

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

Application Liberty Utilities (Park Water)
Corp. (U314W) for an Order Authorizing
Liberty Utilities (Park Water) Corp. to
Purchase the City of Perris's Municipal Water
Systems.

A.18-05-011
(Filed May 9, 2018)

OPENING BRIEF OF CALIFORNIA WATER ASSOCIATION

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I. INTRODUCTION

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and the amended schedule set by the Administrative Law Judge (“ALJ”) during evidentiary hearings,¹ California Water Association (“CWA”) hereby files its opening brief in this proceeding. CWA respectfully urges the Commission to authorize Liberty Utilities (Park Water) Corp. (“Liberty”) to acquire the City of Perris’s (“City”) Municipal Water System (“Perris System”) in the manner previously approved by City’s voters in the November 8, 2017 election (“Proposed Acquisition”). As explained in further detail below, the City Council chose the purchaser of the Perris System through a public process and the City’s voters approved the Proposed Acquisition in order to take advantage of the many public interest benefits that service by Liberty would offer. Despite the indisputable result of a public election of the voters, Public Advocates Office (“Cal PA”) now raises unsupported, non-substantive arguments that would undermine the decision of the City’s residents. The Commission should reject Cal PA’s arguments and authorize the Proposed Acquisition.

¹ Reporters’ Transcript (“RT”) 172:18-21 (ALJ Burcham) (“the concurrent Opening Briefs will now be due on August 13, 2019, and the concurrent Reply Briefs will be due August 27, 2019.”).

II. DISCUSSION

A. The Proposed Acquisition Is the Result of a Lengthy and Rigorous Democratic Process that Must Be Given Due Weight and Deference

Liberty's proposed acquisition of the Perris System is the culmination of a lengthy and rigorous public process in which the City's residents ultimately voted to approve the sale of the Perris System to Liberty. Following an extensive bidding process the Perris City Council concluded that Liberty was the best-qualified purchaser of the Perris System and could provide equal or better service to customers than the City.² The City Council held a public meeting to select Liberty as the proposed buyer and place Measure H on the ballot for the November 7, 2017, special election pursuant to Public Utilities Code Section 10061.³ The City's voters passed Measure H to authorize the sale of the Perris System to Liberty by a substantial margin of 63.29% in favor of the Proposed Acquisition with only 36.71% voting against.⁴ The Proposed Acquisition is now before the Commission as the parties seek to complete the transaction and effectuate the rate changes proposed under terms that were thoroughly negotiated between the City and Liberty and subsequently approved by the City in the draft asset purchase agreement.

CWA is concerned that Cal PA is attempting to undermine the democratic process that overwhelmingly voted in favor of Liberty's acquisition of the Perris System. Cal PA makes several unsupported arguments against the Proposed Acquisition that would undercut the rigorous and highly public process undertaken by the City. The Commission should avoid improperly or unnecessarily thwarting the will of the City's voters. While the Commission is charged with independently meeting its statutory obligations, CWA respectfully urges the

² Exh. City Exhibit-01, p. 5.

³ *Id.*

⁴ Exh. City Exhibit-01, Attachment 2.

Commission to respect the will of the City to the extent possible within the existing regulatory and statutory framework.

The Commission should avoid second-guessing the decision of the City's voters — the Commission's statutory role in this proceeding instead is to meet its obligation of ensuring that the ratemaking changes proposed by Liberty as part of the Proposed Acquisition are just and reasonable and that the Proposed Acquisition would be in the public interest. The evidentiary record in this proceeding clearly demonstrates that both requirements have been met. Moreover, the City's public process and the voters' decision to approve the Proposed Acquisition, which includes the proposed rates for the City of Perris customers, justify a presumption that the Proposed Acquisition and the ratemaking treatment proposed are in fact just and reasonable. The reasons that the City has set forth in its testimony as to why it chose to pursue the Proposed Acquisition reflect the fact that it would be in the public interest.⁵ These actions made pursuant to the legitimate democratic process of the City should not be discounted by the Commission.

Therefore, the Commission should authorize the Proposed Acquisition and the relief requested by Liberty and reject the flawed procedural arguments asserted by Cal PA.

B. The Proposed Acquisition Complied with Statutory and Commission Notice Requirements

In its testimony, Cal PA asked the Commission to “categorically reject Liberty’s request to acquire the Perris water systems” based on its assertion that Liberty failed to comply with the notice requirements set forth in Public Utilities Code Section 10061(c)(4) and in Appendix D of Decision (“D.”) 99-10-064.⁶ However, Cal PA’s assertions regarding notice of the proposed application are baseless.

⁵ Exh. City Exhibit-01, pp. 1-5.

⁶ Exh. PA-01, p. 10.

Public Utilities Code Section 10061(c)(4) provides:

- (4) The municipal corporation, public agency, water corporation, or sewer system corporation proposing to acquire a municipal corporation public utility for furnishing water or sewer service shall disclose to the customers of the public water or sewer system to be acquired, not less than 30 days prior to the date of election for formal approval of the acquisition, a written statement which includes all of the following:
 - (A) A summary of the price and terms of the proposed acquisition.
 - (B) A comparison of the applicable water or sewer charges before and after the proposed acquisition.
 - (C) The estimated savings to be achieved or additional costs expected to result, or both, from the proposed acquisition.

Section 4.03 of Appendix D of D.99-10-064 provides:

- 4.03 Notice. Notice of a proposed acquisition should be given to all affected customers at the time when any advice letter or application is filed with the Commission. Additionally, the notice should contain a comparison of the rates before the acquisition and for the first year after the acquisition and identify any cost, including a reasonable return, not fully reflected in the first year's rates. With respect to the acquisition of a water system of a municipality, similar notice should be given to all affected customers.

As detailed in Liberty's Rebuttal Testimony, Liberty mailed tens of thousands of flyers to City residents asking them to visit the website at www.CityOfPerrisMeasureH.org for more detailed information regarding the proposed application.⁷ This website included links to the City of Perris's website where voters could access the following information beginning in July 2017, more than 3 months prior to the election:⁸

- Agendas and Staff Reports for public meetings that took place on July 11, 2017 and July 27, 2017 at the City Council Chambers, providing detailed information about the Proposed Acquisition such as the purchase price and the 10-year cap on rates.

⁷ Exh. Liberty-03, p. 2.

⁸ *Id.*, pp. 2-3

- A comparison of projected rates with and without the Proposed Acquisition; and a 10-year forecast of rates for Perris System if the proposed acquisition was approved.
- A letter to the City from Liberty providing the principal terms and conditions of the Proposed Acquisition.
- Information about Liberty and its services.
- Information about other bids offered for the sale of Perris System.
- A draft of the Asset Purchase Agreement.

These materials were fully sufficient to satisfy the notice requirements set forth under Section 10061(c)(4) and D.99-10-064, including the specific information mandated therein regarding terms of the Proposed Acquisition and the requisite rate comparisons.

Cal PA also argues that the pre-election notice and the later customer notices provided were deficient with respect to the manner in which the requisite rate comparisons were presented.⁹ However, similar to its arguments with respect to notice generally, the specific things that Cal PA asserts are required with respect to the comparison of rates with and without the Proposed Acquisition go well beyond what is required under Section 10061(c)(4) and D.99-10-064. The series of notices reasonably provided voters with the requisite information to make an informed decision regarding the Proposed Acquisition, and the Commission should not allow Cal PA to unilaterally insert its own biased opinions regarding additional requirements beyond what is required by statute and Commission order.

Cal PA's arguments regarding notice of the Proposed Acquisition are premised on strained interpretations of the statutory and Commission requirements rather than focused on any actual allegation of prejudice. There is no basis or precedent for Cal PA's argument that the requisite notice must be provided in the unduly narrow manner that Cal PA dictates. Nor does

⁹ Exh. PA-01, pp. 13-14.

the plain language of Section 10061(c)(4) and D.99-10-064 expressly mandate the outcomes urged by Cal PA. The obvious substantive purpose of the notice requirements set forth in Section 10061(c)(4) and D.99-10-064 was to ensure that the public had the relevant information it needed to make an informed vote with respect to the Proposed Acquisition. Clearly, the materials highlighted above accomplished this key purpose.

In fact, the set of materials made available online went above and beyond what could feasibly be included on a mailed flyer.¹⁰ The extensive information provided, and made readily available to residents months before the election allowed them to make a fully informed decision regarding whether to vote to approve the Proposed Acquisition. With this information in hand, voters collectively made the informed decision to proceed with the Proposed Acquisition in Measure H. Instead, it appears that Cal PA's procedural objections may be meant to serve its broader opposition to the acquisition of a municipal water utility by a Commission-regulated water utility. As advocates charged with representing the interests of the public, Cal PA should be working to effectuate the decision made by Perris voters, not second-guess or thwart what will clearly be in the interests of the customers. Therefore, the Commission should reject Cal PA's inappropriately narrow interpretation of the notice requirements under Section 10061(c)(4) and D.99-10-064 and instead find that the notice provisions therein were satisfied.

C. The Proposed Acquisition is in the Public Interest and Supports Commission and State Policies Favoring Consolidation of Public Water Systems

In this case, the City has concluded that it is not in a position to continue subsidizing the water system, much less make necessary investments. This acquisition comports with the need

¹⁰ Exh. Liberty-03, p. 3 ("For reasons of practicality and conservation, it would make no sense for all of the detailed information listed above (comprising over 150 pages) to be mailed to each of the approximately 70,000 City residents. Logically, the information was provided online.")

to consolidate systems that find themselves deferring needed maintenance, repair and investments because they lack resources and access to capital. The Commission should efficiently and quickly process the Proposed Acquisition because it is in the public interest and because it is precisely consistent with and supports the Commission and State policies to expedite consolidation of public water systems.

The Commission's Water Action Plan recognizes that, to maintain the highest standards of water quality, the Commission should provide incentives for the acquisition or operation of smaller water and sewer utilities by Class A utilities.¹¹ The Legislature has favored consolidation of public water systems in enacting the statutory provisions of Public Utilities Code Section 2718-2720, also known as the Public Water System Investment and Consolidation Act of 1997, which recognized the scale economies that could be achieved through consolidation and sought to provide incentives to facilitate such transactions.¹² The Commission recently recognized that, "[a]s a statement of public policy, Pub. Util. Code § 2719 identifies important public interests that are achieved through the acquisition of small water companies by larger, more financially secure entities more capable of ensuring that the public receives safe drinking water."¹³

In 2015, Senate Bill 88 added sections 116680-116684 to the Health and Safety Code granting the State Water Resources Control Board ("SWRCB") the authority to mandate consolidations, again reflecting the Legislature's policy favoring such consolidations. In implementing Senate Bill 88, the SWRCB has similarly encouraged consolidation of water systems, noting: "Consolidating public water systems and extending service from existing

¹¹ California Public Utilities Commission 2010 Water Action Plan, p. 9 (October 2010).

¹² Pub. Util. Code § 2719.

¹³ D.19-04-005, pp. 4-5. CWA notes that the policy underlying Section 2719 pertains to all public water systems, not just "small water companies" as is stated in D.19-04-005.

public water systems to communities and areas which currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability.”¹⁴

For the Proposed Acquisition in particular, the public interest benefits to Perris residents have been well documented in the evidentiary record. Most notably, as outlined above, the Perris City Council made the determination that Liberty was the best-qualified potential purchaser of the Perris System and chose to move forward with the Proposed Acquisition.¹⁵ The City voters similarly voted to approve Measure H and again move forward with the Proposed Acquisition, presumably because it was in the public interest.¹⁶ The Commission should give significant deference to these determinations by the residents who would become Liberty customers under the Proposed Acquisition. Additionally, the testimony presented in this proceeding reflects the fact that Perris residents would benefit from the Proposed Acquisition through (1) “orderly transition in ownership and operational authority to a responsible and experienced Class A water utility that has the resources and capability to continue to provide water service;”¹⁷ (2) “considerable operational expertise and experience in Los Angeles County and San Bernardino County;”¹⁸ (3) “full-time staff of water utility professionals with the requisite business and technical expertise, state certifications, and experience to operate and manage [the Perris System] professionally, in accordance with industry standards, and in compliance with water quality regulations;”¹⁹ (4) “full-service customer service center capable of handling customer inquiries and service requests, in-person, over the phone, or online;”²⁰ and (4)

¹⁴ SWRCB, *Fact sheet: Frequently Asked Questions on Mandatory Consolidation or Extension of Service for Water Systems* (Nov. 7, 2016), available at https://www.waterboards.ca.gov/drinking_water/programs/compliance/docs/fs082415_mand_consolid_faq.pdf.

¹⁵ Exh. City Exhibit-01, p. 5.

¹⁶ *Id.*

¹⁷ Exh. Liberty-01, p. 6.

¹⁸ *Id.*

¹⁹ *Id.*, pp. 6-7.

²⁰ *Id.*, p. 7.

the efficiencies and economies of scale that can be achieved by “becoming part of Liberty Park Water’s approximately 30,000-customer system.”²¹

These public interest benefits are particularly critical given the circumstances that the City was facing in making the decision to pursue the Proposed Acquisition. The testimony presented by the City showed that for the past several years, the Perris Systems “have not been capable of generating sufficient revenue to cover their operating costs.”²² Consequently, the Perris Systems “have only been kept operational by drawing on resources from the City’s General Fund.”²³ The opportunity to eliminate what have become annual subsidies from the General Fund is one of the reasons that the City has identified for why it is seeking to sell the Perris Systems.²⁴ Additionally, the City has faced significant challenges with respect to poor groundwater quality, difficulty in setting sufficient water rates due to Proposition 218 and other limitations to its obtaining cost-efficient water caused by disputes with neighboring water providers.²⁵ The Proposed Acquisition offers an opportunity for the City and its residents to resolve these difficulties and therefore is in the public interest.

In view of the public interest benefits to the City and its residents and the consistency of the Proposed Acquisition with relevant Commission and State policies highlighted above, CWA respectfully urges that the Commission strive towards issuing a timely Proposed Decision for consideration as soon as possible that would authorize the Proposed Acquisition.

²¹ *Id.*

²² Exh. City Exhibit-01, pp. 4-5.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*, pp. 1-4.

III. CONCLUSION

The City's residents made a public decision during the November 2017 election to approve the Proposed Acquisition. This decision was made based upon the public benefits that come along with consolidation, which in this particular case were substantial. The record demonstrates that the City and its residents would benefit greatly from the service that Liberty can offer. The Commission should not take the City's rigorous public process and the decision of the voters lightly. The flawed procedural arguments by Cal PA seek to undermine this mandate. CWA respectfully urges the Commission to authorize the Proposed Acquisition previously approved by the City's voters over the unsupported objections of Cal PA.

Respectfully submitted,

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