

Decision No. 45325**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 CHARLES A. SCHWARTZLER and ANNA E.  
 SCHWARTZLER, husband and wife, for an  
 Order authorizing the sale of all of the  
 assets of the "SNELLING WATER WORKS", a  
 public utility water system, to JESSE COSTA  
 and ELIZABETH COSTA, husband and wife,

Application No. 31860

Charles A. Schwartzler and Anna E. Schwartzler  
 by L. A. MacNicol.

O P I N I O N

In this application, filed October 21, 1950, Charles A. and Anna E. Schwartzler request authority to sell their public utility water system in the Town of Snelling, Merced County, to Jesse and Elizabeth Costa.

A public hearing in the matter was held before Examiner Emerson in Snelling on January 10, 1951, and the record consolidated with that made in re Application No. 31706, an application for increased rates.

This water system, known as Snelling Water Works, is believed to have been in operation sometime prior to 1911 but its first filing of rates, rules and regulations with this Commission was not made until 1941. It appears that during 1938 a fire destroyed the building housing the pumping plant and also destroyed an elevated storage tank. During 1938 a new and larger building, made of stone and concrete, was erected on the previous site primarily as a garage, automotive repair shop, and tavern. By erection of such building the water system's well, pump, and 1,000-gallon pressure tank were

also housed. The well is located directly below a window sales-display counter in the garage and the pump and pressure tank about 6 feet distant therefrom in a room separate from the garage space but still within the stone and concrete building. The utility's source of water supply is therefore physically inseparable from the garage. At the present time, approximately 30 customers are served through about 3,200 feet of distribution mains which vary in size from 3/4 inch to 3 inches in diameter. Probably less than half of the town's residences are presently served.

Applicant Charles A. Schwartzler operated the automotive repair shop and garage as well as the water system until 1948 when, because of his advancing age and desire for retirement, he sold certain real property, the automotive business, and the utility water system to applicants Costa. The agreed price of \$26,837.50 for the total properties included an amount of \$1,876.55 for the utility water system. A conditional sales contract was entered into on May 27, 1948, and by its terms applicants Costa made a \$5,000 down payment and have since been paying off the balance in installments of \$250 or more per month with 5% interest per annum on the deferred balances.

Under the terms of said conditional sales contract, title to the water works, as well as to the other properties covered by the contract, will not pass to the buyers until full payment has been made. In the past, this Commission has not looked with favor on transactions of this nature whereby ownership of utility plant is divorced from the responsibility for furnishing public utility service. (See Cook-Kirk, 45 CRC 251; Dulcich-Roome, 45 CRC 350; Karp et al-Feldman, 47 CRC 187.) The present situation is dissimilar to those previously before us, however, and is unique because of the physical arrangement of utility and nonutility plant.

Arrangements between the parties whereby title to the utility plant would be passed to the buyers forthwith, while the nonutility property on which the utility plant is located and within which it is housed would remain under contract of conditional sale, do not appear to be practical. Physical separation of utility and non-utility properties, in this instance, would not be possible except at costs which might well exceed the value of the entire utility property. Further, it does not appear that insistence upon the sellers continuing to be responsible for public utility service, and the buyers acting only as agents for sellers during the remaining five years of the contract term, will realistically enhance the position of the water system's customers. We are of the opinion, therefore, that departure from our previously clearly stated policy with respect to conditional-sale contracts, and the granting of applicants' request, will not, in this instance, be adverse to the public interest. The action taken herein, however, shall not be construed to be a finding of the value of the property herein authorized to be transferred.

Applicants did not obtain from the Commission authorization to execute the conditional sale contract and it is our opinion that such instrument is void. It will be necessary for applicants to execute a new contract upon receiving an order from the Commission. It clearly appears that applicants' failure to obtain the required authorization was through inadvertence and with no intent to evade the provisions of the Public Utilities Act.

O R D E R

The above-entitled application to sell public utility property having been filed with this Commission, a public hearing

having been held, the matter having been submitted, and now being ready for decision, and it appearing that the proposed transfer will not be adverse to the public interest; therefore,

IT IS HEREBY ORDERED that Charles A. Schwartzler and Anna E. Schwartzler may, on or after the effective date hereof, and on or before March 31, 1951, sell and transfer the herein described utility property to Jesse Costa and Elizabeth Costa pursuant to the agreement of sale and purchase embodied in the said application.

IT IS HEREBY FURTHER ORDERED that Jesse and Elizabeth Costa, in part payment for said property, after the effective date hereof and on or before March 31, 1951, may execute a conditional sale contract in substantially the same form as that filed in this proceeding, it being the opinion of the Commission that the money, property, or labor to be procured or paid for through such execution is reasonably required for the purpose specified herein and that such purpose is not in whole or in part, reasonably chargeable to operating expenses or to income.

IT IS HEREBY FURTHER ORDERED as follows:

1. The rates, rules, and regulations of Charles A. and Anna E. Schwartzler, now legally on file with this Commission, shall be refiled within thirty (30) days after the effective date of this order under the name of Jesse and Elizabeth Costa (Snelling Water Works) in accordance with procedure prescribed by General Order No. 96; or in lieu of such refiling, Jesse and Elizabeth Costa may file a notice of adoption of said presently filed rates, rules, and regulations. No increases in the presently lawfully filed rates, rules or regulations, shall be made unless otherwise properly authorized by this Commission.
2. That on or before March 31, 1951, Charles A. and Anna E. Schwartzler shall refund all deposits which customers are entitled to have refunded; and that any unrefunded deposits shall be transferred to and become the obligation for refund of Jesse and Elizabeth Costa.
3. Applicants shall, within thirty (30) days after execution of the contract authorized herein, file with this Commission a certified copy of the contract as executed, together with a

written statement indicating the date on which control of the water system was transferred.

The authority herein granted will become effective when applicants, or either of them, have paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is \$25.

Dated at San Francisco, California, this 6<sup>th</sup> day of February, 1951.

R. F. [Signature]  
Justin F. [Signature]  
Harold D. [Signature]  
[Signature]  
Peter E. [Signature]  
Commissioners.

