

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Matt Dillon Water Company to sell and Tuolumne Utilities District to buy the water system located near the community of Standard, Tuolumne County.

Application 07-10-016
(Filed October 19, 2007)

OPINION

Summary

Matt Dillon Water Company filed an application seeking Commission authorization to sell and transfer ownership of the Matt Dillon Water Company (MDWC) to the Tuolumne Utilities District (TUD). The Commission’s Division of Water and Audits (Division) has investigated the proposed transfer and recommends approval. The application is granted.

Background

MDWC is a California water system engaged in the business of selling water to 160 metered customers in Curtis Creek Ranch Division (CCR) located along Black Oak Road, approximately 1.5 miles east of the community of Standard and 26 metered customers in the Wards Ferry Ranch Division (WFR)

located along Wards Ferry Road and Murphy Road, approximately 2 miles southwest of the community of Standard in Tuolumne County.

The water system is comprised of numerous parcels and easements containing water system, six groundwater wells (CCR Wells Nos. 1, 2, 3, and 4, and MDWC Wells Nos. 1 and 2), one 63,000-gallon storage tank, one 292,000-gallon reservoir, pumping and distribution pipelines and facilities in the Curtis Creek Ranch Division, and three groundwater wells (WFR Wells Nos. 1, 2, and 4), two 15,000-gallon storage tanks, one 270,000-gallon reservoir, pumping and distribution pipelines and facilities in the Ward Ferry Ranch Division.

Sales Agreement

The transfer agreement is entered on December 26, 2006 by and between the MDWC, and its owner-shareholders Matt Beauchamp and Robert Cowden, and the TUD. Diane Beauchamp passed away in early 2007. Matt Beauchamp is the successor Trustee of the Beauchamp Family Irrevocable Trust on the death of Diane Beauchamp. Matt Beauchamp and Robert Cowden are the new owner-shareholders of MDWC.

The original cost of property being transferred is \$501,664 and the depreciation reserve as of December 31, 2006 is \$194,460 resulting in a net book cost of \$307,204. The total purchase price to be paid by the TUD for the water system is \$100,000. The two shareholder-owners of MDWC would be entitled to share in the purchase price in proportion to their respective ownerships, to wit, \$51,000 to Matt Beauchamp and \$49,000 to Robert Cowden. Robert Cowden agrees to waive his share of the payment of \$49,000 and to donate those funds to TUD to be used for the improvement of the water system. TUD will provide confirmation of that contribution to Robert Cowden upon transfer of the water system pursuant to the agreement.

On January 29, 2008, Pete Kampa, general manager of TUD, informed the Division that the selling price of \$50,000 stated in the application is a typographical error and the sale agreement amount of \$51,000 is correct. Division concurs.

The wells transferred to TUD in the Curtis Creek Ranch Division shall include the CCR Wells Nos. 1 and 3 and MDWC Well No. 2, but shall not include those wells identified as CCR No. 2, No. 4, and MDWC Well No. 1. The wells transferred to TUD in the Ward Ferry Ranch Division shall include WFR Wells Nos. 1 and 2, but shall not include the well identified as private well to Robert and Dave Cowden. TUD shall after the transfer sever the connections of the wells not being transferred to the distribution systems being transferred to TUD.

MDWC and its owners desire that the ownership and operation of the water systems and assets be transferred to TUD. TUD is agreeable to the transfer of ownership and operation of the water systems on the terms and conditions set forth in the agreement. Conditions of the agreement include the formation of two improvement districts (one for each water system) and the adoption of special water surcharges by TUD to be levied upon customers served by each water system after transfer to TUD (in addition to TUD's other applicable water charges), such surcharges to be used by TUD to offset the costs of system improvements to be made by TUD and acquisition costs.

After examining the sales agreement, the Division believes that TUD has the financial net worth and sufficient liquid assets to own and operate MDWC. The Division believes that the customers of MDWC 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.

Using the ratepayer indifference test to assess the sale of the water system from MDWC to the TUD, 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 purchased price of \$51,000 is appropriate for a system that the owners desire to dissolve. The Division reviewed the application and confirmed that it complies 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 purchased price of \$51,000 meets the fair value doctrine of the depreciated assets of the water system, it is what a willing buyer wants to pay and a willing seller wants to accept. Public Utilities Code § 2720, which contains 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

The TUD has actual operational knowledge and all appropriate licenses, permits, and easements (actual, implied, or prescriptive), building permits which are required in the acquisition of the water system. The TUD was formed by the voters in Tuolumne County in 1992 to improve the provision of utility services

throughout the region and is responsible for serving raw water to over 600 connections, supplying treated water to over 13,500 connections, in addition to wholesaling both treated and raw water to half a dozen independent water purveyors.

The TUD employs 21 Water Treatment Plant Operators certified by the State of California as well as 29 State Certified Water Distribution System Operators. In addition, TUD employs six customer service representatives, three technical financial personnel including a CPA, as well as three Professional Engineers registered in California. TUD has acquired through receivership and purchase over 12 other privately and publicly owned water systems since its formation in 1992. Each of the acquired system has been improved to California State Standards and successfully operated in compliance with all water quality regulations and standards. TUD has adequate financial, managerial and technical resources to own and successfully operate the MDWC system.

Service Continuity

The owners of MDWC desire to dispose of the water system and the TUD agrees to acquire the system. The sales agreement with the TUD ensures an orderly water system ownership transition and thereby offers continued water service by the responsible and experienced new owner, and greatly reduces the chance of the water system being abandoned. The application does not indicate whether the approval of change of ownership has been granted by the Department of Public Health.

Water Division's Conclusions

The sale of the MDWC water system from the owners to the TUD is desired by both parties. The owners of MDWC want to dissolve the water utility. The TUD will have the staff and the resources to operate MDWC.

The Division recommends:

- (1) That the joint application, A.07-10-016, be accepted and approved with no further hearings, pleadings, or filings necessary.
- (2) That the sale agreement between Matt Dillon Water Company and Tuolumne Utilities District for a purchase price of \$51,000 be authorized.
- (3) That the Tuolumne Utilities District be authorized to purchase all of the assets and assume the obligations of the Matt Dillon Water Company pursuant to the purchase agreement.
- (4) That Matt Dillon Water Company's owners, Matt Beauchamp and Robert Cowden, are granted authorization to withdraw from providing water utility service to customers of Matt Dillon Water Company.
- (5) That the Tuolumne Utilities District is allowed to acquire ownership of and assume water utility service to the customers of the Matt Dillon Water Company.
- (6) That the Tuolumne Utilities District obtain change of ownership approval from the 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 MDWC water system from Matt Beauchamp and Robert Cowden to the Tuolumne Utilities District is desired by all parties.
2. Matt Dillon Water Company's owners Matt Beauchamp and Robert Cowden request authority to transfer ownership to the Tuolumne Utilities District.
3. Matt Dillon Water Company's owners Matt Beauchamp and Robert Cowden want to dissolve the water utility.
4. The Tuolumne Utilities District agrees to buy Matt Dillon Water Company.
5. The Tuolumne Utilities District will have the staff and resources to operate Matt Dillon Water Company.
6. Ratepayers will be better off from the transfer because the Tuolumne Utilities District has the financial net worth and sufficient liquid assets to own and to expand the water system.
7. The Commission's Division of Water and Audits has determined that the purchase price of the system for \$51,000 is the fair market value, as required by Public Utilities Code § 2720.
8. The Tuolumne Utilities District must obtain change of ownership approval from the Department of Public Health.

Conclusions of Law

1. Transfer of ownership of the Matt Dillon 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 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 Matt Dillon Water Company's owners Matt Beauchamp and Robert Cowden to sell and convey the Matt Dillon Water Company to the Tuolumne Utilities District is granted.

2. Matt Dillon 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. The Tuolumne Utilities District is directed to comply with § 116525(a) of the Health and Safety Code, enforced by the Department of Public Health 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."

4. Upon approval of the Department of Public Health, the Tuolumne Utilities District is authorized to acquire ownership of and assume water utility service to the customers of Matt Dillon 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, Matt Beauchamp and Robert Cowden shall be relieved of public utility responsibility for the operation of the Matt Dillon Water Company.

7. Application 07-10-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.