

Decision No. 55048

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Eastshore Consolidated Water Company to operate a water system in lower Eastshore area, Clearlake, Lake County, and to establish rates.)
) Application No. 38589
) As Amended

Heber James Brown, for applicant.
Ralph v. Devoto for Richard Hodges and Harold Drebert (dba Burns Valley Water Company) by Henry E. Morse, Jr.; Highlands Water Company by G. A. Johnson, protestants; State Department of Public Health by Serge V. Spiridonoff; Kurt Schamber, in propria persona, interested parties.
John F. Donovan and Robert C. Moeck, for the Commission staff.

O P I N I O N

Nature of Proceeding

In this proceeding Eastshore Consolidated Water Company, a California corporation, seeks (1) a certificate to operate public utility water systems in three areas in Lake County, (2) to establish flat rates for service therein, and (3) authorization to issue \$125,000 of capital stock. The original application in this matter was filed by one John G. Larson on November 16, 1956, and concerned an area of about 300 acres near the community of Clearlake Highlands, Lake County. An amendment to the application was filed on February 19, 1957, such amendment substituting the corporation as the party applicant and, further, seeking certification for a second area known as the Anderson Subdivision, such subdivision being on the westerly shore of Clear Lake near Brown's Landing. At the public hearing in the matter, certification of a third area, comprising subdivisions known as Bella Laguna, Brendelin Tract, Wilder Tract, Clear Lake Vista, Lakes End, Lakeside Park and intervening territory, was also sought. A second amendment was filed May 14, 1957, such

amendment seeking to establish rates for metered water service and correcting deficiencies in earlier filings.

Public Hearing

After due notice to the public and to each of the grantees to whom deeds for property within the original 300-acre area had been delivered, public hearing in the matter was held before Examiner F. Everett Emerson on April 9, 1957, at Clearlake Highlands, Lake County. The matter was submitted on May 14, 1957, upon receipt of late-filed exhibits and the second amendment to application above mentioned.

The Applicant and Its Financing

Applicant is a California corporation formed, primarily, for the purpose of constructing and operating a water system in areas subdivided many years ago. Lots within these old subdivisions have remained unimproved and all of them have reverted to the State because of nonpayment of taxes. In recent years, applicant's officers, as agents for a real estate firm and for prospective individual purchasers of lands under tax sales, have promoted the sale of 2,609 lots within the various subdivisions near Clearlake Highlands. As of March 31, 1957, approximately 850 persons had completed such lot purchases, through applicant's officers, and their average holdings were 2.7 lots each. Applicant desires that each of these new owners become stockholders in the water company.

As a part of the fee and purchase price collected from prospective purchasers of lots, the promoters set aside in special funds an amount of \$10 per lot for use in the development of a water system. In addition, the promoters collected and have reserved the further sum of \$54 per purchaser which is also to be used for development of the water system and for which it is proposed that the purchaser will receive shares of the capital stock of applicant. It would thus appear that the promoters have already collected about \$26,090 on the basis of lot sales and about \$45,900 on the basis of

purchasers, or a total of \$71,990, from applicant's future water customers for the development of a water system.

Applicant's authorized capitalization consists of 200,000 shares of the par value of \$1 per share and of the aggregate par value of \$200,000. In the present proceeding applicant seeks authority to issue \$125,000 of such stock in exchange for cash and properties, and some unstated additional amount as "promotional stock" for applicant's president.

As of March 31, 1957, applicant asserts that the promoters have expended \$46,361.98 in initially developing a water system, such sum including, however, an amount of \$13,000 for the purchase of approximately 79 acres of nonoperative real property located near Lakeport. It seems, therefore, that as of that date approximately \$33,362 had been expended in developing the physical water system.

It appears that completion of the initial water system will require expenditures of an additional \$80,000, applicant's engineer having estimated the total cost of the physical plant as being \$113,780.96.

Applicant proposes to reimburse the promoters for the amount of \$46,361.98, assertedly already expended, by issuing stock therefor. The promoters have on hand approximately \$28,628 (\$71,990 collected, less \$46,362 expended) in cash yet to be devoted to the water system and for which applicant would exchange shares of stock. It is averred that the promoters might additionally purchase the remainder of the shares of stock sought to be issued out of funds obtained from the sale of property within the proposed certificated service area of applicant.

Applicant proposes to use the 79-acre tract near Lakeport as a source of revenue to assist in meeting the operating expenses of the water system near Clearlake Highlands. Its plan is to sell lots

within such tract and devote the profits thereof to the operations of the water system. This phase of applicant's plans is further discussed below.

Area Development and Water Facilities

Three general areas are involved in applicant's plans and for which applicant seeks certificate of public convenience and necessity. These will be termed (1) Highlands, (2) Bella Laguna and (3) Anderson herein for convenience in discussing the areas and water facilities.

(1) Highlands:

This area comprises about 300 acres containing about 2900 lots. Within its outer boundaries, as delineated on Exhibit A attached to the original application, appear to be a number of subdivisions known as Parkers Addition, Plats 1, 2, 3, 4, 5 and 6; Chateau Villas; Tracts 3, 4 and 7; and Valley Vista Addition; all of which lie to the east of State Highway Route No. 53 near Clearlake Highlands and Clearlake Park. Upon hearing expressions of the opposition of nearby water companies, applicant withdrew its request for certificate for Valley Vista Addition and for that portion of Tract 7 lying to the west of Spruce Avenue.

Contrary to the clearly stated provisions of Section 1001 of the Public Utilities Code, applicant has proceeded with the construction of an intended public utility water system to serve this area. Applicant is using the waters of Clear Lake as its source of supply and is pumping water, by means of a 15-hp electric motor-driven pump, from a percolating well located within the lake. Water from the lake is then conveyed through about 3200 feet of 6-inch line to a 15-hp booster-pump station and 24,000-gallon detention tank located at the northeast corner of Manzanita Avenue and 34th

Avenue. As of the date of hearing applicant had installed approximately 12,000 feet of mains and had practically completed the installation of an 80,000-gallon storage tank in addition to the well and the two pump stations. Completion of the initial system to serve this area will require installation of an additional 83,000 feet of mains, according to applicant.

Applicant's best estimate of area development is that the system will serve an average of 140 customers during the first five years of operation and that at the end of such period 400 customers may be connected to the system. Only a few permanent or year-round customers are anticipated, the majority being only summer-vacation or week-end users of water.

(2) Bella Laguna:

This area is bounded on the north by Lakeside Avenue and on the south by Garner's Lakeside Park Subdivision and encompasses all the territory between such boundaries extending from the shores of Clear Lake to State Highway Route No. 53. The acreage and the number of lots involved appear to be unknown to applicant. Except for the 6-inch line, between the percolation well and the Highlands area above discussed, located in Lakeside Avenue, applicant has no facilities in this area and has developed no specific plans for serving the area. Water needs within the area are now being met, primarily, by means of individually owned wells. As of the date of hearing, applicant anticipated that it might serve 12 customers in this overall area.

Objection to the certification of applicant in this area was voiced by the manager of a neighboring mutual water company who testified that the mutual had long intended to serve the area, had always considered it as part of the mutual's territory and has, in

fact, facilities already in place along the state highway and at Lakeside Park from which the various subdivisions could be and are intended to be served.

(3) Anderson:

This area lies along the westerly shore of Clear Lake at a place known as Brown's Landing and is a proposed new subdivision containing about 70 lots. As of the date of hearing the subdivision had not received the necessary approval of the county or other public agencies and no map was available which would show the area's boundaries.

As in the case of the Highlands area, applicant has proceeded to install an intended public utility water system in the area. The source of supply for this system is also Clear Lake and obtained through a percolation well located in the lake, pumped by means of a 15-hp electric motor-driven pump similar in layout to that for the Highlands area. The well, pump, water mains and a storage tank are now in place for this system.

Applicant anticipates that the development of this area will proceed at a rate not exceeding 5 customers per year. The cost of the system is reported to be \$8,615.35.

Prospective Results of Operations

Applicant's basic rate proposal is that it will charge a flat rate of \$24 annually to seasonal users and will charge for permanent or year-round usage at meter rates identical to those now effective on the mutual water company system serving Clearlake Highlands. Applicant's best estimate of the total annual revenues derivable from such charges for the Highlands area is the sum of \$3,360. Such estimate is based upon applicant's assumed development of an average of 140 customers for the first 5-year period. Applicant made no estimates of revenues which might be obtained from the Bella Laguna and Anderson areas.

With respect to the expenses of operating the Highlands system, the testimony of applicant's president indicates an annual total of approximately \$7,200 before any provision for payment of taxes or proper amounts for depreciation. No estimates of the expenses of operating the systems at Bella Laguna or at Anderson were made by applicant but it is reasonable to assume that, although probably small, additional expenses would necessarily be incurred for such systems.

From the evidence respecting revenues and expenses, the conclusion is inescapable that applicant is faced with serious financial losses and a deficit of not less than \$3,800 annually.

Clearly faced with operating losses under the water rates applicant proposes to charge, applicant intends to subsidize the water operations through funds hoped to be obtained from the sale of lots within the 79-acre tract located near Lakeport. In this connection, applicant estimates that such sales would produce an annual amount of \$13,000 during the first five-year period. Such amount, however, would be nonoperating revenue derived from nonoperative property. The evidence indicates that although the lots are "view" lots and of the type desired by the public, they are of little or no value unless streets and other roadways and the customary utilities, including a water system, are brought into the area. The entire tract is now but raw land even though map records indicate its subdivision into lots. No evidence respecting its prospective development was offered in this proceeding and applicant apparently knew of no means by which the necessary utilities would be provided the area. It seems, therefore, that the development of this area is highly problematical and that as a source of income which might be devoted to applicant's prospective utility deficit it is highly

uncertain and speculative.

Position of Protestants

Applicant's originally proposed Highlands service area was objected to by the Burns Valley Water Company on the grounds that such area would include territory in which it was already rendering utility service. As hereinabove mentioned, applicant withdrew from its request that portion of the area served by Burns Valley Water Company.

Applicant's proposed Bella Laguna service area was objected to by Highlands Water Company, a mutual water company holding itself out to serve the identical area, as hereinabove discussed.

While no person objected to the establishment of public utility water service within the Highlands area, counsel for the owners and operators of the Burns Valley system voiced their serious objection to the certification of applicant to such area, it being their position that applicant is not financially competent to serve the area and that the public interest demands that only a financially competent utility be permitted to enter the area.

Conclusions

This Commission has in many decisions stated the fundamental principles of utility operation and regulation required, by the laws of this State and the policies and practices of this Commission, to be met by those who would enter the public utility water business. We briefly restate them here.

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 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 must 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 for one of the basic necessities of life with a deteriorated system or inadequate service or, indeed, with no water service whatsoever.

Although we have power to issue certificates of public convenience and necessity, to authorize execution of evidence of indebtedness and to authorize the issuance of stock, and to attach reasonable conditions to such grants and authorities when appropriate, this Commission should be slow to exercise that power when by so doing an applicant will commence its utility life under such a heavy financial handicap that its demise seems certain or when a continuing utility service at reasonable rates to the public seems to be uncertain. This Commission would be seriously remiss in its duties if it were to permit the creation of a utility which could bring only trials and tribulations, if not disaster, to the utility, its patrons and the community.

In our opinion the financial aspects of the prospective results of applicant's operations are not merely inadequate but are grossly deficient. Applicant's president claims to be no more than a salesman employed by the promoters and there is no assurance that the real estate company has or will unequivocally supply the funds necessary to complete or operate the water system. In addition, the record in this proceeding will not permit of the finding required by law that all of the purposes for which applicant seeks to issue stock are not reasonably chargeable either to operating expenses or to income.

In view of the evidence no certificate will be issued to this applicant.

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 Eastshore Consolidated Water Company, filed herein as Application No. 38589, be and it is hereby denied.

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

Dated at Los Angeles, California, this 26th day of MAY, 1957.

[Signature]
 President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.