

Decision 04-09-059 September 23, 2004

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

Joint Application of Vanya Rohner
and of Bernard J. MacElhenny, Jr. for
Commission Authorization of the
Transfer Ownership and Control from
Vanya Rohner to Bernard J.
MacElhenny, Jr. of the Sonoma
Springs Water Company, LLC and the
Water System (WTD 412).

Application 04-03-031
(Filed March 26, 2004)

O P I N I O N

Summary

Vanya Rohner seeks Commission authorization to sell and transfer ownership of the Sonoma Springs Water Company, LLC (SSWC) to Bernard J. MacElhenny, Jr. Mr. MacElhenny has contracted with a licensed and certified water company operator to provide operational and maintenance services. In addition he has retained the services of a former employee who is experienced in reading the meters of SSWC. The Commission's Water Division has investigated the proposed transfer and recommends approval. The application is granted.

Background

SSWC has been owned and operated by Ms. Rohner since 2001. SSWC operates a water works system, which has certain rights to the water produced by an artesian well alongside Sonoma Creek at the Morton's Warm Springs

Resort (Resort) located in an incorporated area of Sonoma County near Kenwood. SSWC provides domestic water service to certain facilities at the Resort and to 23 residential customers located on nearby properties outside the resort. The water system is comprised of one 12-inch-wide well, one concrete tank with a 16,000 gallons capacity, two pumps, one automatic chlorinator, 500 feet of mains, three fire hydrants, maintenance equipments and services, and meters for the residential customers and the resort.

The Commission in 1988 declared that the water system serving Morton's Warm Springs Resort and nearby residential customers was a public utility water system subject to the jurisdiction of the Commission, and by Decision (D.) 88-01-015, dated January 13, 1988, the Commission granted then owner, Dino Bozzetto, d.b.a. Los Guilicos Water Works, a Certificate of Public Convenience and Necessity. The Commission in D. 98-09-015, dated September 17, 1998, approved the sale of the Los Guilicos Water Works to Glen Ellen Water Company, LLC. The sale was completed as of June 1, 2000, and on December 4, 2000, Glen Ellen Water Company, LLC filed A.00-12-014 with the Commission to sell the water company to Sonoma Springs Water Company. The Commission in D.01-05-075, dated May 24, 2001, approved the sale.

On October 1, 2003, Ms. Rohner entered into a purchase agreement with Mr. MacElhenny. Both parties subsequently filed a transfer application with the Commission on March 26, 2004 seeking authorization of the sale. Mr. MacElhenny, through an agreement with Ms. Rohner, has been providing interim management and implementing the ongoing billing of customers on behalf of Ms. Rohner since July 1, 2003 and will continue to do so on an interim basis until the transfer of ownership is approved by the Commission. In this

application, Ms. Rohner states that she desires to sell SSWC because she has sold the real property containing the Resort, and as a result she no longer has staff to assist her in operating SSWC.

Sales Agreement

The sales agreement calls for a purchase price of \$25,000. The purchase price is payable in full upon the Commission's approval of the transfer of ownership and control of SSWC to Mr. MacElhenny. Department of Health Services (DHS) in a letter dated January 13, 2004, has approved the proposed transfer of the DHS water supply permit to Mr. MacElhenny, subject to approval of the transfer by the Commission. The full purchase price of \$25,000 has been placed in a trust account in the law office of Daniel F. Reidy with instructions to release the funds to Ms. Rohner upon the approval by the Commission of the transfer of ownership and to release the control of SSWC to Mr. MacElhenny. SSWC indicates that its total plant in service is valued at \$46,659 with a depreciation reserve of \$26,306 thus resulting in a net book value of \$20,353. Mr. MacElhenny has the financial net worth and sufficient liquid assets to own and operate SSWC. While Ms. Rohner operated SSWC at a loss and had to subsidize its costs of operation with personal funds, Mr. MacElhenny plans to more effectively control costs and bill the customers at appropriate rates as permitted by the Commission rate-setting regulations.

After examining Mr. MacElhenny's financial statements, the Water Division believes that he has the financial net worth and sufficient liquid assets to own and operate SSWC. The application projects a loss of \$170 for 2004, a considerable improvement over the net loss of \$12,000 in 2002 and a net loss of \$659 in 2003. The Water Division believes that Mr. MacElhenny is financially

capable of making anticipated and unanticipated capital repairs and keeping the water systems in good working order.

Although there is a projected small net loss for 2004, the Water Division believes that the customers of SSWC will be better served under the new owner.

Ratepayer Indifference

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility. The ratepayer indifference concept is one that states that any sale of a public utility should not have any net consequences that cause the ratepayer to prefer the seller to the buyer. For example, the ratepayer should not be subject to increased rates or reduced service as the result of a change of ownership. In more recent years, the Commission has further required the buyer to demonstrate that his acquisition of the public utility yields a tangible benefit to the ratepayer.

Using the ratepayer indifference test to assess the sale of the water system from Ms. Rohner to Mr. MacElhenny, the Water Division evaluated several key metrics including (1) the impact of purchase price on ratebase, (2) service quality, and (3) continuity of service.

Purchase Price

The proposed purchase price of \$25,000 is \$3,660 over the book value arrived at by adding the fixed assets of the water system and subtracting out accumulated depreciation and adding working cash. The Water Division reviewed the calculations contained in the application and confirmed them with Commission-adopted resolutions and annual reports filed with the Commission.

PU Code § 2720 requires the Commission to use fair market value in establishing the rate base for an acquired water system.

PUC § 2720:

“(a) 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.

(1) For purposes of this section, "public water system" shall have the same meaning as set forth in Section 116275 of the Health and Safety Code.

(2) For purposes of this section, "fair market value" shall have the same meaning as set forth in Section 1263.320 of the Code of Civil Procedure.

(b) If the fair market value exceeds reproduction cost, as determined in accordance with Section 820 of the Evidence Code, the commission may include the difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. In determining whether the additional amounts are fair and reasonable the commission shall consider whether the acquisition of the public water system will improve water system reliability, whether the ability of the water system to comply with health and safety regulations is improved, whether the water corporation by acquiring the public water system can achieve efficiencies and economies of scale that would not otherwise be available, and whether the effect on existing customers of the water corporation and the acquired public water system is fair and reasonable.

(c) The provisions of subdivisions (a) and (b) shall also be applicable to the acquisition of a sewer system by any sewer system corporation or water corporation.

(d) Consistent with the provisions of this section, the commission shall retain all powers and responsibilities granted pursuant to Sections 851 and 852. “

The Water Division believes that the purchase price of \$25,000 meets fair market value as it represents close to the depreciated assets of the water system, plus the price is what a willing buyer wants to pay and a willing seller wants to accept.

Service Quality

The buyer, Bernard J. MacElhenny, Jr. has been providing interim management of the operations of SSWC since July 1, 2003, and will continue to do so until the transfer of ownership is approved by the Commission. Mr. MacElhenny has entered into a contract with a licensed and certified water company operator to provide operational and maintenance services including monitoring of the pumps, routine maintenance of the equipment and making the necessary repairs, collecting water samples as required by DHS, responding to emergencies such as stoppage of water service to customers or bacteriological contamination of the water supply, and assisting in the preparation of the reports to government agencies regarding the operation of the water system.

There was one complaint received about what one ratepayer believes may be an illegal service installation under a prior owner. Mr. MacElhenny will have a consultant assess the problem as soon as the transfer is approved. We find that it is advantageous to the customers of SSWC water system to have the transfer go into effect.

Service Continuity

Mr. MacElhenny wishes to acquire SSWC because he owns the Resort and wants to assure the availability of drinking water for the Resort, and because it is convenient and efficient to operate the water system in connection with operating the Resort.

Ms. Rohner's sales agreement with Mr. MacElhenny ensures an orderly water system ownership transition and thereby offers continued water service by a responsible and experienced new owner, and greatly reduces the chance of the water systems from being abandoned and turned over to their respective county health departments.

Public Notification

A notice of the proposed sale of SSWC to Mr. MacElhenny was mailed to the customers of SSWC on April 13, 2004. No letters opposing the sale were received.

Water Division's Conclusions

The transfer of the SSWC water system from Ms. Rohner to Mr. MacElhenny is desired by both parties. Ms. Rohner wants to exit the water utility business because she has sold the real property containing the Resort to Mr. MacElhenny and as a result she no longer has staff to assist her in operating SSWC. Mr. MacElhenny has the staff and the resources to operate SSWC, both in his office in Santa Barbara and in connection with operating the Resort, and by retaining professional consultants. Mr. MacElhenny and his staff have been managing SSWC for Ms. Rohner on an interim basis since July 2003. The Water Division recommends:

- (1) That the joint application, A.04-03-031, be accepted and approved with no further hearings, pleadings, or filings necessary.
- (2) That the cash sale agreement between Ms. Rohner and Mr. MacElhenny for a total purchase price of \$25,000 be authorized.
- (3) That Mr. MacElhenny be authorized to purchase all of the assets and assume the obligations of the Sonoma Springs Water Company per the purchase agreement.
- (4) That Ms. Rohner be granted authorization to withdraw from providing water utility service to customers of Sonoma Springs Water Company.

- (5) That Mr. MacElhenny be allowed to acquire ownership of and assume water utility service to the customers of the Sonoma Springs Water Company.

Uncontested Matter

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.

Assignment of Proceeding

Izetta Jackson is the assigned Examiner in this proceeding.

Findings of Fact

1. The transfer of SSWC water system from Ms. Rohnert to Mr. MacElhenny is desired by both parties.
2. Ms. Rohner wants to exit the water utility business because she has sold the real property containing the Resort to Mr. MacElhenny and as a result she no longer has staff to assist her in operating SSWC.
3. Mr. MacElhenny has the staff and the resources to operate SSWC.
4. Ms. Vanya Rohner seeks authority to transfer ownership of the Sonoma Springs Water Company, which serves 23 customers.
5. The prospective new owner, Mr. Bernard J. MacElhenny, Jr., has been managing Sonoma Springs Water Company since July 2003.
6. Ratepayers will benefit from the transfer because the prospective new owner has the financial net worth and sufficient liquid assets to own and to continue operating the water system and has been doing so successfully since July 2003.

7. The purchase price of the system, \$25,000, is the fair market value as required by PU Code § 2720.

Conclusions of Law

1. Transfer of ownership of the Sonoma Springs Water Company meets the test of ratepayer indifference, in that customers will be unaffected or better off in terms of service, water quality, and continuity of service.

2. Pursuant to California Health and Safety Code, a change in ownership of a public water system shall, and a change in regulatory jurisdiction may, require application for a new operating permit from the California Department of Health Services.

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

ORDER

IT IS ORDERED that:

1. The application of Ms. Vanya Rohner, to sell and convey the Sonoma Springs Water Company to Mr. Bernard J. MacElhenny, Jr. is granted.

2. SSWC shall remit to the Commission's Fiscal Office all of the Commission's Users Fees collected to the date of transfer of ownership of the water system.

3. Mr. Bernard J. MacElhenny, Jr. is authorized to acquire ownership of and assume water utility service to the customers of Sonoma Springs Water Company.

4. Applicants within 10 days of the transfer of ownership shall notify the Director of the Water Division in writing that the transfer has taken place, attaching copies of the transfer document.

5. Upon consummation of the transfer of ownership, Ms. Vanya Rohner shall be relieved of public utility responsibility for the operation of the Sonoma Springs Water Company water system.

6. Mr. Bernard J. MacElhenny, Jr. is directed to comply with § 116525(a) of the Health and Safety Code, which states: “No person shall operate a public water system unless he or she first submits an application to the department and receives a permit as provided in this chapter. A change in ownership of a public water system shall require the submission of a new application.”

7. Application 04-03-031 is closed.

This order is effective today.

Dated September 23, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners