

CALIFORNIA PUBLIC UTILITIES COMMISSION
Division of Water and Audits

TRANSFER OF A WATER SYSTEM OR SEWER
SYSTEM AND SALE OF UTILITY PROPERTY

Standard Practice U-24-W

San Francisco, California
August 2009

A— PURPOSE AND SCOPE

1. The purpose of this document is to aid an acquiring entity in the preparation and processing of a formal application or advice letter for approval of the sale or transfer of all or a part of a commission regulated water or sewer system and to notify the Commission of the sale of used and useful or non-used and useful utility property (facilities and land).
2. It also includes the procedures that must be filed when a utility sells utility property but not the whole system.
3. It addresses the process of changing the ownership of a small water or sewer system due to probate.
4. Deviations from non-Commission mandated processing procedures may be authorized by the Director of the Division of Water and Audits upon showing of need.

B— TRANSFER OF AN ENTIRE SYSTEM

5. Section 855 of the Public Utilities Code requires that the Commission approve any merger, acquisition of, and change of control of any public utility. An application (Appendix A) is required to transfer a Commission regulated water or sewer system to another owner, including a city or county, unless the sales price is \$5,000,000 or less in which case the parties can request approval by Tier 3 advice letter.¹ The filing fee for the application is \$75 if the transfer is to another Commission-regulated utility. No fee is required if the sale is to a district, municipality or a mutual water company.²
6. Within 30 days after transfer of ownership due to probate, will, trust, or other instrument of a water system serving less than 10,000 connections, the new owner shall file an advice letter containing:
 - a. A new tariff cover sheet that includes the new owner's mailing address and contact information.
 - b. A copy of the legal instrument that conveys ownership of the regulated entity.
7. If the sale is to a CPUC regulated utility, see also Standard Practice U-14-W.

C— SALE OF PART OF A SYSTEM

8. Pub. Util. Code Section 851 governs the sale or transfer of water and sewer utility assets. Water or sewer system utilities shall notice the Director of the Division of Water and Audits and the Director of the Division of Ratepayer Advocates 30 days' in advance by written notice whenever they plan to sell land, buildings, water rights, or all or part of a water

¹ Public Utilities Code Section 851. Stats. 2005, Ch 370, Section 1. Effective January 1, 2006.

² Resolution No. W-4029, February 19, 1997, "Lucerne Vista Water Company (LVWC), Order Authorizing LVWC to be Exempted from Commission Jurisdiction" involved the sale to the Lucerne Vista Mutual Water Company.

or sewer system, including facilities or land that is no longer used and useful.³ Staff will review the notice to assess whether the utility is selling off any key portions of its asset base. Providing notice does not preclude later review of such sales in a water company's GRC or other proceeding.

- a. The notice shall include the following heading in at least 16 point bold type: "Notice under Rulemaking 05-06-040. Commission staff must respond within 30 days."
- b. The notice must include the name, address, phone and email address of the potential purchaser(s).

9. If the Commission staff objects to the proposed sale, it may send an objection in any form to the seller and proposed purchaser(s). Mailing of such an objection shall prevent the proposed purchaser from claiming it is a bona fide purchaser of the property at issue until the issues raised in the objection are resolved.

10. When utility property that was at any time included in rate base but is no longer in rate base is sold, it must be tracked and the sales records must be kept, even if it is sold to an affiliate. At the same time the water or sewer service company must establish a memorandum account to record the net proceeds from the investment. The proceeds booked to this account can only be used to invest in new utility plant or used and useful land. Any proceeds that are not invested within eight years of the sale, must be returned to ratepayers.⁴

11. For properties in rate base, gains and losses on sales of depreciable property shall accrue 100% to ratepayers. Gains and losses on used and useful land shall accrue 67% to ratepayers and 33% to stockholders.⁵

12. If the property was never in rate base, all gains and losses will accrue to shareholders.⁶

D— SALE TO A GOVERNMENTAL ENTITY

13. If a water or sewer system sells part of a system that include facilities actively serving customers to a governmental entity that then serves those customers, all gains or losses accrue to stockholders.⁷

14. Section 42251 of the Water Code states:

"42251. Except where it is proposed to be acquired by eminent domain proceedings, no property belonging to any water corporation which is a public utility shall be acquired by a district, nor shall any property of such public utility be included in the report of the board

³ D.06-05-041 O. P. 19

⁴ D.06-05-041, O. P. 17

⁵ D.06-12-043 at 21, change q

⁶ D.06-05-041 at 82

⁷ D.06-05-041, O. P. 10

unless and until the Public Utilities Commission has made its order authorizing the sale and any abandonment or curtailment of service by the public utility which would result from the acquisition by the district of property of the public utility.

"42252. A certified copy of any order of authority made by the Public Utilities Commission shall be made a part of and filed with the report of the board. Unless the order of the Public Utilities Commission in effect finds and declares that the sale and abandonment or curtailment of service of the public utility through the acquisition of its properties by the district will be to the interest of the consumers of the public utility and that the terms and conditions of the acquisition of property of the public utility by the district are fair, just, and equitable to the consumers of the public utility, the report shall be insufficient for any of the purposes of this division."

E— ADVICE LETTER SUBMITTAL AND CONTENTS

15. For transfers when the sales price is \$5,000,000 or less, at least 60 days prior to the sale of a regulated water or sewer utility or any of the utility's facilities, the utility shall file an advice letter delineating the new service area on an existing service area map or as a new service area map and send a copy to the Local Agency Formation Commission for the county.^{8,9} The new area shall be highlighted or crosshatched.

F— NAME CHANGE

16. A utility may change its name by filing a new Cover Sheet for its tariff book. No resolution is required.¹⁰

⁸ General Order (GO) 96-B, Industry Rule 10

⁹ Public Utilities Code Sections 1001, 852 and 854 do not require that the utility receive Commission approval before a water utility extends its line plant or service into a contiguous area that is not being served by a utility of like character (ref. D.94-01-046, January 19, 1994, Ordering Paragraph 5). The utility may provide service at tariffed rates or by contract in the contiguous area.

¹⁰ Memorandum from Edmund J. Texiera, Deputy Director to Distribution List, March 3, 1983, Subject: Water Management Meeting of March 3, 1983: Percell, Reader/Rosenthal and Texiera, Doc. Mgmt. #342040

Appendix A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of _____)

_____)

doing business as _____)

_____)

to sell and _____)

_____)

to buy the water system in _____)

_____ County))

_____)

Application No. _____

(For Commission use only)

APPLICATION

This application of _____

(seller(s))

whose address and telephone number is _____

_____, (____) _____ owner(s)

of the water system known as _____

_____ and _____

(buyer(s))

whose address and telephone number is _____

_____, (____) _____ respectfully

shows:

I

That communications in regard to this application are to be addressed to _____ whose address

(person)

is _____,

(zip code)

telephone number (____) _____.

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II

That the application is made pursuant to Sections 851 through 854 of the California Public Utilities Code and Rules 1 through 7, 15 through 17, 35, 36, 45 through 48 and 88 of the Commission's Rules of Practice and Procedure for authority to transfer the water system operating in the area described as

_____ in or near the community of _____, serving _____ (city) _____ (number) customers.

III

The seller(s) was/were granted a Certificate of Public Convenience and Necessity by Decision (D.) _____, dated _____, in Application (A.) _____, filed _____.

OR

Authority to acquire the system was granted to sellers by D. _____, dated _____, in A. _____, filed _____. The water system operates under a franchise granted by _____.
(if applicable)

IV

The water system consists of (brief description):

Land: _____

Wells Number: _____, Diameter: _____

Depth: _____ Other Source of Supply: _____

Pumping Equipment: Number: _____ HP: _____ capacity--GPM: _____

Water Treatment Equipment: _____

Reservoirs and Tanks: Number: _____ Capacity: _____

(gallons)

Water Mains: _____ feet. Services: _____

(number)

Appendix A

Meters: _____ installed, _____ available for installation:
_____ Fire hydrants: _____ Buildings: _____
_____ (number)
_____ Office furniture and equipment: _____

Transportation equipment: _____
Other equipment: _____

V

The original cost of property being transferred is \$_____, and
the depreciation reserve as of _____
_____ (date)
is \$_____, resulting in a net book cost of \$_____. The selling
price is \$_____ with these terms for payment:

_____.
A copy of the transfer agreement is attached hereto as Exhibit A.
A copy of the proposed deed to real property is attached hereto
as Exhibit B.

VI

Seller(s) desire(s) to dispose of the system because _____
_____,
and buyer(s) desire(s) to acquire the system because _____
_____.
Buyer(s) has/have had the following experience which qualifies
him/them to operate the system: _____

VII

Seller's(s') most recent annual report, for year ending _____,
is attached hereto as Exhibit C.
Buyer's(s') financial net worth statement is attached hereto as
Exhibit D.
Buyer's(s') occupation is _____ and
present employment is _____. Buyer's(s')
employment address and telephone number is _____

Appendix A

_____, (____)_____. Buyer's(s') residential address and telephone number is _____, (____)_____.

VIII

Buyer(s) propose(s) to adopt the presently filed tariffs of the seller(s), a copy of which seller(s) has available to furnish to buyer(s). Buyer(s) agree(s) to be bound by any outstanding Commission decisions and/or directives involving the water system being transferred. Buyer(s) will be furnished the utility's copies of the following or informed of their availability at the Commission's headquarters, 505 Van Ness Avenue, San Francisco, California 94102:

- (a) General Order 96-A, Filing and Posting of Tariff Schedules
- (b) General Order 103, Rules Governing Water Service, Including Minimum Standards for Design and Construction
- (c) Uniform System of Accounts for Class D Water Utilities
- (d) Rules of Practice and Procedure
- (e) Public Utilities Code of the State of California

IX

Seller(s) and buyer(s) warrant that:

- (a) There are no customer deposits to establish credit.
OR
Buyers will refund customer deposits when due.
- (b) There are no main extension advances
OR
All refunds due on main extension advances have been paid on a current basis and none are overdue.
- (c) On main extension advances which will fall due in the future, buyer(s) agree(s) to pay the refunds when due.
- (d) The condition of the system is good.

OR
The system needs modification and repair to bring it up to the standards of General Order No. 103 at an estimated cost of \$ _____. These funds (are) (are not) available. The work will be performed

Appendix A

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Appendix A

NOTE:

The following exhibits must be attached to all applications for transfer:

Exhibit A - Copy of the sale agreement. If there is no written agreement, it should be so stated in the application and other documentation of sale attached, such as bill of sale, escrow agreement or note.

Exhibit B - Copy of the proposed deed to the real property transferred.

Exhibit C - Copy of the last annual report of seller(s) or a copy of the latest available balance sheet and income statement of seller(s).

Exhibit D - Copy of buyer's(s') financial net worth statement, or, if operating as a utility, the latest available balance sheet and income statement.

If the purchase price is more than the net book cost, the following statement must be included in the application, preferably as a letter exhibit signed by the purchaser.

Purchaser is paying \$_____ more than the original cost of net depreciation and contributions. He understands that rates will be based upon the depreciated original cost of the plant, excluding contributed plant, and not on the purchase price.

A check for \$75 must accompany the applications for transfer of the Certificate of Public Convenience and Necessity, when sold to an individual, as contrasted to a public entity.

Appendix A

Following review of the application by Commission staff the applicant will be notified regarding the adequacy of the information contained in application. The applicant will be provided the text of a notification to be sent each customer. Customers will be given 30 days to make any objections to the Commission, at 505 Van Ness Avenue, San Francisco, CA 94102.

Scoping Memo Information for (New) Applications

(Rule 7.1)

A. Category ¹ (Check the category that is most appropriate)

Adjudicatory – “Adjudicatory” proceedings are: (1) enforcement

Investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

Ratesetting – “Ratesetting” proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). “Ratesetting” proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. Other proceedings may also be categorized as ratesetting when they do not clearly fit into one category.

Quasi-Legislative – “Quasi-Legislative” proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

B. Are Hearings Necessary? Yes No

If “yes,” identify the material disputed factual issues on which hearings should be held, and the general nature of the evidence to be introduced.

Are Public Witness Hearings Necessary? Yes No

Public witness hearings are set up for the purpose of getting input from the general public and any entity that will not be a party to the proceeding. Such input usually involves presenting written or oral statements

¹ See, California Public Utilities Commission Rules of Practice and Procedure, Article 7, especially Rule 7.1. (http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/66013.htm)

Appendix A

to the presiding officer, not sworn testimony. Public witness statements are not subject to cross-examination.

C. Issues—List here the specific issues that need to be addressed in the proceeding.

D. Schedule (Even if you checked “No” in **B.**, above) Should the Commission decide to hold hearings, indicate here the proposed schedule for completing the proceeding within 12 months (if categorized as “Adjudicatory”) or 18 months (if categorized as “Ratesetting” or “Quasi-Legislative”).

The schedule should include proposed dates for the following events as needed:

_____	Prehearing Conference	
_____	Hearings	
_____	Briefs due	
_____	Submission	
_____		Proposed decision (90 days after
submission		
_____		Final decision (60 days after
proposed decision is mailed)		

Docket Office Note: The above information should be set forth either in the text of the application or, if this form is used, it should be inserted into the application packet after the signature(s) of the filer, but immediately prior to the commencement of any exhibits.

- I. End of Scoping Memo Information for (New) Applications
- II. Doc 280540 Rev. June 2007

