

ORIGINAL

Decision No. 69255

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of JOSHUA TREE SERVICE COMPANY for authority to implement an agreement with JOSHUA BASIN COUNTY WATER DISTRICT for sale of all public utility assets and to be relieved of its obligations as a public utility.

Application No. 47380  
(Filed March 3, 1965)

In the matter of the application of RANCHO RAMON WATER CO., a California corporation, for authority to implement an agreement with JOSHUA BASIN COUNTY WATER DISTRICT for immediate sale of certain utility assets, for immediate lease, with option to purchase of other utility assets, for the future sale of all of its remaining utility assets and to be relieved of its obligations as a public utility.

Application No. 47381  
(Filed March 3, 1965)

Redwine and Sherrill, by Maurice C. Sherrill,  
for Joshua Tree Service Company and Rancho  
Ramon Water Company; Arthur L. Littleworth,  
for Joshua Basin County Water District;  
applicants.

Lela J. McPherson, W.H. Porter, and Robert P.  
Stevenson; protestants.

John H. Holton, for Yucca Valley County Water  
District; Charles Stockton, in propria  
persona; and James L. King, for Friendly  
Hills Water Company; interested parties.  
Reginald H. Knaggs, for the Commission staff.

O P I N I O N

By Application No. 47380, Joshua Tree Service Company seeks authority to sell its public utility assets to Joshua Basin County Water District and by Application No. 47381, Rancho Ramon Water Co., seeks authority to sell certain public utility assets

and lease with an option to purchase other utility assets to the Joshua Basin County Water District. Joshua Basin County Water District joins in both applications. Each agreement for which authority is requested in the consolidated applications (Exhibit 1, Joshua Tree, Exhibit 4, Rancho Ramon) provides that the sale to the District is contingent on the sale to the District of the assets of the other seller located within the boundaries of the District. For the purpose of the hearing the two applications were consolidated, and a public hearing thereon was held before Examiner Rogers in Joshua Tree, California, on April 29, 1965. Applicants mailed a notice of the hearing to each of their consumers.

Both Joshua Tree and Rancho Ramon will terminate their operations as public utility water corporations if these sales are effected.

Application No. 47380 - Joshua Tree Service Company

On January 20, 1965, the Joshua Basin County Water District (District) and Joshua Tree Service Company (Joshua Tree) executed an agreement for the sale to the District of the public utility water company facilities of Joshua Tree (Exhibit 1). Joshua Tree is operating pursuant to authority from this Commission (Decision No. 38154, dated August 14, 1945, in Application No. 26451). Its service area is generally in the vicinity of Joshua Tree, California, and all of its customers and utility plant are within the boundaries of the District. Exhibit 1 specifies the property to be transferred and the basic price for the assets, which is \$522,594 and is payable in installments commencing on the closing date. This is stated to

be the first day of the month following approval of the sale by the Commission. The first installment of \$1,000 is due on the closing date, a payment of \$19,000 is due on February 1, 1967, and a payment of \$20,000 is due on February 1, 1968. The subsequent annual installments increase to \$31,667 on February 1, 1975, and annual payments continue thereafter until the balance is paid. The February 1, 1967, and the February 1, 1968, payments are to be evidenced by separate negotiable promissory notes of the District. This basic price is subject to modification for certain equipment and supplies, additions and betterments to the system, and obligations incurred for facilities which are required and ordered, but not installed on the closing date of the agreement. Exhibit 1 further provides that the unpaid balance on the price shall bear interest at the rate of 4 per cent per annum from the closing date until January 31, 1968, and thereafter at the rate of 5-1/4 per cent per annum.

The agreement further provides that on the closing date the District will assume the obligation of providing water service within the service area of Joshua Tree and that the District "shall not be responsible or liable in any way for the Company's obligations under any main extension agreements, customer's deposits, advances in aid of construction, or any similar arrangements". The District agrees, however, that upon Joshua Tree's request, it will give Joshua Tree the necessary information to enable it to make refunds of advances in aid of construction. The District also agrees to make such payments as Joshua Tree directs from the installment payments becoming due, and to deduct the amounts so paid from the installments of the contract. The outstanding advances for construction agreements of Joshua Tree

are listed in Exhibit 3 and total \$104,203.89. Joshua Tree also has outstanding \$2,668.01 of customers' deposits which it agreed it will refund to the consumers entitled thereto within 30 days of the actual transfer to the District.

Joshua Tree alleges that it desires to sell the property because of losses due to lack of customer density and because of the expense involved if the system complies with General Order No. 103 of this Commission. It further alleges that the District has several financial advantages compared to Joshua Tree - such as the District is not liable for certain taxes and that it can levy a charge on vacant properties.

Joshua Tree had a net utility operating loss of \$3,746 for the period of January 1 through November 30, 1964. On March 31, 1965 it had total assets valued at \$393,999.94, and total liabilities of \$280,691.89, including \$104,203.89 advances for construction, and \$131,791 of deferred liability to Friendly Hills Water Company. This deferred liability is to be satisfied by Joshua Tree.

Application No. 47381 - Rancho Ramon Water Co.

On January 20, 1965, the District and Rancho Ramon Water Co. (Rancho) signed an agreement for the sale to the District of certain public utility water company facilities of Rancho; for the leasing by Rancho to the District with an option to purchase, certain assets described in the agreement (Exhibit 4); and for the purchase by the District of the Paradise Valley Water System of Rancho and the Mountain Mutual Water Company. Rancho and the District have agreed that if the Yucca Valley County Water District does not purchase the Paradise Valley and Mountain Mutual systems by January 20, 1966 the District will purchase them for an agreed price of \$280,000. A lawyer for the Yucca Valley County Water District appeared at the hearing and stated that said district intends to acquire said

systems. Mountain Mutual Water Company is not a public utility water corporation under the jurisdiction of this Commission.

Rancho is operating pursuant to authority from this Commission (the latest decision relative to the tariff service area is Decision No. 64025, dated July 31, 1962, in Application No. 43949).

Rancho's service area is in the vicinity of Joshua Tree, California, and all of the customers and utility plant herein affected, exclusive of the Paradise Valley and Mountain Mutual areas, are within the boundaries of the District. Exhibit 4, specifies that certain properties of Rancho are to be transferred, and that the basic price for such assets is \$218,209, payable in installments commencing on the closing date which is the first day of the month following approval of the sale by the Commission. The first installment of \$500 is due on the closing date, a payment of \$9,500 is due on February 1, 1967, and a payment of \$10,000 is due on February 1, 1968, and payments continue annually thereafter until the balance is paid. The February 1, 1967, and the February 1, 1968, payments are to be evidenced by separate negotiable promissory notes of the District. This basic price is subject to modification for certain equipment and supplies, additions and betterments to the system and obligations for facilities which are required and ordered, but not installed on the closing date of the agreement. The agreement further provides that the unpaid balance on the purchase price shall bear interest at the rate of 4 per cent per annum from the closing date until January 31, 1968, and thereafter at the rate of 5-1/4 per cent.

The agreement provides further, that on the closing date the District will assume the obligation of providing water service to the present customers of Rancho within the boundaries of the District, including those served from the leased facilities, and to such other customers and landowners as may in the future request water within the District and the service area of Rancho. The agreement prescribes that the District "shall not be responsible or liable in any way for the Company's obligations under any main extension agreements, customer's deposits, advances in aid of construction, or any similar arrangements." The District agrees, however, on Rancho's request, to provide Rancho with the necessary information to enable it to make refunds of advances in aid of construction. The District also agrees to make such payments from the installment payments becoming due as Rancho directs and to deduct the amounts so paid from installments on the contract.

The outstanding advances for construction agreements of Rancho are listed on Exhibit 6 and total \$149,478.17. Among these advances is one for 2,100 feet of line in Sec. 12, T1N, R6E, SBB&M. Rancho does not desire to complete this installation but seeks authority to refund the entire advance. The reason alleged by Rancho for this refund is that the proposed installation conflicts with the system planned by the District. Paragraph IX of subject application sets forth the condition of construction for Rancho relative to advances in aid of construction.

Rancho's president, who is also general counsel for Joshua Tree, testified that the agreements with the District provide that where any person has deposited money for the installation of facilities and the facilities had not been installed and the money has not been refunded, the District can proceed at the expense of Rancho or Joshua Tree to install the facilities. The agreements provide that the price shall be reduced by the cost

of such facilities and work, and that such amounts shall be deducted from the last installments due. Rancho also has outstanding \$3,338.45 of customers' deposits which it will refund to the consumers entitled within 30 days of its transfer of assets to the District.

Rancho alleges that it desires to sell the property because of lack of customer density and resulting operating losses. It further alleges that the District has certain financial advantages compared to Rancho including factors that the District is not subject to certain taxes which are a substantial item of expense to Rancho, and, in addition, the District has the authority to levy a charge on vacant property.

For the period of January 1 through November 30, 1964, Rancho had a net utility operating loss of \$15,585. As of November 30, 1964, it had total fixed assets valued at \$412,277.19.

In addition to the sale of assets outright, Rancho agrees to lease to the District assets originally acquired from the Las Casitas Water Company, which are described in Exhibit A attached to the contract. This lease is to commence on the closing date and extends, subject to an option to purchase, until March 12, 1983. The rental is to be a sum equal to 22 per cent of the estimated annual revenue from each bona fide customer connected directly by a service line to the leased facilities. These rental payments are to commence on November 1, 1967, based on revenues for the calendar year of 1966, and are to be paid on November 1 of each year thereafter upon revenues for the previous calendar year.

The District has the option for 30 days following April 1, 1966, to elect to purchase the leased properties and facilities for the sum of \$47,000, subject to approval of this Commission. If the option is exercised the price is to be paid by adding the sum

of \$47,000 to the basic price of \$218,209, and shall bear interest and be paid in the manner hereinabove described.

The Commission finds that:

1. The proposed purchase agreements do not provide adequate protection to present and future customers within sellers' dedicated areas of service from discrimination in regard to rates, conditions of service, and installation of facilities.

2. Upon filing of a stipulation by Joshua Basin County Water District regarding service obligations, installation of facilities, and absence of discrimination between customers inside and outside the District's boundaries, the proposed transfers and lease will not be adverse to the public interest.

3. Inasmuch as the District will not assume refund obligations under sellers' main extension agreements, sellers should provide suitable guarantees that refunds will be paid when due.

4. Mountain Mutual Water Company is not a public utility water corporation under the jurisdiction of this Commission, and it is not a party in this proceeding. No authorization will be granted, therefore, regarding transfer of the water system of that company.

The Commission concludes that the proposed transfers and lease should be authorized to the extent of and subject to the conditions in the order herein.

The action taken is not to be construed as a finding of the value of the properties to be transferred.

O R D E R

IT IS ORDERED that:

1. Joshua Tree Service Company is authorized, after the effective date of this order, subject to the conditions of this order,



to sell the public utility water system properties described in the agreement dated January 20, 1965, attached to Application No. 47380 to Joshua Basin County Water District for \$522,594, which sum is to be adjusted in conformance with the provisions of said agreement.

2. Within 30 days of the date of transfer Joshua Tree Service Company shall refund all customers' deposits which are subject to refund and shall advise the Commission in writing of such action.

3. Rancho Ramon Water Co., is authorized, after the effective date hereof, subject to the conditions of this order, (a) to sell the public utility water system properties described in the agreement dated January 20, 1965, attached to Application No. 47381 to Joshua Basin County Water District for the sum of \$218,209, which sum is to be adjusted in conformance with the provisions of said agreement; (b) to lease and/or sell to Joshua Basin County Water District those properties and assets listed in Exhibit A attached to said agreement under the terms and conditions recited in said agreement; (c) to transfer the Paradise Valley Water System to the Joshua Basin County Water District under the terms and conditions stated in said agreement.

4. Within 30 days of the date of transfer or lease Rancho Ramon Water Co. shall refund all customers' deposits which are subject to refund and shall refund to the party who made the advance referred to in subparagraph (c) of Paragraph IX, the amount deposited for the construction specified in said subparagraph (c) of Paragraph IX of Application No. 47381.

5. Joshua Tree Service Company and Rancho Ramon Water Co. shall adjust to actual cost and refund when due all advances for construction.

6. The foregoing authority is conditioned upon the requirement that Joshua Basin County Water District shall file with this Commission a certified copy of a stipulation to the effect that:

(a) Joshua Basin County Water District will be subject to all legal claims for water service which might have been enforced against Joshua Tree Service Company and Rancho Ramon Water Co., including such claims as may exist in territory outside of the boundaries of the District.

(b) Joshua Basin County Water District will, where any person has advanced money to Joshua Tree Service Company or Rancho Ramon Water Co. for installation of facilities and the facilities have not been installed and the money has not been refunded, proceed at the expense of Joshua Tree Service Company or Rancho Ramon Water Co. to install the facilities.

(c) As to the rates, rules and conditions of service which the District will apply within the service areas of the systems herein authorized to be transferred or leased, it will not discriminate between service rendered outside of the District boundaries and service rendered inside of said boundaries, except insofar as it may adjust such outside rates and charges to offset any reasonable tax burden sustained by water users within the District boundaries in subsidizing the operation of the District's water system.

7. Within sixty days after the date of actual transfer or lease of any of the systems herein authorized to be transferred or leased, Joshua Tree Service Company and Rancho Ramon Water Co. shall file with this Commission evidence that they have provided and will provide, in a manner acceptable to this Commission, an adequate guaranty to assure payment of refunds due or to become due on all remaining main extension agreements relating to the system or systems

transferred or leased.

8. Upon completion of the sale of all water system facilities of Joshua Tree Service Company or Rancho Ramon Water Co., this Commission may, by supplemental order herein, relieve the utilities of all public utility water system obligations, except the repayment of advances when due, in connection with the systems transferred.

9. The authorities herein granted to Joshua Tree Service Company and/or Rancho Ramon Water Co., shall expire if not exercised by December 31, 1966.

10. When Joshua Tree Service Company and/or Rancho Ramon Water Co. have respectively complied with the provisions of this decision they shall each so certify to the Commission in writing within 10 days thereafter.

11. The sellers shall each certify to the Commission promptly in writing the time of repayment of customers' deposits and the refund for the uncompleted main extension.

The effective date of this order shall be established by supplemental order herein, after Joshua Basin County Water District shall have complied fully with the requirements of ordering paragraph 6.

Dated at San Francisco, California, this 15<sup>th</sup> day of JUNE, 1965.

[Signature] President  
[Signature]  
[Signature] Commissioners

*I dissent. I will set forth my views later.  
Frederick B. Heblhoff*

I dissent.

The price to be paid by the district for these properties may be reasonable - and it may not be. On this record it is impossible to tell. Judged by the Commission's recent decision in the Monterey case (Decision 68135, Application 41463, October 27, 1964), the price is certainly questionable: The systems are, at least in part, substandard; as business enterprises, they are losers; and the consideration to be paid is, I am informed, substantially equivalent to full reproduction cost new. Reasons may exist for paying such a price, but the Commission majority does not care. I do care.

The theory upon which these matters were tried and are now decided is that the price to be paid by the district is none of our business. I cannot concur in that view of the law. Ratepayers who, until now, have been required to support only the actual investment by these utilities will in the future be required to support an investment by the district which is <sup>at least 1/2</sup> half again as large. Unless that increased burden is justified by special circumstances, it cannot be said to be in the public interest. The suggestion that, under Section 851 of the Public Utilities Code, our concern is solely with the seller and not with the purchaser ignores the fact that, whichever entity operates the system, the public pays the bill. The fact that the burden in the future may be divided between the public as ratepayers and the public as taxpayers is beside the point; in the end it is the same public. Ratefixing is the most important power of this Commission; whatever affects rates affects the public interest.

The authorities marshaled in support of the majority position actually suggest the contrary. Thus, in Henderson v. Oroville-Wyandotte Irr. Dist., 213 Cal. 514, the Court upheld conditions imposed by this Commission in connection with a sale to a public district, and in Water Users etc. v. Railroad Commission, 188 Cal. 437, the Commission's order (affirmed by the Court) dealt in detail with the consideration to be paid by a district in return for utility property.

*George E. Hoover*  
Commissioner