

Decision 06-11-040 November 30, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Patricia Hurlbutt doing business as Garberville Water Company, Inc. U-27-W, to sell and Garberville Sanitary District to buy the water system located in Humboldt County.

Application 06-07-011
(Filed July 18, 2006)

OPINION

Summary

Patricia Hurlbutt (Ms. Hurlbutt), individually and as Trustee of the Patricia Ann Hurlbutt Revocable Trust, filed an application seeking Commission authorization to sell and transfer ownership of the Garberville Water Company, Inc. (GWC) to the Garberville Sanitary District. The Commission's Water Division (Division) has investigated the proposed transfer and recommends approval. The application is granted.

Background

GWC is a California corporation engaged in the business of selling water to customers in the unincorporated area of Garberville, Humboldt County, California. Ms. Hurlbutt and Richard Haapala are the sole shareholders of GWC.

GWC or Ms. Hurlbutt (individually or as Trustee of the Patricia Ann Hurlbutt Revocable Trust) are the sole owners of various respective parcels of real property. GWC's service area is in the unincorporated community of Garberville and vicinity,

located approximately sixty miles south of Eureka in Humboldt County and is mainly residential. The water system is comprised of:

1. A water facility consisting of an infiltration gallery, a pumping station, electrical equipment, and control telemetry, including associated piping and equipment.
2. Water treatment facilities, including disinfecting and pressure filtration system, a 175,000-gallon clearwell, a pump house, electrical equipment, instrumentation and controls and the associated piping and equipment.
3. Water pumping facilities located in the Alderpoint Road, including pump house, electrical equipment, and associated piping.
4. Water pumping facilities located in the Meadows subdivision, including pump house, electrical equipment, telemetry and associated piping.
5. A concrete water storage tank located along Alderpoint Road, including associated piping.
6. Redwood storage tanks located in the Wallan/Johnson Subdivision.
7. Water treatment and distribution system, including all associated piping and laterals, meters, and meter boxes.
8. Water supply system, including all associated piping, from source to treatment and distribution system.
9. A well located at Pine Street, including pump house and storage shell and associated materials, pumping system, electrical equipment, and associated piping.
10. All office records and water supply, treatment and distribution system documentation.
11. Micron Pentium computer and printer, including Jayhawk System Utility Billing Software and associated files.
12. Existing chemical inventory.
13. Individual Grant Deed.
14. All water rights of any kind.

Sales Agreement

The sales agreement calls for a purchase price of \$320,000. The purchase price is to be paid with a deposit of \$100,000 into escrow and the balance of \$220,000 to be payable with a promissory note in sixty equal monthly payments. The interest rate on the note shall be the greater of four and one quarter percent (4 ¼%) or the rate equal to the then prime rate being charged by Bank of America at the close of escrow. GWC indicates that its total plant in service is valued at \$530,007 with a depreciation reserve of \$343,292 thus resulting in a net book value of \$186,715. The Garberville Sanitary District has the financial net worth and sufficient liquid assets to own and operate GWC. Ms. Hurlbutt desires to dispose of the system because of the death of the primary operator/owner, and the Garberville Sanitary District wishes to acquire the system because of public convenience and because they have experience which qualifies them to operate the system. It currently operates a public utility and the proposed operator would be the existing operator of GWC. Currently GWC operates at a loss and Ms. Hurlbutt has to subsidize the costs of operation with personal funds.

After examining the Garberville Sanitary District financial statements, the Division believes that it has the financial net worth and sufficient liquid assets to own and operate GWC. The Division believes that the customers of GWC will be better served under the new ownership.

Ratepayer Indifference

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility. The ratepayer indifference concept is one that 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.

Using the ratepayer indifference test to assess the sale of the water system from Ms. Hurlbutt to the Garberville Sanitary District, the 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 \$320,000 is \$133,285 over the book value arrived at by adding the fixed assets of the water system and subtracting out accumulated depreciation and adding working cash. The Division reviewed the calculations contained in the application and confirmed them with Commission adopted resolutions and annual reports filed with the Commission.

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

Public Utilities Code § 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 Division believes that the purchase price of \$320,000 meets the fair value doctrine although it is above the amount of the depreciated assets of the water system, it is what a willing buyer wants to pay and a willing seller wants to accept. PU Code § 2720 provides a provision to include additional amounts above and beyond fair market value to be included in rate base if found fair and reasonable.

Service Quality

Garberville Utility District has actual knowledge, all appropriate licenses; permits, easements (actual, implied or prescriptive), building permits, and occupancy permits which are required from any governmental authority having jurisdiction over the assets or from private parties as necessary to make use of the assets of the acquired operational water system.

Service Continuity

Ms. Hurlbutt (individually or as Trustee of the Patricia Ann Hurlbutt Revocable Trust) wishes to dispose of the GWC because of the death of the primary operator/owner and Garberville Sanitary District desires to acquire the system because of public convenience. Ms. Hurlbutt's sales agreement with the Garberville Sanitary District ensures an orderly water system ownership transition and thereby offers continued water service by responsible and experienced new owners, and greatly reduces the chance of the water system being abandoned and turned over to the county health department.

Division's Conclusions

The sale of the GWC water system from Ms. Hurlbutt to the Garberville Sanitary District is desired by both parties. Ms. Hurlbutt wants to exit the water utility business because of the death of the primary operator/owner and because she is unable to continue operating the system. The Garberville Sanitary District will have the staff and the resources to operate GWC. The Division recommends:

- (1) That the joint application, Application 06-07-011, be accepted and approved with no further hearings, pleadings, or filings necessary.

- (2) That the sale agreement between Ms. Hurlbutt, individually and as Trustee of the Patricia Ann Hurlbutt Revocable Trust and Garberville Sanitary District for a total purchase price of \$320,000 be authorized.
- (3) That the Garberville Sanitary District be authorized to purchase all of the assets and assume the obligations of the GWC per the purchase agreement.
- (4) That Ms. Hurlbutt be granted authorization to withdraw from providing water utility service to customers of GWC.
- (5) That the Garberville Sanitary District be allowed to acquire ownership of and assume water utility service to the customers of the GWC.

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.

Assignment of Proceeding

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

Findings of Fact

1. The sale of GWC water system from Ms. Hurlbutt, individually and as Trustee of the Patricia Ann Hurlbutt Revocable Trust to the Garberville Sanitary District Company is desired by all parties.
2. Ms. Hurlbutt requests authority to transfer ownership of the Garberville Water Company, which serves approximately 388 customers.
3. Ms. Hurlbutt wants to exit the water utility business because she is unable to continue the day-to-day operation of the utility.
4. The Garberville Sanitary District wants to buy Garberville Water Company because of public convenience.
5. The Garberville Sanitary District has the staff and resources to operate Garberville Water Company.

6. The Garberville Sanitary District proposes to hire the existing operator of Garberville Water Company.

7. Ratepayers will benefit from the transfer because the Garberville Sanitary District has the financial net worth and sufficient liquid assets to own and to modify and repair the water system.

8. The Division has determined that the purchase price of the system, \$320,000 is the fair market value, as required by Public Utilities Code § 2720.

Conclusions of Law

1. Transfer of ownership of the Garberville Water Company, Inc. meets the test of ratepayer indifference in that customers will be unaffected or better off in terms of service, water quality, and continuity of service.

2. 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 the California Department of Health Services.

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 Patricia Hurlbutt, individually and as Trustee of the Patricia Ann Hurlbutt Revocable Trust, to sell and convey the Garberville Water Company, Inc. to the Garberville Sanitary District is granted.

2. Garberville Water Company, Inc. 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. The Garberville Utility District is directed to comply with § 116525(a) of the Health and Safety Code, enforced by the California Department of Health Services 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.”

4. Upon approval of the Department of Health Services, the Garberville Sanitary District is authorized to acquire ownership of and assume water utility service to the customers of Garberville Water Company, Inc.

5. 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.

6. Upon consummation of the transfer of ownership, Patricia Hurlbutt shall be relieved of public utility responsibility for the operation of the Garberville Water Company, Inc. water system.

7. Application 06-07-011 is closed.

This order is effective today.

Dated November 30, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners