

Decision 05-02-012 February 10, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of The Nelson E. and Winifred Bartoo Trust and Angelo L. Andreini, III, for Commission Authorization of the Transfer Ownership and Control from the Nelson E. and Winifred Bartoo Trust to Rentals Etc. of the B & W Riverview Estates Water Company, and the Water System (WTD 43).

Application 03-11-012  
(Filed November 10, 2003)

**OPINION**

**Summary**

In the joint sale application, The Nelson E. Bartoo & Winifred M. Bartoo Trust (Trust) seeks Commission authorization to sell and transfer ownership of the B & W Riverview Estates Water Company (B & W), and Angelo Louis Andreini, III, seeks to acquire B&W. The reasons for the proposed transfer are (1) the owners of record have passed away and the charitable trust cannot perform the functions of running a water company; (2) the buyer owns property in the subdivision; and (3) the buyer has passed the Grade I Water Distribution Operator Certification Examination and can provide proper service to the customers and can ensure an orderly ownership transfer.

The Commission's Water Division has investigated the proposed transfer and recommends approval. The application is granted.

## **Background**

B & W has been owned and operated since 1965 by Nelson E. Bartoo and Winifred M. Bartoo. B&W provides water to an area known as B&W Riverview Estates, which is located in an unincorporated area on the east bank of the Sacramento River, approximately three miles north of Los Molinos, Tehama County.

The water system serves approximately 10 flat rate customers. The system consists of a single well, adjacent to a 5,000-gallon steel pressure/storage tank and distribution mains. The water mains consist of mainly four-inch standard steel pipes installed nearly forty years ago.

On October 28, 2003, The Nelson E. & Winifred M. Bartoo Trust entered into a purchase agreement with Mr. Andreini. Both parties subsequently filed a transfer application with the Commission on November 10, 2003, seeking authorization of the sale and transfer. Mr. Andreini assumed all operating responsibilities for the water system in 2003 and has been operating the water system ever since—including bill collection, water testing, and system maintenance. The Andreini place of business in Red Bluff, Tehama County, is less than 30 minutes away from the water system. Angelo Andreini has prior experience in water and wastewater plant operation and currently is self-employed. His current occupation is property management. Mr. Andreini holds a Grade 1 water treatment facility operator's license, and also holds a BS degree in Soils and Irrigation.

The original owners of record passed away and the charitable trust is not in a position to perform the functions of running a water company, so Mr. Andreini is providing interim management and operating the water system until the transfer of ownership is approved by the Commission.

### **Sales Agreement**

The sales agreement calls for a purchase price of \$1,000. The purchase price has been paid in cash on close of escrow. B&W indicates the net book value of the total plant in service is \$1,000. The Water Division examined available records of the water system including recent balance sheets, income statements, the sales agreement, and other pertinent records. Mr. Andreini has the financial net worth and sufficient liquid assets to own and operate B&W. We have determined that Mr. Andreini can assume the ownership without incurring financial trouble, or raising the rates of its customers beyond what the rates ordinarily would be. While the original owners operated at a loss and had to subsidize its cost of operation with personal funds, Mr. Andreini plans to more effectively control costs and bill the customers at appropriate rates as permitted by the Commission.

After examining Mr. Andreini's financial statements, the Water Division believes that he has the financial net worth and sufficient liquid assets to own and operate B&W and to make anticipated and unanticipated capital repairs and keep the water systems in good working order. Although there is a projected small net loss for 2004, the Water Division believes that the customers of B&W will be better served under the new owner.

### **Ratepayer Indifference**

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 purely of a change of ownership. In more recent years, the Commission has further required the buyer to demonstrate that the buyer's acquisition of the public utility yields a tangible benefit to the ratepayer.

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

### **Purchase Price**

The proposed purchase price of \$1,000 is approximately the book value arrived at by adding the fixed assets of the water system and subtracting out accumulated depreciation and adding working cash. The Water Division reviewed the calculations contained in the application and confirmed them with Commission-adopted resolutions and annual reports filed with the Commission.

PU Code § 2720 requires the Commission to use fair market value in establishing the rate base for an acquired water system.

PUC § 2720:

“(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 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. “

The Water Division believes that the purchase price of \$1,000 meets fair market value as it represents close to the depreciated assets of the water system. The price is also what a willing buyer wants to pay and a willing seller wants to accept.

### **Service Quality**

The buyer has been providing interim management of the operations of B&W, and will continue to do so until the transfer of ownership is approved by the Commission. Mr. Andreini has a license, has been certified as a water company operator, and has been able to provide operational and maintenance services, including monitoring of the pumps, routine maintenance of the equipment, and making the necessary repairs, collecting water samples as required by Department of Health Services, responding to emergencies, and assisting in the preparation of the reports to government agencies regarding the operation of the water system.

There were no complaints received. We find that it is advantageous to the customers of B&W water system to have the transfer go into effect.

### **Service Continuity**

Mr. Andreini wishes to acquire B&W because he owns real estate in the area and his place of business in Red Bluff, Tehama County, is less than 30 minutes away from the 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.

### **Public Notification**

A notice of the proposed sale and transfer was hand-delivered to the customers of B&W on November 6, 2003, notifying the customers that the trust is liquidating these assets and that Mr. Andreini is taking over day to day operations of the water system. No letters opposing the sale were received.

### **Water Division's Conclusions**

The transfer of the B&W water system to Mr. Andreini is desired by both parties. The Trust desires to exit the water utility business because it is not in a position to provide water service. Mr. Andreini has been providing the water services since November 2003. The Water Division recommends:

- (1) That the joint application, A.03-011-012, be accepted and approved with no further hearings, pleadings, or filings.
- (2) That the cash sale agreement between the Trust and Mr. Andreini for a total purchase price of \$1,000 be authorized.
- (3) That Mr. Andreini be authorized to purchase all of the assets and assume the obligations at B&W Riverview Estates Water Company per the purchase agreement.
- (4) That the Trust be granted authorization to withdraw from providing water utility service to customers of B&W Riverview Estates Water Company and Mr. Andreini be granted a Certificate of Public Convenience and Necessity to acquire ownership of B&W and provide water utility service to its customers.

### **Uncontested Matter**

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.

In Resolution ALJ 176-3124 dated December 4, 2003, the Commission preliminarily categorized this application as adopted, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-312.

### **Assignment of Proceeding**

Kevin Coughlan is the assigned Examiner in this proceeding.

### **Findings of Fact**

1. The transfer of B&W water system from The Nelson E. and Winifred Bartoo Trust to Mr. Andreini is desired by both parties.
2. The previous owners have passed away leaving the company in a charitable trust and the trust cannot perform the functions of running a water company and wants to exit the water utility business.
3. Mr. Andreini has water distribution operator certification and the resources to operate B&W.
4. The Trust seeks authority to transfer ownership of the B&W Riverview Estates Water Company, which serves about ten customers.
5. The prospective new owner, Mr. Angelo Andreini, has been operating and managing the water company since November 2003.
6. Ratepayers will benefit from the transfer because the prospective new owner has the financial net worth and sufficient liquid assets to own and to operate the water system.
7. The purchase price of the system, \$1,000, is the fair market value as required by PU Code § 2720.

**Conclusions of Law**

1. Transfer of ownership of the B&W Riverview Estates Water Company meets the test of ratepayer indifference, in that customers will be unaffected in terms of service, water quality, and continuity of service.
2. Pursuant to the 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 the California Department of Health Services.
3. This is an uncontested matter in which the decision grants the relief requested.

**ORDER**

**IT IS ORDERED** that:

1. The joint application of The Nelson E. and Winifred Bartoo Trust (Trust), to sell and convey the B&W Riverview Estates Water Company (&W) and of Angelo L. Andreini, III, (Andreini) to acquire B&W, is granted.
2. B&W shall remit to the Commission's Fiscal Office all of the Commission's Users Fees collected to the date of transfer of ownership of the water system.
3. Andreini is authorized to acquire ownership of and provide the water utility service to the customers of B&W.
4. 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, the Trust shall be relieved of public utility responsibility for the operation of the B&W.
6. Andreini 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 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.”

7. Application 03-11-012 is closed.

This order is effective today.

Dated February 10, 2005, at San Francisco, California.

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