

Decision 09-03-032 March 26, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of David R. Robertson Requesting to Sell the Assets of the Lake Forest Utility 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 06-11-018
(Filed November 28, 2006)

DECISION APPROVING SALE AND PURCHASE OF ASSETS OF LAKE FOREST UTILITY COMPANY, INC.

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**DECISION APPROVING SALE AND PURCHASE OF
ASSETS OF LAKE FOREST UTILITY COMPANY, INC.**

Summary

We grant, *nunc pro tunc*, the joint application requesting approval of the April 3, 1996 sale of assets of Lake Forest Utility Company, Inc. (Seller) to Tahoe Park Water Company, a California Corporation (Buyer), subject to conditions to encourage the prompt completion of system improvements. The underlying sale and purchase were consummated without Commission approval more than 12 years ago, and Buyer's president has been operating the system since that time despite the absence of Commission approval. This decision brings the regulatory status of the system into conformity with its putative ownership, in pragmatic recognition of the realities and the need to clarify its ownership in order to accomplish urgently needed improvements now.

Although we do not condone the fact that the sale and purchase were concluded without our prior approval, we cannot overlook the fact that the system has been continuously operated by Buyer since it changed hands in 1996. The circumstance that it remains in a state of regulatory limbo does not serve the interests of its customers or the public, and the question of ownership must be settled before vital improvements can be made to the system, whether by its current owner and operator, or by another entity if it changes hands in the future. Ratification of the 1996 transaction will accomplish this first step, and will not materially affect the present management or operation of the system at this time.

The system suffers from many inadequacies that predate the 1996 transaction, and that have not been satisfactorily addressed in the intervening 12 years. However, Buyer has developed a service improvement plan, obtained

a rate increase, and is in the process of securing funds from the California Department of Public Health (DPH) to improve supply and comply with water quality standards, so these problems are being addressed. Nevertheless, we perceive the need for greater accountability on Buyer's part to ascertain that these improvements are being accomplished in a timely manner. Accordingly, we impose periodic reporting requirements on Buyer to enable this Commission to exercise greater oversight. If Buyer fails to satisfy these requirements, the Commission can take action in accordance with its regular procedures for correcting such failures.

We conclude that the public interest will not be adversely affected by ratifying the transfer that the applicants concluded more than 12 years ago, and we approve the application in order to remove the cloud over Buyer's ownership status. Application 06-11-018 is closed.

1. Background and Procedural History

By this application, which was filed on November 28, 2006, 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 Seller's assets to Buyer.¹ The assets involved are the tangible and intangible property comprising Seller's plant and water supply system, which serves nearly 120 customers in the Lake Tahoe area.

¹ All statutory references hereafter are to provisions of the Public Utilities Code, unless specifically noted otherwise.

The applicants actually concluded this transaction on April 3, 1996, and the nominal Seller identified in the joint application no longer exists as a legal entity.

As Dewante recently explained to the Commission:²

Lake Forest Utility Co., Inc. ... is not the owner of the assets now, but was the corporation from which the assets were purchased. [It] was owned by David R. Robertson, the transferring party in this application. [Lake Forest Utility Co., Inc.] was dissolved sometime after the date of sale in 1996. The owner of the assets is Tahoe Park Water Co. ... (formerly Tahoe Park Utility Co.) dba Lake Forest Water Co.

Under sections 851 through 854, the 1996 transaction should have been approved by the Commission before it was consummated in order to be effective,³ but approval was not timely sought, and the Commission and Buyer have conducted themselves as though the transfer was valid from the outset. The applicants (through their predecessor entities) did attempt to obtain approval shortly *after* they concluded the sale and purchase of the system, but in *Re: Tahoe Park Water Company, Inc.*, Decision (D.) 97-02-039, (1997) 73 CPUC2d 715, the Commission denied the application without prejudice for reasons that are not material here. Although the system had actually changed hands and was already being operated by Dewante by the time that application was filed, the "outlaw" status of the entity was somehow disregarded in the course of our formal regulatory oversight of the company, even in the course of a recent rate

² Letter of Richard M. Dewante, dated September 2, 2008, in response to Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge, dated August 14, 2008.

³ Section 854, subdivision (a), provides that an acquisition accomplished without prior Commission authorization "shall be void and of no effect."

increase proceeding. Thus, the issue lay dormant until the present application was filed.⁴

The proceeding was initially assigned to Examiner Kevin P. Coughlan, but was reassigned to Administrative Law Judge (ALJ) Victor D. Ryerson on March 28, 2007. On May 21, 2007, the Commission's Division of Ratepayer Advocates (DRA) sought leave to file a late protest, citing its concerns that the application was incomplete and failed to comply with Commission Rules of Practice and Procedure (Rules) 3.6. Specifically, DRA was concerned that the application lacked an up-to-date description of the property to be conveyed because it incorporated by reference the original 1996 purchase and sale agreements, and was also concerned because the application did not contain Buyer's current balance sheet and income statement. The ALJ granted DRA's request for leave to file its protest.

Late-filed protests were also filed by Lake Forest Public Water Advocates (PWA) and Tahoe City Public Utility District (TCPUD), who claim that public ownership of the system would be preferable to its current private ownership, and who are formulating possible plans to annex the system to TCPUD's system. By ruling dated September 11, 2007, PWA was permitted to intervene as an interested party to the extent that its contentions are reasonably pertinent to the issues presented by the application, as provided under Rule 1.4. TCPUD was permitted to intervene subject to the same stricture, *i.e.*, that its participation

⁴ The current application was signed by Robertson as well as Dewante, but Robertson has otherwise taken no active part in this proceeding. Dewante has consistently appeared and participated with the explanation that he is the owner and operator of the system.

would be limited to those matters which are reasonably pertinent to the issues presented by the application.

The ALJ conducted a prehearing conference (PHC) in Tahoe City on October 2, 2007, to identify the parties and establish the contested issues. At that time DRA stated that Buyer had furnished additional information to DRA in response to a data request, and that DRA would probably withdraw its protest once it had analyzed the new information. Consequently, the ALJ granted DRA the opportunity to analyze the new information and determine whether or not to maintain its protest.⁵

TCPUD and PWA contend that section 854, subdivision (d), requires the Commission to consider reasonable alternatives as part of its determination whether to approve the transaction,⁶ and that the possibility of a near-term TCPUD acquisition of the system is such an alternative. Accordingly, at the PHC TCPUD and PWA asked for scheduling of sufficient time to enable TCPUD to formulate the plan to acquire and improve the system before a hearing was held.

At the conclusion of the PHC, the ALJ established a briefing schedule to enable each party to explain its position and more fully identify the material issues. The ALJ did not set an evidentiary hearing (EH) at the time of the PHC,

⁵ DRA subsequently filed a motion for leave to withdraw its protest, and we grant that motion in our Order.

⁶ Section 854, subdivision (d) states:

When reviewing a merger, acquisition or control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal.

because these issues were not yet settled, but instead indicated that consideration of the application would be deferred to allow the parties to develop their plans for improving the system before he scheduled the EH.

During the ensuing period, the need to clarify the ownership of the system became acute, because DPH told Dewante that it was unwilling to process Buyer's application for Proposition 50 funding for certain improvements until that question was answered to DPH's satisfaction. The absence of this information threatened funding during the current annual cycle, and might have eliminated the availability of those funds altogether. On August 14, 2008, the assigned Commissioner and the ALJ issued a joint ruling requiring the applicants to file and serve supplemental information to clarify the respective applicants' current relationship, and explain how Buyer satisfied the Commission's financial and other requirements to acquire and operate the system. The ruling also required a specific description of the applicants' plans for improvement of the system.

In response to the ruling, Dewante furnished a letter providing details about the occurrence of the sale and purchase in 1996.⁷ The response also included a copy of a detailed water supply and distribution system improvement plan *September, 2008, Lake Forest Water Supply and Distribution System, Improvement of Facilities Plan* (Facilities Plan) that was current as of September 2, 2008.

⁷ Following filing of the Buyer's response to the ruling and Buyer's compliance with various DPH informational requirements, DPH advised the Commission that it would release the Proposition 50 grant funds to Buyer to accomplish certain improvements for meeting water quality standards.

PWA and TCPUD filed responsive comments on Buyer's Facilities Plan, and TCPUD filed a detailed plan setting forth how it proposed to acquire the system from its present owner and incorporate it into the existing TCPUD system.

Following the filing of these documents, the ALJ held two public participation hearings (PPHs) in Tahoe City on October 10, 2008, to receive public comments and suggestions for deciding the application. At the conclusion of the PPHs he determined that the record was sufficient to resolve the issues that were before the Commission without conducting a formal EH, and following a 30-day period during which additional written comments were accepted, the proceeding was submitted on November 10, 2008.

2. Operation and Management of the System by Buyer

2.1. Description of the System

Title to the assets comprising the system is currently in the name of Tahoe Park Water Co., doing business as Lake Forest Water Co. (LFWC).⁸ Dewante and his wife, Ann P. Dewante, each own 50 percent of the company's stock. LFWC is a Class D water utility, and has been regulated by the Commission under the name, "Lake Forest Water Company" since its first rate increase was approved in 1950.⁹

Resolution (Res.) No. W-4625, which authorized the most recent general rate increase for the system in December 2006, states that LFWC serves approximately 112 customers consisting of 111 flat rate customers and

⁸ Tahoe Park Water Co. is a California corporation in good standing.

⁹ Lake Forest Water Company started providing service in 1911 "and does not therefore require a certificate to operate as a public utility" (Decision No. 42351, February 1, 1950 at 2.)

one metered customer.¹⁰ Its service area is in Lake Forest, an area on the shore of Lake Tahoe adjacent to State Highway 28, approximately two miles northeast of the community of Tahoe City.

The existing distribution system has been in place for nearly a century, and much of it is more than 75 years old. Many water mains are located in the backyards of properties, rather than in streets, a design that restricts fire suppression because it limits access to the pipes. Small diameter (two- and three-inch) mains in some parts of the system cause high loss of pressure during periods of peak demand. Comments received from customers at the PPH and sent to the Commission in writing indicate that there are significant areas of substandard or leaky pipes, and other conditions that urgently require repair or renewal. Buyer does not dispute this contention. Replacement and modernization efforts have been limited because the system's small size and revenue level.

For more than 50 years, the primary water source for the system was Aspen Intake, a surface water intake located on Lake Tahoe at the foot of Aspen Street. The sole treatment of the lake water was the addition of chlorine. The United States Environmental Protection Agency adopted the Surface Water Treatment Rule (SWTR), imposing new nationwide filtration requirements on water supplies using surface water, before the system changed ownership in 1996. This rule rendered Aspen Intake noncompliant as a water source, necessitating efforts to bring the source of supply into compliance. DPH also

¹⁰ References in the record to the number of customers vary from 112 to 120, but we use figures from Res. No. W-4625, as they were relied upon in setting LFWC's current rates.

Footnote continued on next page

issued a Compliance Order directing LFWC to comply with the SWTR or find a new water source, and the 1996 purchase agreement included language referring to the need to drill a new well or find another water supply.

The distribution system is also inadequate to provide adequate fire suppression capability because of its pressure limitations and pipe size, and because of the number and spacing of fire hydrants. The entire system has only three hydrants, although the proximity of four TCPUD hydrants just outside the LFWC service area mitigates the lack of LFWC facilities to some extent. The recent occurrence of catastrophic fires in the Lake Tahoe area, and the effect of droughts on the nearby forests, has increased the level of concern that the fire suppression capability of LFWC requires immediate improvement.

2.2. Post-sale Improvement Efforts

The Facilities Plan includes a chronology of significant events relating to Buyer's efforts to improve the system's supply after Buyer acquired it in 1996. We quote from the plan at length, because it provides the most detailed and reliable record we have about the efforts Buyer has made to date to improve the system:

Beginning in 1998, and ending in 2002, LFWC planned, designed, secured permits, funded, and completed the construction of a well test hole, called the Aspen well. Alternative water supplies including filtration of lake water, filtration avoidance (alternative treatment, such as ozone), and purchased water from a neighboring water utility, the Tahoe City Public Utility District (TCPUD), were considered and evaluated and results presented in an engineering report. It was concluded in the engineering

For purposes of this decision, any inconsistency between these figures and those found elsewhere is immaterial, and should be disregarded.

report that a well would be the least costly alternative. Pumping tests of the Aspen well proved the quantity of water to be adequate; however, water quality tests found high levels of arsenic in Aspen well water. Although arsenic removal is feasible, the high cost of such treatment discouraged further development of Aspen well.

In 2002, LFWC was still dependent on lake water as its primary source. In that year, the lake level had dropped to a point that made it very difficult to maintain continuous pumping from the lake, so LFWC requested an "emergency" water supply connection to TCPUD to supplement the Aspen Intake. The TCPUD approved a 2-inch "temporary" connection and LFWC began purchasing water from TCPUD on an as needed basis in November 2002.

In 2003, LFWC installed a submersible intake pump and extended the intake line approximately 100 ft. farther into the lake at the Aspen Intake. This improvement increased the reliability of the Aspen Intake.

After further engineering study and discussion with [DPH] officials, LFWC adopted a plan presented in the report Evaluation Report for Meeting the Surface Water Treatment Rule, dated October 2004. This plan recommended a permanent connection to TCPUD as a primary water supply for LFWC. The next best alternative would be a new well on Old Mill Road with treatment for removal of arsenic.

Recognizing the high cost of either plan, in November 2004 LFWC submitted two pre-applications for Proposition 50 Grant funding - one for a TCPUD connection, named the "Hillcrest Intertie," and the other for a well with arsenic removal named "Old Mill Well Arsenic Filtration."

In April 2005, LFWC received a decision from the Sewer and Water Committee of TCPUD that its request for a permanent supply connection to TCPUD system was denied. At that time, LFWC was compelled to consider the next best plan identified in the 2004 Evaluation Report,

which was presented in Amendment 1 to the Evaluation Report for Meeting the Surface Water Treatment Rule, dated June 2005, recommending a new well on Old Mill Road with treatment for removal of arsenic. The capital cost was estimated at \$515,000.

In August 2005, [DPH] informed LFWC that both Hillcrest Intertie and the Old Mill Well Arsenic Filtration projects were eligible for Prop. 50 Grant funding. The combined funding requested for the projects had been \$420,000, but [DPH] advised that this was not a limiting amount for a project that would solve the problem. The projects were ranked Nos. 7 and 8 on the statewide list of projects. This was very good ranking, as during 2005, the first year of Prop. 50 Grants, projects through No. 6 ranking were invited to submit full grant applications.

In December 2005, LFWC applied to the [Commission] for a 178.6% increase in water rates for recovery of capital invested over the previous 10 years and for higher O&M expenses that had not been adjusted in 18 years.

In June 2006, with urging from [DPH], the alternative for a connection to TCPUD was re-examined. It was felt at the time that the TCPUD denial had been based on incomplete engineering data. The recommendation of this study as presented in Amendment 2 to the Evaluation Report for Meeting the Surface Water Treatment Rule was again a permanent connection to TCPUD.

The recommendation in Amendment 2, however, relied on a favorable decision from TCPUD for a permanent connection, and for that decision the TCPUD first had to conduct a hydraulic analysis. [It took] a year to complete the analysis.

In August 2006, LFWC retained the services of a geotechnical engineer to study the area surrounding LFWC service area for a possible well site that would be free of arsenic. Field investigation and tests of existing wells indicated that an area near Lake Forest Road and Hwy. 28 appeared to be arsenic-free. Preliminary inquiries to

adjacent property owners were encouraging that a well site could be acquired.

In December 2006, LFWC received approval from the [Commission] for a 160.7% increase in water rates.

In January 2007, LFWC submitted an application to [DPH] for a Planning Study to evaluate alternative water supply sources for LFWC. The study would be funded by a State Revolving Fund (SRF) loan of \$38,556.

In March 2007, LFWC submitted Amendment 3 to the Evaluation Report for Meeting the Surface Water Treatment Rule. In Amendment 3, an interim plan was proposed to utilize the emergency TCPUD connection as a primary supply, implement water rationing to reduce demand, use the existing Old Mill Well and Aspen Intake to supplement supply if demand could not be met with the TCPUD supply alone, and complete the SRF Planning Study to determine the best water source once TCPUD completed their hydraulic study and finally decided whether or not it would provide a permanent supply to LFWC.

* * *

In June 2007, after TCPUD completed its hydraulic study that concluded it could probably “live with” a permanent connection to LFWC providing certain modifications were made, TCPUD offered only a temporary supply connection (of greater capacity than the existing emergency connection). LFWC later confirmed that although TCPUD had completed the modifications to their distribution system that the hydraulic analysis had identified were necessary to serve LFWC with a permanent supply, they refused to offer a permanent supply connection.

[A] temporary connection would not meet the [DPH] requirement for a compliant water supply.

* * *

In 2007, the two LFWC Prop. 50 Grant projects were ranked Nos. 6 and 7. In a meeting with [DPH] officials,

LFWC was assured that their approval of a grant-funded project would ultimately be based on the most cost-effective project that would solve the problem, which didn't have to be either of the two projects proposed in the pre-applications. Specifically, if the best plan were a new well that needed no arsenic removal but was farther from the distribution system and therefore required a pipeline to connect to the system, the well and the pipeline would be grant-eligible.

In August 2007, [DPH] invited LFWC to submit full Prop. 50 Grant applications for the two projects pre-applied for in 2004, and confirmed that they could be consolidated into one project. In November 2007, LFWC submitted a Prop. 50 Grant application for a project comprised of a new well to be located on a site free of arsenic, and a conveyance pipeline from the well through the Lake Forest community (that would also serve as a distribution main) to a connection at the existing storage tank, for a total grant request of \$925,000.

As noted above, receipt of the Proposition 50 funds from DPH is now assured, so funding for improvements to supply (and, by extension, water quality) is available. Until Res. No. W-4606 was issued on June 29, 2006, authorizing LFWC's current rates on an interim basis, and Res. No. W-4625 was issued on December 14, 2006, authorizing the first general rate increase since May 29, 1988, LFWC was operating at a loss. These resolutions authorized LFWC to increase its revenues for test year 2006 by \$88,115, or 160.7 percent, to enable it to meet its operating expenses.

2.3. Buyer's Proposed Improvement Plan

LFWC's improvement plan proposes specific improvements to both the water supply system and the water distribution system, utilizing revenue sources that are now available for these purposes.

The alternative that LFWC has selected for obtaining new water supply is the plan it proposed in its 2007 Proposition 50 grant application. This plan requires the development of a new well in an area adjacent to the LFWC service area that has been indicated by testing to be free of arsenic. In addition to the well, the project would include a six-inch or eight-inch transmission line (depending upon the finished well capacity) about 1,600 feet long to convey water from the well along the westerly end of Lake Forest Road to the service area boundary at the end of Hillcrest Avenue. Another line, consisting of about 2,150 feet of six-inch, eight-inch, and ten-inch pipes, would convey water to a connection to the existing eight-inch line installed in 1998 on Aspen Street. This line would be located along Hillcrest Avenue from the well transmission line east to Bristlecone Avenue, then south along Bristlecone Avenue to Lake Forest Road, and east along Lake Forest Road to Aspen Street. Along this line approximately 25 double service lines would be installed, as well as five hydrants. To provide fireflow capacity from the existing storage tank, a 2,000-foot ten-inch transmission line would be constructed from Aspen Street to the tank, replacing an existing four-inch line. The estimated cost of the water supply project is \$970,000, of which \$925,000 is expected to be eligible for Proposition 50 grant funding.

LFWC has developed three alternative proposed improvement plans for replacing the distribution system, and these are each described in considerable detail in the Facilities Plan. The first alternative is to replace the system completely, whereas the other two options respectively involve partial replacements of a greater or lesser extent. The Facilities Plan proposal including provision for public meetings and an advisory vote before any alternative is selected.

LFWC expects the funding for any of these plans to be accomplished by private borrowing, but a zero-interest State Revolving Fund loan might be available through the auspices of DPH. Although it is difficult to gauge the willingness of lenders to provide a loan for this project in the current economic environment, LFWC stated that Plumas Bank had shown interest at the time the report was prepared.

The supply system project, which would be 95 percent funded by a Proposition 50 grant, would require an estimated \$7.20 annual customer charge for recovery of administrative costs. LFWC estimates that the three alternative distribution system projects would respectively require a monthly surcharge of \$43.35, \$27.05, or \$13.35 per equivalent single family residence.¹¹

LFWC states that the water supply project would be completed in three years, from 2009 to 2011. The first two alternative plans for the distribution service project would be completed in 2011, with construction starting in 2009 for the complete replacement option, and in 2010 for the alternative involving the greater amount of partial completion. The third, least extensive alternative would be accomplished entirely in 2010. These completion times take into account the fact that the Tahoe Regional Planning Agency generally restricts a “construction year” to the period from May 15 to October 15.

2.4. Response to Buyer’s Improvement Plan

TCPUD filed comments in response to the joint ruling, including a detailed description of its own procedure for acquiring and improving the

¹¹ An equivalent single-family residence, or SFR, is computed by dividing the water company’s total annual revenue from water charges by the annual water charge for a single-family service. Because there are multiple families and commercial services in Lake Forest, there are approximately 180 SFR, based upon an estimated 118 customers.

system. This document reflects TCPUD's serious interest in the possibility of annexing the Lake Forest Water Company system to its own, and demonstrates that TCPUD is undertaking active measures toward that end. Its plans appear to be thorough and well formulated. We are persuaded that TCPUD has the will and the ability to accomplish that goal, but its comments do not reflect that it has any right to do so within the parameters of this proceeding.

PWA filed comments in response to the Facilities Plan. PWA is generally critical of Buyer's proposed plans, partly because it is skeptical on the basis of past experience that the plans will be carried out, and expresses a preference for annexing the system to that of TCPUD. PWA asserts that Buyer's plan does not provide for adequate fire storage or enough properly spaced hydrants; is speculative because it assumes that the contemplated groundwater source will be of sufficient capacity and quality, that required rights-of-entry, easements and use permits can be obtained, and that financing will be available; and fails to include right-of-way acquisition costs in its project estimates. PWA also reiterates that Buyer's past performance has resulted in customer dissatisfaction for various reasons.

3. Discussion

This application requires the Commission to answer the question whether the proposed transaction should be authorized, based upon whether or not approval would be adverse to the public interest. It does not require us to choose between Buyer and TCPUD as the owner or operator from this point forward.

Ordinarily, the central issue in this type of proceeding requires the Commission to examine the technical and financial qualifications of the prospective buyer and assess any impact that the transaction would have on

rates and service. In this instance, however, the inquiry is complicated by the fact that Buyer has actually owned and managed the system for more than 12 years, and that Seller is no longer legally in existence. Buyer has operated and maintained the system to a basic standard during this period, but has been slow to address service quality issues and fire suppression concerns. This has resulted in a strong desire on the part of many customers for TCPUD to acquire and operate LFWC as part of its contiguous water system, raising the collateral issue of Buyer's fitness to *continue* owning and operating LFWC, and the possibility of denying approval to restore the 1996 status quo.

Buyer purchased a system that, by all accounts, was inadequate and poorly maintained at the time of the transfer of ownership.¹² Moreover, the recently adopted SWTR had imposed a costly new compliance requirement on Buyer that Seller did not address before the sale, which was acknowledged in the original contract of sale. Although Buyer has been slow to make major improvements since the 1996 transfer, the chronology of events following the transaction indicates that for at least the past ten years Buyer claims to have been exerting reasonable efforts to address the supply problem with available resources, maintain the system to a basic level of operability, and seek public funds to make the major changes that are needed. The principal obstacle to progress was the size of the system and the limited revenue that it produced, according to Buyer.

In recent months, Buyer has received a commitment from DPH for Proposition 50 grant funds that will pay for improvements to the supply system,

¹² For example, one long-time customer commented that the previous owner would plug a leak in a water main with a redwood dowel. (Tr. PPH, p. 50, lines 12-18.)

and has obtained authority from the Commission to increase rates to a level that covers the cost of operating and maintaining the system. Its Facilities Plan describes specific plans for distribution system improvements, and also identifies funding sources and a method for proposing the three alternatives to customers to seek their input.¹³ These events are indications that substantial progress is being made toward achieving an adequate level of service under Buyer's current ownership.

Although the protestants' criticisms of the Facilities Plan may have some merit, we do not believe they indicate that the plan is invalid. For example, although Buyer's plans for developing a new groundwater source do not guarantee that the well will produce the quantity and quality of supply that are hoped for, Buyer has retained the services of a geotechnical engineer to locate a promising site, obtained preliminary assurances that the site can be acquired, and developed an approximate cost for each alternative to improve the distribution system. These are reasonable steps toward achieving appropriate improvements to eliminate the system's current inadequacies.

PWA and TCPUD contend that section 854, subdivision (d), requires us to consider reasonable options proposed by other parties, including denial of approval in order to facilitate acquisition of the system by TCPUD. But we are not confronted with this choice. If we disapprove the 12-year-old transfer, the

¹³ Fire suppression capacity would be improved to varying degrees under the three alternative plans. As previously mentioned, the situation is eased somewhat by the fact that LFWC's territory is completely surrounded by that of TCPUC, which has hydrants located around the periphery of LFWC's territory, providing some fire suppression capacity. Some additional coordination between LFWC, TCPUD, and local firefighting agencies may be required to integrate these facilities.

transaction would remain void as a matter of law, and the system logically would have to be returned to an entity that is no longer in legal existence. Resolving the conundrum in this manner would serve nobody's interest.

Even if we were somehow empowered to elect between two competing proposals for addressing the system's deficiencies, there is no perfected plan before us for acquisition and improvement of the system by any other entity that we have any power to impose, so we need not reach that question. The only choice before us is whether to deny approval and try to unravel a sale that occurred more than twelve years ago, or to grant approval in order to dispel the cloud over the current status of ownership of the system. We conclude that the latter is by far the preferable course.

Although we do not condone the conduct of either party to this application that resulted in the unauthorized sale of the system and its operation for many years by an owner that was not approved by the Commission, clearing title to the system now is paramount to ensure that DPH will fulfill its Proposition 50 grant funding commitment, that financing will be available for improving the distribution system, and that the system may be acquired by any future owner (including TCPUD) without undue difficulty. Granting our approval today will not in any way adversely affect future plans to transfer the system.¹⁴

The comments we have received from customers overwhelmingly indicate that Buyer has not been sufficiently responsive to customer complaints or

¹⁴ We note that LFWC already has a temporary interconnection with the TCPUD system, and TCPUD has already conducted a hydraulic analysis to determine that LFWC could be incorporated into it by establishing a permanent connection. We do not perceive that approving the long-past transfer will hinder potential efforts for TCPUD to integrate LFWC or acquire it in a subsequent transaction.

maintenance problems during his tenure, and this suggests a need to exercise greater oversight until the planned system improvements are completed. As we recently held in a water company acquisition decision,¹⁵

Pursuant to [section] 854, the Commission has broad authority to approve and deny applications for transfers of utility ownership or control. Implicit in this authority is the right to place reasonable conditions upon the transferor or transferee, should the need for conditions arise The right to impose these conditions carries with it the right to enforce [them]....

With planned improvements now underway, we believe that the inclusion of a periodic progress reporting requirement in our order, coupled with the availability of our enforcement powers, will provide the necessary level of discipline and oversight to ensure timely completion of the improvements.¹⁶ Accordingly, our order includes this reporting requirement to make Buyer accountable for carrying out the facilities improvement plans it has furnished to us in support of this application. If Buyer fails to comply with the reporting requirements, or to perform the actions necessary to accomplish its plans, the Commission can take corrective action under its regular procedures for instituting investigations and issuing orders to show cause.¹⁷ (*See e.g.*, Rule 5.1.)

¹⁵ In the Matter of the Joint Application of California-American Water Company, *etc.*, for an order Authorizing Apollo Acquisition Company to merge with and into American Water Works Company, Inc. resulting in a change of control for California-American Water Company, and for such related relief as may be necessary to effectuate such a transaction (2002) D.02-12-068, pages 11 - 12.

¹⁶ Our order provides that Buyer serve a copy of each progress report on every other party this proceeding, including DRA.

¹⁷ In extreme cases the Commission can cause a receiver to be appointed to operate a noncompliant system. Section 855 provides in part,

Footnote continued on next page

3.1. Ratepayer Indifference

The Commission has historically required the sale of a small water company to satisfy a standard of ratepayer indifference. Under this standard, the sale of the utility should not have any net consequences that cause the ratepayer to prefer the seller to a buyer. For example, ratepayers should not be subject to increased rates or reduced service as a result of a change of ownership.

This application presents us with an unusual situation, because the sale actually occurred many years ago. Ratepayers cannot prefer Seller to Buyer, because Seller is no longer in existence. Service under the auspices of Buyer shows every indication that it will improve from this date forward, and the Commission recently adopted new rates that will be unaffected by our approval. Because approval will not result in increased rates or reduced service, we deem this transaction to be a matter of indifference to ratepayers.

4. Conclusion

We conclude, on the unique facts of this application, that ratifying the completed transaction will not be adverse to the public interest. Accordingly, we grant the application, subject to the terms and conditions of our order. Inasmuch as the company received a greatly needed rate increase after the occurrence of the 1996 transaction, our order is effective *nunc pro tunc* to preserve the validity of those rates and avoid any potential disruption of the company's operations.

Whenever the commission determines, after notice and hearing, that any water ... system corporation is unable or unwilling to adequately serve its ratepayers ..., or is unresponsive to the rules and orders of the commission, the commission may petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate the system upon such terms and conditions as the court shall prescribe.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3183, dated November 30, 2006, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. While three protests were received, we concur with the ALJ's determination, described in Section 1 above, that a hearing is not necessary. We confirm the preliminary determination made in Resolution ALJ 176-3183.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Timely comments were filed by TCPUD and PWA, and timely reply comments were filed in response to each of these by Buyer.

Legal Error

TCPUD cites as legal error the fact that no evidentiary hearing was held in this matter. We disagree. The decision whether or not to hold a hearing is committed to the discretion of the presiding officer, in this instance the ALJ. His decision not to hold a hearing to receive evidence on the competing water system plans to "[determine] which of the competing water system plans for upgrade would actually achieve a water system that meets federal and state [compliance] requirements and . . . mandated fire flow requirements" was proper, because that is not the issue before us. As explained below, under the law, this proceeding does not require, or even permit, the Commission to elect between the two competing proposals. That choice will require completely different public processes in the future. We cannot provide a shortcut to new ownership

in this proceeding, which presents only the very narrow question of whether to ratify the status quo and enable those future processes to move forward.

Although he was reluctant to do so, the ALJ announced at the PHC that he would adopt a comparatively leisurely schedule in this matter to accommodate TCPUD's request for time to develop and present its acquisition and improvement plans. As discussed below, we have now reviewed and considered those plans in detail, and we recognize that they are thorough and sound. But in the context of this proceeding, those plans can do no more than assist us in evaluating whether, on the basis of Buyer's own plans for the system, Buyer is fit to retain ownership. If the application were rejected because we determined Buyer to be unfit, the transfer would be void, and the system would revert to Seller's ownership. We have determined that such a result would at best be improvident, and at worst result in a catastrophic return to Seller's neglectful operation of the system.

We have been able to make all of these determinations without having to resort to the detailed and voluminous evidence that the parties sought to present at a formal evidentiary hearing. Holding a hearing would have needlessly delayed and complicated the process of establishing a baseline from which to move forward, with no advantage to be gained. It was not legal error for the ALJ to determine, after due consideration of the issues, that a hearing was unnecessary.

Factual Errors

The most significant factual error noted in the comments is that, contrary to a statement made in the proposed decision, TCPUD filed comments in response to the August 14, 2008 joint ruling that included a plan for acquisition and improvement of the system by TCPUD. A review of the docket card

confirms that such a document was filed, but it did not come to the attention of the ALJ, either because of some deficiency in the e-filing procedure, or because a hard copy was not provided to the ALJ as required by Rule 1.1(d). Nevertheless, the Commission has reviewed and considered the entire document, including TCPUD's attached detailed plans, so this omission has been cured.

TCPUD's detailed plans lay out a credible procedure for acquiring and improving the Lake Forest Water Company system. However, this does not, as a matter of law, constitute an alternative that we can act upon in this proceeding, because that is not the issue before us. The issue is not which of two competing plans to adopt. The only issue is whether to ratify the long-ago completed transfer of the facilities to Buyer, so that Buyer's title to the system is clear. For purely practical reasons, this is what we have decided to do in the best interest of the public. Whether Buyer now retains and improves the system under the Commission's heightened oversight efforts, or divests the system (voluntarily or otherwise), must be left to subsequent developments. In any event, those developments will be recorded on a clean slate.

We have concluded that granting the application will have no possible adverse consequences within the meaning of section 854, subdivision (a), because ratification will not disturb the status quo with respect to Lake Forest Water Company's existing rates and service; the belated completion of the transfer at this point is a formality. We characterize the absence of any net consequences in the form of increased rates or reduced service as "ratepayer indifference," and we have found that this decision satisfies that test. PWA vehemently objects to the suggestion that ratepayers are indifferent to confirmation of Buyer's ownership of the system. PWA's comments misconstrue our finding, as PWA appears to regard the matter as a comparison of Buyer's improvement plan to

that proposed by TCPUD. As we have already explained, that is not the question before us in this proceeding, and we do not give the term “indifference” its common meaning. It is a term of art.

Other comments are directed at the veracity of Buyer’s chronology of events regarding the operation and improvement of the system to date. In particular, TCPUD objects to Buyer’s characterization that TCPUD “refused” to provide a permanent connection. Again, the precision of characterizing the system’s history is not a material issue in deciding whether or not to approve Seller’s transfer of the system to Buyer. No matter what implication it may have for the future relationship between Buyer and TCPUD, the phrasing of chronology has no bearing upon the question of ownership that is before us.

We conclude that the comments do not compel us to change the outcome of the proposed decision in any way. No party has demonstrated that we have the power to order conveyance of the system to TCPUD instead of Buyer in this proceeding, and we are convinced that we have none. We have corrected factual inaccuracies about the state of the record, but we have not altered our order in response to the comments.

7. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Victor D. Ryerson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. A.06-11-018 is a joint application by Seller and Buyer identified in the summary of this decision. Buyer is a California corporation in good standing. The stock ownership of Buyer is 50 percent that of Richard M. Dewante and 50 percent that of Ann P. Dewante, his wife. Richard M. Dewante is the

president of Buyer. Seller was dissolved sometime after April 2, 1996, and is no longer legally in existence.

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 known as LFWC. This transaction was actually concluded on or about April 3, 1996, without prior Commission approval. Richard M. Dewante has operated and managed LFWC since that date, but the Commission did not approve transfer of the company's ownership following the occurrence of the transaction.

3. The Commission has regulated LFWC as a Class D water utility at all times relevant to this application. Res. No. W-4625, issued on December 14, 2006, authorized LFWC's present rates. This was the first general rate increase for the system in more than 18 years.

4. LFWC has continuously consisted of supply and distribution systems since the 1996 transfer that were inadequate to provide service to a reasonable standard, and are not in compliance with supply requirements of the SWTR that became effective before the 1996 transfer.

5. At least since 1998, Buyer has made reasonable efforts to fund and build improvements to the LFWC system.

6. Buyer has obtained a commitment from DPH for \$925,000 in Proposition 50 grant funds to pay for improvements to the supply system, and has sought funding from private lenders and from the State Revolving Fund to make improvements to the distribution system.

7. Buyer proposes supply system improvements that will consist of a new well and a conveyance pipeline (which will also serve as a distribution main)

from the well to a connection at an existing storage tank, and will be completed by 2011.

8. Buyer proposes improvements to the distribution system to be made in accordance with one of three alternative improvement plans to be presented to customers for their input, and will be completed by 2011. The first alternative, involving complete replacement of the system, is estimated to require a monthly surcharge of \$43.35. The other two alternatives, which involve varying degrees of partial replacement, are respectively estimated to require a monthly surcharge of \$27.05 or \$13.35.

9. During the period that Buyer has operated and managed LFWC, Buyer's efforts to make system improvements have been slow, and Buyer has not been sufficiently responsive to customer complaints or maintenance problems. This has caused widespread customer dissatisfaction.

10. Buyer's pending plans to improve the LFWC supply system and distribution system are a rational response to the current deficiencies in those systems, and are reasonable. Completion of these plans will improve LFWC's water supply, water quality, water distribution, and fire suppression capacity.

11. No party has presented a specific and detailed alternative plan to address the inadequacies in LFWC's supply and distribution systems that we can implement in an order in this proceeding.

12. Approval of the 1996 transaction will not result in increased rates or reduced service to LFWC customers.

Conclusions of Law

1. LFWC has been owned and operated by Buyer since April 3, 1996. Denial of this application would result in voiding the transaction in which Buyer assumed possession and operation of the system at that time, pursuant to

section 854, subdivision (a). *Nunc pro tunc* ratification of that transaction is therefore necessary to ensure continuity of rates and service for LFWC's customers.

2. As a matter of law, no reasonable option to approval of the application within the meaning of section 854, subdivision (d), has been proposed for Commission consideration by any other party.

3. 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, water rates and continuity of service if the 1996 transfer is now ratified.

4. 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 Findings of Fact, as is more fully explained in the body of this decision.

5. The application should be approved, subject to appropriate terms and conditions to ensure that improvements to facilities and service are made expeditiously.

6. Our 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.

2. Application 06-11-018 filed by David R. Robertson, on behalf of Lake Forest Utility 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 *nunc pro tunc*, effective as of April 3, 1996, consistent with the terms and conditions set forth in this Order.

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

4. No later than ten (10) days after the effective date of this Order, Buyer shall serve upon the Executive Director, and shall serve copies thereof upon the assigned Commissioner, the assigned Administrative Law Judge, and the Commission's Division of Water and Audits, a written statement setting forth an inventory of the assets conveyed in sufficient detail to enable the Commission to ascertain the identity thereof, the price paid therefor, and the identity and amount of any customer refunds transferred to Buyer at any time on or after April 3, 1996.

5. As a condition of the authority granted herein, Buyer shall assume the public utility obligations of Seller as of the date the purchase and sale were concluded, and liability for refunding all customer deposits.

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

7. Buyer may not increase its rates without the authority of the Commission.

8. Buyer shall retain all records of the construction and operation of the system that is the subject of this Order.

9. Buyer shall, 90 days after the effective date of this order, submit a comprehensive status report of all actions it has taken to improve the supply and

distribution facilities of the Lake Forest Water Company system within the preceding 90 days to the Division of Water and Audits of the Commission, and shall serve a copy thereof on every other party to this proceeding, including the Division of Ratepayer Advocates. Buyer shall submit and serve successive status reports every 90 days thereafter, until every improvement identified in the September 2008 Lake Forest Water Supply and Distribution System Improvements Facilities Plan (Facilities Plan) that was furnished as part of its response to the Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge, dated August 14, 2008, is completed.

10. Each status report submitted by Buyer shall include, without limitation, a detailed explanation of the status of funding of all improvements (including the borrowing and expenditure of funds), the specific work completed during the preceding 90-day period, the purpose of the completed work, and the updated estimate for completion of work identified in, or encompassed by, the Facilities Plan, with an explanation of any delays. Each report shall also provide similar information concerning any significant system improvements accomplished, or anticipated to be accomplished, during the period covered by the respective status report, that is not otherwise reported as required above because it was not encompassed by the September 2008 plan.

11. Application 06-11-018 is closed.

This order is effective today.

Dated March 26, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG

TIMOTHY ALAN SIMON
Commissioners

