

Decision 04-08-043 August 19, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of M. Green and Company, appointed by the Court U-81-W, for Authority to convey the Curtis Water Company assets, located in Kings County to County of Kings pursuant to Public Utilities Code Section 851.

Application 03-12-042
(Filed December 19, 2003)

O P I N I O N

Summary

This decision grants M. Green and Company (MGC), receiver appointed by the Kings County Superior Court, the authority to transfer the Curtis Water Company (Curtis) system to the County of Kings (the County) as requested in Application (A.) 03-12-042 (Application).

Background

Commission Decision (D.) No. 53767 granted E. S. Curtis a certificate of public convenience and necessity to construct and operate the Curtis Water Company on September 18, 1956. On March 21, 1984, E. S. Curtis transferred the water system to David Gunter, Trena Gunter, Jerry Ellis, and Barbara Ellis per D.84-03-052. On a court order dated December 11, 1990, Barbara Ellis conveyed her interest in Curtis to Jerry Ellis as a result of a marital settlement agreement.

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In 1993, the Kings County Superior Court in Case No. 58720 appointed Behrens, Bekedam, and Blackburn (BBB), Certified Public Accountants as receiver to operate Curtis. On September 10, 1994, MGC took control of BBB and assumed receivership responsibilities. On September 23, 1998, authority to operate the system and to transfer the assets was granted to receiver MGC by order of King County Superior Court. On December 11, 2003, Peter D. Moock, Assistant County Counsel for Kings County, confirmed with David and Trena Gunter that they conveyed any interest in Curtis to Jerry Ellis. The Gunters stated they have no interest in the water company. Curtis serves 128 connections in the area of El Rancho Subdivision and vicinity, located about one-half mile from the eastern limits of the City of Hanford, Kings County.

The source of water supply is groundwater. The groundwater basin is not adjudicated and there is no limit on pumping. There are no new wells to be constructed and therefore water rights are not an issue.

The last activity before the Commission from MGC was Advice Letter (A.L.) No. 12, for Plant Replacement Fees with the Water Division on October 2, 2000. Curtis' last General Rate Case (GRC) was filed by draft A.L. No. 10 in 1988. As a result of the GRC filing, Resolution No. W-3411 went into effect on October 21, 1988, and the approved rate of return was ten and a half percent.

MGC requests authority, pursuant to § 851 of the Public Utilities (PU) Code and Rules 1 through 7, 15 through 17, 35, and 36 of the Commission's Rules of Practice and Procedure to transfer its water system and public utility water service responsibilities to the County.

Notice of the filing appeared on the Commission's Daily Calendar of January 6, 2004. No protests have been received.

Discussion

MGC desires to dispose of the system because the system has serious water quality and quantity problems. The MGC does not have sufficient funds to improve the system. The County desires to acquire the system and its assets in order to utilize State loan and grants to design, develop, and construct a new water distribution system for the benefit of the residents in the El Rancho Subdivision area. The County water distribution system will be connected to the City of Hanford water system, which currently provides water to all the residents of the City of Hanford. In order to facilitate the transition from the Curtis system to the new County system, it is necessary for the County to operate both systems. The City of Hanford will provide water from its existing sources and will operate and maintain the system.

The County and the City of Hanford have extensive experience in the provision of water and sewer services. The City is a large water district with long experience in maintaining a water system and currently provides sewer services to the El Rancho Subdivision.

PU Code § 851 provides that no public utility other than a common carrier by railroad may sell the whole or any part of its system or property useful in the performance of its public utility service without first obtaining authorization to do so from this Commission. Other sections of the Public Utilities Code pertaining to the transfer of utility property do not apply in this instance because MGC's gross annual revenues are under \$500 million.

The Contract between MGC and the County provides:

1. MGC transfers authority to operate the system and the entire assets of the fully depreciated company to the County.

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2. Upon completion of the transfer of service, the pumping plant and water distribution system of Curtis will be abandoned and the useful property disposed of.
3. Under terms and conditions of the Safe Drinking Water State Revolving Fund Program, the County must own the water system to receive loans and grants.
4. County proposes to adopt connection and monthly user fees sufficient to cover the costs of developing, designing, constructing, operating, and maintaining the new system.
5. Approval must be obtained from the California Public Utilities Commission.

The County is an agent of the state and is specially formed for local performance of functions like utility service. (Gov. Code §§ 61100 and 61600.) After transference to the County, the customers must continue to receive service and rates that are “fair, reasonable, just, and nondiscriminatory.” (*See, e.g., Hansen v. City of San Buenaventura* (1985) 213 Cal.Rptr. 859; *In re Park Water Company* (1988) 29 CPUC2d 415.) Thus we can approve the transfer.

Water and sewer utilities subject to Commission jurisdiction were required by the Legislature beginning January 1, 1983, to impose user fees on customers’ bills. (*See* PU Code §§ 401, et. seq.) With the end of Commission jurisdiction at the time of transfer to the County, collection of these fees will no longer be required. For that period of time prior to transfer, MGC should be required to collect and remit these fees before it can be relieved of its public utility responsibilities.

Since the water service to be provided by the City of Hanford is under the same terms and conditions as water service provided to other land in the

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County, we could reasonably conclude that the sale and transfer of this system will have no significant effect on the environment.

The sale relieves MGC of its duty to provide public utility water service in the El Rancho Subdivision area.

Izetta C. R. Jackson is the assigned Examiner in this proceeding.

In Resolution (Res.) ALJ 176-3126 dated January 8, 2004; the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. A public hearing is not necessary, and there is no need to alter the preliminary determinations made in Res. ALJ 176-3126.

Comments on Draft Decision

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

Findings of Fact

1. Curtis Water Company serves 128 connections in the area of El Rancho Subdivision adjacent to the City of Hanford, Kings County.
2. Receiver MGC is no longer financially able to maintain the system and provide service to its customers.
3. The County and the City of Hanford have extensive experience in providing water and sewer services in the same area.
4. By A.03-01-042 dated December 19, 2004, MGC proposes to transfer the Curtis Water Company to the County.
5. It is reasonably certain the sale and transfer of this system will have no significant effect on the environment.

6. As a receiver for a public utility, MGC remains responsible to the Commission for remittance of the Public Utilities Commission Users Fees collected up to the date of sale and transfer.

7. There is no known opposition to the proposed sale and transfer.

8. After consummation of the transfer, receiver MGC will no longer provide public utility service in the El Rancho Subdivision area, the County having assumed these duties and obligations.

9. This order should become effective immediately as seller and buyer have completed all elements of the transaction except for the Commission's approval.

Conclusions of Law

1. The County has the legal capacity to acquire Curtis Water Company.

2. The acquisition of ownership and control of Curtis Water Company by County is in the public interest.

3. A public hearing of this Application is not necessary.

4. Upon completion of the sale and transfer, and remittance of pending Public Utilities Commission Users Fees collected to the date of sale and transfer, receiver MGC should be relieved of its public utility water duties and obligations.

5. This order should be made effective immediately so as to permit prompt consummation of the sale and transfer.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, the transfer of the Curtis Water system by M. Green and Company (MGC), court appointed receiver, to the County Of Kings is authorized, upon terms and conditions substantially consistent with those set forth or contemplated in Application (A.) 03-12-042.

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2. Receiver MGC shall remit to the Public Utilities Commission the Users Fees collected up to the date of sale and transfer within 90 days from the date of sale and transfer of its water system.

3. Within ten (10) days after the transfer, receiver MGC shall write a letter to the Commission notifying it of the transfer and submitting an executed copy of the transfer document(s).

4. Upon compliance with this order, receiver MGC shall be relieved of its public utility obligation and the certificate of public convenience and necessity cancelled.

5. The Application is granted as set forth above.

6. A.03-12-042 is closed.

This order is effective today.

Dated August 19, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners