

Decision 10-07-027 July 29, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Jose Water Company (U168W) for an Order Determining that Authorization of its sale of Property #181, Site of the Doyle Road Station, was not and is not required.

Application 09-12-026
(Filed December 21, 2009)

DECISION ADOPTING STIPULATION OF FACTS AND FINDING PROPERTY NOT NECESSARY OR USEFUL FOR UTILITY PURPOSES AT THE TIME OF SALE

Summary

This decision grants the joint motion of San Jose Water Company (SJWC) and the Division of Ratepayer Advocates for Commission Adoption of the Stipulation of Facts (Stipulation), and applies the Stipulation to the sale of SJWC's Property Number 181 at Doyle Road Station (Property 181). By applying the Stipulation, the Commission finds that, as required by Public Utilities Code Section 851,¹ Property 181 was not necessary or useful at the time of its sale for water utility purposes, and is not necessary or useful at this time. As Property 181 has been sold, Commission authorization of the sale is not required.

This proceeding is closed.

¹ All references to codes are to the Public Utilities Code unless otherwise noted. Code Section 851 governs the sale or other disposition or encumbrance of public utility property.

Background

Property Number 181 (Property 181), located in the northwestern end of San Jose Water Company's (SJWC's) service area, provided the site for a groundwater production station. The infrastructure at Property 181 originally was designed as a source of seasonal water supply to supplement baseline production. However, due to growth in the water importation facilities of the Santa Clara Valley Water District, declining yields, and water quality, Property 181 ultimately supplied water only in an emergency and was rarely used.

On October 25, 2001, SJWC's Board of Directors declared Property 181 to be no longer necessary or useful to SJWC, and the property was transferred in November 2001 from an operating account to a non-utility property account, and thus removed from SJWC's rate base. On October 15, 2008, Property 181 was sold as it was considered no longer necessary or useful for water utility purposes.

On November 20, 2009, the Commission adopted Decision (D.) 09-11-032, which found that "there is insufficient information in this proceeding to substantiate without a doubt that Property 181 was no longer useful for utility purposes at the time of sale." (At 46.) Ordering Paragraph (OP) 15 of D.09-11-032 directed SJWC to file a Section 851 application for the sale of its Property 181.

On December 31, 2009, SJWC filed Application (A.) 09-12-026 (Application) requesting a determination by the Commission that, in consideration of the requirements of Section 851 and the relevant facts, Commission authorization of SJWC's sale of Property 181 was not required when SJWC sold the property on October 15, 2008, and is not required at this time.

On January 14, 2010, the Division of Ratepayer Advocates (DRA) protested the Application, and on February 5, 2010, SJWC replied to DRA's protest.

On March 8, 2010, a prehearing conference (PHC) was held to determine a schedule and issues, and whether evidentiary hearings were necessary. At the PHC SJWC and DRA agreed to meet in an attempt to resolve the issues.

On April 22, 2010, SJWC and DRA filed the Joint Motion of DRA and SJWC for the Adoption of Stipulation of Facts (Joint Motion). The Joint Motion includes a Joint Statement of Stipulated Facts Between SJWC and DRA Regarding A.09-12-026 (Stipulation).² As the Stipulation resulted from negotiations and is supported and recommended by all parties to this proceeding, DRA and SJWC recommend that the notice and service requirements of Rule 12.1(b)³ be waived.

This proceeding was submitted on April 22, 2010.

Discussion

The Commission has held that the purpose of Section 851 and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the transfer and to take such action, as a condition of the transfer, as the public interest may require.⁴ Our primary objective in reviewing the sale of property is to ensure that disposition or encumbrance of public utility property does not impair a utility's public service

² See Appendix A.

³ All references to rules are to the Commission's Rules of Practice and Procedure. Rule 12.1(b) requires that prior to a settlement conference notice and opportunity to participate must be given to all parties.

⁴ *San Jose Water Company*, 10 CRC 56 (1916) at 62-63.

to customers. As the Commission has stated previously, “the relevant inquiry is whether the proposed transaction is adverse to the public interest.”⁵ However, Section 851 also provides that, “Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public.” The threshold issue to be decided is whether the property in question is “necessary or useful.”

This issue is resolved by granting the Joint Motion and adopting the Stipulation. As stated in the Stipulation:

- 1) SJWC agrees that it failed to comply with the notice requirement set forth in D.06-05-041 prior to selling Property 181;
- 2) SJWC has complied with OP 15 of D.09-11-032 by filing this Section 851 Application;
- 3) DRA has examined Property 181 and concluded the property was not used or useful at the time of sale;
- 4) SJWC agrees to comply with the notice requirement for all real property sales in the future; and
- 5) DRA and SJWC agree that the issues presented in this Application have been resolved to the satisfaction of both parties and apply solely to SJWC and DRA.

DRA and SJWC state that the terms of the Stipulation are reasonable, consistent with the law and in the public interest. As SJWC has fulfilled its requirement to file the Application, and as DRA has reviewed Property 181 and concluded that the property was not used or useful at the time of sale, and as there are no unresolved issues in this proceeding, we agree.

⁵ Universal Marine Corporation, 14 CPUC 2d 644, 646 (1984).

By granting the Joint Motion and applying the Stipulation and in consideration of the requirements of Section 851, and the relevant facts, we determine that SJWC's Property 181 was not necessary or useful when SJWC sold the property on October 15, 2008. Furthermore, as the property has been sold, we conclude that Property 181 is not necessary or useful for utility purposes at this time, and therefore Commission authorization of the sale is not necessary.

As noted in the Joint Motion, we remind SJWC of the Commission's requirement in D.06-05-041 that the water company provide 30 days advance written notice to the Directors of the Commission's Division of Water and Audits and DRA if they plan to sell land, building, water rights, or all or part of a water system that the water company believes to be no longer used and useful for public utility service.

Comments on Proposed Decision

Rule 14.6(b) provides that comments may be waived in proceedings where all the parties to the proceeding so stipulate. As parties to this proceeding have so stipulated and as we are granting the joint motion for adoption of the Stipulation, comments are waived.

Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Bruce DeBerry is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SJWC did not comply with the notice requirement set forth in D.06-05-041 prior to selling Property 181.

2. DRA examined Property 181 and concluded this property was not necessary or useful at the time of sale.

3. SJWC admits it inadvertently did not comply with the notice requirement set forth in D.06-05-041.

4. Parties agree that the issues presented in the Application have been resolved to the satisfaction of both parties and apply solely to SJWC and DRA.

5. The agreement reached by the Stipulation will remain in effect indefinitely unless modified with written consent from both of the parties.

Conclusions of Law

1. The Joint Motion should be granted.

2. SJWC has complied with OP 15 of D.09-11-032 by filing the Section 851 Application.

3. As all of the parties to the negotiations in this proceeding support the Stipulation the notice requirements of Rule 12.1(b) should be waived.

4. Property 181 was not necessary or useful for public utility purposes when sold on October 15, 2008.

5. As Property 181 has already been sold Commission authorization of the sale as required by Section 851 is not necessary.

6. The terms of the Stipulation are reasonable, consistent with law, and in the public interest.

7. This decision should be effective today.

8. Application 09-12-026 should be closed.

O R D E R

IT IS ORDERED that:

1. The Doyle Property known also as Property Number 181 was not necessary or useful for public utility purposes when the property was sold on October 15, 2008, and is not necessary or useful at this time.

2. Application 09-12-026 is closed.

This order is effective today.

Dated July 29, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners