. This introduction seriously misstates AVR's role, falsely asserting that AVR has opposed efforts to develop a recycled water supply and alleging without substantiation that the Town's attempts to replace AVR with a municipally owned water system would result in lower water rates. Town Protest, at 2-3. The Town also is incorrect in stating that the Town learned about the proposed sale "as a result of CPUC proceedings." *Id.* at 3-4. In fact, Park Water and AVR informed all the local governments within which they provide public utility service, including the Town, of the proposed acquisition by Western Water on December 22, 2010, the same day on which the Agreement and Plan of Merger was signed. This application was not filed until a month later.

In the body of its protest, the Town states a belief that the proposed transaction will result in unjust economic consequences for "the Town and its ratepayers," but offers no suggestion of what it is about the transaction that will have such results. Town Protest, at 4. The Town then asserts that the planned merger is "premature," because it does not account for the transfer of water rights from Park Water and AVR to Western Water. *Id.* However, as

noted above, no transfer of water rights is contemplated. Park Water will retain the water rights it owns, which relates to its Los Angeles County service area, and AVR will do the same with its rights for its service area. Western Water plans to acquire the capital stock of Park Water – that is all.

The Town’s protest then addresses four numbered topics, most of which already have been noted.

First, the Town refers to AVR’s GRC application and the Town’s plan to participate in that case, but offers no support for its claim that the two proceedings “cannot be wholly separated.” Town Protest, at 4-5. In fact, the rate impacts for AVR of the planned acquisition will be minor, comprising a small reduction in General Office expenses. DRA staff working on the GRC are already aware of these effects and will recommend reflection of them in rates if the acquisition is approved. In short, the two cases can and should proceed on separate tracks.¹

As its second topic, the Town recounts its past attempts to take over AVR and, more recently, to consider doing so, based on an alleged belief “that this would substantially lessen water rates.”² This leads the Town to claim that the present application will “ultimately result in unjust and unreasonable rates,” because the Town’s residents “will still be served by a private company.” Town Protest, at 5. The Town appears to be unaware of the Commission’s responsibility to ensure that AVR’s rates are just and reasonable. In any

¹ Indeed, in 1987, when the Commission last considered a proposed acquisition of ownership and control of AVR and authorized Park Water to acquire the stock of AVR, the matter was considered in a proceeding, A.87-01-003, separate from the GRC for AVR, A.85-11-041, that was then pending before the Commission. See, D. 87-05-028 (authorizing Park Water to acquire the stock of AVR); D.87-08-024 (GRC decision simply noting prior issuance of D. 87-05-028).

² In fact, when the Town last considered taking the AVR system by eminent domain in 2006, the Town’s consultants advised that either an increase in taxes or an increase in water rates would be required.

event, because the proposed transaction is not a sale of AVR but only an indirect change of control through sale of Park Water's stock, the Town's interest in acquiring AVR is immaterial. If the Town truly believes it can provide better and more economical water service than AVR and has the financial resources to do so, it can pursue a taking by eminent domain regardless of whether the Commission approves the proposed change in ownership of AVR's parent company, Park Water.

The Town's third topic is a rehash of its concerns about water rights, driven by a misconception that Applicants are proposing to transfer AVR's water rights to Western Water. Town Protest, at 5-6. As noted above, no such transfer is proposed. AVR will retain all its water rights unaffected by the proposed transaction.

As its fourth and final topic, the Town requests public participation meetings in Apple Valley and evidentiary hearings on the present application. *Id.* at 6. Nothing in the Town's protest, however, presents a dispute as to any material fact or even a hint of a substantive issue relevant to Western Water's proposed acquisition of the capital stock of AVR's parent company. Accordingly, the Town's protest provides no basis either for evidentiary hearings or for public participation hearings with respect to this application. By the same token, the Town's protest provides no support for its concluding recommendation that the application should be denied.

C. Mr. Allan's Protest Follow the Town's Themes With Equal Irrelevance.

Like the Town's attorneys, Mr. Allan (a former Town mayor) appears to misunderstand the planned transaction and its consequences for AVR's customers. As a result, his protest fails to identify relevant issues.

Mr. Allan protests the transfer of AVR “from local control to Western Water.”

Allan Protest, ¶II.A. AVR presently is owned by Park Water and is indirectly controlled by Mr. Henry H. (“Sam”) Wheeler, Jr., who resides in Los Angeles County, over 50 miles away from Apple Valley. The proposed transaction will not affect Park Water’s ownership of AVR, but will transfer indirect control over AVR from Mr. Wheeler to Western Water. There is no “local control” today, so there will be no loss of local control.

Like the Town, Mr. Allan conceives a problem as to water rights that does not exist. Contrary to his protest (¶II.B), there is no need for Western Water to own any water rights in order for AVR to serve the Town and its residents. AVR owns water rights that are used to provide that service, and will continue to do so. The proposed transaction will have no effect on such rights.

Mr. Allan is concerned that AVR “needs to spend millions of dollars” to bring its “archaic” water system to a point where the number of leaks is “mitigated, but complains that Western Water will be “under no particular obligation to upgrade the system” to eliminate leaks. Allan Protest, ¶II.C. Mr. Allan apparently does not understand that it is AVR’s obligation to invest in necessary system upgrades, an obligation that will not be affected by the proposed transaction.

In accordance with the Rate Case Plan, AVR’s water loss ratio will be subject to examination in its current GRC and if the rate is determined to be excessive the Commission may require AVR to accelerate its pipeline replacement program. AVR will continue to be subject to the operation & maintenance requirements of the Commission’s General Order 103-A. As Applicants have previously explained, “access to the resources of The Carlyle Group should enhance Park Water’s access to capital markets to meet its periodic needs for

outside sources of funds.” Application, at 16. This improved access to capital will enhance AVR’s ability to upgrade its system as needed to provide efficient, high quality service to its customers at reasonable rates. Thus, Mr. Allan’s concern about the need for AVR to upgrade its pipeline infrastructure is not a sound basis for protesting the proposed transaction.

Even more difficult to fathom is Mr. Allan’s concern that “the price of the transaction is artificially low and is designed to simply provide quick cash for its owners,” and that Western Water will be trying to “come up with the shortfall in value” from the ratepayers. Allan Protest, ¶II.D. First, Applicants must note that the transaction was not designed to provide “quick cash” for AVR’s owner, Park Water, or for Park Water’s owners, the Wheeler family. As Applicants have previously explained, Mr. Wheeler “is seeking an orderly succession in the management and ownership of Park Water” for the benefit of his family and the utility, which the Wheeler family has owned for over 70 years. Application, at 13-14. More to the point, contrasting the price to buy the capital stock of Park Water with the possible cost for the Town to condemn the assets of AVR is a meaningless “apples and oranges” comparison. And even if there were a “shortfall in value,” it makes no sense that the *purchaser* would need to respond to it by seeking an increase in rates – which would, of course, require approval by the Commission.

Finally, Mr. Allan’s statements regarding the North Apple Valley Industrial Specific Plan (“NAVISP”) are both incorrect and completely immaterial. AVR never was asked to provide the Town a “will serve” letter for the NAVISP, but AVR did prepare a Water Supply Assessment which concluded that, subject to performance by the Mojave Water Agency and availability of State Project water, there was sufficient water for AVR to provide service to the NAVISP. In a subsequent meeting addressing requirements of the

Commission's Main Extension Rule, Leigh Jordan stated that AVR's existing infrastructure in that part of the system (previously owned by the Town and purchased by AVR in 1998) could not provide the fire-flow required by the Fire District for large Commercial/Industrial customers in the NAVISP and that developers would have to pay the cost of installing additional transmission mains so the cost would not fall on AVR's existing customers. In any event, this history of past development plans is completely irrelevant to the present application.

In sum, Mr. Allan's protest presents no issues or facts that are material to the Commission's task of determining whether the proposed transaction should be authorized. Accordingly, Mr. Allan's has provided no support for his requests that public participation and evidentiary hearings be held in this proceeding or that the application be denied.

D. Mr. Cici's Concern About Rate Impacts Is Misdirected.

The Protest of Angelo S. Cici, while more colorfully expressed than those of the Town and the former mayor, is likewise focused on issues of limited relevance. Mr. Cici correctly recognizes that AVR (and Park Water as a whole) are attractive to the acquiring companies because of their predictable profit margin as regulated utilities, but he wonders whether ownership by the Town might bring rates down. Cici Protest, at 2. His statements about the percentage increases in AVR's rates over recent years and past decades are exaggerated, and his comparison of AVR's rates to those in neighboring communities fails to account for the fact that most neighboring water purveyors are government entities that keep water rates down by charging large connection fees and property tax assessments. Thus, any savings in water rates will tend to be offset by more costly home prices.

More to the point, as noted above, Western Water's acquisition of Park Water (and indirectly of AVR) will not prevent the Town from seeking to take over the water system by eminent domain, and the impact of the proposed transaction on AVR's revenue requirement is expected to be a modest reduction. Mr. Cici's concerns about AVR's rates would be better directed to AVR's ongoing GRC rather than to this transfer of ownership proceeding.

E. The Smiths' Protest Offers No Relevant Criticism of the Proposed Transaction.

The Protest of James & Christine Smith is briefer than those of the Town and Mr. Allan, but equally irrelevant to the issues presented by the present application. The Smiths fear that "this merger" will result in rates so high that they will be forced to abandon their home and their community will suffer. However, as stated above in Applicants' reply to the Town's protest, the rate impacts for AVR of the planned acquisition will be minor, comprising a small *reduction* in General Office expenses. There is no prospect for an increase in AVR's rates due to the proposed transaction.

F. DRA's Protest Presents a List of Relevant Questions That Can Be Resolved By an Expedited Process of Discovery and Settlement.

Unlike the other protesting parties, DRA's protest addresses the substance of Western Water's planned acquisition of Park Water and its subsidiary, AVR. DRA notes a series of "specific concerns," which Applicants acknowledge are relevant to DRA's goal of ensuring that ratepayers will not be harmed in any respect due to the proposed transaction. DRA Protest, at 3.

Applicants agree with DRA that the upcoming prehearing conference as well as settlement meetings will provide the best venue for discussing the relevant issues that DRA has raised. Applicants appreciate DRA's commitment to work with them to clarify DRA's concerns and to seek settlement of relevant issues. Applicants, in turn, commit to respond

promptly to DRA's requests for information – just received on March 1 – and to pursue resolution of DRA's concerns on a basis that serves the interests of Park Water's and AVR's customers.

G. Conclusion

The protests filed on behalf of the Town and by Messrs. Allan and Cici and the Smiths stand in stark contrast to that of DRA. The local protests address immaterial topics (with the Town and the former mayor, in particular, pursuing their special agendas) while failing to justify their demands for evidentiary and public participation hearings. In contrast, DRA presents a series of relevant concerns along with a practical proposal for addressing and resolving those concerns by less formal and more expeditious means. Applicants are hopeful that DRA's suggested approach will result in a timely and appropriate Commission decision.

Respectfully submitted,

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March 2, 2011

CERTIFICATE OF SERVICE

I, Jeannie Wong, hereby certify that on this date I served by electronic mail and by hand delivery, the foregoing APPLICANTS' REPLY TO PROTESTS on the parties in Application 11-01-019, below:

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Executed this 2nd day of March, 2011, in San Francisco, California.

/S/ JEANNIE WONG

Jeannie Wong

CALIFORNIA PUBLIC UTILITIES COMMISSION

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