

Decision No. 36905

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the application
of FRANK T. COOK and EUBERA A.
COOK, husband and wife, for
authorization to sell, and
LAWRENCE KIRK and MARGUERITE
KIRK, husband and wife, to
purchase

Application No. 25924

BY THE COMMISSION:

O P I N I O N

Frank T. Cook and Eubera A. Cook, his wife, hereinafter referred to as Vendors, own and operate in the City of Westmorland, Imperial County, a domestic water system known as The Westmorland Water Co. For 1942 and for the 11 months ending November 30, 1943, they report operating revenues and expenses as follows:

| <u>Item</u> | <u>1942</u> | <u>1943</u> <u>11 Mos.</u> |
|-----------------------|-------------------|-------------------------------|
| Operating Revenues | \$7,528.03 | \$7,016.91 |
| Operating Expenses | <u>6,414.49</u> | <u>5,679.57</u> |
| Net Operating Revenue | \$1,113.54 | \$1,337.34 |
| Non-operating Revenue | <u>282.85</u> | <u>312.36</u> |
| Net Income | <u>\$1,396.39</u> | <u>\$1,649.70</u> |

The investment in the properties is reported at \$57,771.68.

Vendors have agreed to sell and convey to Lawrence Kirk and Marguerite Kirk, husband and wife, hereinafter sometimes referred to as Purchasers, "all of that certain lot and parcel of land situate in Imperial County, State of California, bounded and described as follows, to-wit: Lots 1, 2 and 3 in Blk. 73, Townsite of Westmorland, containing 10 Acres more or less, together with all buildings, structures and improvements thereon, and, in addition thereto the water system and water business in the City of Westmorland, known as 'The Westmorland Water Co.,' including all operating equipment, the distribution system thereof, all tools, machinery, and stock on hand at present located on the said premises and used in connection with the said business together with all franchises, easements, and rights of way necessary to the operation of the said business."

A copy of the conditional sales contract, dated December 2, 1943, between Vendors and Purchasers is filed in this application as Exhibit "A."

The Purchasers have agreed to pay for the properties \$40,000, payable as follows:

- (a) \$200 upon the execution of the agreement of sale.
- (b) \$3,800 on or before December 15, 1943.
- (c) The balance of \$36,000 in 360 monthly installments of \$100 each, commencing on the 10th day of February, 1944.

In addition, the Purchasers agree to pay to Vendors the further sum of \$60 per month for 360 months, commencing February 10,

1944, as interest on the deferred payments which is the equivalent of 4% interest on one-half of the deferred payments. The Purchasers also agree to pay all taxes and assessments levied against the property from and after January 1, 1944; to insure the property against loss by fire in a responsible company to the full insurable value thereof; to maintain and keep the property in good condition and repair at their own cost and expense, and not to create any lien against the property. The Purchasers do not under the terms of the conditional sales contract receive title to the properties until they have made the final payment. They may at their election pay the whole of the unpaid balance of the purchase price at any time, but in such event the Purchasers must pay as interest a sum equal to 4% per annum on the monthly balance of principal remaining unpaid from time to time less any sums theretofore paid as interest, as provided in the agreement.

The conditional sales contract does not, in our opinion, make adequate provision for the use of the property, to finance replacements thereof, or to make extensions thereto. We believe that there should be added to the conditional sales contract a provision reading substantially as follows:

The parties of the first part covenant and agree to encumber the property, which is the subject matter of the sales contract, to any extent necessary and to the extent of their ability to do so, and advance any sum received from such encumbrance to the parties of the second part to be expended by them in replacing any part of said water system or in making extensions or additions to said water system which may be ordered by the regulatory authorities when the normal income from the business will not meet such expenditures; and the parties of the second part covenant and agree that any such sums advanced to them by the parties of the first part will be added to the principal amount owing under this contract and be repaid in accordance with the terms of such encumbrance.

The Purchasers will assume the obligation to refund customers' deposits and consumers' advances in aid of construction. The amounts held by the Vendors for such purposes have been turned over to the Purchasers.

O R D E R

The Commission having considered applicants' request and it being of the opinion that this is not a matter on which a hearing is necessary; that the execution of the conditional sales contract constitutes an evidence of indebtedness under the provisions of Section 52 of the Public Utilities Act; that the execution of said contract is reasonably necessary for the purpose of effecting the sale and conveyance of the properties referred to in the foregoing Opinion; that this application should be granted subject to the provisions of this Order, therefore,

IT IS HEREBY ORDERED as follows:

1. Frank T. Cook and Eubera A. Cook, husband and wife, may, after the effective date hereof, sell and convey to Lawrence Kirk and Marguerite Kirk, husband and wife, the properties referred to in the foregoing Opinion, provided that the conditional sales contract, a copy of which is filed in this application as Exhibit "A," under the terms and conditions of which said sale and conveyance may be made, is modified and amended by incorporating therein a covenant substantially in the same form as the covenant set forth in the foregoing Opinion.

2. Upon the effective date hereof, Frank T. Cook and Eubera A. Cook, husband and wife, their successors and assigns are, while not in possession of said water system, relieved of all public utility obligations and liabilities in connection with said water system.

3. The authority herein granted will become effective when applicants, or either of them, have paid the fee prescribed by Section 57 of the Public Utilities Act, and when applicants have filed with the Commission a copy of the conditional sales contract amended as herein indicated.

4. Lawrence Kirk and Marguerite Kirk, husband and wife, shall file

(a) on or before March 31, 1944, four copies of rates for service in the City of Westmorland and vicinity, which rates shall not be higher in any particular than the applicable rates now on file.

(b) on or before March 31, 1944, four sets of rules and regulations applicable to water service in the City of Westmorland and vicinity, each set of which shall contain a map or sketch, drawn to an indicated scale, upon a sheet approximately 8 1/2 x 11" in size, delineating thereupon in distinctive markings the boundaries of the present service area and the location thereof with reference to the surrounding territory; it being understood, however, that the filing of such sketch shall not be considered as a conclusive determination of the area of dedication.

(c) on or before March 31, 1944, four copies of a comprehensive map, drawn to an indicated scale of not less than 600 feet to the inch, delineating the area served and its location with reference to sources of supply and surrounding territory. Such map shall show the source and date thereof, and include data sufficient to determine clearly the location of the various properties comprising the service area.

5. The authority herein granted by the Commission to the parties to transfer and purchase the properties in question shall not be construed to be a finding by the Commission, or otherwise, of the value of said properties.

Dated at San Francisco, California, this 29th day of February, 1944.

Richard Lachse
Justus F. Casner
Frank R. Havenner
Francis C. ...
Commissioners.

