

ORIGINAL

Decision No. 48145

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
HERCULES WATER COMPANY, a corporation,
for authority to transfer, assign and
convey certain water properties and
facilities to East Bay Municipal Utility
District, and for authority to withdraw
from public service as a water utility.)

) Application No. 33895

O P I N I O N

In this application filed November 24, 1952, the Hercules Water Company,^{1/} a California corporation, operating a public utility water system in and about the Towns of Hercules and Pinole in Contra Costa County, requests authority of the Commission to transfer, assign and convey certain of its properties and facilities to the East Bay Municipal Utility District,^{2/} which joins in the application, in accordance with an agreement between the two parties, dated September 26, 1952, attached to the application as Exhibit D. The application further requests that, upon completion of the transfer under the terms and conditions set forth in said agreement, applicant Company be authorized to withdraw entirely from public service as a water utility; or in the event that only one of the two towns now served by the Company is annexed to the District, that the Company be authorized to transfer to the District the water properties which are not required to serve the unannexed town and unincorporated areas contiguous thereto, and to withdraw from public service in the annexed town and unincorporated areas contiguous thereto.

^{1/} Sometimes hereinafter referred to as Company.
^{2/} Sometimes hereinafter referred to as District.

The application states that the Company serves approximately 565 residential and commercial consumers in the incorporated Towns of Hercules and Pinole and in unincorporated areas adjacent thereto and also one industrial consumer (Hercules Powder Company) in the territory shown on the map marked Exhibit B and on the seven detailed drawings comprising a part of Exhibit II of Exhibit D, all attached to the application herein. In Exhibit C thereof, the Company's balance sheet as of September 27, 1952, shows total fixed capital at \$178,580.73 with a reserve for accrued depreciation of \$156,993.99 and the Company's income and profit and loss statement shows amounts for the calendar year 1951 and for the nine months ending September 27, 1952, which may be summarized as follows:

<u>Item</u>	<u>Year 1951</u>	<u>Nine Months Ending September 27, 1952</u>
Operating Revenues	\$89,503.37	\$66,293.19
Operating Expenses:		
Maintenance and Operation	62,298.51	49,946.80
Taxes	9,027.11	1,222.81*
General Amort. of Capital	2,440.00	1,818.00
Total	<u>73,765.62</u>	<u>52,987.61</u>
Net Operating Revenues	15,737.75	13,305.58
Nonoperating Revenues	<u>12,079.96#</u>	<u>319.00</u>
Gross Corporate Income	27,817.71	13,624.58
Nonoperating Revenue Deductions	<u>2,577.71</u>	<u>1,306.96</u>
Net Earnings	25,240.00	12,317.62

* Includes no amount for 1952 federal income taxes.

Includes \$11,502.96 from sale of nonoperating land.

The inventory included in Exhibit II of Exhibit D shows the facilities proposed to be conveyed by the Company to the District to consist of the following principal items:

45,950 feet of pipe varying in size from 1½ to 8 inches.
 450 water meters varying from 5/8 to 2 inches in size.
 66 fire hydrants of various types and sizes.
 53 gate valves varying in size from 1½ to 8 inches.
 Miscellaneous small service mains, meter lines, valves
 and cocks.
 Property at Reservoir No. 1.
 Property along Pinole Creek.

The original cost and book cost of the Company's property proposed to be transferred to the District is shown in Exhibit E of the application as follows:

<u>Item</u>	<u>Orig. Cost</u>	<u>Depreciation</u>	<u>Net Book Cost</u>
I Plant			
(a) Distribution Mains	\$69,874.70		
(b) Service Mains	3,044.33		
(c) Hydrants	4,306.37		
(d) Meters	18,294.02		
Total Plant	95,519.42	\$90,136.53	\$5,382.89
II Real Estate			
(a) Reservoir #1	400.00		400.00
(b) Pinole Creek			
Parcel #1	837.37		837.37
Parcel #2	1,000.00		1,000.00
Total Assets to be Conveyed	97,756.79	90,136.53	7,620.26

It may be noted that the Company does not propose to transfer to the District all of the property included in its fixed capital. Most important of the facilities which the Company will retain are the 100,000-gallon elevated steel tank, the 10-million-gallon surface storage reservoir, and the pump station, piping and valves connected therewith which are advantageously located to serve the unincorporated territory embracing the property of the Hercules Powder Company which owns 645 of the 650 shares of stock of the Hercules Water Company now outstanding.

The applicant Company obtains all of its water from the District. It receives a portion of its supply pursuant to a contract dated March 10, 1936, a copy of which is attached to the application herein and marked Exhibit I of Exhibit D, which provides for the delivery of certain quantities free of charge and other quantities at a rate of 10 cents per thousand gallons, the total entitlement under the contract being an average of 550,000 gallons of water per day. In order to meet the requirements of its customers, the Company also purchases from the District an average of approximately 366,000 gallons per day at

the District's regular outside-District rates. This additional supply is surplus water but the District is unable and has refused to give the Company any assurance that it will have or that it will be willing to supply such surplus water in the future. The Company alleges that it has been unable to find any other suitable source of water which would be feasible for it to develop in order to supply the needs of its existing customers in excess of the quantities obtained from the District under the said contract. The quantity of water required by consumers within Company's service area has increased in recent years and all indications point to further increases in the future. The Company has been requested to provide water service in certain areas immediately adjacent to its territory and not served by any other water utility, but it has refused to serve such areas because the requirements of its existing customers already exceed the Company's firm supply of water. (See Case No. 5279, Residents of Town of Pinole vs. Hercules Water Company - now pending).

The East Bay Municipal Utility District is a public corporation of the State of California which owns and operates a water distribution system in Contra Costa County and elsewhere in the state, providing water service to approximately 220,650 consumers. The District now provides water service in several areas adjacent to the territory served by the Company and owns and operates water supply lines which traverse said territory. The District has adequate sources of water, is able to supply the territory now served by the Company and is willing to serve said territory. The District desires to cease selling water to the Company under the existing contract which, under present-day conditions, is alleged to be onerous to the District.

For the foregoing reasons the Company and the District have executed the agreement previously mentioned, which provides that the Company will transfer, assign and convey a major portion of its water system to the District, subject to approval of the Commission and conditioned upon the annexation to the District of the incorporated areas within the Towns of Hercules and Pinole. Annexation of the unincorporated areas within the Company's service area, as well as certain unincorporated areas outside, but contiguous thereto, is also proposed.

In the event that only one of the said towns is annexed, the agreement provides for the transfer of only that part of Company's water system which it will not require to serve the unannexed town and unincorporated areas contiguous thereto. The agreement also provides that the District's obligations to serve water to the Company under the existing contract of March 10, 1936, previously identified herein, will be terminated only after the Company may have completely withdrawn from public service as a water utility. In consideration of the proposed transfer, the District will undertake to provide water service in the annexed town or towns and in the unincorporated areas contiguous thereto. Under the terms of the agreement the District will pay no cash to the Company.

Upon the Commission granting the authority requested herein, it is proposed to hold separate annexation proceedings as required by law in the Towns of Hercules and Pinole and in the unincorporated areas contiguous thereto which are served in part by the Company. The order which follows contemplates that applicants herein will diligently and energetically arrange for carrying out the necessary separate and several annexation proceedings as required by law in the Towns of Hercules and Pinole and in the unincorporated areas contiguous thereto which are now served in part by the Company.

Following annexation and upon assumption of the responsibilities of providing service to the Company's customers, the District states that it will proceed to make such improvements and betterments as may be required to supply properly the territory now served by the Company.

The proposed transfer, assignment and conveyance of certain portions of the Company's water system to the District and the Company's withdrawal from public service from all or a part of its present service area appear to be in the public interest for the following reasons:

- a. The Company is unable to supply the present and future water requirements of its customers on a firm basis.
- b. The District has an adequate supply of water to meet all requirements of consumers in the Company's service area, both now and in the foreseeable future.
- c. The District has an adequate supply of water and is willing to supply certain areas contiguous to the Company's present service area not now served by any public utility water system.
- d. The District will include in its general schedules of work of a similar nature such improvements and betterments as may be necessary to supply the territory now served by the Company.
- e. In the event that only one of the Towns of Hercules and Pinole becomes annexed to the District, the Company's supply of water under the existing contract with the District will thereafter more adequately meet the present and future requirements of the Company's remaining consumers, and withdrawal from part of its service area will reduce the possibility of a future water shortage in the remaining service area.

The transfer will be authorized. However, the action herein taken shall not be construed to be the finding of value of the property or properties herein authorized to be transferred.

O R D E R

The Commission having considered the request of applicants and it appearing that the requested transfer of certain water properties and facilities from the Company to the District and the withdrawal of the Company's water service from part or all of its present service area will not be adverse to the public interest, and that these are not matters in which a public hearing is necessary and that the application should be granted, subject to the following conditions; now, therefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the Hercules Water Company, a corporation, may, on or after the effective date hereof and on or before December 31, 1953, transfer, assign, and convey to the East Bay Municipal Utility District certain water properties and facilities in accordance with the terms and conditions set forth in the agreement dated September 26, 1952, a copy of which is attached to the application herein as Exhibit D and by reference made a part hereof;
2. That on or before the actual date of any transfer of properties, the Company shall cause to be refunded all consumers' deposits, if any, to consumers entitled thereto, and within thirty (30) days thereafter shall notify this Commission in writing of the completion of such refunding;
3. That if the authority granted herein is exercised, the said Company and District shall separately or jointly, within thirty (30) days thereafter, notify this Commission in writing of the date of completion of the property transfer herein authorized and of their compliance with the conditions hereof.
4. That concurrently with the sale and transfer of its water utility properties and facilities serving any or all of its existing service areas which may have been duly annexed to the District, the Company shall be, and it is, relieved of the obligation to serve such annexed area or areas as a public utility.

5. That if any of the Company's present service area remains unannexed to the District after the several contemplated annexation proceedings have taken place, then within thirty (30) days thereafter and in no event later than December 31, 1953, the Company shall refile in quadruplicate with this Commission, in conformity with its General Order No. 96, the presently filed rate schedules, revised to reflect the resultant territorial changes, appropriate up-to-date rules and regulations, and service area map.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 13th day of January, 1953.

P. J. [Signature]
President.

Harold A. [Signature]

[Signature]

[Signature]

Commissioners.