

Decision No. 45787**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MOUNTAIN PROPERTIES, INC., a)
 California corporation, and)
 TWENTY-NINE PALMS UTILITIES CO.,)
 a California corporation,)
 to transfer the Twenty-nine Palms)
 water system under section 51 (a) of)
 the Public Utilities Act.)
 -----)

Application
 No. 32256

Moss, Lyon & Dunn, by George C. Lyon, for Mountain Properties, Inc.; John N. Leeper and Dorothy H. Chadwick, for Twenty-nine Palms Utilities Co.; Leonard P. Wikoff, in propria persona and for certain subdividers; J. I. Sklar, interested party; Kenneth K. Wright, for W. L. Schutze, L. T. Wikoff, S. S. Stanley and Ralph Snyder; Theodore Stein, Principal Accountant, and James F. Wilson, Senior Utilities Engineer, for the Commission's staff.

O P I N I O N

This is an application for an order authorizing Twenty-nine Palms Utilities Co., hereinafter referred to as Seller, to sell and transfer its public utility water system to Mountain Properties, Inc., hereinafter referred to as Buyer.

Seller is a California corporation engaged in the distribution of water as a public utility in and about the unincorporated town of Twentynine Palms, in San Bernardino County. For the last two years it has reported the following:

	<u>1949</u>	<u>1950</u>
Operating revenues	\$ 13,767	\$18,987
Deductions -		
Operating expenses	16,213	16,166
Depreciation	9,268	9,627
Uncollectible bills	60	15
Total	<u>25,541</u>	<u>25,808</u>
Balance	<u>\$(11,774)</u>	<u>\$(6,821)</u>
Number of active service connections	430	466

By Decision No. 43958, dated March 21, 1950, the Commission approved certain increases in rates for service rendered on and after May 1, 1950, which were designed to increase Seller's annual revenues by approximately \$8,000.

A statement of Seller's assets and liabilities as of December 31, 1950, has been filed in Exhibit A attached to the application. As revised during the adjourned hearing, the figures reflecting costs of its system, reserve for depreciation and consumers' advances for construction, are as follows:

Land	\$ 2,400.00
Depreciable capital	257,323.58
Organization expense	125.89
Inventories-pipe and fittings	<u>5,281.50</u>
Total	<u>265,130.97</u>
Deductions -	
Reserve for depreciation	39,799.82
Consumers' advances for construction	<u>149,062.25</u>
Total	<u>188,862.07</u>
Balance	<u>\$ 76,268.90</u>

It appears that Seller desires to withdraw from the public utility business and that it has made arrangements to sell its water system to Mountain Properties, Inc. for the sum of \$76,268.90 and to accept in payment \$76,000 par value of Buyer's 5% preferred stock and \$268.90 in cash. Under the terms of the agreement, Buyer will assume the payment of the consumers' advances for construction in the amount of \$149,062.25. Seller will be responsible for refunds of such advances which had accrued up to March 1, 1951, will pay all the accounts payable it has incurred, and will turn over to Buyer the amount of customers' deposits to insure payment of water charges, which deposits were reported at \$731.43 at the close of 1950. Buyer agrees to make refunds of such deposits as they become due.

Buyer is a corporation engaged in the public utility water business in portions of the counties of Orange, Los Angeles and Kern. For the year 1950, it reported operating revenues of \$124,992 and net income of \$19,785. At the close of the year it had 4,777 active service connections and an investment in fixed capital of \$675,034, with outstanding capital stock of \$161,200 consisting of \$79,200 of common stock, \$78,000 of 6% cumulative preferred stock, and \$4,000 of 5% cumulative preferred stock. It desires to extend its operations through the acquisition of Seller's water system.

As stated, Buyer proposes to issue \$76,000 par value of its 5% preferred stock to Seller, which issue will call for the payment by Buyer of dividends in the annual amount of \$3,800. In this connection, a witness called on behalf of Buyer testified that upon reviewing Seller's records he had concluded economies can be effected by Buyer through a reduction of expenditures for supervision and through the integration of the operations of Seller with those of Buyer. He pointed out, in addition, that the increased rates which were approved by Decision No. 43958 were not in effect during the entire year 1950, and stated that in his opinion, based on his study, the system will be able to produce the fixed charges incident to the proposed issue of stock.

Appearances were entered at the hearing by and on behalf of certain subdividers who have advanced money to Seller to serve tracts and subdivisions. The record indicates that there is no disagreement by the parties as to the amounts of such advances, and that there is no objection to the transfer of the water system as proposed in the application. However, question was raised as to the refunds to be made of such advances, that is, whether by application of the footage rule or the gross revenue rule, and counsel for

Buyer requested the Commission to indicate the method to be followed.⁽¹⁾

The record shows that water operations at Twentynine Palms at one time were conducted by Twentynine Palms Water Company, a certificated public utility, and by four companies said to be mutual, namely, Desert Homes Mutual Water Company, Twentynine Palms Mutual Water Company, Twentynine Palms Utilities Corporation and Twentynine Palms Corporation, and that during the latter part of 1945 Mr. Culbert W. Faries acquired the properties of such companies at public auction from the trustees in bankruptcy in the estate of Twentynine Palms Air Academy and Floyd Whyers. It further appears that on May 16, 1946, Culbert W. Faries filed with the Commission an application, No. 27521, to transfer the properties to Twenty-nine Palms Utilities Co., the Seller in the present proceeding, in exchange for stock, and that it was not until May 25, 1948, by Decision No. 41650, that the Commission passed on said application, granting to Twenty-nine Palms Utilities Co. a certificate of public convenience and necessity and authorizing it to issue \$80,000 par value of its capital stock. During the period following Mr. Faries' acquisition of the property and up to the date of the Commission's order, it appears that Mr. Faries had no certificate from this Commission and had not filed

(1)

Under the footage rule, refunds shall be made for each bona fide consumer within the subdivision upon the basis that the cost of each 100 feet of main bears to the total amount of the original deposit, provided no refunds shall be made after a period of ten years from the date of completion of the installation.

Under the gross revenue rule, refunds shall be made semi-annually during the months of January and July in each year after commencement of service, in amounts equal to 35% of the gross revenues collected during the six immediately preceding calendar months from consumers whose service lines are attached to the extensions; payment of such refunds to continue for a period of not exceeding ten years from completion of the said construction, provided that the total of all such refund payments shall not exceed the original deposit, without interest.

rates, rules and regulations governing water service.

Upon obtaining a certificate of public convenience and necessity, Twenty-nine Palms Utilities Co. on June 29, 1948, filed its rates, rules and regulations with the Commission, which, among other things, provided in Rule 19 that in connection with extensions to serve tracts or subdivisions the company would make refunds semi-annually, during the months of January and July in each year, by the application of the gross revenue rule. It appears, then, that the question presented here is the basis to be used in ascertaining the amounts of the refunds of advances made prior to June 29, 1948. (2)

The record in the present proceeding indicates that presently there are 36 individuals or companies to whom advances may be refundable but that in no case was there a written agreement or contract relating to the terms under which such advances were made or refunds become in order. There is nothing before the Commission to show clearly the understanding on the part of the company and other parties, at the time the advances were made, as to the method to be applied in computing the refunds. One witness testified it was his understanding that refunds of advances to serve tracts or subdivisions were to be made under

(2)

One of the former operators, namely, Twentynine Palms Water Company, held a certificate of public convenience and necessity from the Commission and on June 15, 1938, filed rules and regulations providing for refunds on a footage basis.

Seller takes the position that Mr. Faries did not acquire said certificate at the public auction and points out that the Commission, by Decision No. 41650, saw fit to grant a new certificate to it and to direct it to file rules and regulations.

the footage rule. On the other hand, Exhibit 4 filed in this proceeding, which is a photostat copy of a letter dated January 16, 1946, from Mr. Faries, then the owner of the water system, indicates that the 35% rule was the basis to be used in computing refunds, rather than the footage rule. The treasurer of Seller testified that his review of the company's records indicates to him that the gross revenue rule was and is the appropriate one to be used.

Upon reviewing the record, the Commission is of the opinion that the proposed transfer will not be adverse to the public interest, that the request of applicants should be granted, and that Mountain Properties, Inc. should adopt the rates, rules and regulations of Twenty-nine Palms Utilities Co. and thereafter make refunds of the advances it will assume in accordance with the terms of said rules and regulations, that is, using the gross revenue rule as provided in Rule 19.

Under the agreement of sale, Seller will be responsible for paying the amounts of such advances which had accrued up to March 1, 1951. The suggestion was made by one of the parties that the Seller be required to deposit in escrow the amounts of such refunds. However, the testimony offered by Seller indicates that it has sufficient cash on hand to pay the amounts accrued up to the end

of 1950, reported at \$2,333.92 computed on the gross revenue basis, and that while those accruing during January and February have not been computed, and are not required to be computed until July, it should have sufficient resources to enable it to discharge its obligations under the agreement of sale. It does not appear necessary to the Commission to impose such a condition in passing on this application.

The issue of the \$76,000 of stock by Buyer in payment for the properties herein authorized to be sold and transferred will be authorized by a supplemental order in Application No. 32255.

O R D E R

Public hearings having been held in the above entitled application and the Commission having considered the matter and being of the opinion that the application should be granted, as herein provided; therefore,

IT IS HEREBY ORDERED as follows:

1. Twenty-nine Palms Utilities Co., after the effective date hereof and on or before December 31, 1951, may sell and transfer its public utility water system to Mountain Properties, Inc. in accordance with the terms and conditions set forth in the agreement of sale filed in this proceeding as Exhibit A and in the record in this matter.
2. The action taken herein shall not be construed to be a finding of the value of the system herein authorized to be transferred.
3. The rates, rules and regulations of Twenty-nine Palms Utilities Co. now on file with the Commission shall be refiled

within thirty (30) days after the date of transfer under the name of Mountain Properties, Inc., in accordance with the procedure prescribed by General Order No. 96, or, in lieu of such refiling, Mountain Properties, Inc. may file a notice of adoption of said rates, rules and regulations. No increases in the present lawfully filed rates shall be made unless authorized by the Commission.

4. Twenty-nine Palms Utilities Co. shall transfer to Mountain Properties, Inc. all unrefunded deposits by customers to insure payment of water charges, which deposits shall become the obligation for refund by Mountain Properties, Inc.

5. If the authority herein granted is exercised, Twenty-nine Palms Utilities Co. shall file with the Commission, on or before January 31, 1952, a statement showing the amount of accrued consumers' advances for construction as of March 1, 1951, for which it became liable for repayment, the names of those to whom payable, and the date, or dates, when paid or to be paid by it.

6. The authority herein granted will become effective twenty (20) days after the date hereof.

Dated at Los Angeles, California, this 5th day of June, 1951.

A. F. Indrany
Harold H. Hulse
John E. Mitchell

Commissioners