

**ORIGINAL**Decision No. 51693

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the PIONEER GARDENS  
 WATER COMPANY, a corporation, and  
 B. F. MCGLOTHLEN, MARY JANE  
 MCGLOTHLEN and the EAST SAN BERNAR-  
 DINO COUNTY WATER DISTRICT, for per-  
 mission to sell the physical assets  
 of the PIONEER GARDENS WATER COMPANY  
 and other assets appurtenant to the  
 water system thereof to the EAST SAN  
 BERNARDINO COUNTY WATER DISTRICT.

Application No. 35913

Cunningham, Parry & Holcomb, attorneys, by  
W. R. Holcomb, for applicant.  
Alden Reid, attorney for Jack R. Widmeyer  
 Grace L. Widmeyer, petitioners.

OPINION ON REHEARING

Pioneer Gardens Water Company, a corporation, by the  
 above-entitled application, filed November 1, 1954, sought author-  
 ity to sell its physical assets to the East San Bernardino County  
 Water District. By Decision No. 50885,<sup>1/</sup> dated December 21, 1954,  
 in Application No. 35913, this application was granted. On  
 January 6, 1955, Jack R. Widmeyer and Grace L. Widmeyer filed a  
 Petition for Rehearing<sup>2/</sup> dated January 6, 1955 and by its order  
 dated January 25, 1955, the Commission granted said petition.

A rehearing in this matter was held before Examiner  
 Stewart C. Warner on February 24, 1955 at Los Angeles. The matter  
 was submitted subject to late-filed exhibits. It is now ready for  
 decision.

<sup>1/</sup> Decision No. 50947, dated January 4, 1955, amended a typographi-  
 cal error in Decision No. 50885.

<sup>2/</sup> Entitled "In the Matter of the Application of Jack Widmeyer and  
 Grace L. Widmeyer to Vacate and Set Aside and Suspend Decision  
 No. 50885, dated December 21, 1954, pursuant to Application No. 35913,  
 for Rehearing and to Authorize and Direct Refund to Applicants."

General Information

Applicant, Pioneer Gardens Water Company, for some time has been furnishing domestic and fire protection water service in the area known as East San Bernardino, lying mostly without, but partly within the City of San Bernardino. At an election held on August 31, 1954, the East San Bernardino County Water District was authorized by the voters within said district to issue water revenue bonds in the amount of \$1,250,000 to acquire existing water systems and to reconstruct and extend them in order to provide the District with an adequate water supply. In accordance with the agreed terms and purchase price set out in Exhibit A attached to the application, a Contract of Purchase dated August 25, 1954, the District paid applicant and B. F. McGlothlen and Mary Jane McGlothlen \$675,000 cash, plus the cost of certain capital additions and improvements for applicant's water system as specified in said Exhibit A.

Exhibit B, attached to the application was a detailed list of consumer's advances to Pioneer Gardens Water Company. Sums of money were deposited by applicant with Pioneer Title Insurance and Trust Company in San Bernardino to pay said consumers' advances. The total amount of such advances was \$139,197.26. Decision No. 50885 authorized the sale and transfer of applicant's public utility property, contingent upon the refunding by applicant of all deposits to consumers and the filing of a verified statement showing the consumers' advances refunded in accordance with provisions of Section IX of the application. Said decision also relieved applicant of all further public utility obligations and liabilities in connection with the operation of the public utility water system authorized to be transferred.

Petitioner Widmeyer alleged that, upon noticing a report of the Commission's decision in a local newspaper, he realized that an agreement, dated November 18, 1951, between Jack R. Widmeyer and Grace L. Widmeyer, William Obst and Wanda Obst as subdividers, and Pioneer Gardens Water Company, was and would still be outstanding. Exhibit A attached to the petition for rehearing, is a copy of said agreement. Petitioners alleged that no provision was made in Decisions Nos. 50885 or 50947 covering the disposition of said agreement.

Terms of Petitioners' Agreement

The agreement, Exhibit A of the petition, provided in general that, commencing in November 1951, the subdivider would cause the installation of a pipeline and water distribution system in subdivision Tract No. 3771, San Bernardino County, containing approximately seven acres of ground and thirteen subdivided lots. The record shows that this subdivision was located about 1500 feet north and outside of the utility's service area. Upon completion of this installation water service was, and has been furnished to the subdivision by the utility through a master meter which was installed just outside the utility's service area line. The utility charged Widmeyer for water service according to its filed rates.

The record further shows that upon the installation of the pipeline and booster pump, all of which cost approximately \$8,031.84, Widmeyer commenced to furnish water service and to resell water to some five consumers in Tract No. 3771. Subsequently, the Widmeyers bought out the Obsts' interests in the subdivision and became the sole parties to the agreement with the utility.

According to the terms of the agreement, the utility agreed to continue this type of arrangement until it next appeared before this Commission in any manner whatsoever, at which time it would make application to include the subdividers' land within its franchise area, and request the Commission to establish rates for service thereto. The agreement further provided that in the event the Commission granted these provisions, the utility would purchase all of the water system facilities within the subdivision and refund the purchase price to the subdividers out of 35 percent of the gross revenues derived from the subdivision's distributing system over a period of ten years. The record shows that these provisions of the agreement were never complied with by the utility.

Issue Presented by Petition

Since Decision No. 50947 authorized the utility to sell all of its assets and discontinue business, the issue presented by the petition is what disposition should be made of the arrangement agreed to in Exhibit A between the Widmeyers and the Pioneer Gardens Water Co. It should be noted here that Pioneer Gardens Water Company has not been disincorporated.

Review of the Record in the Instant Proceedings

A review of the record in the proceedings on rehearing fails to describe clearly what relief petitioners seek. It appears that they wish that water service be continued to their subdivision, and that they be assured of most, if not all, reimbursement of the original cost of the installation of the water system in their subdivision.

Several solutions are indicated by the record. Late-filed Exhibit No. 10 is a copy of a resolution of the Board of

Directors of the San Bernardino County Water District, Resolution No. 29, dated March 9, 1955. Said agreement contains an offer by the County Water District to execute and deliver to the Widmeyers a standard form of refund agreement in the face amount of \$8,031.84 for the acquisition of the Widmeyer's water system.

Finding and Conclusion

Inasmuch as Pioneer Gardens Water Company has been relieved of all further obligation as a public utility, it appears, and the Commission so finds, that it would be adverse to the public interest to require the company to continue to operate in a limited manner as a public utility by the purchase of water from the County Water District for resale to the Widmeyers under the terms of the contract effected in 1951. Further, inasmuch as the County Water District has acquired all of the utility's water system assets, and, the record shows, has continued and is now furnishing water to the Widmeyer's through the master meter, and it is assumed that the Water District will abide by its offer of \$8,031.84 for the Widmeyer's system, the aforesaid sum of \$8,031.84 should be paid to and accepted by the said Widmeyers.

It is concluded, therefore, that the area referred to and described in Exhibit A of the petition, should not be incorporated in the service area of Pioneer Gardens Water Company, that said company should not be authorized and directed to serve consumers in said area as a public utility, and that the petition should be denied.

ORDER ON REHEARING

Petition for Rehearing having been filed, a rehearing on the above-entitled application having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED that the petition of Jack R. Widmeyer and Grace L. Widmeyer to vacate and set aside Decision No. 50885, dated December 21, 1954, and to authorize and direct refund to petitioners be and it is denied.

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

Dated at Los Angeles, California,  
this 18th day of July, 1955.

Justin F. Galloway  
President  
Paul E. Lutz  
William R. Dooly  
R. H. Harty

Commissioners

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