

Decision 12-04-020 April 19, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Central Water System, a Sole Proprietorship (U243W), for Authority to Sell and Plainview Mutual Water Company, a Nonprofit Mutual Benefit Corporation, for Authority to Buy the Central Water System in Tulare County.

Application 11-12-006
(Filed December 8, 2011)

DECISION AUTHORIZING ANGEL M. GONZALES, SOLE PROPRIETOR OF CENTRAL WATER SYSTEM TO SELL, AND PLAINVIEW MUTUAL WATER COMPANY, A NONPROFIT MUTUAL BENEFIT CORPORATION TO BUY, CENTRAL WATER SYSTEM

1. Summary

Pursuant to Pub. Util. Code §§ 851-854, this decision grants authority to Angel M. Gonzales, sole owner of Central Water System to sell and Plainview Mutual Water Company to buy Central Water System in Tulare County, which serves a total of approximately 42 connections.

2. Background

On December 6, 2011, Angel M. Gonzales (current owner) and Plainview Mutual Water Company (Plainview Mutual)¹ filed an application to sell and to buy, respectively, Central Water System in Tulare County.

¹ Angel M. Gonzales and Plainview Mutual combined are referred to as “Applicants” for the remainder of this decision.

2.1. Description of Central Water System

Angel M. Gonzales was granted a certificate of public convenience and necessity to acquire ownership of and assume water utility service to the customers of Central Water System in Decision (D.) 96-01-025.

Central Water System provides service in Porterville to approximately 42 customers. Central Water System has one well, which is its only source of water. Central Water System also has one tank with a capacity of up to 3,000 gallons. Other assets include land, pumping equipment, water mains, a computer, and a truck. Water is treated via chlorination. All of Central Water System's customers are charged a flat rate for water service.

The last general rate increase for Central Water System was authorized in Resolution W-4828 on April 8, 2010. This resolution authorized an increase of \$7,972 or 51.5% for test year 2010. These same rates are still in effect.

3. Request

Angel M. Gonzales desires to dispose of Central Water System due to illness in the family, and no longer having the capacity to administer Central Water System in accordance with public health requirements governing public water systems in California. Plainview Mutual wants to acquire Central Water System because it operates the adjacent public water system on the other side of Road 196 in the same community. Applicants state that together, the two water systems provide water service to the entire unincorporated community of Plainview, and customers from both small systems will achieve greater economies of scale if ownership and operation of the two water systems are consolidated.

The buyer, Plainview Mutual, is a public water system incorporated as a nonprofit mutual benefit corporation under the laws of the State of California, and is in the business of providing water service to its shareholders, who are property owners in the community of Plainview in Tulare County, with a total of 187 connections. Plainview Mutual has been in operation since 1947. Applicants believe that customers of Central Water System will benefit from Plainview Mutual's technical, managerial, and financial capabilities. Once physical interconnection is achieved, Applicants state that customers of Central Water System will have access to water from Plainview Mutual that consistently meets state and federal drinking water standards. Plainview Mutual proposes to initially adopt the presently filed tariffs for Central Water System, and be bound by all outstanding Commission decisions.

4. Standard of Review

Proposed water utility ownership changes are reviewed under Public Utilities (Pub. Util.) Code §§ 851-854. Pub. Util. Code §§ 851-854 prohibit the sale or transfer of control of a public utility without the advance approval of this Commission.

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility,² and also requires the buyer to demonstrate that the buyer's acquisition of the public utility yields a tangible benefit to the ratepayer.³ Using the ratepayer indifference test to assess the sale of Central Water System, the Commission should evaluate several key metrics including: (1) service

² Under the ratepayer indifference test, any sale of a public utility should not have any net consequences that cause the ratepayer to prefer the seller to the buyer.

³ See D.05-04-047 at 9-11; D.04-01-066 at 8-11; and D.01-09-057 at 26-28.

quality; (2) continuity of service; and (3) the impact of the purchase price on ratebase.

We also assess whether the transaction is in compliance with California Environmental Quality Act (CEQA) requirements, and whether any required approvals of other agencies are received, when assessing whether a water utility should be disposed of.

We evaluate the proposed sale and purchase under these standards. On that basis, we determine that Plainview Mutual can assume the ownership without incurring financial difficulties and that it has plans to effectively control costs. Based on Plainview Mutual's experience as a provider of water and its financial capacity, the customers of Central Water System will be well served by the change to Plainview Mutual's ownership.

4.1. How Will the Proposed Sale Affect Service Quality?

Plainview Mutual can provide management of the operations of Central Water System when the transfer of ownership is approved by the Commission. Plainview Mutual has extensive experience in the provision of water services in the State of California. It serves 187 customers just across the road from Central Water System. Plainview Mutual can provide operational and maintenance services and provide water that consistently meets state and federal drinking water standards. We find that it is advantageous to the customers of Central Water System to have the transfer go into effect.

4.2. How Will the Proposed Sale Affect Service Continuity?

Plainview Mutual wishes to acquire Central Water System, because it can be efficiently consolidated with the regulated water system that it already owns and operates in Plainview. The sale relieves Angel M. Gonzales of his duty

to provide public utility water service to the customers of Central Water System. The sale agreement ensures an orderly water system ownership transition, and thereby (1) offers continued water service by a responsible and experienced new owner, and (2) greatly reduces the chance of the water system being abandoned.

4.3. Is the Purchase Price Reasonable and Properly Calculated?

The Agreement of Purchase and Sale and Joint Escrow Instructions (sales agreement), dated November 7, 2011, calls for a purchase price of \$24,000 for Central Water System. The Applicants indicate the net taxable value of the total assets for Central Water System pursuant to its 2009 Secured Tax Statement from the Tulare County Treasurer Tax Collector is \$14,805. Based on Central Water System's 2010 Annual Report to the Commission, Central Water System holds \$17,068.87 of Advances for Construction. The Commission examined available records of the water system including recent balance sheets, income statements, the sales agreement, and other pertinent records, and determined that the inputs are accurate and the calculations are consistent with the statutory provision allowing these water systems to be bought for "fair market value." Even though the purchase price of \$24,000 is slightly lower than the combined assessed value of assets and book value of Advances for Construction of \$31,873, the price is agreeable to the buyer and the seller, and Plainview Mutual does not plan on changing the rates currently being charged customers at this time.

We cannot precisely predict the financial impact of the acquisition on any future rate change request, but, on balance, even if there is some increased cost to ratepayers in the future, we find that the sale meets the ratepayer indifference test because of the off-setting advantages of Plainview Mutual's experience in operating water utilities. The buyer, Plainview Mutual, has the

financial net worth and sufficient liquid assets to own and operate Central Water System.

4.4. Is a CEQA Review Required by the Proposed Sale?

We have reviewed the application to determine whether CEQA applies to this proposed conveyance. CEQA applies to a “project” or action “which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change . . . [and involves] the issuance to a person of a lease, permit, license, certificate, or entitlement for use by one or more public agencies.”⁴ If an application does involve a project under CEQA, our Rule 2.4 imposes other procedures and requirements on the applicant.

The Applicants indicated they do not believe the proposed transaction is subject to the CEQA. We construe this argument to be a motion for determination of the applicability of CEQA. This application involves only a proposed change in control and operation of existing water facilities. No new construction or changes in the source of water supply are being proposed. There is no evidence of any other changes in the operation of Central Water System. Accordingly, there is no possibility that the transaction may have any significant effect on the environment.

Based on the record before us, there is no evidence of any potential change to the environment as the result of our approval of this application.⁵ As a result, we conclude that our approval of the application is exempt from CEQA.

⁴ CEQA Guidelines, CALIFORNIA CODE OF REGULATIONS TITLE 14, § 15378(a) (2003).

⁵ CEQA Guidelines, CALIFORNIA CODE OF REGULATIONS TITLE 14, § 15061(b)(3) “A project is exempt from CEQA if...it can be seen with certainty that there is no

Footnote continued on next page

4.5. Has Plainview Mutual Received Permits Required by Other Agencies to Operate Central Water System?

Pursuant to the provisions of California Health and Safety Code (CH&S) § 116525(a), any person or entity operating a public water system must have a permit to operate that system from the California Department of Public Health (CDPH). A change in ownership of a public health system requires the prospective new owner to apply to and satisfy the CDPH requirement that the new owner “possesses adequate financial, managerial, and technical capability to ensure the delivery of pure, wholesome, and potable drinking water.”⁶

Accordingly, in addition to the authorization from the Commission for the acquisition of Central Water System, the new owner must also apply for and receive permits to operate Central Water System. In the current case, the public health agency with jurisdiction for Central Water System is CDPH. Plainview Mutual has requested issuance of permits from CDPH to operate Central Water System, but has not yet received such authority.

Since the required permit has been requested of CDPH but not yet received, we condition our authority for the sale herein on Plainview Mutual’s receipt of the permit to operate Central Water System. Plainview Mutual must also file a copy of such permit in this docket within 30 days of receipt of such permit. Plainview Mutual may not take possession of Central Water System or collect tariffed rates from Central Water System customers until it has received an operating permit from CDPH.

possibility that the activity in question may have a significant effect on the environment . . .”).

⁶ CH&S Code § 116540(a).

4.6. Should Plainview Mutual be Required to File an Informal General Rate Case for Central Water System?

In 2010, the Commission reviewed the rates charged Central Water System customers. The buyer, Plainview Mutual, is not under the Commission's jurisdiction. Once we authorize the sale requested in the current application, and Plainview Mutual takes ownership of Central Water System, this Commission will no longer have jurisdiction over the rates charged to customers of Central Water System. Therefore, no informal GRC need be filed after Plainview Mutual takes ownership of Central Water System.

4.7. Conclusion

Both parties desire the transfer of Central Water System to Plainview Mutual. Angel M. Gonzales desires to exit the water utility business because he no longer wants to continue doing business as a regulated public utility. Another entity must therefore take over ownership and operation of Central Water System. Plainview Mutual has the experience, ability, and financial resources to operate these systems. The terms and conditions of service will remain unchanged as a result of the acquisition. There will be no immediate change in rates.

We conclude that the proposed sale of Central Water System is reasonable, is in the public interest, and will provide tangible benefits to ratepayers, which include continued provision of quality water service by a water service provider that has the operational experience and financial ability to operate and own Central Water System. We therefore conditionally approve the application for sale of Central Water System as of the date of this decision. Since Plainview Mutual has not yet received a permit from CDPH to operate Central Water System, we condition our authority on Plainview Mutual's receipt of this

permit, and require that Plainview Mutual file such permit in this docket as a condition to exercise the authority granted herein.

The sale of Central Water System will relieve Angel M. Gonzales of the duty to provide public utility water service to the customers of Central Water System. The conditional authority granted herein is not a finding of the value of the rights and property being sold.

5. Payment of Fees

Pursuant to Pub. Util. Code § 433(a), public utilities are required to pay an annual Public Utilities Reimbursement Fee (annual fee) to the Commission. Small water companies must also submit an *Annual Fee Statement for the CPUC Utilities Reimbursement Account, Water and Sewer System Corporations – Small Water Companies* (statement). Central Water System did not pay the required fee for the year 2011. Prior to finalizing the sale of Central Water System to Plainview Mutual, we require that Central Water System to pay the required annual fee and submit the required statement. Central Water System must also file proof of such payment of the annual fee and submission of the statement as a compliance filing in the current proceeding within 30 days of such compliance. This compliance filing will not reopen the record of the current proceeding.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3287 dated January 12, 2012, the Commission preliminarily categorized this application as ratesetting and that no hearings were necessary. Since there were no protests, the preliminary determination of ratesetting and that hearings were not necessary is confirmed herein.

7. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested on a conditional basis. In such case, the comment period may be

shortened or waived. (§ 311(g)(2).) With the agreement of the Applicants, we shortened the comment period to three days, and waived reply comments. On March 20, 2012, the proposed decision of Administrative Law Judge (ALJ) Seaneen M. Wilson was filed and served. No comments were filed.

8. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. By Resolution ALJ-176-3287 dated January 12, 2012, it was preliminarily determined that this is a ratesetting proceeding and that no hearings would be necessary. No protests were filed and no hearings were held.
2. The transfer of Central Water System from the Angel M. Gonzales to Plainview Mutual is desired by both parties.
3. Central Water System provides service in Porterville, California to approximately 42 active customers.
4. Angel M. Gonzales no longer desires to continue doing business as a regulated public utility.
5. Plainview Mutual has extensive experience providing water services in the State of California since 1947.
6. Applicants sales agreement calls for a purchase price of \$24,000.
7. Plainview Mutual has the financial net worth and sufficient liquid assets to own and operate Central Water System.
8. The sale of Central Water System will have no significant effect on the environment.
9. After consummation of the transfer, Angel M. Gonzales will no longer provide public utility service to customers of Central Water System.

10. Pursuant to the CH&S Code, when a change in ownership of a public water system occurs, the buyer of the public water system must apply for a new operating permit.

11. Plainview Mutual has requested, but not yet received, a permit from CDPH to operate Central Water System.

12. Pursuant to Pub. Util. Code § 433(a), public utilities are required to pay an annual fee to the Commission.

13. Small water companies must also submit an *Annual Fee Statement for the CPUC Utilities Reimbursement Account, Water and Sewer System Corporations – Small Water Companies*.

14. Central Water System did not pay the required fees for the year 2011.

Conclusions of Law

1. Transfer of ownership of Central Water System to Plainview Mutual meets the test of ratepayer indifference, in that customers will be unaffected in terms of service quality and continuity of service.

2. Plainview Mutual has the operational experience and financial ability to own and operate Central Water System.

3. Angel M. Gonzales should be conditionally authorized to sell and Plainview Mutual should be conditionally authorized to buy Central Water System.

4. After the sale of Central Water System to Plainview Mutual is final, Angel M. Gonzales should no longer be required to provide public utility service to the customers of Central Water System.

5. The purchase price of the system, \$24,000, is reasonable and calculated pursuant to applicable statutes.

6. The proposed sale of Central Water System is exempt from CEQA, and no further environmental review is required.

7. Authority for Angel M. Gonzales to sell and Plainview Mutual to buy Central Water System should be conditioned on Plainview Mutual's receipt of a permit from CDPH to operate Central Water System.

8. Plainview Mutual should file a copy of such permit from CDPH in this docket within 30 days after receipt of such authority is granted.

9. Plainview Mutual should not take possession of Central Water System and not collect tariffed rates from customers of Central Water System until it has received an operating permit from CDPH, and Central Water System and Plain View Mutual have complied with Ordering Paragraphs 2, 5, and 6 herein

10. Prior to finalizing the sale of Central Water System to Plainview Mutual, we should require that Central Water System pay the required annual fee and submit its *Annual Fee Statement for the CPUC Utilities Reimbursement Account, Water and Sewer System Corporations – Small Water Companies*. Central Water System should file proof of payment of the annual fee and submission of its *Annual Fee Statement for the CPUC Utilities Reimbursement Account, Water and Sewer System Corporations – Small Water Companies* as a compliance filing in this docket within 30 days of such payment and submission. This compliance filing should not reopen the record of this proceeding.

11. Application 11-12-006 should be closed.

O R D E R

IT IS ORDERED that:

1. The application of Angel M. Gonzales, sole owner of Central Water System, to sell and Plainview Mutual Water Company to buy Central Water

System, is granted, conditioned on Plainview Mutual Water Company's receipt of a permit from the California Department of Public Health to operate Central Water System, Central Water Systems payment of its Public Utilities Reimbursement Fee, and submission of its Annual Fee Statement for the California Public Utilities Reimbursement Account, Water and Sewer System Corporations - Small Water Companies.

2. Plainview Mutual Water Company must file a copy of the California Department of Public Health operating permit referenced in Ordering Paragraph 1 as a compliance filing in this docket within 30 days of receipt of such authority. This compliance filing will not reopen the record of this proceeding.

3. Plainview Mutual Water Company must not take possession of Central Water System and may not collect tariffed rates from customers of Central Water System until it has received the operating permit from the California Department of Public Health, and Central Water System and Plainview Mutual Water Company have complied with Ordering Paragraphs 2, 5, and 6 herein.

4. After the sale of the Central Water System to Plainview Mutual Water Company is final, Angel M. Gonzales, sole owner of Central Water System, is no longer required to provide regulated water service to customers of Central Water System.

5. Within 10 days of the sale of Central Water System to Plainview Mutual Water Company, Plainview Mutual Water Company must notify the Director of the Commission's Division of Water and Audits in writing that the sale has been completed.

6. Prior to finalizing the sale of Central Water System to Plainview Mutual Water Company, we require that Central Water System pay the required Public Utilities Reimbursement Fee and submit its *Annual Fee Statement for the CPUC*

Utilities Reimbursement Account, Water and Sewer System Corporations – Small Water Companies. Central Water System must file proof of payment of the Public Utilities Reimbursement Fee and submission of its *Annual Fee Statement for the CPUC Utilities Reimbursement Account, Water and Sewer System Corporations – Small Water Companies* as a compliance filing in this docket within 30 days of such payment and submission. This compliance filing will not reopen the record of this proceeding.

7. Application 11-12-006 is closed.

This order is effective today.

Dated April 19, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners