

Decision 07-11-034 November 16, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U 210 W) and John W. Richardson & Associates, Court-Appointed Receiver for Toro Water Service, Inc., for an Order Authorizing the Sale and Conveyance of Certain Real Property and Utility Assets in Monterey County Pursuant to Public Utilities Code Section 851 and Authorizing an Increase in Revenues of \$105,332 or 31.7% on an Interim Basis in 2007, or \$208,467 or 63.5% (from Current Revenues) after Completion of Capital Improvements in 2007, and \$15,903 or 3.0% in 2008.

Application 07-02-008
(Filed February 8, 2007)

**OPINION APPROVING SALE AND CONVEYANCE OF
TORO WATER SYSTEM INC. TO
CALIFORNIA AMERICAN WATER COMPANY**

1. Summary

In this decision, we approve the application of California American Water Company (CalAm Water) and John W. Richardson & Associates, Court-appointed Receiver for Toro Water Service Inc. (Receiver), to sell and convey the real property, water system assets, and other assets of Toro Water Service Inc. to CalAm Water pursuant to Pub. Util. Code § 851. We also adopt a proposed settlement agreement between CalAm Water and the Division of Ratepayer Advocates (DRA) which resolves the disputed ratemaking issues concerning the proposed sale.

2. Procedural Background

On February 6, 2007, CalAm Water and John W. Richardson, in his capacity as the appointed Receiver in *United States of America v. Alisal Water Corporation et al.* (Case No. C97-20099 JF (EAI)), requested approval from the Commission of the acquisition of the assets of Toro Water Service, Inc. (Toro) by CalAm Water pursuant to Pub. Util. Code § 851. In an April 13, 2004 federal court order, the Receiver was directed to sell the Toro assets to CalAm Water for \$408,000 pending Commission approval. The federal court concluded the proposed sale and transfer was in the public interest and that the sales price was commensurate with the fair market value of the system. The Receiver was directed to complete the transaction as soon as practicable.

The application also sought Commission authorization for the following:

1. Merge all of Toro's utility assets and service into CalAm Water's Monterey District and combine the operations, rate base and tariffs of Toro and CalAm Water's Monterey District.
2. Invest in system improvements to bring Toro up to CalAm Water standards, including \$738,000 to address the arsenic impacted well(s) currently owned by and located in the Toro Water System.
3. Increase Toro's rate base to reflect the fair market value of the system and the expected costs for treating the arsenic impaired well(s).
4. Implement a phased-in increase in customer rates to recover the expected costs and increase in rate base.

DRA filed a protest on March 19, 2007. DRA indicated that while it did not oppose the proposed sale and transfer of Toro to CalAm Water, it did oppose the proposed ratemaking treatment. CalAm Water filed a response on March 29, 2007.

A prehearing conference (PHC) was held on July 3, 2007. At the PHC, DRA repeated its objection to the requested rate increase and recovery of the arsenic treatment plant on the grounds that they should be considered as part of CalAm Water's 2008 general rate case (GRC) application for the Monterey District. The assigned Administrative Law Judge (ALJ) also questioned whether it was an efficient use of parties' and the Commission's resources to consider permanent rates for Toro in this proceeding given the GRC application for the Monterey District would be filed in January 2008. CalAm Water and DRA requested an opportunity to meet and discuss potential settlement of the ratemaking issues.

On July 27, 2007, a telephonic status conference was held. DRA and CalAm Water informed the assigned ALJ that they had almost reached agreement on all disputed issues and requested additional time to finalize the agreement.

On September 26, 2007, CalAm Water and DRA filed a motion for approval and adoption of a proposed settlement agreement (Settlement), which resolved all disputed ratemaking issues.

A telephonic PHC was held on October 10, 2007 to determine whether any further proceedings were necessary before submission of this matter. The telephonic PHC was summarized in an October 11, 2007 ALJ Ruling.

The proceeding was submitted on October 16, 2007.

3. The Proposed Transaction

Toro is a Class D public utility that is wholly-owned by Alisal Water Corporation (Alisal) and regulated by the Commission. In 2002, the U.S. District Court for the Northern District of California found that Alisal had continuously failed to provide its customers with healthful drinking water in compliance with

the Safe Drinking Water Act and that there was an imminent potential of future violations. Consequently, the District Court appointed John Richardson as Receiver to assume management of Alisal's small water systems, including Toro, and to assess the feasibility of selling the water systems to one or more water purveyors. In an order issued on April 13, 2004, the Receiver was directed to sell Toro to CalAm Water for \$408,000.

The Asset Acquisition Agreement (Agreement) between CalAm Water and Receiver involves the sale and conveyance of approximately 2.58 acres of land, along with all easements and other real property rights, and water system assets of Toro. CalAm Water would be acquiring Toro "as is" and will not assume any of the Receiver's or Toro's liabilities, debts, or obligations that exist prior to the closing date of the transaction.

Pub. Util. Code § 851 provides that no public utility "shall . . . sell . . . the whole or any part of . . . property necessary or useful in the performance of its duties to the public, . . . without first having secured from the Commission an order authorizing it to do so." In determining whether to approve an application filed under § 851, the Commission's primary consideration is whether the proposed transaction is in the public interest.

In reviewing a Section 851 application, the Commission may "take such action, as a condition to the transfer, as the public interest may require."¹ The public interest is served when utility property is used for other productive

¹ D.3320, 10 CRRC 56, 63.

purposes without interfering with the utility's operation or affecting service to utility customers.²

In its application, CalAm Water states that the proposed acquisition would benefit Toro customers in numerous ways. First, CalAm Water commits to make the necessary capital expenditures to bring the Toro system into full compliance with all DHS water quality standards, including construction of an arsenic treatment facility. Further, by combining Toro with the Monterey District, ratepayers would benefit from reduced operating and maintenance costs, operational efficiencies and economies of scale. Finally, CalAm Water indicated that Toro customers would have access to CalAm Water's resources in the existing Monterey District, including a bacteriological laboratory.

CalAm Water states that the proposed purchase of Toro is not an activity subject to the California Environmental Quality Act (CEQA), as it will not result in a direct or reasonably foreseeable indirect physical change in the environment. We agree. CEQA Guidelines Section 15060(c)(2) notes that "[a]n activity is not subject to CEQA if . . . [t]he activity will not result in a direct or reasonably foreseeable indirect physical change in the environment."³ CalAm Water is not seeking to change the existing uses of the property, but rather to transfer ownership of the property and to continue operating Toro as a water company.

During the October 10th PHC, CalAm Water confirmed that Toro would have its own separate rate schedule and that any request to consolidate Toro with the rest of the Monterey District will be made in a subsequent application.

² D.00-07-010, 7 Cal. P.U.C. 3^d 148, 151.

³ 14 Cal. Code Regs. § 15060, subd. (c)(2).

CalAm Water also indicated that the issues concerning transfer of property by Alisal Water Corporation identified in its application have been resolved. Finally, the Receiver informed the assigned ALJ that the receivership shall be concluding shortly, and requests that the Commission act expeditiously to resolve this matter.

4. Settlement Agreement

4.1. Terms

The proposed Settlement, included as Attachment A of this decision, contains the following provisions:

1. Parties have agreed that the purchase price of \$408,000 represents the fair market value of Toro. CalAm Water will not increase the rate base of the Monterey District to reflect the purchase price nor seek recovery of this amount at this time. Rather, it will do so as part of its 2008 general rate case (GRC) application for the Monterey District.
2. CalAm Water will construct and have a fully operational arsenic treatment facility within ninety (90) days after acquiring legal title and possession of Toro at a cost of \$685,000.
3. CalAm Water shall implement new rates for Toro customers as proposed in Attachment 1 of the Settlement. The proposed rates represent an increase of \$109,377 over the present revenue requirement. CalAm Water requests Commission authority to implement these proposed rates through the advice letter process once CalAm Water has acquired legal title and possession of Toro.
4. The new rates for Toro customers shall remain in effect until they are replaced by rates authorized by the Commission in the 2008 GRC application for the Monterey District or thereafter.
5. If CalAm Water does not meet the 90-day deadline for a fully operational arsenic treatment facility, it shall track the

- difference between the new rates and the current Toro rates until the arsenic treatment facility is fully operational and this difference shall be refunded to Toro customers as part of CalAm Water's 2008 GRC application for the Monterey District. After an arsenic treatment facility is operational, any refunded amounts shall be recovered in rates as part of a subsequent GRC application for the Monterey District.
6. CalAm Water will proceed with wellhead improvements, which are estimated at \$40,000. CalAm Water will seek recovery of these costs as part of its 2008 GRC application for the Monterey District. CalAm Water, therefore, requests that the Commission authorize it to establish a memorandum account to record the depreciation, carrying costs, and earned interests associated with these improvements, not to exceed \$40,000. CalAm Water shall seek recovery of the balance of the memorandum account as part of its 2008 GRC application for the Monterey District.
 7. CalAm Water will withdraw the request for authorization of all other capital projects described in its application which are not specifically identified in the settlement agreement. After it obtains ownership of Toro, CalAm Water will determine what other improvements are needed and seek Commission authorization as necessary.

4.2. Discussion

The Commission has long favored the settlement of disputes. However, we do not automatically approve a settlement, even if uncontested. Rather, pursuant to Rule 12.1(d) of the Commission's Rules of Practice and Procedure, we consider whether the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

4.2.1. Settlement is reasonable in light of the whole record.

Recent water quality testing results have shown that the concentration of arsenic in the Toro wells currently exceeds both the federal and state maximum

contaminant levels. The Settlement requires CalAm Water to remediate the arsenic in the water system in an expeditious manner once it acquires legal title of Toro. The Settlement also contains provisions to ensure that ratepayers will not be harmed if CalAm Water does not have a fully operational arsenic treatment facility within ninety days after acquiring legal title and possession of the Toro system. CalAm Water stated during the October 10th PHC that the Commission will be able to determine whether CalAm Water has met the 90-day deadline based on whether CalAm Water has submitted a compliance filing. The compliance filing will be made after CalAm Water has received sign-off from the California Department of Public Health (formerly Department of Health Services) that the arsenic treatment facility is fully operational.

The Settlement protects existing Toro ratepayers. The capital expenditures for the arsenic treatment facility proposed in the Settlement are less than what had been initially proposed. Furthermore, recovery of the wellhead improvements, as well as other necessary capital expenditures for Toro, will be included as part of CalAm Water's 2008 GRC application for the Monterey District. This will not only provide the Commission an opportunity to consider these expenditures in a more comprehensive manner, but will also permit a more efficient use of DRA's and CalAm Water's resources.

Based on these considerations, we find the Settlement reasonable in light of the whole record.

4.2.2. Settlement is consistent with the law.

Pursuant to D.99-10-064, Class A water corporations, such as CalAm Water, are encouraged to acquire smaller water systems that need infrastructure improvements but are unable to finance such developments. As indicated in

CalAm Water's application, capital expenditures are necessary to bring the Toro system into compliance with the Environmental Protection Agency's (EPA) arsenic rule. Moreover, DRA and CalAm Water note that D.07-01-024 permits water utilities to seek a rate increase by means of an advice letter upon Commission authorization.

The Settlement provides CalAm Water reasonable incentives for acquiring Toro, including recovery of the purchase price in rate base and the capital necessary to make improvements to the Toro system. These provisions are consistent with Pub. Util. Code §§ 2718 – 2728. Further, CalAm Water and DRA submit that the sale and transfer of Toro comply with Pub. Util. Code §§ 851 and 854.

Based on these considerations, we find that the Settlement is consistent with the law.

4.2.3. Settlement is in the public interest.

The Settlement expedites the Commission's review and approval of the sale and purchase of Toro. Further, it results in a lower rate increase than originally requested by CalAm Water and provides Toro ratepayers with an operational arsenic treatment facility and other system infrastructure improvements in an expeditious manner.

5. Conclusion

For all the foregoing reasons, we find the proposed sale of Toro to CalAm Water to be in the public interest and consistent with Pub. Util. Code § 851. Accordingly, we approve CalAm Water's application and grant the motion of CalAm Water and DRA to adopt the Settlement. Further, we grant CalAm Water's request to implement the proposed rates in Attachment 1 of the Settlement through the advice letter process once it acquires legal title and

possession of Toro. CalAm Water is also authorized to establish a memorandum account to record the depreciation, carrying costs and earned interests associated with wellhead improvements, not to exceed \$40,000. Finally, we grant CalAm Water and DRA's request to waive Rule 12.1(b), which requires settling parties to hold a formal settlement conference with all parties prior to signing any settlement. CalAm Water and DRA's motion represents that attorney for the Receiver does not object to the waiver of Rule 12.1(b).

6. Waiver of Comment Period

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment period required by Pub. Util. Code § 311 and the opportunity to file comments on the proposed decision. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

7. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Amy C. Yip-Kikugawa is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed sale is in the public interest because Toro customers would receive numerous benefits if Toro were acquired by CalAm Water.
2. The proposed sale of Toro to CalAm Water will not result in a direct or reasonably foreseeable indirect physical change in the environment.
3. CalAm Water and DRA have agreed to settle the disputed ratemaking issues in this case.
4. The settlement agreement between CalAm Water and DRA is the product of negotiations between the settling parties and constitutes a compromise of the parties' positions.

5. The settlement agreement contains sufficient information to permit the Commission to discharge its regulatory obligations with respect to the parties and their interests.

6. Addressing the ratemaking issues in this case would unnecessarily consume valuable resources of the Commission and other parties, especially since CalAm Water will be filing its 2008 general rate case application for the Monterey District in January 2008.

Conclusions of Law

1. Pursuant to § 15060(c)(2) of the CEQA Guidelines, the proposed sale and transfer of Toro to CalAm Water is not subject to CEQA, as it will not result in a direct or reasonably foreseeable indirect physical change in the environment.

2. Consistent with § 851, the sale of Toro to CalAm Water is in the public interest and should be authorized.

3. The settlement agreement between CalAm Water and DRA resolves all disputed issues in this proceeding.

4. The settlement agreement between CalAm Water and DRA is reasonable in light of the whole record, consistent with law, and in the public interest.

5. The settlement agreement between CalAm Water and DRA should be approved.

6. CalAm Water's request to implement the proposed rates found in Attachment 1 of the Settlement through the advice letter process should be granted.

7. CalAm Water's request for authority to establish a memorandum account to record up to \$40,000 of the depreciation, carrying costs and earned interests associated with the wellhead improvements should be granted.

8. CalAm Water and DRA's request to waive the requirements of Rule 12.1(b) should be granted.

9. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. California American Water Company (CalAm Water) and John W. Richardson & Associates, Court-Appointed Receiver for Toro Water Service, Inc. (Receiver) are authorized to sell and convey the real property, water system assets, and other assets of Toro Water Service, Inc. pursuant to Pub. Util. Code § 851.

2. The settlement agreement between CalAm Water and the Division of Ratepayer Advocates (DRA), included as Attachment A of this decision, is approved.

3. CalAm Water is authorized to implement the proposed rates presented in Attachment 1 of the settlement agreement through the advice letter process once it has acquired legal title and possession of Toro.

4. CalAm Water is authorized to establish a memorandum account to record the depreciation, carrying costs and earned interests, up to \$40,000, associated with wellhead improvements.

5. CalAm Water and DRA's request to waive the requirements of Rule 12.1(b) is granted.

6. Application 07-02-008 is closed.

This order is effective today.

Dated November 16, 2007, at San Francisco, California.

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

[D0711034 Attachment A](#)