

Decision 08-07-017 July 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of David R. Robertson requesting to sell the assets of the Tahoe Park Water Company, Inc. and Richard M. Dewante, Tahoe Park Water Company requesting to buy all assets in this water system located near Tahoe City in the unincorporated area of Placer County, California.

Application 06-11-020
(Filed November 28, 2006)

DECISION APPROVING SALE AND PURCHASE OF ASSETS OF TAHOE PARK WATER COMPANY, INC.

Summary

We approve the parties' joint application for approval of the sale of assets of Tahoe Park Water Company, Inc. (Seller) to Tahoe Park Water Company, a California Corporation (Buyer), subject to terms and conditions ensuring that the scope and subject matter of the transaction are clear and unambiguous, and that the interests of customers are protected.

The application is unopposed. Buyer's president, who is a licensed operator, has been operating the water system since April 3, 1996, and the transaction will not materially affect either the management or the operation of the system. We conclude that purchase and sale of the assets under the terms of our Order will not adversely affect the public interest, and we approve the applicants' joint request.

Application 06-11-020 is closed.

Background

David R. Robertson (Robertson), on behalf of Seller, and Richard M. Dewante (Dewante), on behalf of Buyer, seek the Commission's authority, pursuant to Public Utilities Code sections 851 through 854, to consummate the sale and purchase of all of the assets of Seller by Seller to Buyer. Robertson is the president of Seller, and Dewante is president of Buyer.

Seller's assets are the tangible and intangible property comprising its plant and water supply system, which serve approximately 520 customers in the Lake Tahoe area. Seller has been owned by Robertson since 1986. The stated price is \$150,000, as set forth in the written Agreement of Sale between Richard Dewante and Ann P. Dewante, husband and wife, and Tahoe Park Water Company, Incorporated, a California corporation, dated April 3, 1996. In 1996, Seller attempted to sell the personal property pursuant to that agreement, as well as two parcels of real property to Dewante and his wife as their community property under a separate written agreement, but in *Re: Tahoe Park Water Company, Inc.*, Decision (D.) 97-08-021 in Application (A.) 97-02-039, 73 CPUC2d 715 (1997), the Commission denied the request without prejudice as a consequence of concerns about the nature of the property to be conveyed.¹ A

¹ The Grant Deed and Bill of Sale, and two Agreements of Sale, dated April 3, 1996, which were the subject of A.97-02-039, reflect that the intended buyer of the system was Tahoe Park Utility Company, a California Corporation (Utility). The applicants have included in the present application a certified copy of an Amendment of Articles of Incorporation, which reflects that on January 22, 1997, Article I of Utility's Articles of Incorporation was amended to change the name of the corporation to Tahoe Park Water Company.

number of plant additions and retirements have been made since that decision was issued, and the present application only requests authority for the purchase and sale of assets comprising the existing system, even though copies of the 1996 documents are attached to the application to describe the subject matter.

Dewante, who is a licensed operator, has been operating the system for Seller since April 3, 1996, the date of execution of the earlier purchase and sale agreement and related documents. Dewante claims that after D.97-08-021 was issued, Buyer invested more than \$800,000 in new plant and equipment at its own expense, in the apparent expectation that Buyer would eventually assume ownership of the system.

Procedural History

This application was filed on November 28, 2006. Initially, it was assigned to Examiner Kevin P. Coughlan, but it was reassigned to Administrative Law Judge (ALJ) Victor D. Ryerson on March 28, 2007.²

On May 21, 2007, the Commission's Division of Ratepayer Advocates (DRA) sought leave to file a late protest. The protest cited DRA's concerns that the application is incomplete and does not comply with Commission Rule of Practice and Procedure 3.6, specifically in that it lacks an up-to-date description of the property to be conveyed because it incorporated the eleven-year-old purchase and sale agreements, and because it does not contain Buyer's current balance sheet and income statement. The ALJ granted DRA's request to file the

² At the time of the reassignment of this matter, an application for a general rate increase (GRC) was pending before the Commission. The GRC was requested by Tahoe Park Water Company, which is the Buyer in the present proceeding. On May 3, 2007, the Commission authorized a rate increase in Resolution (Res.) W-4628.

protest, and held a prehearing conference (PHC) in Tahoe City on October 2, 2007, to identify the contested issues.

At the PHC, DRA stated that Buyer had furnished additional information in response to a data request, and indicated that it would probably withdraw the protest once it had analyzed the new information. Consequently, the matter was not scheduled for evidentiary hearing at the time of the PHC, and the ALJ granted DRA the opportunity to analyze the new information and determine whether or not it would maintain its protest. On November 6, 2007, DRA filed a timely motion to withdraw its protest, and we accordingly treat this as an *ex parte* matter.

Discussion

Although the application is ambiguous because it confuses individual owners with their associated corporations, we understand that it seeks our approval for the sale and purchase of all used and useful utility assets between the two corporate entities. Our decision addresses this confusion by describing the transaction and identifying the parties in very specific terms, and by including appropriate conditions and compliance requirements to ensure that there is a clear record of these matters.

We recently examined Buyer's financials and established net plant in Res. W-4628. Buyer's president, Dewante, has been operating the Seller's system for more than eleven years. We rely upon these circumstances as lending additional support for approval of the transfer, as doing so will be consistent with ensuring the continuity of management and service. Moreover, DRA has withdrawn its opposition to this application because it received and evaluated information it requested from Buyer, allaying its concerns, so the application is no longer controversial.

Our intention is to approve the consummation of a longstanding transaction in which Dewante, as both owner and manager of the company, will assume full ownership and control and relieve Robertson of any involvement whatsoever. Buyer will fully assume, and Seller will relinquish, the entire benefit and burden of furnishing service to customers of the system as a public utility.

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, ratepayers should not be subject to increased rates or reduced service as a result of a change of ownership.

The proposed transaction will not result in increased rates or reduced service. To the contrary, our approval will result in maintenance of the status quo, because improvements have been made over the past 11 years, and the system operator will not change. The rates were recently reviewed, and a general rate increase was granted to the present owner last year. Those rates will not be increased as part of this transaction, and will not be subject to increase without Commission approval. Rate base, future rates, service quality, and continuity of service will not be affected, and we therefore deem this transaction to be a matter of indifference to ratepayers.

Provided the parties comply with terms, conditions and requirements in the Order, we conclude that granting this application will not be adverse to the public interest. Accordingly, our decision approves the transaction.

Categorization and Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Victor D. Ryerson is the assigned ALJ in this proceeding.

Public Comment and Review

This is an uncontested matter pertaining solely to a water company. Accordingly, pursuant to Public Utilities Code section 311, subdivision (g)(3), the 30-day period for public review and comment does not apply.

Findings of Facts

1. Tahoe Park Water Company, Inc., and Tahoe Park Water Company, a California Corporation, are, respectively, the Buyer and the Seller in this matter. David R. Robertson is the president of Seller, and Richard M. Dewante is the president of Buyer.

2. In the transaction for which approval is sought by this joint application, Seller proposes to sell to Buyer, and Buyer proposes to buy from Seller, all right, title and interest in the property comprising the used and useful assets of the water system presently owned by Seller and operated by Richard M. Dewante, a licensed operator.

3. The assets that are the subject of this application are only those used to furnish water service to customers of the system.

4. The stated price for the sale and purchase of the assets is \$150,000.

5. Approval of this transaction will not materially change the operation of the system or the service now being provided to Seller's customers.

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. Approval of this transaction subject to the terms and conditions set forth in the Order will not adversely affect the public interest by reason of the matters set forth in the Discussion and in Findings of Fact 1 through 5.

3. The application should be approved by reason of Conclusions of Law 1 and 2.

4. Appropriate terms and conditions should be included in the Order to obviate any ambiguity about the nature of the relief requested, and to make the full extent of the authority granted ascertainable.

5. Today's Order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Motion of the Division of Ratepayer Advocates to withdraw its Protest is granted, and this is deemed to be an *ex parte* matter.

2. Application 06-11-020 filed by David R. Robertson, on behalf of Tahoe Park Water Company, Inc. (Seller) and Richard M. Dewante, on behalf of Tahoe Park Water Company, a California Corporation (Buyer), seeking the Commission's authority, pursuant to Public Utilities Code sections 851 through 854, to consummate the sale and purchase of all of the assets of Seller to Buyer, is granted, consistent with the terms and conditions specified in this Order.

3. The assets, purchase and sale of which are approved in this Order, shall only be those used and useful in providing water service to Seller's customers.

4. Purchase and sale of the assets as approved herein shall be completed no later than thirty (30) days following the effective date of this Order.

5. Title to all assets conveyed pursuant to this Order shall be taken in the name of Buyer, and not in the name of any individual(s).

6. No later than ten (10) days after completion of the purchase and sale of the assets pursuant to this Order, the parties shall serve upon the Executive Director, and shall serve copies upon the assigned Commissioner, the assigned Administrative Law Judge, and the Commission's Water Branch, a written statement setting forth the date of the transfer, an inventory of the assets conveyed sufficient in detail to enable the Commission to ascertain the identity thereof, the price paid, and the identity and amount of any customer refunds transferred in accordance with this Order.

7. As a condition of the authority granted herein, Buyer shall assume the public utility obligations of Seller at the time the purchase and sale are concluded, and liability for refunding all customer deposits.

8. Buyer shall, within thirty (30) days of the effective date of this Order, notify the affected customers of the occurrence of the transaction, the decision of the Commission authorizing the transaction, and the disposition of customer deposits held by Buyer.

9. Buyer shall, within thirty (30) days of the effective date of this Order, either file a statement adopting the Seller's tariffs, or refile those tariffs under its own name, as prescribed in the most current version of Commission General Order 96. Buyer may not thereafter increase its rates without the authority of the Commission.

10. Before the purchase and sale are concluded, Seller shall deliver to Buyer, and Buyer shall retain, all records of the construction and operation of the system that is the subject of this Order.

11. Seller shall have no further obligation with respect to operation of the system upon the parties' full compliance with all of the terms and conditions of this Order.

12. Application 06-11-020 is closed.

This Order is effective today.

Dated July 10, 2008, in San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners