

WATER/RSK/AAS:jrb

Decision 08-05-008 May 15, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Searles Valley Holdings, LLC to sell and Karnavati Holdings, Inc. to buy, the Searles Domestic Water Company (U-368-W) which is located near the community of Trona, San Bernardino County.

Application 07-12-004
(Filed December 10, 2007)

OPINION

Summary

This application seeks approval under Public Utilities Code § 854 of a transaction that will transfer control of the Searles Domestic Water Company (SDWC) to Karnavati Holdings, Inc. (Karnavati). The transaction is structured to take effect upon approval of this Commission. The application is unopposed, and is granted.

Background

SDWC is a Class C California water company engaged in the business of selling water to 905 metered customers. The water system is comprised of one 500,000 storage tank, one pumping station with two pumps to raise the water to the storage tank and distribution pipelines consisting of 163,000 feet of mains in sizes from 1 to 12 inches in diameter. All of the water (approximately 91 million gallons annually) is purchased from Searles Valley Minerals Operations Co. (SVMO). SVMO pumps from 5 wells in the Indian Wells Valley. SDWC

provides water service to the communities of Argus, Trona, Pioneer Point, South Trona, Westend, and Point of Rocks, all in the unincorporated area of Trona.

SDWC was formed in the early 1940s as an outgrowth of commercial operations to recover minerals and chemicals from brine pumped from Searles Lake, a dry lakebed in San Bernardino County. In order to provide water to operate plants and potable water to employee families located in communities along the lake's west shoreline, Searles was organized as a California corporation and was granted a certificate of public convenience and necessity by Decision (D.) 36822 on January 12, 1944.

Past Transfers of Control Applications Involving SDWC

In the past ten years, the Commission has authorized the transfer of indirect control of SDWC on three occasions. In D.98-03-069, the first of three decisions, the Commission authorized the transfer of indirect control of SDWC arising out of the acquisition of SDWC's ultimate parent, Harris Chemical Group, Inc. ("Harris") by IMC Global, Inc. ("IMC"). Just over a year later, by D.99-04-006, the Commission again authorized the transfer of indirect control of SDWC, this time arising out of the execution of a recapitalization agreement at the holding company (IMC) level. Finally, in 2004, the Commission authorized another transfer of indirect control of SDWC, one arising out of the acquisition by Searles Valley Minerals Operations, Inc. for a controlling interest in IMC Chemicals, Inc. In each of these proceedings, the application seeking authority for an indirect transfer of control was unopposed. See Exhibit A which describes the history.

The 1994 Settlement Regarding Purchased Water

An agreement was reached in 1994 which provided that the price of purchased water North American [Harris] (buyer of the company at that time) would charge would be capped at the cost of purchased electricity and the cost of

payroll and outside maintenance, as limited by increases in the Gross National Product Price Index. The price would also be subject to reasonableness review from time to time by the Commission. Concluding that the settlement agreement was reasonable in light of the whole record, consistent with law, and in the public interest, the Commission issued D.94-01-042 on January 19, 1994, which approved the settlement agreement, and authorized the sale of all Searles capital stock to North American [Harris].

In all Commission proceedings subsequent to the issuance of D.94-01-042, the applicants in those proceedings have affirmed that the transfer of indirect control for which authority was sought would have no effect on the force and effect of the 1994 settlement regarding purchased water.

Joint Applicants likewise have affirmed that the transaction for which authority is sought herein will have no effect on the force and effect of the 1994 settlement regarding purchased water.

Request for Waiver of Rule 16(a) for Karnavati Holdings, Inc.

Karnavati will not be operating in California except through its subsidiaries, and therefore, under Cal. Corp. Code § 191(a), is not required to qualify to transact intrastate business. Applicants state that because Karnavati, will not be transacting business in California as that term is defined by Cal. Corp. § 191(a), it is not required by Cal. Corp. § 191(b) to qualify to transact business in California. Applicants submit that requiring Karnavati to qualify to transact intrastate business for the sole purpose of satisfying Rule 16(a) will impose administrative burdens on the company that it would not otherwise incur but for having qualified and, which are not related to the issues before the Commission in this application.

Description of Transaction

Applicants seek approval of a transaction whereby Searles Valley Holdings, LLC sells SVMO to Karnavati. SDWC, the operating utility which is a subsidiary of SVMO, will continue to provide service to its California customers, who will be indifferent to the ownership change. Exhibit B to this document depicts the before and after merger holding company organization.

Applicants submit that the transaction is an internal corporate reorganization which will have no impact on SDWC operations or its customers. SDWC current management will continue in place without change. SDWC rates, terms and conditions, billing practices and operations will be unaffected by the transaction.

Identification of Joint Applicants

Searles Valley Holdings, LLC

Searles Valley Holdings, LLC is a Delaware limited liability company. Its principal place of business is 5200 Town Center Circle, Suite 600, Boca Raton, Florida 33486. Searles Valley Holdings, LLC is a holding company of businesses that focus on mining, processing, marketing, and distributing soda ash, sodium sulfate and refined boron products and associated activities.

Searles Valley Holdings, LLC is majority owner of SVMO, which wholly owns SDWC. Thus, Searles Valley Holdings, LLC holds indirect control over SDWC.

Karnavati

Applicant Karnavati Holdings, Inc. is a Delaware corporation. Its principal place of business is 1209 Orange Street, Wilmington, DE 19801. Like Searles Valley Holdings, LLC, which it will succeed, Karnavati is a holding company of businesses that focus on mining, processing, marketing, and

distributing soda ash, sodium sulfate and refined boron products and associated activities.

Karnavati is a wholly owned subsidiary of Nirma , Limited (“Nirma”), whose principal place of business is Nirma House, Ashram Road, Ahmedabad 380 009, Gujarat, India. Nirma is a publicly traded company in India and one of the largest manufacturers of soap and detergent products in India. It is vertically integrated and owns and operates soda ash mining operations and other industrial facilities in India.

SDWC

SDWC is a Delaware Limited liability company. Its primary place of business is 13217 Main Street, Trona, California 93952. A copy of the SDWC Articles of Incorporation was attached as Exhibit B to A.98-01-019 and is incorporated by reference pursuant to Rule 16(a).

The Commission has previously exempted from the qualification requirement a foreign corporation that controls an entity transacting business in California but does not itself transact any business in California. *See e.g., In the Matter of the Joint Application of Working Assets Funding Service, Inc. dba Working Assets Long Distance and Working Assets, Inc.* Decision No. 01-12-029 (2001). Granting an exemption here is consistent with Corporations Code § 191 (b).

SDWC has been the subject of a number of transfers of control proceedings before this Commission, proceedings arising out of the sale of the mineral operations undertaken by its parent and affiliates. (See Decision No. 04-03-026 (2004), 2004 Cal. PUC LEXIS 76; Decision No. 99-04-006 (1999), 1999 Cal. PUC LEXIS 234; Decision No. 98-03-069 (1998), 1998 Cal. PUC LEXIS 169) Accordingly, the formation and operation of SDWC has been described in a number of Commission decisions and those descriptions remain accurate today.

SDWC purchases water from SVMO pursuant to purchased water pricing restrictions that: (1) were first adopted in D.94-01-042, issued January 19, 1994, (2) have remained extant through the previous transfers of control, and (3) will remain in effect following the transfer of indirect control.

The history of transfers is depicted in Exhibit A.

Purchase Price and Terms of Payment

The agreed purchase price and terms of payment for the transaction are included as part of the Agreement which is filed under seal.

Financial and Managerial Showing

Consolidated financial statements for Searles Valley Holdings, LLC and its subsidiaries are filed under seal. Financial statements for the SDWC are part of its Annual Report to the Public Utilities Commission.

Financial statements for Nirma have been submitted. The amounts listed in the financial statements are in India crore, rather than US dollars. A crore is 10 million rupees, and the rupee is currently trading at about 40 to the dollar, so Nirma's revenue of somewhat more than 2500 crore for the last fiscal year is on the order of \$600 million US.

Karnavati is newly formed under Nirma. Applicants state that the financial statements for Nirma are provided to indicate that it is prepared to provide adequate financial support to SDWC in the unlikely event that SVMO is unable to do so. See Exhibit B describing the relationship.

SDWC possesses the technical capability to own, manage, operate, and maintain its existing public utility assets and will continue to do so unimpeded by this transaction. Karnavati plans to continue to staff the utility operations with professional, experienced operators and anticipates no changes to the current management and staff. SDWC is managed by a well-qualified management team. SDWC has both the technical and financial capability to

maintain operations of the subject public utility assets in a safe and reliable manner and consistent with their existing authorized uses. As such, the proposed transaction is in the public interest.

Reasons for Entering Into Transaction

Searles Valley Holdings, LLC believes that continuing ownership and management of the mining operation is no longer consistent with its business objectives. Karnavati desires to enter into the subject transaction and acquire the business of SVMO and SVM with the expectation of creating efficiencies within the operation. The SDWC is an ancillary but critical component of the overall mining operation because it serves customers in the surrounding area (many of whom are employed in the mining operation) and provides productive and efficient use for water acquired for the mining operation.

Public Interest

The applicants state that the proposed transaction will produce a corporate structure that can more efficiently bring new products and services to SDWC customers in a more efficient and less costly manner.

Discussion

Pub. Util. Code §§ 851-854 require Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state” The purpose of these sections is to enable the Commission to review the situation, before any transfer of public utility property is consummated, and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co., (1916) 10 CRC 56.)

This proposed transfer will not affect SDWC’s certificate of public convenience and necessity (CPCN). Management of SVMO under SDWC will remain the same.

An approval of change of ownership does not have to be granted by the Department of Public Health (DPH). The DPH permit was issued to SVMO which will continue to operate the utility.

We will grant Applicants' request for a waiver of Rule 16(a) for SDWC, as Applicants agree to waive any objection to Commission jurisdiction on the basis that it is not qualified to transact business in California.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application requests expedited approval of the application.

The application is granted, subject to the terms and conditions set forth below.

Request for Confidentiality

Applicants have requested that financial information pertaining to Searles Valley Holdings, LLC Balance Sheet and Income Statement filed with this application be kept under seal. Applicants represent that the information is proprietary and sensitive. The information, if revealed, would place Applicants at an unfair business disadvantage. We have granted similar requests in the past and ALJ Jean Vieth has done so in a ruling in this case on March 12, 2008 (See Attachment A).

Uncontested Matter

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

Assignment of Proceeding

Rami Kahlon is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of December 12, 2007.
2. Applicants seek approval pursuant to Pub. Util. Code § 854 of a transaction that will transfer control of Searles Domestic Water Company.
3. Searles Domestic Water Company will continue to provide services in California.
4. There will be no change in name, current services or rates provided by Searles Domestic Water Company as a result of the transfer of control.
5. Public disclosure of financial information pertaining to Searles Valley Holdings, LLC balance sheet and income statement, included in the application, would place Applicants at an unfair business disadvantage.

Conclusions of Law

1. The proposed transfer of control is not adverse to the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
3. Applicants' request to file its financial information under seal should be granted for two years.
4. This is an uncontested matter in which the decision grants the relief requested.
5. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Searles Valley Holdings, LLC and Karnavati Holdings, Inc., (collectively, Applicants) are authorized pursuant to Section 854 of the Public Utilities Code to

enter into the transaction by which Karnavati Holdings, Inc. acquires control of Searles Domestic Water Company.

2. Applicants shall provide the Director of the Commission's Division of Water and Audits, in writing, of the transfer of authority, as authorized herein, within ten days of the date of this order. A true copy of the instruments of transfer shall be attached to the notification.

3. Searles Domestic Water Company shall make all books and records available for review and inspection upon Commission staff request.

4. Karnavati Holdings, Inc. is authorized to acquire ownership of and assume water utility service to the customers of Searles Domestic Water Company.

5. Applicants' request that the financial information pertaining to Searles Valley Holdings, LLC balance sheet and income statement, filed with this application be kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

6. If Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

7. The authority granted herein shall expire if not exercised within one year of the date of this order.

8. Upon consummation of the transfer of ownership, Searles Valley Holdings, LLC shall be relieved of public utility responsibility for the operation of the Searles Domestic Water Company.

9. Application 07-12-004 is closed.

This order is effective today.

Dated May 15, 2008, at San Francisco, California.

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

ATTACHMENT A

XJV/smj 3/12/2008



FILED
03-12-08
02:02 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Searles Valley Holdings, LLC, Searles Domestic Water Company LLC and Karnavati Holdings, Inc., for Authority to Transfer Control of Searles Domestic Water Company LLC (U 368 W)

Application 07-12-004
(Filed December 10, 2007)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING DECEMBER 10, 2007 MOTION FOR LEAVE
TO FILE CONFIDENTIAL MATERIAL UNDER SEAL,
AS SUBSEQUENTLY REVISED**

By motion filed December 10, 2007, Applicants move, pursuant to Public Utilities Code Section 583 and General Order (GO) 66-C, for leave to file under seal Exhibits D, E and G to their application. Applicants' amendment to motion, filed February 19, 2008, and a letter from counsel, dated February 22, 2008¹, revise and clarify the request vis a vis Exhibit D. The motion and amendment to motion are unopposed. As no ALJ has been assigned to this proceeding, the motion has been referred to the Law and Motion ALJ for disposition.

I have examined each exhibit *in camera*. Exhibit D, entitled "Water Company Agreement," provides the terms for the continued operation of Searles Domestic Water Company LLC (Searles Water) by Searles Valley Holdings, LLC (Searles Holdings) until the Commission has acted on the application. (Exhibit D is actually one of several attachments to the larger Exhibit E, discussed below.)

¹ The letter, from Thomas J. MacBride, Jr., Esq. to the Administrative Law Judge (ALJ), has been placed in the ALJ correspondence file for this proceeding.

While Applicants initially sought to file Exhibit D under seal, the amendment to motion revises that request. The amendment to motion includes two attachments, a public version of Exhibit D and the declaration of John F. Tancredi, President of Searles Water. Tancredi verifies that the only portion of Exhibit D that Applicants now seek to keep confidential consists of banking information for Searles Water and Searles Holdings (name of financial institution, account number, etc.) listed in Exhibit A to Exhibit D. In fact, Applicants have deleted this information from the copy attached to the amendment to motion – in other words, what they actually seek is permission not to produce it as part of the filed application. Tancredi states “for the purposes of maintaining the confidentiality of the accounts and preventing fraud” the Commission should authorize Applicants to keep this information confidential. (Declaration at paragraph 6.)

The letter from counsel corroborates that Applicants seek to keep confidential only the banking details in Exhibit A to Exhibit D. The letter also explains that the public version of Exhibit D supersedes the version tendered under seal, which includes two attachments (A and B -- both blank) that served as placeholders during an earlier stage of the transaction. Subsequently, Applicants determined they had no need of the original Exhibit A and it was discarded; the banking information (originally labeled as Exhibit B) was relabeled as Exhibit A.

The information that Applicants seek to hold confidential generally is not necessary to our review of a proposed change of control. Moreover, if such information is provided, the Commission routinely declines to make it public. Public disclosure of this kind of banking information could subject Searles Water

or Searles Holdings to "unfair business disadvantage " as well as other harm. We will not require the information to be produced at this time.

Exhibit E is entitled "Merger Agreement." This document, dated November 26, 2007, consists of the terms of merger between Searles Holdings and Karnavati Holdings, Inc. (Karnavati). One of the results of this transaction is the indirect transfer of control of Searles Water, which requires Commission authorization before it can be consummated. Tancredi states that public disclosure of the material terms of the transactions described in Exhibit E (with the exception of the Water Company Agreement, Exhibit D, discussed above) "will place the Water Company and its existing investors in a position of significant disadvantage in the event that the transaction is not consummated and other negotiations are undertaken" and that "the merger agreement includes a great deal of non-public information about Searles Holdings and Karnavati that could lead to competitive disadvantage for both companies if made public." (Declaration at paragraph 5.)

Exhibit G is entitled "Consolidated Searles Valley Holding, LLC and Subsidiaries Financial Statements" and consists of the Consolidated Financial Statements, March 31, 2007 and 2006 for Searles Holdings and its Subsidiaries. Page 1, the Independent Auditor's Report, has been disclosed publicly as Exhibit H to the Application. Tancredi states that these financial statements are not public and that their public disclosure "will place the Searles Companies at a competitive disadvantage in their operations." (Declaration at paragraph 4.)

The information that Applicants seek to have filed under seal is of the type that is not commonly made public, and which if made public, could subject Searles Water, Searles Holdings and/or Karnavati to "unfair business disadvantage." (See GO 66-C, 2.2(b).)

A.07-12-004 XJV/smj

ATTACHMENT A

Good cause appearing, IT IS RULED as follows:

1. The unopposed motion of Applicants, filed on December 10, 2007, as revised by the amendment to motion filed February 15, 2008, and clarified by the letter from counsel, dated February 19, 2008, is granted to the extent set forth below.

2. Applicants are authorized to file at this time a redacted version, only, of Exhibit A to Exhibit D. Applicants are authorized to file under seal Exhibit E and Exhibit G. The information redacted from Exhibit A to Exhibit D and the information in Exhibits E and G contain proprietary and competitively sensitive information and may be protected under General Order 66-C. Public disclosure of this confidential information likely would provide Applicants' competitors with unfair, competitive advantage or result in other harm to Applicants.

3. The confidential information filed under seal will remain under seal for a period of two years from the date of this ruling. During this period, the information shall not be made accessible or disclosed to anyone other than (a) Commissioners and Commission staff; (b) other parties to this proceeding who have executed a reasonable nondisclosure agreement with Applicants; or (c) upon the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then-designated as Law and Motion Judge, which order shall be entered only after notice to Applicants and opportunity to be heard.

A.07-12-004 XJV/smj

ATTACHMENT A

If Applicants believe that further protection of this information is needed after two years, Applicants may file a motion stating the justification for further withholding the information from public inspection, or for such other relief as the Commission Rules may then provide. This motion must be filed no later than 30 days before the expiration of this protective order.

Dated March 12, 2008, at San Francisco, California.

/s/ JEAN VIETH

Jean Vieth
Administrative Law Judge



