

WATER/RSK/SRW/jlj

Decision 08-09-010 September 4, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Del Oro Water Company, Inc. (U-61-W)
for a Certificate of Public Convenience
and Necessity to Acquire Arbuckle
Water Company near Arbuckle in
Colusa County and to Establish Rates
for Service.

Application 08-01-018
(Filed January 22, 2008)

**DECISION ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY AND AUTHORIZING INITIAL RATES**

Summary

Del Oro Water Company, Inc. (Del Oro or Buyer) requests a Certificate of Public Convenience and Necessity (CPCN) to acquire Arbuckle Water Company (Arbuckle), with initial rates for water service at the existing Arbuckle flat rate of \$39.96 per month. The owner of Arbuckle desires to sell the 55-customer water system and Del Oro agrees to purchase the water system.

In this decision, the Commission grants the CPCN and authorizes a flat rate of \$39.96 per month pending a general rate case filing by Del Oro. Del Oro is required to file a general rate case to implement metered rates once sufficient data are available. Del Oro is also required to record the difference between the developer's cost of building the water system (\$812,138) and the total amount paid for the water system (\$100,000), in Account 271-Contributions-in-Aid-of-Construction.

Background

Del Oro is a Class B California water company providing water service to approximately 7,400 customers across California in Butte, Humboldt, Shasta, Kern, Colusa, and Tuolumne Counties. Del Oro's consolidated financial statements, attached to the Application, show both 2005 and 2006 as profitable years. Del Oro's 2007 Annual Report indicates that 2007 was a profitable year. The financial information for Del Oro's existing utility operations is evidence of Del Oro's financial viability.

Arbuckle is a California Corporation and a mutually-owned water company. It owns and operates a water system engaged in the business of selling water to 55 flat-rate water customers in the Almond Ranch Estates, approximately one mile southwest of the town of Arbuckle, Colusa County, California.

The water system, installed in 2004, is comprised of two wells of 19 gallons per minute (gpm) and 55 gpm, a 10,000-gallon steel hydro-pneumatic tank at the well site and a distribution system of 8-inch PVC pipe. Del Oro states that the water system conforms to the Commission's General Order 103, Rules Governing Water Service Including Minimum Standards for Design and Construction (Application at p. 6). Pursuant to an operations and maintenance agreement, Arbuckle has retained Del Oro to operate and maintain the water system since July 1, 2004.

CPCN Requirements and Criteria

The provisions of Public Utilities Code and Resolution (Res.) M-4708 (August 28, 1979) set forth certain requirements and criteria that must be satisfied by Del Oro before a CPCN can be granted in this proceeding. (Subsequent section references are to the Public Utilities Code unless otherwise indicated).

Del Oro has complied with all of the procedural requirements outlined in Section 2004 and Rules 3.1 and 3.2 of the Commission's Rules of Practice and Procedure.

Section 2701 defines a Commission-regulated water utility as a person or entity that "sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, where under contract or otherwise," Judicial decisions have also required that the entity "dedicate" or hold out its property

to public use. *Thayer v. California Development*, 164 Cal. 117 (1912). Del Oro affirmatively seeks public utility status for the existing Arbuckle water system. Del Oro proposes service at the existing monthly flat rate of \$39.96.

Section 1002(a) requires that the Commission, in evaluating the application, to consider the potential impact of utility operations on community values, recreation and park areas, historical and aesthetic values, and the environment. Arbuckle is an existing water system that has been operational since 2004. Since that time it has provided an essential utility service to the 55 customers in Almond Ranch Estates. The acquisition of the Arbuckle water system by Del Oro will not have an impact on the criteria listed in Section 1002(a).

In Res. M-4708, the Commission set forth criteria that are used to evaluate applications of small water companies (Class D companies, *i.e.*, those serving less than 500 customers). The criteria are applicable to the Arbuckle water system serving 55 customers. Del Oro proposes to operate Arbuckle as a separate district. As pertinent to this application, Res. M-4708 specifies that the Commission will issue CPCNs only when the water company is able to render adequate service and remain financially viable. Del Oro has satisfied both of these criteria. As discussed herein, Del Oro has demonstrated (1) its ability to provide water service based on its experience as a regulated Class B water distribution utility serving multiple small districts throughout California, and (2) its financial viability based on its profitable financial results for its existing utility operations.

California Environmental Quality Act (CEQA)

We must consider whether the Commission's approval of Del Oro's Application for a CPCN triggers CEQA and, if so, what steps must be taken to satisfy the statute's requirements. CEQA applies to governmental activity that involves the exercise of discretion, has the potential of causing a direct or reasonably foreseeable indirect physical change in the environment, and satisfies the definition of "project." The issuance of a CPCN is a project since it involves discretionary governmental activity in issuing a "certificate or other entitlement." California Public Resource Code §§ 21001.1,

21002, & 21080. A CPCN is both a certificate and an entitlement since it allows an entity to operate as a public utility within a specified service area. The remaining question is whether the issuance of a CPCN in this case will cause a direct or reasonably foreseeable indirect physical change in the environment.

The Commission has previously held that the mere granting of a CPCN involving existing facilities is exempt from CEQA. In D.02-06-005, *In re Cypress Ridge Service Co.*, we held that CEQA does not apply when the applicant is seeking to provide public utility service using “exactly the same facilities as are now in place and in operation.” *Id.* at 18. In this proceeding, Del Oro proposes to acquire a fully-developed and operational Arbuckle water system. The Commission’s granting of a CPCN will establish the service area and authorize rates for the existing water system as a jurisdictional public utility. This decision does not authorize any construction or modification of the existing water system. Under these circumstances, the granting of a CPCN presents no possibility of having a significant adverse impact upon the environment. As such, the issuance of a CPCN in this proceeding is exempt from CEQA under Section 15061(b) (3) of the CEQA Guidelines.

Sales Agreement

The purchase and sale agreement (Agreement) was signed on December 4, 2007, between Utility Management Services, Inc., the parent company of Del Oro and Pacific West Homes, Inc., the current owner of Arbuckle. The original cost of property being transferred is \$812,138 and the Contributions in Aid of Construction are \$712,138 as of December 31, 2007, resulting in a net book cost of \$100,000. The purchase price to be paid for the water system is \$100,000.

The current owner of Arbuckle desires that the ownership and operation of the water system and assets be transferred to Del Oro. Del Oro is agreeable to the transfer of ownership and operation of the water system on the terms and conditions set forth in the Agreement. Conditions include transfer of all easements, license agreements and/or leases necessary for the legal operation of the water company.

Purchase Price

The proposed purchase price is \$100,000 for the existing system. Section 2720(a) states:

“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.”

The Buyer is paying the original cost of plant less contributions. The Division of Water and Audits believes that the purchase price of \$100,000 meets the fair market value standard as defined in the Code of Civil Procedure § 1263.320(a), referenced in Public Utilities Code Section 2720(a)(2) where:

“The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.”

Developer Contributions

Del Oro and Arbuckle have agreed to a purchase price of \$100,000 for the water system, even though the original cost to construct the water system is \$812,138. Arbuckle is contributing \$712,138 of plant. Consistent with our June 2008 decision (D.08-06-037) in a similar Del Oro application, contributions are to be recorded in Account 271-Contributions-in-Aid-of-Construction. Dollars recorded in this account do not earn a return, since the utility did not expend the funds. The difference of \$712,138 should therefore be recorded in Account 271- Contributions in Aid of Construction, in order to properly record the value of the contributed plant by Arbuckle.

Service Quality

Del Oro has been retained since July 2004 to operate the Arbuckle water system until Arbuckle has been sold. Del Oro is a public utility water company under the

jurisdiction of the California Public Utilities Commission and operates 12 California water districts with approximately 7,400 customers. Del Oro plans to operate Arbuckle as one of its water districts and has the required staff for this purpose. All field personnel are appropriately licensed depending on the operational requirements of the system.

Service Continuity

Arbuckle desires to dispose of the water system and Del Oro agrees to acquire the water system. The Agreement with Del Oro ensures an orderly ownership transition and thereby offers continued water service by a responsible and experienced new owner. Del Oro proposes that all customers will be metered in the future. However, until then, Del Oro requests Commission approval to charge Arbuckle's customers the current flat rate of \$39.96 per month plus the Commission user fee. Del Oro will be required to seek Commission approval to establish metered rates once sufficient usage data have been collected. The Application states that the water supply permit is to be issued by the California Department of Public Health (Application at p. 6).

DWA's Conclusions

The sale of Arbuckle from the current owners to Del Oro is desired by both parties. Del Oro has the staff and financial resources to operate Arbuckle. The DWA recommends that:

- (1) Application 08-01-018 be accepted and approved with no further hearings, pleadings, or filings necessary;
- (2) The Agreement between Arbuckle and Del Oro for a purchase price of \$100,000 be authorized;
- (3) Del Oro be authorized to purchase all of the assets and assume the obligations of Arbuckle pursuant to the Agreement;

- (4) Del Oro is authorized to adopt the current Arbuckle flat-rate tariff of \$39.96 per month plus the Commission user fee pending a future general rate case filing to implement metered rates;
- (5) Del Oro obtains a change of ownership approval from the California Department of Public Health pursuant to §116525(a) of the Health and Safety Code, if not already acquired; and
- (6) Del Oro should record the difference between the original cost of plant and the purchase price for the water system in Account 271-Contributions-in-Aid-of-Construction.

Uncontested Matter

This is an uncontested matter in which the decision grants the relief requested. This proceeding is subject to the public review and notice comment exclusion pursuant to Public Utilities Code § 311(g) (3).

Assignment of Proceeding

Rami Kahlon is the assigned Examiner in this proceeding.

Findings of Fact

1. The sale of Arbuckle to Del Oro is desired by all parties.
2. Del Oro agrees to buy Arbuckle.
3. Del Oro has the staff and financial resources to operate Arbuckle.
4. Del Oro has indicated it will initially adopt the current flat-rate tariff plus the Commission user fee for Arbuckle's customers.
5. The Division of Water and Audits has determined that the purchase price of \$100,000 is fair market value, as required by Public Utilities Code §2720(a).
6. The difference between the original cost of plant and the purchase price of the water system is accounted for in Account 271-Contributions-in-Aid-of-Construction.
7. Del Oro must obtain a change of ownership approval from the California Department of Public Health.

8. Based on the record, there is no possibility that the granting of a CPCN in this proceeding will have a significant impact on the environment. Therefore, no further environmental review by the Commission is required.

9. Because Arbuckle has been in operation since 2004, the issuance of a CPCN to Del Oro will have no affect on community values, recreational and park areas, and historical and aesthetic values.

Conclusions of Law

1. Del Oro has satisfied all the applicable requirement of Public Utilities Code Sections 1002(a) and 1004.

2. Del Oro should be awarded a CPCN authorizing it to operate the Arbuckle water system as a public water utility within the state of California with all the rights and obligations thereof.

3. The issuance of a CPCN to Del Oro is exempt from the California Environmental Quality Act because the approval will not result in a direct or reasonably foreseeable indirect physical change in the environment.

4. Pursuant to California Health and Safety Code § 116525(a), a change in ownership of a public water system shall require application for a new operating permit from the Department of Public Health.

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

6. This order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The application of Del Oro Water Company, Inc. (Del Oro) for a Certificate of Public Convenience and Necessity to acquire Arbuckle Water Company (Arbuckle) is granted.

2. Del Oro is directed to comply with §116525(a) of the Health and Safety Code, enforced by the California Department of Public Health.

3. Upon approval of the California Department of Public Health, Del Oro is authorized to acquire ownership and assume water utility service to the customers of Arbuckle.

4. Del Oro shall adopt the current Arbuckle's flat-rate tariff of \$39.96 per month plus the Commission user fee for service to Arbuckle's customers.

5. Del Oro shall record the difference between Arbuckle's original cost of plant and the amount paid by Del Oro for the water system in Account 271-Contributions-in-Aid-of-Construction.

6. Del Oro within 10 days of the transfer of ownership, shall notify the Director of the Division of Water and Audits in writing that the transfer has taken place, attaching copies of the transfer document.

7. Del Oro shall file, within 15 days of the effective date of this decision, a Tier One Advice Letter compliance filing containing the Preliminary Statement, Service Area Map, and the tariff necessary to implement the Flat Rate authorized in this decision.

8. Application 08-01-018 is closed.

This order is effective today.

Dated September 4, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

