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Decision No. 48847

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SAN JOSE WATER WORKS, a corporation,)
 for an order approving the execution)
 and performance of an agreement)
 between applicant and Santa Clara)
 Valley Water Conservation District) Application No. 34143
 and authorizing and approving the)
 sale and conveyance to Santa Clara)
 Valley Water Conservation District)
 of certain property of applicant in)
 the County of Santa Clara.)

McCutchen, Thomas, Matthews, Griffiths & Greene,
 by Robert L. Lipman, for applicant.
Senator Herbert Jones and G. Walter Hunt, for
 Santa Clara Valley Water Conservation District.
J. J. Beatty, Alma H. Feehan and E. E. Dadman,
 interested parties.
Verner R. Muth, for the Commission's staff.

O P I N I O N

Nature of Proceeding

San Jose Water Works, a corporation, engaged in the business of supplying water, as a public utility, to domestic, commercial and industrial consumers in San Jose, Los Gatos, Saratoga and adjacent territory in Santa Clara County, requests this Commission to issue an order authorizing (a) the execution and performance of an agreement with the Santa Clara Valley Water Conservation District, dated March 22, 1951, respecting relocation or replacement of certain Company facilities near Los Gatos and (b) the sale and conveyance to the District of certain properties, described in a deed attached as an exhibit to the application, to be used by the District in connection with its Lexington Reservoir water conservation project near Los Gatos.

(1) Because of certain errors contained in the deed attached to the application, a revised deed has been substituted in the record as Exhibit No. 1.

Public Hearing

A public hearing was held at San Jose before Examiner Gregory on April 16, 1953. Three persons whose homes are located in the vicinity of the District's project, who formerly received domestic water service from the Company but who, since about February 1, 1953, have been supplied by the District, appeared and testified concerning their water supply problems.

The Agreement of March 22, 1951

The District, pursuant to an agreement with the Company executed March 22, 1951, entered upon the Company's lands along Los Gatos Creek and has since brought nearly to completion the construction of its Lexington Dam Project for conservation of surplus waters of Los Gatos Creek and its various tributaries in the area. The project has involved replacement or relocation by the District of a number of facilities used by the Company to supply water to its consumers, including dams, flumes and pipe lines, as well as provision for diversion or capture of the waters of various streams necessitated by the relocations or replacements.

The Company's Alma Distribution System, consisting of a 6-inch pipe line extending from Montevina (formerly Madera Colorado) Reservoir in Los Gatos Creek to the Alma Distribution Area, has been inundated. The District has constructed a 6-inch pipe line approximately 5,000 feet long, at a higher elevation, from which seven consumers, formerly receiving water from the Company's Alma Distribution line through meters placed near the line, have since about February 1, 1953, received water from the District. These consumers have their own pipe lines, storage and pumping facilities

(2) Dadmun, Menuhin, Feehan, Beatty, Frank, Lexington School, Fire District. Frank, the Lexington School and the Fire District are now located on lands which, prior to construction by the District of its 6-inch pipe line, were never served with water from the Alma Distribution System or elsewhere.

between the meters and their homes or buildings. Prior to February 1, 1953, they were served by the Company in accordance with the Company's filed schedules of meter rates.

Some of these consumers have experienced difficulty, at times, in securing adequate pressures, especially when others along the line are operating their pumps. The evidence indicates that effective pressures may have been adversely affected as a result of the change in elevation of the 6-inch line installed by the District and the increased lengths of small service connections. The District's engineer expressed the opinion that the problem of maintaining adequate supplies of water for these consumers could be met by installation of booster facilities at the Montevina Reservoir, near which the District takes its water for the 6-inch line from the Company, and by construction, where necessary, of separate service lines.

The agreement makes no provision for these consumers, other than to state (p. 3, par. (5)):

"Provision will have to be made by the District for water service to those of the Company's consumers now receiving service or obtaining their water from the Company's distribution properties in Alma, whose properties will not be acquired by the District."

The Company, at the hearing, took the position that as the lands of these consumers were located at some distance from the narrow strip through which ran the inundated Alma distribution pipe line, they were not within the Company's service area and hence had no right to receive service from the Company in any event.

We cannot accept this view. The Company served these users through meters located close to the inundated 6-inch Alma pipe line and charged its established meter rates for such service. Moreover, there is nothing in the record to indicate that the Company has ever secured authority from this Commission to

circumscribe its service area in the vicinity in question so as to warrant it in denying service to these consumers or to anyone else who might apply for service under like conditions.

We conclude, therefore, that it is the duty of the Company to make adequate provision for the continuance of water service to those persons it was serving from the Alma Distribution System prior to its inundation by the District.

The Company requests that we authorize the execution of the agreement of March 22, 1951. That agreement, however, is void, since no prior authority was secured from the Commission for its execution. The Commission by a later order cannot authorize or approve that agreement, but will direct the Company to execute and submit a new agreement in its place.

The Deed and Agreement for Sale of Certain Company Properties

On February 16, 1953, the Company and the District executed a deed and agreement whereby the Company, in consideration of the sum of \$168,895, granted to the District, for reservoir purposes, approximately 322.79 acres of land, at \$500 per acre, plus flowage rights and easements in the Los Gatos Canyon. The District, in return, granted to the Company permanent easements of right of way for roadway purposes across its Lexington Reservoir properties to permit access by the Company to its various facilities in the vicinity of the District's project. (Exhibit C of the Application.)

The deed was revised April 14, 1953, to include additional lands, approximating 20 acres, and an express reservation by the Company of all riparian rights pertaining to the lands conveyed, without prejudice, however, to the rights of the District under its application for its Lexington Project. The stated consideration in

the revised deed is \$178,820, which includes the sum of \$7,500 for certain improvements, consisting of fences, a caretaker's house and miscellaneous items none of which is a water supply facility (Exhibit 2). A further revision, dated June 22, 1953 (Exhibit 1), has been substituted as a late-filed exhibit in the record in order to correct errors in the surveys made of certain parcels of land described in the earlier deeds. The acreage to be sold, as stated in the latest deed, is 342.651 acres and the total price, including \$7,500 for miscellaneous items, is stated to be \$178,825.50.

The Company asserts that since the lands to be conveyed to the District have been rendered inoperable due to inundation, no authorization from this Commission, pursuant to Section 851, Public Utilities Code, is required for their sale and that the application, in so far as it relates to the sale, has been made out of an abundance of caution, to preclude any question that such an order should have been obtained.

The Company, in asking that the Commission authorize the sale and conveyance of its lands to the District in accordance with the deed and agreement of June 22, 1953, in effect is requesting what amounts to approval by this Commission of the result flowing from the contract with the District of March 22, 1951, which we have held to be void for lack of prior authorization. In our opinion, the deed for conveyance of these lands suffers from the same defect as the contract for relocation and replacement of the Company's facilities, pursuant to which the Company, without prior authorization from this Commission, permitted a portion of its operative property to become inoperative due to inundation by the District. The Company, accordingly, will be directed to re-execute the deed for conveyance of its lands to the District within the time limitations and subject to the conditions prescribed by the order to follow. The transfer of public utility properties authorized herein we find not to be adverse to the public interest.

O R D E R

A public hearing having been held herein, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That San Jose Water Works, a corporation, on and after the effective date hereof and on or before October 1, 1953, may execute an agreement with Santa Clara Valley Water Conservation District providing for relocation and replacement by the District of certain facilities of the Company in Los Gatos Creek and vicinity, said agreement to be in, or substantially in, the same form as that filed in this proceeding as Exhibit B attached to the application herein, but bearing a date of execution within the period of time authorized herein.

(2) That San Jose Water Works shall file with the Commission a copy of said agreement executed under the authority herein granted, within 30 days after the date of execution.

(3) That San Jose Water Works, a corporation, on and after the effective date of the authorization to sell and convey a portion of its properties to the Santa Clara Valley Water Conservation District, as set forth in the following paragraph (4) hereof and in accordance with the conditions specified in said paragraph (4) and not otherwise, may sell and convey to said District the properties described in a deed and agreement, dated June 22, 1953, Exhibit 1 hereof, said sale and conveyance to be by deed in, or substantially in, the form contained in said Exhibit 1, but bearing a date of execution within the period of time authorized by said paragraph (4).

(4) That the authority granted herein to sell and convey said properties shall not become effective unless and until San Jose Water Works shall first have filed with and obtained authorization from this Commission for tariffs to include rates, rules and regulations respecting service to Dadmun, Monahan, Feehan, Beatty, Frank, Lexington School and the Fire Service, which tariffs shall also specify the conditions under which the Company will render water service to said consumers in the area formerly supplied by its Alma Distribution System. Such filing may be made by advice letter, as provided for in General Order No. 96, and shall include a full showing therein in justification for the tariffs proposed, together with a full statement of the arrangements concluded for rendition of water service to said former consumers. Such authority shall terminate unless exercised on or before October 1, 1953.

(5) That within thirty days after consummation of the sale and conveyance of its properties, as herein authorized, San Jose Water Works shall file with the Commission a true and correct copy of the deed and agreement, as finally executed, and also copies of its book entries used to record said sale and conveyance in its books of account, in accordance with the Commission's Uniform Classification of Accounts for Water Companies.

(6) That for all purposes other than that specified in paragraph (4) above, the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21st day of July, 1953.

[Signature]
 _____ President
[Signature]

[Signature]

Commissioners

Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.