

WATER/KPC/SNR/PTL/LEP:jlj

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of William W. Guenther and Angelita Guenther doing business as Bear Trap Water Company (U-237-W) to sell and Sugarloaf Village Mutual Water Company to buy the water system in Tulare County.

Application 05-10-025
(Filed October 6, 2005)

OPINION

Summary

William W. Guenther and Angelita Guenther seek Commission authorization to sell and transfer ownership of the Bear Trap Water Company (BTWC) to Sugarloaf Village Mutual Water Company (SVMWC), a California Corporation. The Commission’s Water Division (Division) has investigated the proposed transfer and recommends approval. The application is granted.

Background

BTWC (which is owned by Guenther Family Trust as of August 23, 1996) and has been operated by Mr. William W. Guenther since 1987 provides domestic water service to land owners located within its service area. The

service area is adjacent to the Sequoia National Forest and is residential. The water system is comprised of two wells and a lot for a proposed well, five 20,000-gallons steel storage tanks and three small buildings, two for the wells and one for a fire hydrant and hose storage. There are approximately 6,000 feet of distribution and transmission mains and 24 connections. The sale is to include the real property where the BTWC is located, easements to be assigned and quitclaimed, including various easements for pipelines, the location of which is not certain, whether in grant, prescription or otherwise.

Sales Agreement

The sales agreement calls for a purchase price of \$80,000. The purchase price is payable in full upon the Commission's approval of the transfer of ownership and control of BTWC to SVMWC. Department of Health Services (DHS) has delegated the approval of the proposed sale and transfer of the DHS water supply permit to the Tulare County and Health Department. The buyers have indicated that the Tulare County Health Department will approve the sale if it is approved by the Commission. A cashier's check for the full purchase price of \$80,000 will be delivered to William W. Guenther and Angelita Guenther at the closing of the sale and approval by the Commission. BTWC indicates that its total plant in service is valued at \$62,783 with a depreciation reserve of \$38,703 thus resulting in a net book value of \$24,080. SVMWC was incorporated effective January 27, 2006. The members of SVMWC have the financial net worth and sufficient liquid assets to own and operate BTWC. For health reasons Mr. William Guenther has decided to sell BTWC and all the water company facilities to his customers and the customers are interested in acquiring BTWC in order to serve themselves with continued reliable water service and control such service.

The organizers of the SVMWC have obtained consent of substantially all the customers of Mr. Guenther to the acquisition of BTWC.

After examining Mr. Donald Lockler's and other customer's of BTWC financial statements, the Division believes that they have the financial net worth and sufficient liquid assets to own and operate BTWC. The Division believes that the SVMWC is financially capable of making anticipated and unanticipated capital repairs and keeping the water systems in good working order.

One property owner and customer has assisted the present owner for the last three years in maintaining and operating the water system. Another property owner and customer is a California registered professional Geologist, California certified Hydro geologist, California certified Grade 2 Water Purification Plant Operator and is ready to take the test for the California Water Distribution Certificate. A third property owner is an Engineer specializing in petroleum production. The Division believes that the customers of BTWC will be better served under the new ownership.

Ratepayer Indifference

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility. The ratepayer indifference concept is one that states that any sale of a public utility should not have any net consequences that cause the ratepayer to prefer the seller to the buyer. For example, the ratepayer should not be subject to increased rates or reduced service as the result of a change of ownership. In more recent years, the Commission has further required the buyer to demonstrate that his acquisition of the public utility yields a tangible benefit to the ratepayer.

Using the ratepayer indifference test to assess the sale of the water system from Mr. Guenther to the SVMWC, the Division evaluated several key metrics including (1) the impact of purchase price on ratebase, (2) service quality, and (3) continuity of service.

Purchase Price

The proposed purchase price of \$80,000 is \$55,920 over the book value arrived at by adding the fixed assets of the water system and subtracting out accumulated depreciation and adding working cash. The Division reviewed the calculations contained in the application and confirmed them with Commission adopted resolutions and annual reports filed with the Commission.

Although it does not apply in this case (since the sale is to the customers), Public Utilities Code § 2720 provides the Commission a standard of fair market value in establishing the rate base for an acquired water system when the sale is to another investor-owned system.

Public Utilities Code § 2720:

“(a) The commission shall use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation. This standard shall be used for ratesetting.

(1) For purposes of this section, "public water system" shall have the same meaning as set forth in Section 116275 of the Health and Safety Code.

(2) For purposes of this section, "fair market value" shall have the same meaning as set forth in Section 1263.320 of the Code of Civil Procedure.

(b) If the fair market value exceeds reproduction cost, as determined in accordance with Section 820 of the Evidence Code, the commission may include the difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. In determining whether the additional amounts are fair and reasonable the commission

shall consider whether the acquisition of the public water system will improve water system reliability, whether the ability of the water system to comply with health and safety regulations is improved, whether the water corporation by acquiring the public water system can achieve efficiencies and economies of scale that would not otherwise be available, and whether the effect on existing customers of the water corporation and the acquired public water system is fair and reasonable.

(c) The provisions of subdivisions (a) and (b) shall also be applicable to the acquisition of a sewer system by any sewer system corporation or water corporation.

(d) Consistent with the provisions of this section, the commission shall retain all powers and responsibilities granted pursuant to Sections 851 and 852. “

The Division believes that the purchase price of \$80,000 meets the fair value doctrine although it is above the depreciated assets of the water system, it is what a willing buyer wants to pay and a willing seller wants to accept. PU Code § 2720 provides a provision to include additional amounts above and beyond fair market value to be included in rate base if found fair and reasonable.

Service Quality

One property owner has assisted Mr. Guenther in maintaining and operating the water system. Another property owner is a California certified Grade 2 Water Purification Plant Operator and is ready to take the test for the California Water Distribution Certificate. The Guenther Family Trust wishes to dispose of the BTWC because Mr. Guenther is disabled and desires to sell the company. Clearly, it is advantageous for the SVMWC to buy the water system.

Service Continuity

Mr. William W. Guenther wishes to sell the water company because he is no longer able to operate it and the homeowners in the service area of BTWC wish to acquire BTWC in order to serve themselves with continued reliable water service and control such service. Mr. Guenther's sales agreement with the SVMWC ensures an orderly water system ownership transition and thereby offers continued water service by responsible and experienced new owners, and greatly reduces the chance of the water system being abandoned and turned over to the county health department.

Water Division's Conclusions

The sale of the BTWC water system from Mr. Guenther to the SVMWC is desired by all parties. Mr. Guenther wants to exit the water utility business because he is disabled and cannot continue operating the system. The SVMWC will have the staff and the resources to operate BTWC. One property owner has assisted Mr. Guenther to maintain and operate the water system for the last three years.

The Water Division recommends:

- (1) That the joint application, A.05-10-025, be accepted and approved with no further hearings, pleadings, or filings necessary.
- (2) That the Bear Trap Water Company obtain approval from the Tulare County Health Department for the transfer of ownership.
- (3) That the cash sale agreement between Mr. and Mrs. Guenther and the Sugarloaf Village Mutual Water Company for a total purchase price of \$80,000 be authorized.

(4) That the Sugarloaf Village Mutual Water Company be authorized to purchase all of the assets and assume the obligations of the Bear Trap Water Company per the purchase agreement.

(5) That Mr. and Mrs. Guenther be granted authorization to withdraw from providing water utility service to customers of Bear Trap Water Company.

(6) That the Sugarloaf Village Mutual Water Company be allowed to acquire ownership of and assume water utility service to the customers of the Bear Trap Water Company.

Categorization and Need for Hearings

In Resolution (Res.) ALJ 176-3161 dated October 27, 2005, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and there is no need to alter the preliminary determinations made in Res. ALJ 176-3161.

Comments

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Kevin P. Coughlan is the assigned Examiner in this proceeding.

Findings of Fact

1. The sale of Bear Trap Water Company water system from William W. Guenther and Angelita Guenther to the Sugarloaf Village Mutual Water Company is desired by all parties.

2. The Bear Trap Water Company has not obtained approval from the County Health Department to sell the utility to the Sugarloaf Village Mutual Water Company.

3. Mr. William W. Guenther wants to exit the water utility business because he is disabled and unable to continue the day to day operations of the utility.

4. The Sugarloaf Village Mutual Water Company will have the staff and the resources to operate Bear Trap Water Company.

5. Mr. William W. Guenther wants authority to transfer ownership of the Bear Trap Water Company, which serves 23 customers.

6. One of the prospective new owners has been assisting Mr. Guenther in maintaining and operating the water system for the last three years.

7. Ratepayers will benefit from the transfer because the prospective new owners will have the financial net worth and sufficient liquid assets to own and to continue operating the water system.

8. The Commission's Water Division believes that \$80,000 is the fair market value, as required by Public Utilities Code § 2720.

Conclusions of Law

1. Transfer of ownership of the Bear Trap Water Company meets the test of ratepayer indifference, in that customers will be unaffected or better off in terms of service, water quality, and continuity of service.

2. Pursuant to California Health and Safety Code, a change in ownership of a public water system shall, and a change in regulatory jurisdiction may, require application for a new operating permit from the California Department of Health Services.

3. This is an uncontested matter in which the decision grants the relief requested.

ORDER**IT IS ORDERED** that:

1. The application of William W. Guenther and Angelita Guenther, to sell and convey the Bear Trap Water Company to the Sugarloaf Village Mutual Water Company is granted.

2. Bear Trap Water Company shall remit to the Commission's Fiscal Office all of the Commission's Users Fees collected to the date of transfer of ownership of the water system.

3. Upon approval of the Tulare County Health Department, the Sugarloaf Village Mutual Water Company is authorized to acquire ownership of and assume water utility service to the customers of Bear Trap Water Company.

4. Applicants within 10 days of the transfer of ownership shall notify the Director of the Water Division in writing that the transfer has taken place, attaching copies of the transfer document.

5. Upon consummation of the transfer of ownership, Mr. William W. Guenther shall be relieved of public utility responsibility for the operation of the Bear Trap Water Company.

6. The owners of the Sugarloaf Village Mutual Water Company are directed to comply with § 116525(a) of the Health and Safety Code, which states: “No person shall operate a public water system unless he or she firsts submits an application to the department and receives a permit as provided in this chapter. A change in ownership of a public water system shall require the submission of a new application.”

7. Application 05-10-025 is closed.

This order is effective today.

Dated _____, 2006 at San Francisco, California.