

Decision No. 37334

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 INDEPENDENCE ACRES WATER WORKS
 for permission to abandon water service.

Application No. 25639
(First Supplemental)

In the matter of the investigation on
 the Commission's own motion into the
 service, reasonableness of rates, methods
 and practices of the Independence Acres
 Water Works located in the unincorporated
 town of Agoura, Los Angeles County,
 California.

Case No. 4724

Ben Van Tress, for Independence Acres Water Works
 O. Benton Worley, for certain water consumers.

BY THE COMMISSION:

O P I N I O N

A hearing in the two above entitled matters was held before Examiner Gorman on June 9, 1944, at Agoura. Objection was made by the attorney for the applicant to the consolidation of the two matters for decision, but inasmuch as the evidence introduced is common to both the application and the investigation brought upon the Commission's own motion, we see no occasion to issue separate decisions.

The application of the Independence Acres Water Works to abandon service was first denied by the Commission in its Decision No. 36874 issued February 15, 1944. It was then represented that this water system was not being operated at a profit by the present management. However, the water consumers expressed the desire of forming an association for the acquisition of the system, and the applicant was willing to continue operation for a reasonable time to permit consumers to effect

such an association. Accordingly, the Commission denied the application to abandon pending the development of such a plan.

On March 20, 1944 Independence Acres Water Works filed a supplemental application stating that it had tried unsuccessfully to have formed a mutual organization, and again asked that abandonment of service be authorized. The Commission thereupon instituted an investigation upon its own motion, and a further hearing was ordered.

A certificate of public convenience and necessity to operate this public utility water system was granted by the Commission by Decision No. 18250 dated April 18, 1927, to I. Colodny and L. L. Colodny, as partners. Although no applications were thereafter filed with the Commission for authority to dispose of any part of the property, the evidence now before us reveals a series of both voluntary and involuntary conveyances of parcels of land necessary for the rendition of water service. Any purported conveyance by either I. Colodny or L. L. Colodny without approval by the Commission, as provided by Section 51(a) of the Public Utilities Act, was a void act, and could not relieve either of them of the obligation to continue service, nor vest in the grantees any valid title to such used and useful properties.

A deed was executed by I. Colodny and L. L. Colodny on August 15, 1931 purporting to convey to May E. Cinsburg, Lot 1, Block 4, and Lot 34, Block 3, Tract 8451, upon which lots were located the only producing wells of this utility. On June 10, 1932 the Los Angeles Branch of the Bank of America National Trust and Savings Association foreclosed upon certain properties of L. L. Colodny to satisfy a judgment of approximately \$100,000, including Lot 3, Block 10, Tract 8451, a lot upon which the storage tank is located. This parcel was later sold to Dwight and Bernice Tracey. It does not appear, however, that the Bank acquired other parts of the water works system.

Both the original and the supplemental applications of Independence Acres Water Works for authority to abandon utility service were signed only by L. L. Colodny as Manager. Neither L. L. Colodny nor I. Colodny admit that they retain any ownership in the property. Mr. L. L. Colodny seemingly takes the position that

because of the above mentioned conveyance voluntarily made of those parcels of land constituting the source of water supply, and also the loss of another parcel through foreclosure proceedings, he is no longer an owner of the water system nor in any way responsible for its continued operation. The question of title to these properties is further complicated by the fact that on November 1, 1940, L. L. Colodny filed a voluntary petition in bankruptcy in the amount of \$387,192. But it appears that he did not list any interest in the Independence Acres Water Works properties as an asset of his estate. Moreover, on June 30, 1941, the water distribution system was sold to the State of California for delinquent taxes.

It would be inappropriate, of course, for the Commission to attempt on this record to pass upon any title which either L. L. Colodny or Mr. I. Colodny, or any other person, may claim to have in the utility property here involved, or attempt to place the responsibility for continued utility service which goes with ownership. Certainly, under the circumstances here revealed, the Commission would not be justified in granting the application to abandon service. We believe that the water consumers are sincere in their offer to acquire the property for a reasonable consideration, but it is obvious that they cannot safely proceed until they can ascertain what title and rights they are to acquire. Whether a satisfactory title may be obtained through the medium of the bankruptcy proceeding, or by tax deed, or by voluntary conveyances, is not a question for us to decide. It is suggested that the consumers promptly explore these possibilities so that the Commission may be further advised.

The application to abandon service will again be denied, but both the application and the investigation proceeding will be subject to reopening at any time by order of the Commission or upon petition by either the applicant or the water consumers.

ORDER

A public hearing having been held in these matters and the Commission being fully apprised of the facts,

IT IS HEREBY ORDERED that the above entitled First Supplemental Application be and the same is hereby denied. Case No. 4724 will remain open for the Commission's further action.

Dated at San Francisco, California, this 13th day of September, 1944.

Richard Kach

Francis C. Havenner
Francis D. ...

Irving ...

Commissioners.