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WATER/ICRJ/KKE

Decision 03-07-026 July 10, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

In the Matter of the Application of YUBA
INVESTMENT COMPANY, INC. U-81-W, for
Authority to sell its Water System Located in
Yuba County to Browns Valley Irrigation District
Pursuant to Public Utilities Code Section 851.

Application 02-12-034
(Filed December 20, 2002)

O P I N I O N

Summary

This decision grants Yuba Investment Company, Inc. (YIC) the authority to transfer its water system to Browns Valley Irrigation District (the District) as requested in Application (A.) 02-12-034 (Application).

Background

The predecessor of YIC's water system originally was incorporated in 1911 as the Los Verjels Land and Water Company. Its name was changed in 1931 to Yuba Butte Orchards Company, Limited, and it was sold at a sheriff's sale in December of 1935 to the Yuba Investment Company. In 1984, the YIC water system was sold to Thousand Trails, a Washington corporation located in Seattle, Washington. YIC serves about 18 connections in the area of Oregon House, Yuba County.

The source of water supply derives from two water rights held by YIC. One is a pre-1914 appropriative right for storage of 2,300 acre-feet per annum

(afa) in Lake Mildred on Dry Creek and direct diversion of 2.6 cubic feet per second (cfs) from Dry Creek at a stone masonry diversion dam located about one mile below Lake Mildred. This first water right serves 260 acres along and at the end of its associated 7.5-mile ditch. The other water right was a license issued in 1957 for the right to divert 16 cfs for irrigation purposes from Dry Creek, a tributary to the South Yuba River. This second water right serves 1100 acres.

YIC owns Lake Mildred, the diversion dam and the 7.5-mile ditch. Recreational activities on Lake Mildred subsidize the operation of the irrigation utility. YIC's local operations are conducted from the Thousand Trails office in Oregon House, California.

The last activity before the Commission from YIC was filed draft advice letter (A.L.) No. Three, for a General Rate Case (GRC) with the Water Division on May 14, 1997. While the new rates went into effect on April 5, 1998, the approved rate of return was less than three percent.

YIC requests authority, pursuant to § 851 of the Public Utilities (PU) Code and Rules 1 through 7, 15, through 17, 35 and 36 of the Commission's Rules of Practice and Procedure to sell and transfer its water system and public utility water service responsibilities to the District. YIC entered into a Contract of Sale of Business and Real Property with District on March 16, 2001 (Contract).

Notice of the filing appeared on the Commission's Daily Calendar of December 27, 2002. No protests have been received.

Discussion

YIC desires to transfer its water system and public utility irrigation service responsibilities to the District because now, five years after its GRC was approved, annual costs exceed annual revenues, making the operation no longer

financially feasible. The company wishes to get out of the utility business and concentrate on its recreational activities.

The District is a large water district (over 1000 customers) with long experience in maintaining a water system (formed in 1888) and currently supplies water near YIC.

PU Code § 851 provides that no public utility other than a common carrier by railroad may sell the whole or any part of its system or property useful in the performance of its public utility service without first obtaining authorization to do so from this Commission. Other sections of the Public Utilities Code pertaining to the transfer of utility property do not apply in this instance because YIC's gross annual revenues are under \$500 million.

The Contract between YIC and the District provides:

1. YIC pays the District \$45,000, the estimated cost to repair the sold facilities.
2. The property is subject to any property taxes or assessments levied generally on land with the District.
3. Irrigation water service will be provided by the District at rates and under the same terms and conditions as irrigation water service provided to other land in the District, including the District's rules and regulations for irrigation water service and the District's water shortage allocation policy.
4. Approval must be obtained from the California Public Utilities Commission (CPUC) and the Yuba County Local Agency Formation Commission (LAFCO).

The District in Resolution 11-06-00-01, dated November 6, 2000, approved the sale. Pursuant to Government Code §§57200 and 57202, a Certificate of Completion, dated November 7, 2000, was recorded by Frances J. Fairey, Yuba County Recorder. LAFCO Resolution 2000-06, dated September 13, 2000 was

issued by James P. Manning, Executive Officer of the Local Agency Formation Commission of the County of Yuba, California. Pursuant to Government Code §54900, et. Seq., the transfer was filed at the State Board of Equalization under file No. 02-001.

The District is an agent of the state and is specially formed for local performance of functions like utility service. (Gov. Code §§61100 and 61600.) After sale to the District, the customers must continue to receive service and rates that are “fair, reasonable, just, and nondiscriminatory.” (*See, e.g., Hansen v. City of San Buenaventura* (1985) 213 Cal.Rptr. 859; *In re Park Water Company* (1988) 29 CPUC2d 415.) Thus we can approve the transfer.

Water and sewer utilities subject to Commission jurisdiction were required by the Legislature beginning January 1, 1983, to impose user fees on customers’ bills. (*See* Pub. Util. Code §§ 401, et. seq.) With the end of Commission jurisdiction at the time of transfer to the District, collection of these fees will no longer be required. For that period of time prior to transfer, YIC should be required to collect and remit these fees before it can be relieved of its public utility responsibilities.

Since the irrigation water service to be provided by the District is under the same terms and conditions as irrigation water service provided to other land in the District, we can reasonably conclude that the sale and transfer of this system will have no significant effect on the environment.

The sale relieves YIC of its duty to provide public utility water service in the Oregon House area.

Izetta C. R. Jackson is the assigned Examiner in this proceeding.

In Resolution (Res.) ALJ 176-3105 dated January 16, 2003, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. A

public hearing is not necessary, and there is no need to alter the preliminary determinations made in Res. ALJ 176-3105.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. YIC serves some 18 connections around the community of Oregon House in Yuba County.
2. YIC is no longer financially able to maintain the system and provide service to its customers.
3. The District is a large irrigation water provider with long experience in supplying water in the same area.
4. By A.02-12-034 dated December 20, 2002, YIC proposes to sell its water system to the District.
5. The District approved the purchase by Resolution 11-06-00-01, dated November 6, 2000.
6. Resolution No. 2000-06 of the Yuba County Local Agency Formation Commission, dated September 13, 2000, approved the sale of YIC to the District.
7. It is reasonably certain the sale and transfer of this system will have no significant effect on the environment.
8. As a public utility, YIC remains responsible to the Commission for remittance of the Public Utilities Commission Users Fees collected up to the date of sale and transfer.
9. There is no known opposition to the proposed sale and transfer.

10. After consummation of the sale and transfer, YIC will no longer provide public utility irrigation service in the Oregon House area, the District having assumed these duties and obligations.

11. This order should become effective immediately as seller and buyer have completed all elements of the transaction except for the Commission's approval.

Conclusions of Law

1. The District has the legal capacity to acquire YIC.
2. The acquisition of ownership and control of YIC by District is in the public interest.
3. A public hearing of this Application is not necessary.
4. Upon completion of the sale and transfer, and remittance of pending Public Utilities Commission Users Fees collected to the date of sale and transfer, YIC should be relieved of its public utility water duties and obligations.
5. This order should be made effective immediately so as to permit prompt consummation of the sale and transfer.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, the sale of the water system of the Yuba Investment Company, Inc. (YIC) to the Browns Valley Irrigation District is authorized, upon terms and conditions substantially consistent with those set forth or contemplated in Application (A.) 02-12-034 (Application) and the Contract of Sale of Business and Real Property dated March 16, 2001.

2. YIC shall remit to the Public Utilities Commission the Users Fees collected up to the date of sale and transfer within 90 days from the date of sale and transfer of its water system.

3. Within ten (10) days after the transfer, YIC shall write a letter to the Commission notifying it of the transfer and submitting an executed copy of the transfer document(s).

4. Upon compliance with this order, YIC shall be relieved of its public utility obligation and the certificate of public convenience and necessity cancelled.

5. The Application is granted as set forth above.

6. A.02-12-034 is closed.

This order is effective today.

Dated July 10, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners