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Decision No. 60941

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MABEL P. B. ROE to sell)
the Cherokee Water Works to a mutual)
water company, the Cherokee Mutual) Application No. 42317
Water Company, and to terminate Public)
Utilities Commission jurisdiction.)

Mack, Bianco, King & Eyherabide, by Harvey Means
and Henry C. Mack, for applicant.
Charles Barnhill, protestant.
James R. Barrett, for Commission staff.

O P I N I O N

This is an application, filed pursuant to Sections 851-853 of the Public Utilities Code, in which a public utility water company seeks authority to sell and transfer all of its assets to a mutual water company.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis at Bakersfield on August 9, 1960.

Preliminarily, it should be noted that the application is filed by Mabel P. B. Roe, whereas the authority to operate the water system here involved is contained in a certificate of public convenience and necessity granted to Albert B. Sage and Cra Mae Sage in Decision No. 52497 in Application No. 37340.

The evidence indicates that at the time the certificate of public convenience and necessity was issued and the Sages dedicated the water system here involved as a public utility, there were in existence prior deeds of trust on the property upon which are located the well and pumping system of the utility. Subsequently, Mabel P. B. Roe foreclosed upon said deeds of trust and took possession of said property subject to its public utility status. Therefore, the

certificate of public convenience and necessity here involved should be changed to show that Mabel P. B. Roe is the present owner and operator of the water system.

The water system here involved is located in Kern County, near Shafter, California. Applicant serves approximately 42 customers.

Applicant proposes to sell the entire water system to the Cherokee Mutual Water Company, which was recently organized, for the sum of \$9,000. This sum is to be paid in monthly installments of \$100 with interest of 7.2 percent on the unpaid balance. The Cherokee Mutual Water Company has applied to the Corporations Commissioner for authority to issue 42 shares of \$300 par value stock. It proposes to collect on a time basis for said stock. It was stated at the hearing that the payments on the shares would be \$2 a month, without interest, unless they became delinquent.

The applicant, Mabel P. B. Roe, testified that she was more than 70 years of age; that she cannot stand the physical burden of running the water company; that after she acquired the water company she made costly improvements to the system and that the company was operating at an out-of-pocket loss. Applicant also introduced in evidence a petition assertedly signed by 27 of the water users which indicated that they desired that the service be taken over by the mutual.

The application was vigorously protested. Several of the water users testified against granting the application. In summary, this testimony indicated that these water users did not want to join the mutual water company; that the mutual water company was created by the applicant and did not originate with the water users here

involved; that coercion was used to obtain the signatures on the petition introduced in evidence by applicant; that said petition was altered after certain signatures were obtained; and that these people wanted the water system kept under the jurisdiction of this Commission.

A physical examination of the petition received in evidence indicates that it was altered, but there is a conflict in the evidence as to whether the alterations were made before or after the signatures were obtained. The Commission need not determine this and other issues raised in the proceeding. It is apparent that a substantial number of the water utility's customers do not wish to join the mutual water company. To grant this application would, in effect, force these water users to join the mutual, because applicant's water system is the only practical source of water supply in the area. The Commission therefore finds that the proposed sale and transfer of applicant's assets to the Cherokee Mutual Water Company would be adverse to the public interest.

In considering this application the Commission has been mindful of the evidence which indicates that applicant has been operating at a small out-of-pocket loss. However, the record clearly establishes, and applicant concedes, that applicant has not applied to this Commission for an order seeking compensatory rates. Furthermore, some of the protesting witnesses testified that they had no objection to paying compensatory rates set by this Commission.

O R D E R

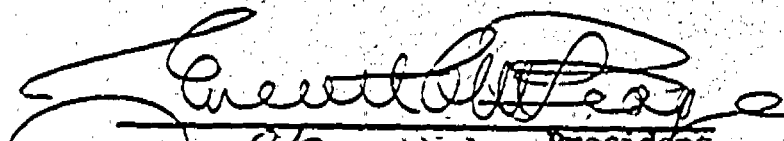
A public hearing having been held, and based upon the evidence therein adduced,

IT IS ORDERED that:

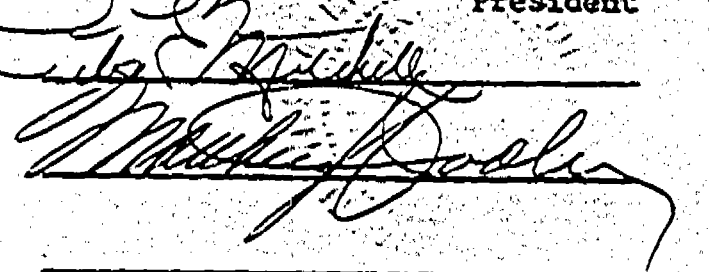
1. The certificate of public convenience and necessity granted by Decision No. 52497 in Application No. 37340 is hereby changed to provide that the owner and operator of the public utility water system therein authorized and described is Mabel P. B. Roe.
2. In all other respects this application is denied.

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

Dated at San Francisco, California, this 25th day of OCTOBER, 1960.



President



Commissioners

Theodore H. Jenner
Commissioner C. Lyn Fox, being
necessarily absent, did not participate
in the disposition of this proceeding.