

Decision 07-12-043 December 20, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Beatrice Miller
doing business as Cottage Springs
Water Company requesting to sell
Cottage Springs Water Company to
Cottage Springs Real Estate, LLC.
The Cottage Springs Water Company
water system is located in the
unincorporated area of
Calaveras County.

Application 07-09-022
(Filed September 27, 2007)

OPINION

Summary

Beatrice Miller doing business as Cottage Springs Water Company filed an application seeking Commission authorization to sell and transfer ownership of the Cottage Springs Water Company (CSWC) to the Cottage Springs Real Estate, LLC (CSRE). The Commission's Division of Water and Audits (Division) has investigated the proposed transfer and recommends approval. The application is granted.

Background

CSWC is a California water system engaged in the business of selling water to customers in Cottage Springs, Subdivision No. 3, located adjacent to State Highway 4 approximately 35 miles east of the community of Angel

Camp, Calaveras County. Beatrice Miller is the sole owner of CSWC. The water system is comprised of:

1. Well #1 located 600 feet north of Beatrice Road and 90 feet east of Highway 4. The well was constructed circa 1959. It is thought to be 280 feet deep, with an 8-inch casing and a 60-foot deep annular seal. It contains approximately a one horsepower, submersible Striate pump and produces about 10 gpm and was drilled by Tank Well Drilling of Sonora. (This information is derived, in part, from an AB 1803 System Evaluation Form dated February 4, 1988).
2. Well #2 is located in the southeast corner of the parking lot approximately 2,000 feet south of Beatrice Road and 200 feet east of Highway 4. A Water Well Drillers Report describes what is probably Well #2 as being 90 feet deep, yielding 10 gallons per minute (gpm) and having a 30-square foot cement grout surface seal. The well is single cased consisting of 8-inch casing. Vincent Tanko of Tanko Well Drilling of Sonora completed the well February 7, 1969.
3. Services are along a 2,752-foot mainline located in the main street of the service area. System has one 20,000-gallon redwood storage tank. There are approximately 21 services on the system with 16 customers. There are no customer meters or fire hydrants on the system. No other equipment comes with the system.

Sales Agreement

The original construction cost of the property being purchased is \$12,906 according to the annual report and the last general rate case Resolution W-4603, dated May 5, 2006, indicates the system is fully depreciated. The selling price is a token amount of \$10 cash, as the seller merely wants to pass the system along

with the sale of other assets so the water system can be redeveloped as a part of new construction in the area.

A copy of the transfer agreement consists of a First American Title Company Final Closing Statement. There is no real property that goes with the water company.

Ms. Beatrice Miller wishes to sell the water system as she is over 80 years old and desires to retire from the water business. The CSRE desires to acquire the water system because the buyer is also the new owner of the resort, which is the largest customer of the water system, and desires to expand the current water service area with new home sites making this a much larger system in the future. CSRE has no practical experience in the operation of a water system and may retain the former owner to assist in the transition, and CSRE shall retain a new certified operator to meet the new system operating requirements. CSRE will also retain Mr. Frank Brommenschenkel and Mr. Gary Jennings as regulatory agencies' consultants to assist in the expansion of the water system. After examining the CSRE financial net worth statements, the Division believes that they have the financial net worth and sufficient liquid assets to own and operate CSWC. The Division believes that the customers of CSWC 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 its 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 Ms. Miller to the CSRE, 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 token purchase price of \$10 is appropriate for a system that is fully depreciated and that has no book value. The Division reviewed the application and confirmed its no book value statement with Commission adopted resolutions and annual reports filed with the Commission.

Public Utilities Code § 2720 requires the Commission to use the fair market standard in establishing the rate base for an acquired water system:

(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 token price of \$10 meets the fair value doctrine of the depreciated assets of the water system, it is what willing buyers want to pay and a willing seller wants to accept. Public Utilities Code § 2720 contain a provision to include additional amounts above and beyond fair market value to be included in rate base if found fair and reasonable does not apply.

Service Quality

CSRE has no practical experience in the operation of a water system, therefore, they will retain the current owner to assist in the transition and they will hire a new certified operator to meet the system operating requirements. In addition, they will retain Mr. Frank Brommenschenkel and Mr. Gary Jennings as consultants to assist in obtaining all appropriate licenses, permits, easements (actual, implied or prescriptive), building permits which are required in the expansion of the water system.

Service Continuity

Ms. Miller wishes to dispose of the CSWC because she is over 80 years old and desires to retire from the water business and CSRE desires to acquire the

system because they are the new owners of the resort, which is the largest customer of the water system and they desire to expand the current water service area with new home sites making it a much larger system in the future. Ms. Miller's sales agreement with the CSRE ensures an orderly water system ownership transition and thereby offers continued water service by responsible although inexperienced new owners, and greatly reduces the chance of the water system from being abandoned and turned over to their respective county health departments. The application does not indicate whether the approval of change of ownership has been granted by the Department of Public Health (DPH).

Water Division's Conclusions

The sale of the CSWC water system from Ms. Miller to CSRE is desired by both parties. Ms. Miller wants to exit the water utility business because of her advanced age and because she desires to retire from the water business. The CSRE will have the staff and the resources to operate CSWC. The Division recommends:

- (1) That the joint application, A.07-09-022, be accepted and approved with no further hearings, pleadings, or filings necessary.
- (2) That the sale agreement between Beatrice Miller and Cottage Springs Real Estate, LLC for a purchase price of \$10 be authorized.
- (3) That the Cottage Springs Real Estate, LLC be authorized to purchase all of the assets and assume the obligations of the Cottage Springs Water Company pursuant to the purchase agreement.
- (4) That Beatrice Miller be granted authorization to withdraw from providing water utility service to customers of Cottage Spring Water Company.

- (5) That Cottage Springs Real Estate, LLC be allowed to acquire ownership of and assume water utility service to the customers of the Cottage Spring Water Company.
- (6) That the Cottage Spring Water Company obtains change of ownership approval from the California Department of Public Health if not already acquired.

Uncontested Matter

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

Rami Kahlon is the assigned Examiner in this proceeding.

Findings of Fact

1. The sale of CSWC water system from Beatrice Miller to the Cottage Springs Real Estate, LLC is desired by all parties.
2. Ms. Miller requests authority to transfer ownership of the Cottage Springs Water Company, which serves approximately 16 customers.
3. Ms. Miller wants to exit the water utility business because of her advanced age and her wish to retire from the water business.
4. The Cottage Springs Real Estate, LLC wants to buy Cottage Springs Water Company because they are the new owners of the resort and the largest customer of the system, and they desire to expand the system.

5. Cottage Springs Real Estate, LLC will have the staff and resources to operate Cottage Springs Water Company.
6. Cottage Springs Real Estate, LLC proposes to retain the current owner to assist in the transition.
7. Ratepayers will benefit from the transfer because Cottage Springs Real Estate, LLC has the financial net worth and sufficient liquid assets to own and to expand the water system.
8. The Commission's Division of Water and Audits has determined that the purchase price of the system for \$10 is the fair market value, as required by Public Utilities Code § 2720.
9. Cottage Springs Water Company and Cottage Springs Real Estate, LLC must obtain change of ownership approval from the Department of Public Health.

Conclusions of Law

1. Transfer of ownership of the Cottage Springs 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 Public Health.
3. This is an uncontested matter in which the decision grants the relief requested.

O R D E R

IT IS ORDERED that:

1. The application of Beatrice Miller to sell and convey the Cottage Springs Water Company to the Cottage Springs Real Estate, LLC is granted.
2. Cottage Springs 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. Cottage Springs Real Estate, LLC is directed to comply with § 116525(a) of the Health and Safety Code, enforced by the California Department of Public Health which states: "No person shall operate a public water system unless he or she first 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."
4. Upon approval of the Department of Public Health, the Cottage Springs Real Estate, LLC is authorized to acquire ownership of and assume water utility service to the customers of Cottage Springs Water Company.
5. Applicants within 10 days of the transfer of ownership shall notify the Director of the Water and Audits Division in writing that the transfer has taken place, attaching copies of the transfer document.
6. Upon consummation of the transfer of ownership, Ms. Beatrice Miller shall be relieved of public utility responsibility for the operation of the Cottage Springs Water Company.

A.07-09-022WATER/RSK/FLC/PTL/LEP/jlj

7. Application 07-09-022 is closed.

This order is effective today.

Dated December 20, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners