

ORIGINAL

Decision No. ~~70835~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MALLIE O. RICHARDS)
 and BERTHA A. RICHARDS, husband)
 and wife, doing business as)
 "Le Grand Water Company", for an)
 order under Public Utilities Code)
 Section 851 authorizing them to)
 sell all of their operating prop-)
 erties to the Le Grand Mutual)
 Services, Inc., a mutual water)
 company.)

Application No. 48386
 Filed April 11, 1966

Cobey & Adams, by James A. Cobey and William P. Quigley, for Mallie O. Richards and Bertha A. Richards, applicants.
John D. Reader, for the Commission staff.

O P I N I O N

Mallie O. Richards and Bertha A. Richards, doing business as Le Grand Water Company (hereinafter referred to as Company), seek authority to transfer their public utility water system to Le Grand Mutual Services, Inc., a mutual water company (hereinafter referred to as Mutual), which seeks to acquire the system.

A duly noticed public hearing was held in this matter before Examiner Jarvis at Le Grand on May 18, 1966, and the matter was submitted on that date.

Company furnishes service at 91 connections and five fire protection hydrants in the unincorporated town of Le Grand in Merced County. Company has, for some time, been financially unable to make needed improvements to its water system. (See Decisions Nos. 64179 and 67346 in Application No. 43981.¹) It cannot provide adequate service to its customers without these improvements.

¹ Decision No. 67346 found that Company was financially unable to make \$10,050 in improvements ordered by Decision No. 64179.

Mutual was formed in July of 1963 by residents of Le Grand in order to obtain better water service. Mutual's service area is larger than that of Company, but it includes all of Company's service area.

Mutual received a loan of \$112,000 from the Farmers Home Administration of the United States Department of Agriculture and Mutual itself raised \$8,000 in order to establish a water system in Le Grand and vicinity. Mutual deemed it advantageous to acquire Company's water system and use portions thereof in its new system. On February 4, 1966, Mutual and Company entered into an agreement whereby Company agreed, subject to authorization by this Commission, to sell its water system to Mutual for \$11,000.² As of December 31, 1964, the original cost less accumulated depreciation of Company's water system was \$7,342.76.

Mutual is a bona fide mutual water company. If the requested transfer is authorized, subject to a matter hereinafter discussed, Mutual will not be under the jurisdiction of the Commission. Mutual's rates will be higher than those of Company: \$5.50 per month rather than \$4 per month for a service connection for a single-family unit not exceeding 7,500 square feet in area. Mutual has a \$10 membership fee and a connection fee, later discussed.

Mutual has expended \$100,000 in constructing a water distribution system which is designed to serve 500 persons. The system meets and exceeds the construction requirements of General Order No. 103. Mutual's connection charge is based upon the approximate cost of running a line and riser to a customer's property, in

² The agreement provides for an immediate cash payment of \$7,500 and that the remaining balance shall be evidenced by an unsecured note and bear simple interest of 6 percent per annum with minimum annual installments of \$700.

accordance with its rules. During construction of the system - until April 15, 1966 - the connection charge was \$40. The present connection charge is \$80.

Each of Company's customers was mailed a notice indicating the time and place of the public hearing herein. No one appeared at the hearing to protest the granting of the application. At the time of the hearing eight of Company's customers, representing 13 service connections, had not joined Mutual. Mutual's president testified that each of the eight customers had been contacted and that they indicated they would either join Mutual or obtain water from wells on their property. The record also discloses that Mutual's bylaws provide that it holds out service, indefinitely, to all those living within the bounds of its service area on a non-discriminatory basis. Any of Company's remaining eight customers will be able to join and receive service from Mutual at any time in the foreseeable future. The Commission is of the opinion that Mutual can provide better water service to the residents of the Le Grand area and that the application should be granted as hereinafter provided.

The record indicates that Mutual intends to operate as a nonregulated mutual water company not under the jurisdiction of the Commission. Paragraph 7 of the agreement between Company and Mutual provides as follows:

"7. Temporary Water Service to Sellers. As an integral part of the consideration furnished the Sellers by Purchaser for the sale of the property sold hereunder, the Purchaser promises to furnish the Sellers for a period of 6 months from date hereof, or for such portion of said 6 months as Sellers continue to own their remaining land within the Le Grand area, water service at rates not exceeding those presently established by the State Public Utilities Commission for such service. This provision of this agreement is, of course, subject to the approval of the said State Public Utilities Commission and it is understood that it may be changed or eliminated by said Commission.

Furthermore, if the performance of this promise would have the legal effect of converting the Purchaser from a mutual water company to a public utility, such promise shall not be performed by the Purchaser."

A supplemental "Addendum and Disclaimer" attached to the agreement in part provides that if implementation of paragraph 7 would subject Mutual to the jurisdiction of the Commission, Company agrees to abide by an order deleting the requirements of that paragraph. Sections 2701, 2702 and 2725 of the Public Utilities Code provide as follows:

"2701. Any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system within this State, who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public utility, and is subject to the provisions of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission, except as otherwise provided in this chapter.

"2702. Any corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost which delivers water to others than its stockholders or members, or the State or any department or agency thereof or any school district, or any other mutual water company, for compensation, becomes a public utility and is subject to Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission.

"2725. As used in this chapter, 'mutual water company' means any private corporation or association organized for the purposes of delivering water to its stockholders and members at cost, including use of works for conserving, treating and reclaiming water."

The record discloses that Mallie O. Richards and Bertha A. Richards, Company's owners, are not members of Mutual. Therefore, the furnishing of water to them for compensation, in accordance with paragraph 7, would subject Mutual to the Commission's jurisdiction under the above-cited code sections. In the circumstances, the transfer will be authorized except as to the provisions of paragraph 7.

No other points require discussion. The Commission makes the following findings and conclusion.

Findings of Fact

1. Le Grand Mutual Services, Inc. is a bona fide mutual water company.
2. The transfer of the public utility water system presently owned by Mallie O. Richards and Bertha A. Richards to Le Grand Mutual Services, Inc. would not be adverse to the public interest.

Conclusion of Law

The application should be granted as hereinafter provided.

O R D E R

IT IS ORDERED that:

1. Within one year after the effective date of this order Mallie O. Richards and Bertha A. Richards, doing business as Le Grand Water Company, may sell and transfer their public utility water system to Le Grand Mutual Services, Inc., a mutual water company, in accordance with all the provisions of the "Agreement of Sale and Purchase", except paragraph 7 thereof, executed by the parties on February 4, 1966 and which is attached to the application as Exhibit A.
2. Within ten days after the actual transfer, Mallie O. Richards and Bertha A. Richards shall notify the Commission, in writing, of the date upon which the transfer was consummated.
3. Upon completion of the sale and transfer herein authorized and compliance with all the terms and conditions of this order,

Mallie O. Richards and Bertha A. Richards shall be relieved of their public utility obligations in connection with the utility system herein authorized to be transferred.

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

Dated at San Francisco, California, this 14th day of JUNE, 1966.

Frederick P. Holliday
President
John E. Mitchell
George F. Brown
August
William L. ...
Commissioners