

ORIGINALDecision No. 51526

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MONROE WELLS, individually and doing)
 business as WELLS WATER SERVICE, for:)
 (1) certificate of public convenience)
 and necessity to continue the opera-)
 tion of and to construct and operate)
 an additional public utility water)
 system in unincorporated areas known)
 as Walnut Glen and Columbia Rancho,)
 Sacramento County; and (2) establish-)
 ment of rates for the service rendered.)

Application No. 36808
(As Amended)

Clarence H. Pease, for applicant.
Allan D. Lynn in propria persona, protestant.
F. N. Woodard and Kenneth H. McBee in propria
 personae, interested parties.
John F. Donovan and W. B. Stradley, for the
 Commission staff.

OPINION AND ORDERIntroductory

Monroe Wells (Wells Water Service) by the above-entitled application, filed March 17, 1955 and as amended April 30, 1955, seeks an order of this Commission granting a certificate that public convenience and necessity require or will require that he provide public utility water service to an area comprising Walnut Glen and Columbia Rancho subdivisions and intervening territory in Sacramento County, and the establishment of water rates for service to be rendered therein.

Public Hearing

After due notice to the public and to each present water user in the territory for which the certificate is sought, a public hearing in the matter was held before Examiner F. Everett Emerson on May 3, 1955 in Sacramento. At the hearing no opposition to the

granting of a certificate was interposed but opposition to the level of rates was expressed by present water users in the area. The matter was submitted, on receipt of late-filed exhibits, on May 13, 1955.

Description of Properties

An existing well supply and distribution system in the Walnut Glen subdivision is so installed and operated that it may serve approximately 35 lots in that area. The system presently serves residences on 12 of these lots. A deep-well turbine pump, located in the approximate center of the area, discharges the well water directly into a distribution system consisting of approximately 2,590 feet of 6-inch and 225 feet of 2-inch mains. The reported total original cost of this system is \$10,740.42 distributed as follows:

Pump House	\$ 922.00
Well	1,180.00
Pumping Equipment	3,302.00
Mains	5,336.42

The Columbia Rancho subdivision, located about 325 feet northwesterly from the Walnut Glen subdivision, contains 25 lots. The water system for this subdivision is to consist of one deep well near the southerly end of the tract and approximately 960 feet of 6-inch, 115 feet of 4-inch and 300 feet of 2-inch mains within the subdivision. Approximately 800 feet of 6-inch mains will be placed in Fair Oaks Boulevard to connect this system with that now existing in the Walnut Glen subdivision. The total original cost of the installation to serve the Columbia Rancho subdivision is estimated to be \$10,015, distributed as follows:

Pump House	\$1,000
Well and Pumping Equipment	4,847
Mains	4,168

Method of Acquisition

The existing water system in Walnut Glen is now owned by the C. C. Ruby family who obtained the lands and water system through a receivership sale from one F. C. Auforth who as then owner caused the construction and installation of the system. None of these persons has sought the authorization of this Commission to construct or operate the system or authority to make any charges for the water service rendered. By an agreement dated August 1, 1954, C. C. Ruby and Son^{1/} would construct a fence and pump shed and convey the entire water system, together with \$700 for modernizing the system, to Monroe Wells, the applicant herein. Applicant would pay to Ruby and Son 35 per cent of the annual gross revenues derived from water customers within the Walnut Glen subdivision for a period of 10 years, commencing with the date of service to the initial customer within the subdivision.^{2/} The agreement further provides that if such percentage is insufficient to yield the actual reasonable cost of the facilities to Ruby and Son, applicant shall not be responsible for any deficit.^{3/} The agreement is silent as to terms governing a situation where 35 per cent of gross revenues may exceed such cost.

The Columbia Rancho subdivision is a tract developed for the sale of homes by Bonnie Homes, Inc., a California corporation.

- 1/ The agreement, attached to the application herein as Exhibit No. 3, while purporting to be between C. C. Ruby and Son and applicant Monroe Wells, is signed by C. C. Ruby, Mabel C. Ruby, Carl C. Ruby and Betty K. Ruby, whose interests in the matter are not disclosed in the agreement or in the record in this proceeding.
- 2/ The agreement is not clear, nor does the record in this proceeding disclose, when such date of commencement might have been or might be, nor what constitutes an "initial customer". The system has served customers for some undisclosed period of time.
- 3/ The "actual reasonable cost" of the facilities to Ruby and Son are not stated, nor does the record disclose such cost.

Bonnie Homes is now installing, and at the time of hearing had practically completed, a water system in the tract in order to promote the sale of its homes. It purports to be desirous of contracting the services of Monroe Wells, applicant herein, for the operation and maintenance of the water system.^{4/} Bonnie Homes, under the terms of the proposed agreement, would convey to applicant the entire water system in the Columbia Rancho subdivision "free, clear and unencumbered". For such conveyance, however, applicant agrees to pay Bonnie Homes a sum equal to 35 per cent of the annual gross revenue derived within the boundaries of the tract for a period of 10 years, commencing with the date of the consummation of the agreement.^{5/} The proposed agreement provides that applicant would pay Bonnie Homes, in lieu of the 35 per cent of gross revenues, 20 per cent of the sales price net to applicant for sale of the water system should applicant sell the system within the first year and that in the event of the sale at any subsequent time applicant would pay to Bonnie Homes, in lieu of such 20 per cent, 2 per cent of the net sales multiplied by the number of years or fractions of years remaining within the 10-year gross revenue period.^{6/}

Financial Responsibilities

With respect to system operations, applicant estimated total annual operating expenses of \$2,200 and total possible annual operating revenues of \$2,579 when the two tracts were fully occupied

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- ^{4/} A proposed agreement between the two is attached to the application as Exhibit No. 6.
- ^{5/} Such an agreement would seem to completely negate the stated conveyance "free, clear and unencumbered".
- ^{6/} Thus if the system were sold in the first year Bonnie Homes would receive only 20 per cent of the net sale price; if in the second year, 35 per cent of first year's revenue plus 18 per cent of the sale price, etc.; in any practical event, a considerably lesser amount than the cost of the system.

and fully served. From the nature of the agreements for system acquisition, the maximum revenues which applicant may have for operation of the system will be only \$1,676 (65 per cent of \$2,579) thus producing an operating loss of not less than \$524 for each of the next 10 years.

Applicant presented a financial statement as Exhibit No. 2 in this proceeding and testified relative thereto. Cross-examination revealed that \$20,000 of the \$31,561 net worth therein set forth is for the two water systems which applicant does not now own but which he would eventually acquire under the agreements above discussed.

No showing was made that applicant is in such financial condition that the prospective continuing losses in operating this water system can be sustained.

Conclusions

When an applicant, as herein, seeks the privilege of operating as a public utility it thereby dedicates its service to the public and covenants with the State that it will perform its public duties as a utility. Of these duties, a most fundamental one is that it will furnish an adequate and a continuing service to the public at reasonable rates. The public interest is paramount and it is the plain duty of this Commission to protect that interest. The prospective water utility should have some probability of successful operations if the public interest is adequately to be served. If it does not it may collapse, leaving the water users who are completely dependent upon it with a deteriorated system or inadequate service, or indeed, with no service whatsoever.

In this proceeding we discover what appears to be an existing unlawful water utility operation in the Walnut Glen subdivision, the owners or operators of which propose to transfer such operations to the applicant herein. The basis for the transfer lies in the

provisions of a now superseded utility extension rule designed to govern main extensions from an existing utility system. No mere extension of mains or partial expansion of a water system is here contemplated; rather, the refunding provision of a main extension rule is sought to be applied to the purchase of an entire and essentially complete system. Further, the once prevalent rule (whereby the total cost of a main extension was deposited as an advance to the utility and refunds on such deposit were made at the rate of 35 per cent of revenues over a 10-year period) in recent years has proved to be so burdensome to water utilities and the public alike that this Commission ordered all water utilities in this State to file revised rules substantially lowering such percentage and substantially extending the period over which refunds might be made.^{2/} In short, the purchase proposed with respect to the system in Walnut Glen cannot be authorized without negating the principles of proper utility financing and without placing applicant in such a deficient operating situation as to make eventual successful operation extremely remote and improbable, if not impossible.

The record in this proceeding makes it plain that the developers of the Columbia Rancho subdivision are concerned with the sale of homes and not with the operation of a public utility system from which such homes might receive water service. The developers are constructing a water system which, if they were to operate and sell water therefrom, would constitute a public utility operation unlawfully commenced without the authorization of this Commission. They seek to avoid utility operations and the State's regulation thereof by transferring the completed system to the applicant herein.

^{2/} Decision No. 50580 in Case No. 5501, issued September 28, 1954 and reported at 53 Cal PUC 490-500.

The transfer would be accomplished on essentially the same basis as that above discussed with respect to the Walnut Glen tract. The same deficiencies would here apply. In addition, however, the terms of the proposed transfer agreement provide that should applicant sell the system within one year the developers would relieve applicant from further purchase payments upon applicant's paying them 20 per cent of the net price of the sale. In our opinion, such a provision is an open invitation to applicant to sell the system, realize a profit thereon without having any investment therein, and thus leave both the developers and applicant relieved of any obligation to serve the public. A comparable situation would prevail in any ensuing year up to the termination of the agreement.

We should be disposed, were it not for the uncontradicted evidence of record, that no other adequate near by supply of water is available to the Columbia Rancho tract, to deny this application with prejudice. Such action, however, would not solve the practical problem of providing the residents of the tract with water, nor

would it assure a reasonably adequate service to the residents of the Walnut Glen tract.

Although we have power to issue certificates of public convenience and necessity, to authorize execution of evidence of indebtedness and to attach reasonable conditions to such grants and authorizations when appropriate, or to deny the same, we should be slow to exercise that power when by so doing an applicant will commence its utility life under such a heavy financial handicap as is indicated by this record or when the perpetuity of utility service at reasonable rates to the public is so uncertain. We are not convinced that proper utility service will be forthcoming from an owner who has no investment whatever in the system. Nor do we feel that prospective water users should be placed in such a position that their basic needs for water must depend on nothing more substantial than an "intent" to perform.

The financial showing in this record is wholly inadequate and, in our opinion, contrary to the public interest. Of the parties most concerned^{8/} (C. C. Ruby and Son, Bonnie Homes, Inc., and applicant) only applicant Wells and his counsel were in attendance at the hearing in this matter. These parties should carefully review this decision and the entire matter and attempt to arrive at such a solution as will meet both their own needs and those of the public. If applicant, by supplemental application herein, is able to present a plan satisfactory to the Commission for the acquisition of necessary water facilities, the Commission will reconsider its action. The present application will be denied without prejudice.

^{8/} Other than a few residents of Walnut Glen.

O R D E R

Public hearing having been held, the matter having been submitted and the Commission basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that the application of Monroe Wells, filed herein, be and it is hereby denied without prejudice.

In order to allow applicant to proceed with the preparation of a satisfactory plan of financing and acquiring water facilities without undue delay, this order shall be effective on the date hereof.

Dated at San Francisco, California, this 31st day of May, 1955.

John E. Mitchell
President.

Donald L. ...

William D. ...

W. H. ...

Commissioners.

Commissioner Justus F. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.