

Decision 04-09-053 September 23, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Kenneth Van Gorder, as the sole Owner of Meyers Water Company, and Jay Gardner, Pam Simonson, Matt Fullner and Juell Fullner, as the buyers for the following orders:

1. Authorizing Kenneth Van Gorder, to sell and transfer to Jay Gardner, Pam Simonson, Matt Fullner, and Juell Fullner, ownership of Meyers Water Company; and
2. Authorizing Kenneth Van Gorder to withdraw from providing water utility service to the Meyers Water Company customers; and
3. Granting Meyers Water Company, Inc., a certificate of public convenience and necessity; and
4. Authorizing Meyers Water Company, Inc. to engage in and carry on the water utility service to the existing Meyers Water Company customers.

Application 04-02-027
(Filed February 10, 2004)

OPINION GRANTING APPLICATION

Summary

Kenneth Van Gorder seeks Commission authorization to sell and transfer ownership of Meyers Water Company to Jay Gardner, Pam Simonson, Matt

Fullner, and Juell Fullner (Jay Gardner, et al.). The prospective purchasers have been operating or assisting in the operation of the water system since May 2003. The Commission's Water Division has investigated the proposed transfer and recommends approval. The application is granted.

Background

By Decision (D.) 74427, July 23, 1968 in Case No. 8724, the Commission found that Stanley D. Meyers and Opal Meyers were operating a public utility water system on Edgerly Island in Napa County, and not an accommodation as they claimed.

By D.96-02-005, February 7, 1996 the Commission approved the transfer of Meyers Water Company to Kenny (Kenneth) and Heidi Van Gorder. In the interim, Kenneth and Heidi Van Gorder were divorced and Kenneth Van Gorder was granted sole ownership of the property associated with Meyers Water Company. Although the Commission has not approved the transfer of ownership of Heidi Van Gorder's portion of the water company to Kenneth Van Gorder, there is a de facto change of ownership. The First American Title Company of Napa record show that Heidi Van Gorder is no longer an owner of the real property associated with Meyers Water Company.

In this application, Kenneth Van Gorder proposes to sell Meyers Water Company to Jay Gardner, Pam Simonson, Matt Fullner, and Juell Fullner (Jay Gardner, et al.). Jay Gardner, et al. have formed Meyers Water Company, Inc., a California Corporation. The Articles of Incorporation were filed with the Secretary of State on January 28, 2004. The officers of Meyers Water Company, Inc. are: Jay Gardner, President; Pamela Simonson, Vice President; Juell Fullner, Secretary/Treasurer; Matt Fullner, Vice President and Director of Operations. The Board of Directors is comprised wholly of the aforementioned four officers.

The Meyers Water Company water system serves the Edgerly Island Subdivision, located approximately ten miles south of Napa, Napa County, and has 94 flat-rate customers. The system consists of one well, a 4,000-gallon steel pressure/storage tank and distribution mains. The well has been inspected and the pumping equipment replaced last year. The Water Division reports that the tank is in apparently good condition. The water mains are primarily two-inch plastic pipes that were installed 30 years ago. The Water Division verified with Napa County Department of Environmental Health that the system is in compliance with county testing requirements.

Kenneth Van Gorder has been in jail for approximately three years. His father and sister have been running the company in his absence but are unable to continue.

Jay Gardner and Pam Simonson operate two family-owned businesses; one founded 25 years ago, the other 14 years ago. In his role in these businesses, Mr. Gardner has demonstrated a variety of mechanical abilities. He and Matt Fullner are currently enrolled in distribution operator certification training and plan to seek a D2 certification, exceeding the D1 requirement for the Meyers Water Company system.

Jay Gardner's involvement in the operation of the water system began in May 2003, when he and others made emergency repairs. Jay Gardner, et al. have been running the water company since they signed a purchase agreement with the current owner in February 2004.

Sales Agreement

The sales agreement calls for a purchase price of \$77,500, payable to Kenneth Van Gorder in two equal payments. One half was paid on March 8, 2004 and one half is to be paid within seven days of the approval of the transfer by the California Public Utilities Commission. To evaluate whether Jay Gardner,

et al. will be able to handle this long-term obligation, the Water Division examined available records of the water system, including the balance sheet, income statement, and purchase agreement. The Water Division concludes that Jay Gardner, et al. can assume this debt without incurring financial difficulty and without raising the rates of water system customers beyond what the rates ordinarily would be.

Ratepayer Indifference

The Commission historically has required a standard of ratepayer indifference when evaluating the sale of a public small water company. Under this standard, the sale of 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 a result of a change of ownership. In more recent years, the Commission has further required the buyer to demonstrate that acquisition of the public utility yields a tangible benefit to the ratepayers.

Using the ratepayer indifference standard to assess the proposed sale of Meyers Water Company, the Water Division evaluated several key metrics including (1) the impact of purchase price on ratebase, (2) future water rates, (3) service quality, and (4) continuity of service.

Rate Base

The proposed purchase price of \$77,500 was arrived at through negotiation. Jay Gardner, et al. have agreed that the rate base for future ratemaking will be based on the recorded net plant. Exhibit G to the application lists the 2003 year-end net plant at \$8,426. However, the Water Division's preliminary review suggests that depreciation may be overstated. Therefore, Water Division recommends that a detailed depreciation study be undertaken at the time of the next general rate case. The difference between the purchase price

and the recorded rate base will be recorded as acquisition cost in the books and will be amortized below the line. Since the purchase price will have no effect on rate base, this criterion for ratepayer indifference is satisfied.

Water Rates

The ratepayer indifference test requires that projected rates be no more than if the water systems remained under the same ownership. Jay Gardner has stated that no rate increase is anticipated in the foreseeable future. Water Division believes the current rates, along with CPI increases and offsets in any major increases in offsettable expenses, will be adequate as long as there is no growth and the system is not required to treat its water.

Service Quality

The prospective purchasers have been operating or assisting in the operation of the water system since May 2003. Their involvement in the water company began as a response to the failure of the current owner to respond to an emergency. Two of the buyers, Jay Gardner and Matt Fullner, are enrolled in distribution system training. Jay Gardner has stated that he or Mr. Fullner will be available 24 hours per day and that in the unlikely event that both are absent, Dave Meyers, a contract worker familiar with the system, would be retained to respond to service problems.

There is one complaint on file with the Commission since Jay Gardner, et al. have been operating the water system. Water Division staff spoke with the customer involved and found that the situation had been resolved.

Water Division staff believes that service quality will be improved under the new ownership.

Service Continuity

Kenneth Van Gorder, the current owner, has been in jail for three years. His father and sister had been trying to run the company until Jay Gardner, et al. took over this February. Mr. Van Gorder has never lived in the service territory and his father and sister live in Napa, approximately 10 miles away. Jay Gardner and Pam Simonson own a home in the service territory and have lived there for over 20 years. Matt and Jewell Fullner have recently purchased a home in the service territory. The buyers clearly have a vested interest in the future of the water system.

Kenneth Van Gorder's sales agreement with Jay Gardner, et al., ensures an orderly water system ownership transition and offers continued water service by a responsible new owner.

Water Quality

Staff spoke to Christine Sofko of the Napa County Environmental Health Department, and she informed them that the water system is up to date on their testing requirements and that there are no outstanding compliance orders. Ms. Sofko confirmed that Jay Gardner, et al. have applied for a permit as required by Section 116525(a) of the Health and Safety Code. She further stated that the application had been approved pending approval of the transfer by the Public Utilities Commission.

Public Notification

The customers were notified by mail of the pending sale of the water company on February 2, 2004. The announcement gave the name and addresses of the buyers and sellers, the approximate date of transfer, and contact information for inquiries.

Conclusion

Both parties desire the transfer of the Meyers Water Company system from Kenneth Van Gorder to Jay Gardner, et al. Mr. Van Gorder is presently unable to operate the water system. Jay Gardner, et al. want to purchase the water system. The Water Division recommends that the application be approved. We find that approval of the application is in the public interest in that (1) the transfer does not entail rate increases, (2) service continuity is essentially preserved, and (3) service quality will be the same or better.

Uncontested Matter

In Resolution ALJ 176-3130 dated March 16, 2004, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3130.

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

Assignment of Proceeding

Izetta Jackson is the Assigned Examiner in this proceeding.

Findings of Fact

1. Kenneth Van Gorder seeks authority to transfer ownership of the Commission-regulated water system, Meyers Water Company, which serves 94 customers.
2. The prospective new owners, Jay Gardner, Pam Simonson, Matt Fullner, and Juell Fullner, have operated the Meyers Water Company system since February 2004.

3. Ratepayers will benefit from the transfer because the prospective new owners can be available to respond to service problems, unlike the present owner.

4. Jay Gardner, et al. have applied for a permit as required by § 116525 of the California Health and Safety Code.

5. Jay Gardner, et al., agree that rate base will be based on the recorded net plant as determined by the Commission.

6. The difference between the purchase price and the recorded rate base will be recorded as acquisition cost in the books and will be considered below the line cost.

7. The new owners have registered the Articles of Incorporation for Meyers Ware Company, Inc. with the Secretary of State.

Conclusions of Law

1. Transfer of ownership of the water system at issue meets the test of ratepayer indifference, in that customers will be unaffected or better off in terms of service, water quality, future water rates and continuity of service.

2. The transfer of ownership will provide tangible benefits to ratepayers both in the quality and cost of water service.

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 Kenneth Van Gorder to sell and convey the Meyers Water Company to Meyers Water Company, Inc. is granted.

2. Meyers Water Company, Inc. is authorized to acquire ownership of and assume water utility service to the customers of Meyers Water Company.

3. Applicants within 10 days of the transfer of ownership shall notify the Director of the Water Division in writing that the transfer has taken place, attaching copies of the transfer document. Upon transfer, the name of the water company will become Meyers Water Company, Inc.

4. Upon consummation of the transfer of ownership, Kenneth Van Gorder shall be relieved of public utility responsibility for the operation of Meyers Water Company.

5. Application 04-02-027 is closed.

This order is effective today.

Dated September 23, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners