

Decision 05-03-008 March 17, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Authority to Transfer 100% of the Outstanding Stock of YERBA BUENA WATER COMPANY U-323-W from John A. DeFalco and Neil N. Werb to Crown Pointe Estates at Malibu, LLC pursuant to Public Utilities Code Sections 851-854.

Application 05-01-014
(Filed January 13, 2005)

O P I N I O N

1. Summary

Pursuant to Pub. Util. Code §§ 851 through 854¹, this decision authorizes John A. DeFalco and Neil N. Werb, principal stockholders of Yerba Buena Water Company (Yerba Buena), to sell and transfer 100% of the utility's outstanding stock to Crown Pointe Estates at Malibu, LLC (Crown Pointe Estates), as described in Application (A.) 05-01-014 and attached exhibits (Application). Crown Pointe Estates will retain Robert M. Berry, president and manager of Yerba Buena for the past 23 years, to continue operating the system.

Notice of the filing appeared on the Commission's Daily Calendar of January 25, 2005. No protests have been received.

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

2. Background

Yerba Buena, a California corporation, is a Class D water utility subject to the jurisdiction of this Commission. Yerba Buena was originally granted a Certificate of Public Convenience and Necessity (CPCN) by Decision (D.) 51694, dated November 19, 1947 in A.35887.

Yerba Buena provides water to about 226 active services in approximately 178 acres in or near the community of Malibu, California adjacent to the Pacific Ocean in Ventura County.

Yerba Buena has two storage tanks with a total capacity of 257,000 gallons; 15,000 feet of water mains; 17 fire hydrants; and two wells with capacities of 450 gallons per minute (GPM) and 130 GPM. The water treatment consists of a chlorination system at each well site. The utility does not have buildings, transportation equipment, or office furniture and equipment.

For the period ending December 31, 2003, Yerba Buena reported total operating revenues of \$120,009 and net loss of \$21,096, as shown in its 2003 Annual Report attached as Exhibit B to the Application. As of the same period, DeFalco and Werb each own 13,000 shares of the company's \$1 par value common stock².

3. Purchase Agreement

By this Application, DeFalco and Werb request authorization to sell their outstanding shares of common stock to Crown Pointe Estates. Crown Pointe Estates has agreed to pay DeFalco and Werb \$500,000 cash for 100% of the issued and outstanding shares of common stock of Yerba Buena.

² When the acquisition of Yerba Buena by DeFalco and Werb was authorized by D.88-03-052 dated March 23, 1988, Berry (owner and seller of Yerba Buena at that time) was retained by DeFalco and Werb to operate and maintain the water system.

On May 28, 2004, Skylark Investment, G.P. represented by partners Werb and DeFalco and two other partners entered into a Commercial Property Purchase Agreement and Joint Escrow Instructions (Agreement) with Richard G. Morris and Ronald B. Coleman for the sale of some commercial property described as Lots 1-11 of Tract 4483, Ventura County and all outstanding shares of stock of Yerba Buena held by DeFalco and Werb. The Agreement specifies that if Yerba Buena is excluded from the Agreement, the purchase price shall be reduced by \$500,000.

Number eight of the First Amendment to the Agreement states:

“A separate escrow shall be opened for Buyers’ purchase of the Water Company stock. If all approvals necessary to complete that transfer (e.g., PUC) are not obtained by the time the escrow for the real property is set to close, then the real property escrow shall nevertheless close and the close of the Water company escrow, for \$500,000 allocated from the Purchase Price, shall be continued until such approvals are obtained.”

The proposed transaction is not scheduled to close until all of the conditions set forth in the Agreement have been satisfied.

Crown Pointe Estates is a California limited liability company engaged in residential home development. Crown Pointe Estates’ Balance Sheet as of November 1, 2004, shown as Exhibit C to the Application shows total assets of \$13,438,000, consisting of \$2,000,000 cash in bank and \$11,438,000 land at cost, and total liabilities of \$2,688,000 and equity of \$10,750,000.

Crown Pointe Estates’ managing member is RimRoc Investments, LLC, a California limited liability company (RimRoc). The members of RimRoc are Morris and Coleman. Morris is an experienced real estate

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developer, a lawyer in good standing with the California State Bar, and a certified public accountant. He has practiced real estate development law for 28 years, performing all facets of real estate development for development clients who have constructed more than five million square feet of commercial and industrial facilities in the State of California. Morris has lived in Ventura County, where Yerba Buena is located, for more than 20 years and will reside in a residence to be constructed by Crown Pointe Estates in the Yerba Buena's service area.

Coleman has worked as a real estate developer in the State of California for 30 years and is experienced in all facets of real estate development, including residential, commercial and mixed-use. Coleman has obtained entitlements for a wide variety of real estate developments in California, some recent ones including a 500 lot single family subdivision in Santa Clarita, a resort hotel and conference facility in Yosemite, including the creation of a private water district to service that development, and a 282 unit condominium complex in San Francisco. In the 1980s, Coleman was president of a real estate development company, which oversaw the planning and development of 1,800 apartment units, 3,500 single-family homes and condominiums, and 2,000 acres of master planned communities.

RimRoc has assembled a development team for 13 residential lots in the certificated service area of Yerba Buena consisting of Peridian International, Inc., a land use and master planning landscape architectural firm which has designed numerous hotel and master planned residential communities in Southern California, including Ventura County, and other locally recognized architectural firms and contractors.

The Water Division examined available records of the water system including recent balance sheets, income statements, the purchase agreement, and purchaser's information. Crown Pointe Estates has the financial net worth and sufficient liquid assets to own and operate Yerba Buena.

Both parties desire the sale and transfer of the outstanding shares of common stock of Yerba Buena. DeFalco and Werb have sold all of their interest in certain land located in the certificated service area of Yerba Buena to Crown Pointe Estates, which the latter intends to develop as 13 residential lots. Berry is an experienced water system operator and he will be retained by Crown Pointe Estates to continue operating the system.

4. Standards of Legal Review

Section 854(a) states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control...any public utility organized and doing business in this state without first securing authorization to do so from the commission...any merger, acquisition, or control without the prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to Section 854(a). The primary standard used by the Commission to determine if a transaction should be authorized under Section 854(a) is whether the transaction will adversely affect the public interest. The Commission may also consider if the transaction will serve the public interest. Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.

First, Yerba Buena will continue to operate as it has in the past, using the same name and operating authority. Second, the public may

benefit from the transfer of control to the extent the transaction enhances Yerba Buena's ability to maintain and expand its services and operations in California. Third, there is no opposition to this Application. Thus, we see no reason to withhold authority for the transfer of control before us here.

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility. The ratepayer indifference concept 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. In more recent years, the Commission has considered whether the buyer demonstrated that its acquisition of the public utility would yield a tangible benefit to the ratepayer.

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

Crown Pointe Estates proposes to adopt the presently filed tariffs of Yerba Buena, and upon approval of the transfer of control, to continue offering its current services and using the same name and operating authority. Crown Pointe Estates is retaining the services of Berry who has been the principal operator of Yerba Buena for several years, during which time service quality appears good. Based on the desire of the current owners to sell, it is appropriate and in the public interest to ensure an orderly transition in the ownership of Yerba Buena. Accordingly, it is reasonable from the ratepayer standpoint to approve the transfer whether considered from the ratepayer indifference or benefit standard.

5. Selling Price

The original cost of property owned by Yerba Buena being transferred is \$367,000 with an accumulated depreciation as of December 31, 2003 of \$293,000 or a net book cost of \$74,000.

Section 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

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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.

Crown Pointe Estates has agreed to pay \$500,000, which is more than the original cost net of depreciation, but it states in the Application that “purchaser understands that rates will be based upon the depreciated original cost of the plant, excluding contributed plant, and not on the purchase price”.

We will not make any pronouncement as to the reasonableness of the selling price of \$500,000. This amount represents the amount paid by a willing buyer to a willing seller. The buyer is financially capable and is retaining the services of the present manager who has extensive experience in utility operation.

The action taken herein shall not be construed as a finding of the value of the properties of Yerba Buena. In issuing this decision we place Yerba Buena and its shareholders on notice that we do not regard the number of shares outstanding or the purchase price of the shares as measuring the return it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a finding of the value of the company’s stock or property, or as indicative of amounts to be included in proceedings for the determination of just and reasonable rates. Yerba Buena’s depreciated rate base will be the Commission’s basis for ratemaking and the cost paid for the system in excess of rate base will not be considered in setting rates.

California Health and Safety Code (CH&S) Section 116525(a) 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.”

Accordingly, Crown Pointe Estates must file an application with the Department of Health Services.

6. Service Quality

Crown Pointe Estates is retaining the services of Berry who has been operating the water system for 23 years and is intimately familiar with the operation of the Yerba Buena water system. For the period January 1, 2004 to January 31, 2005 there was one informal complaint filed against Yerba Buena for the charges to a landscaping company for repairing a leak in a lateral line. To save time and expenses, Yerba Buena offered to shoulder half of the repair cost. The customer agreed and paid half of the bill. There are no other customer complaints filed with the Commission.

7. Service Continuity

The transfer of ownership will not disrupt water service. Crown Pointe Estates will continue using the presently filed tariffs and agrees to be bound by any outstanding Commission decisions and directives involving the operation of Yerba Buena. The stock transfer does not alter the corporate status of Yerba Buena. We find that it is advantageous to the customers of Yerba Buena to have the transfer go into effect.

8. Public Notification

The Application states that Crown Pointe Estates and DeFalco and Werb accept joint responsibility for informing the community of customers about this filing. Yerba Buena is keeping the same postal address, the

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same 24-hour emergency telephone service, and the same location where the accounting, billing, and computer requirements are processed.

9. Conclusions and Recommendations

The Water Division recommends:

1. That the Application be accepted and approved with no further hearings, pleadings or filings necessary.
2. That DeFalco and Werb be granted authorization to sell all of the shares of common stock outstanding of Yerba Buena to Crown Pointe Estates.
3. That Crown Pointe Estates be authorized to assume the water utility service to the customers of Yerba Buena.
4. That Yerba Buena remains responsible for payment of utility user's fees to the Commission.
5. That Crown Pointe Estates comply with the provisions of California Health and Safety Code (CH&S) § 116525(a), which states: "No person shall operate a public water system unless he or she first 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." Accordingly, apart from authorization from the Commission for Crown Pointe Estates' acquisition of Yerba Buena, Crown Pointe Estates also must file an application with the Department of Health Services.

The Commission has considered the Water Division's recommendations and, finding them reasonable, will adopt them as stated above.

10. Categorization and Need for Hearings

In Resolution (Res.) ALJ 176-3146 dated January 27, 2005, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. No protests

have been received. Given these developments, a public hearing is not necessary, and there is no need to alter the preliminary determinations made in Res. ALJ 176-3146.

11. Waiver of Comment Period

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

12. Assignment of Proceeding

Kevin P. Coughlan is the assigned Examiner in this proceeding.

Findings of Fact

1. DeFalco and Werb seek authority to transfer ownership of the Yerba Buena Water Company, which serves about 226 customers.

2. The prospective new owner, Crown Pointe Estates is financially capable and is retaining the services of Berry, who is an experienced water system operator that managed and operated Yerba Buena for 23 years.

3. The transaction is not contrary to the public interest.

4. The Commission does not by this decision determine that the value of the company's stock or property presented herein are necessary or reasonable for ratemaking purposes nor are indicative of amounts to be included in proceedings for the determination of just and reasonable rates. Yerba Buena's depreciated rate base will be the Commission's basis for ratemaking and the cost paid for the system in excess of rate base will not be considered in setting rates.

5. Yerba Buena's corporate status remains unchanged with the stock transfer authorized.

6. There is no known opposition and there is no reason to delay granting the authority requested.

Conclusions of Law

1. The transfer of ownership of Yerba Buena meets the Standards of Legal Review in that customers will be unaffected or better off in terms of service, water quality, and continuity of service.

2. No protests have been received.

3. A public hearing is not necessary.

4. 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 DHS.

5. Section 854(a) requires prior Commission authorization for the acquisition or control of a public utility.

6. This is an uncontested matter in which the decision grants the relief requested.

7. Today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Application of John A. DeFalco and Neil N. Werb to transfer all the shares of common stock outstanding in Yerba Buena Water Company to Crown Pointe Estates at Malibu, LLC, as described in Application 05-01-014 and exhibits attached to the Application is granted.

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2. 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.

5. Upon consummation of the transfer of ownership, DeFalco and Werb shall be relieved of public utility responsibility for the operation of the Yerba Buena water system.

6. Yerba Buena shall continue offering its current services and using the same name and authority after the transfer of ownership.

7. Crown Pointe Estates is directed to comply with § 116525(a) of the Health and Safety Code, which states: “No person shall operate a public water system unless he or she first 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.”

8. Application 05-01-014 is closed.

This order is effective today.

Dated March 17, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

