

Decision No. 52768

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 PACIFIC WATER CO., a California )  
 corporation, to sell its water system )  
 known as its East Bakersfield Water )  
 System to East Niles Community )  
 Services District under Section 851 )  
 of the Public Utilities Code. )

Application No. 37674

O P I N I O N

Nature of Proceeding

Pacific Water Co., a public utility, and East Niles Community Services District, a political subdivision of the State of California (Government Code, Secs. 61000 - 61891), have joined in an application to the Commission, filed January 20, 1956, under Section 851 of the Public Utilities Code of California, to obtain authorization for the sale of the assets of Pacific's East Bakersfield water system to the District. The sale, it is alleged, will be made pursuant to the terms and conditions of an agreement with the District, dated September 15, 1955, at a price of \$493,800 for the assets which were on the company's books on May 31, 1955, plus the installed cost to Pacific of assets placed on its books after that date.

Applicants allege that the sale is to be made to the District free and clear of consumers' advances for construction entered into by Pacific, amounting to \$133,177.23 as of the date of execution of the application, together with the amount of any additional consumers' advances entered into by the utility prior to transfer of the system to the District. The total amount of such advances, according to the agreement of sale, will be

deposited by Pacific with Bank of America National Trust and Savings Association, in trust, for the purpose of repaying consumers' advances for construction in accordance with their terms, or of making present settlement of such advances. Copies of the agreement of sale and the declaration of trust (the latter dated January 19, 1956) are annexed to the application. Pacific has also agreed to repay, after completion of the sale, consumers' deposits in the sum of \$545.87 held by it, as of June 30, 1955, for the East Bakersfield system.

#### District Bonds

On November 8, 1955, the District voted bonds for the purpose, among others, of paying the cost of acquisition of Pacific's East Bakersfield system and for other costs of the District connected with the development and improvement of the system. The District plans to sell its bonds in March of 1956.

#### History of System

Pacific Water Co. is a California corporation formed by consolidation of Mountain Properties, Inc., and Desert Water Co. (Decision No. 48648, June 1, 1953, Applications Nos. 34371, 34372, 52 Cal. P.U.C. 570). Pacific owns and operates public utility water systems in unincorporated areas in Los Angeles, Orange, Kern and San Bernardino Counties. The company's predecessor, Mountain Properties, Inc., acquired the East Bakersfield system in 1950 from Arvin W. Richardson, doing business as Mesa Acres Water Company (Decision No. 44508, July 11, 1950, Application No. 31512). Richardson had been granted a certificate of public convenience and necessity, in 1940, to operate a water company in an area comprising about 1,500 acres of land lying in portions of Sections 25, 26, 35 and 36, Township 29 South, Range 28 East, M.D.B.&M., located about five miles east of Bakersfield. (Decision No. 33107, May 21, 1940, Application No. 22757).

Pacific, after its acquisition of the East Bakersfield properties, proceeded to improve the system and extended service to contiguous areas lying north and east of the area originally certificated to Richardson. Rapid residential development easterly from Bakersfield, however, led to shortages in the water supply and to other problems connected with storage, transmission and distribution of available water, with the result that the Commission found it necessary to impose a restriction against service to additional subdivisions in the East Bakersfield system, unless an adequate supply of water were made available for existing customers as well as for such subdivisions (Decision No. 49415 and subsequent orders in Application No. 34239 and Case No. 5468, a consolidated proceeding involving rates and service in Pacific's East Bakersfield system). The restriction has been relaxed from time to time, on application by the utility, as improvements in the supply of water and its distribution have occurred.

Extent of District's Boundaries

Pacific has filed with the Commission a plat which indicates that the exterior boundaries of the District embrace all of Pacific's East Bakersfield service area, as originally certificated and as later extended to the north and east. Also, the Community Services District Act, under which the District was formed, provides that

" . . . a district . . . shall assume the obligation of the private utility to serve such consumers and their successors in interest both inside and outside the boundaries of the district."  
(Government Code, Sec. 61626.6)

Pacific's officials have advised the Commission, in writing, that it is the intention of the District to serve all of the customers of Pacific in its East Bakersfield system.

Terms of Contract of Sale and Declaration of Trust

The contract of sale, in substance, provides for the

purchase and sale of all of the assets of Pacific in its East Bakersfield system, except office furniture, transportation equipment and general assets of Pacific allocated to that system. As stated above, Pacific, under a declaration of trust, will place in trust, for repayment of consumers' advances for construction, the sum of \$133,177.23 together with the amount of any additional advances received prior to the sale.

The instruments of transfer and trust appear to present no objectionable features, with three exceptions. The first, contained in paragraphs 2(c) and 2(d)(i) of the contract of sale and relating to possible disputes between Pacific and the District over installation contracts in excess of \$500 where the assets have not been installed at the time of transfer, specifies that, in case of a dispute, the recommendation of a hydraulic engineer of the Public Utilities Commission "shall be final and binding on the parties." paragraph 2(c) Also, where installations have been made by someone other than Pacific and then transferred to the utility, the agreement provides that disputes over the installed cost of such assets are to be "determined" by a hydraulic engineer of the Commission. paragraph 2(d)(i)

We consider provisions, such as those just mentioned, calling for final determination by a member of the Commission's staff of disputes arising from a contract of sale between a public utility and a public district, to be improper. The vice of such informal methods of settling disputes is further revealed by consideration of the provisions of paragraph 14 of the agreement. That paragraph sets up standard arbitration procedure in case of "any dispute, difference or question" arising between the parties regarding "the construction, meaning or effect of this agreement or any of its provisions, or the rights, privileges, duties or obligations of the parties hereto," and also provides for submission of any matter in controversy to a court

of competent jurisdiction in lieu of arbitration. We specifically withhold approval of those parts of paragraph 2(c) and 2(d)(i) of the contract of sale which relate to determination of disputes by a member of the Commission's staff. We refrain from passing upon the provisions of paragraph 14 of said agreement. ✓

The other two instances of what, so far as concerns this Commission, we consider to be improper terms of agreement, appear in paragraphs IX and XI(3) of the declaration of trust between Pacific and the Bank of America. ✓

Paragraph IX of that instrument provides that, in the event of conflicting demands upon the trustee (by claimants to refunds of advances for construction), the trustee (a) shall have the right to stop further payments, (b) may file an interpleader suit and require the parties "to interplead and litigate . . . their several claims and rights among themselves", or (c) may "petition the Public Utilities Commission, under its continuing jurisdiction of this matter, to make a further order setting forth the rights of the parties to such payments." If such suit or petition be filed, "Trustor shall pay Trustee all costs, expenses and reasonable attorney's fees expended or incurred, the amount thereof to be fixed and judgment thereof to be rendered by the Court in such suit or fixed by the Public Utilities Commission . . ."

Paragraph XI of the declaration of trust provides that the trust shall terminate as to each contractee; i.e., a person entitled to refunds of advances, upon the happening of any one of three events, one of which is "the order of the Public Utilities Commission authorizing trustor to terminate this trust."

[Paragraph XI(3)]

The two provisions of the trust instrument just mentioned call for the exercise of judicial and regulatory power that, in our opinion, lies outside the proper sphere of Commission action. The

first provision, purporting to create in this Commission an alternate forum for the settlement of conflicting claims against the trustee bank arising out of contracts for advances and for refunds thereof; and for fixing the amount of "all costs, expenses and reasonable attorney's fees expended or incurred" in connection with such disputes, is clearly an attempt to confer upon this Commission a kind of judicial power for which we are unable to find sanction in the sources of our jurisdiction. Power to resolve such issues, and to fix the amount of costs and attorney's fees in connection therewith, lodges in the courts.

Nor is such a power conferred by Section 5, paragraph A, of Pacific's main extension rule (Rule and Regulation 15), effective October 30, 1954. That section of the rule states:

"In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears impracticable or unjust to either party, the utility, applicant or applicants may refer the matter to the Public Utilities Commission for settlement." (1)

These rule provisions, for settlement by the Commission of disputes between utilities and those seeking service or otherwise complaining, find their sanction in Section 1702 and following sections of the Public Utilities Code. The formal proceedings authorized by those sections, as well as the well-known informal complaint procedures long followed by the Commission, contemplate resolution of differences between disputants one of which is always either an avowed or a presumptive public utility. Paragraph IX of the declaration of trust, however, seeks to confer jurisdiction on the Commission to hear and determine litigation between private parties; viz., a bank, acting as trustee, on the one hand, and, on

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(1) The quoted rule superseded earlier and somewhat more limited rules on the same subject filed in 1940 by Mesa Acres Water Company and in 1950 by Pacific.

the other hand, one or more persons who, at one time or another, had advanced costs of construction under a contract with a public utility which, indeed, might never become a party to such litigation. Neither Pacific's main extension rule nor those of its predecessors sanction the petition procedure before the Commission set forth in paragraph IX of the trust instrument.

The remaining objectionable feature of the trust instrument is found in paragraph XI (3), which provides for termination of the trust in three ways, the last of which is "Upon the order of the Public Utilities Commission authorizing Trustor to terminate this trust."

Exhibits B and C of the declaration of trust contain essential data relative to outstanding contracts of Pacific for consumers' advances and reimbursements. These agreements, according to the exhibits, were entered into at various times between 1948 and 1955 and expire between 1958 and 1965.

We consider such a provision as that contained in paragraph XI (3) of the trust instrument to be improper, since it purports to extend the regulatory jurisdiction of the Commission over such extension agreements long past the time when the company will have been relieved of its public utility obligations in the East Bakersfield area, following transfer of its assets to the District. Indeed, such supervision might well extend at least twenty years into the future, with respect to extension agreements that may come into existence between the date of execution of the trust instrument and the date of transfer of Pacific's East Bakersfield assets, under the more liberal repayment provisions of the current main extension rule.

We are of the opinion, therefore, that we have fulfilled our function with respect to regulatory matters concerning Pacific's

East Bakersfield system when we have authorized the sale of those assets to the District, including the setting up of a trust for repayment of consumers' advances, have further authorized the company to retire from the utility field in that area, and Pacific shall have complied with the provisions of such authorization.

Findings and Conclusions

We hereby find that the transfer of assets of Pacific Water Co. in its East Bakersfield system, as proposed in the application, is not adverse to the public interest. The application, therefore, will be granted, subject to the exceptions, indicated above, with respect to certain portions of the contract of sale and the declaration of trust.

The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

A public hearing is not deemed necessary.

O R D E R

The Commission, having considered the application of Pacific Water Co. and East Niles Community Services District, filed January 20, 1956, and being now fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that:

1. Pacific Water Co., a corporation, may, on or after the effective date hereof and on or before July 1, 1956, sell and transfer to East Niles Community Services District, a political subdivision of the State of California, the properties included in the East Bakersfield system of Pacific Water Co., as said properties are described in the application herein, pursuant to the terms and



conditions, except as hereinafter noted, of the contract of purchase, dated September 21, 1955, annexed to the application as Exhibit A thereof.

2. Pacific Water Co. is also authorized to carry out the terms and conditions, except as hereinafter noted, of the declaration of trust, dated January 19, 1956, entered into with Bank of America National Trust and Savings Association, as trustee, for the purpose of repayment, in accordance with their terms, of contracts of Pacific Water Co. for consumers' advances and reimbursements in its East Bakersfield system, said declaration of trust being annexed to the application as Exhibit B thereof.

3. Authorization is specifically withheld:

- a. To carry out those terms and conditions of paragraphs 2(c) and 2(d)(i) of said contract of purchase which relate to settlement of certain disputes between Pacific and District by a hydraulic engineer of the California Public Utilities Commission.
- b. To carry out those terms and conditions of paragraph IX of said declaration of trust which relate to the filing of a petition with this Commission by the trustee in the event of conflicting demands made, or notices served, upon said trustee in connection with repayments of consumers' advances out of trust funds.
- c. To carry out those terms and conditions of paragraph XI of said declaration of trust which relate, in subparagraph (3) thereof, to termination of said trust upon the order of the Public Utilities Commission.

4. On or before the date of actual transfer Pacific Water Co. shall refund all deposits which consumers in its East Bakersfield system are entitled to have refunded.

5. If the authority herein granted is exercised, Pacific Water Co. shall, within thirty days thereafter, notify this Commission in writing of the date of completion of the transfer

herein authorized and whether or not any deposits which said consumers may be entitled to have refunded them remain unpaid.

6. Concurrently with consummation of said transfer, and provided that no refunds of consumers' deposits then remain unpaid, Pacific Water Co. shall thereafter stand relieved of any obligation as a public utility water company with respect to the properties herein authorized to be transferred.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of March, 1956

*[Signature]*  
 President

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*  
 Commissioners