

**ORIGINAL**Decision No. 73156

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of John Pestana (dba  
John Pestana Water Co.) to annex  
adjacent land to the franchised  
area of the water system.

Application No. 49078  
(Filed January 12, 1967)

Chester L. Beltz and John Pestana, for applicant.

Jerry W. Bartholow, Assistant County Counsel, for  
the County of Santa Cruz.

John Gibbons, for the Commission staff.

O P I N I O N

Applicant requests authority to extend water facilities and service to an 11.5 acre, presently unsubdivided parcel of land, planned for ultimate subdivision into 42 residential lots contiguous to the northwest boundary of the present service area, located about one and one-half miles east of the city limits of Santa Cruz.

The application was set for hearing following unsuccessful attempts by the staff, during its routine investigation, to elicit from the utility's officials pertinent information on the ownership of the utility, the cost and financing of previously authorized extensions, and basic data, not stated in the application as required by Rule 18, Revised Rules of Procedure, bearing upon the current request. The application was heard and submitted on June 23, 1967 at Santa Cruz, before Examiner Gregory.

The record includes testimony from: Chester L. Beltz, operator of the system and former owner of a nearby public utility water company; John Pestana, sole owner of the utility according to Commission records (Decision No. 61714, March 21, 1961, Application

No. 42652 and Supplemental Decisions Nos. 63203 (1962), 63767 (1962) and 70196 (1966)), but now, in light of this record, claiming an equal interest with a Mrs. Corrine U. Chirco, of Los Gatos, with no evidence of Commission authorization for any such purported transfer of a proprietary interest, as required by Section 851, Public Utilities Code; and a Commission financial examiner, co-author of the staff's report of its field investigation of the utility's system and records, dated May 8, 1967 (Exhibit 1).

The staff, in its report and at the close of the hearing, recommended that if the application be granted, the effective date of the authority be postponed until applicant has taken appropriate steps to rectify, and advise the Commission when done, certain deficiencies in his operating practices and accounting procedures, shown by this record as follows:

- a. Apply to the Santa Cruz County Health Department for an amended water supply permit in the name of the owner, or owners, of the utility. ✓
- b. Supply, in the form of an exhibit, specific documented information on the costs of existing plant installations for Tracts 230, 323 and 438 (except for minor plant additions installed during 1965 and 1966), with special reference to purported contributions in aid of construction amounting to \$72,397.87 for the three tracts.
- c. Supply, in the form of an exhibit, a description, including plans and detailed cost estimates, of facilities to be extended to and installed in the 11.5 acre parcel of land for which authority is here sought, together with information concerning the proposed method of financing such installations, i.e., whether by refundable advances for construction pursuant to applicant's Rule 15, Water Main Extensions, or by contributions in aid of construction, giving the names and addresses of those who are to make the advances or contributions and the amounts to be advanced or contributed.

- d. Either execute main extension contracts in accordance with applicant's Rule 15, or supply, in the form of an exhibit, copies of letters or other documents from contributors showing contribution of the cost of existing in-tract water facilities for Tracts 323 and 438.
- e. Set up, and advise the Commission when that has been done, formal books of account and record therein the actual cost of existing water plant facilities, such costs to be supported by invoices or other documents. The method of financing such installations should be sufficiently documented to permit staff verification. Sources of funds for plant already installed should be properly classified in the formal books of account as proprietary capital, advances for construction and contributions in aid of construction, as appropriate.

The deficiencies in applicant's practices and accounting methods revealed by this record are not, in our opinion, serious enough to warrant ultimate denial of the application, unless applicant fails or refuses to take the action, indicated above, to correct them. The present system is capable of serving about 400 metered residential customers plus the local school, and its facilities meet required minimum design and construction standards. Only 188 metered residential customers and the school were served at the end of 1966, while the number of lots in the three presently authorized tracts, plus the 42 included in the 11.5 acre parcel here, total 306.

Applicant's questioned practices, so far as appears on this record, seem to have evolved not so much from intentional disregard of normal regulatory procedures as from somewhat informal corporate arrangements for developing the area (the corporate entity, Santa Cruz Gardens, has been suspended by the Franchise Tax Board, for reasons not disclosed by this record). This, together with inadequate record

keeping by a former bookkeeper and the failure of the utility's officials to observe normal procedures, including provisions of General Order No. 96-A requiring prior authority for rule deviations, has contributed to the accumulation of irregular practices noted above.

Although the record hints that the City of Santa Cruz, at some unspecified future time, possibly may be interested in acquiring applicant's water system, we see no reason for not insisting that the utility now put its house in order. Accordingly, we adopt the staff's corrective recommendations, mentioned earlier, as reasonably designed to effect that result. The utility's officials, at the hearing, indicated their desire to comply with whatever requirements may be necessary to achieve a more normal regulatory climate.

On the question--noted in the staff's exhibit--concerning the lack of any Commission record authorizing an asserted transfer by John Pestana to Mrs. Corrine U. Chirco of a one-half proprietary interest in the water system, we perceive no insurmountable difficulty to authorizing that transfer here. The uncontradicted testimony of Chester L. Beltz, managing operator of the utility, given while under cross-examination and in the presence and hearing of John Pestana, is that John Pestana and Mrs. Chirco each have a one-half interest in the water system.

Although a transfer or other disposition of utility property without, or that varies from, prior Commission authorization is void by Section 851, Public Utilities Code, we do not believe that the Commission's regulatory authority is so circumscribed as to render it impotent to adopt corrective procedures, in a particular case when the facts warrant, that will tend to minimize the burden on both a utility and the Commission, required to bring the utility up to

normal operating and regulatory standards. Authorizing, in this proceeding, the transfer by John Pestana to Mrs. Chirco of a one-half interest in the water system is a reasonable corrective action in the circumstances disclosed by this record.

The Commission finds, on this record, that:

1. Applicant, John Pestana, by Decision No. 61714, dated March 21, 1961 in Application No. 42652, was granted, in his own name as sole proprietor, a certificate of public convenience and necessity and authority to establish rates and rules for a public utility water system to serve 108 lots in Tract 230, Santa Cruz Gardens, near Santa Cruz, California, subject to certain restrictions as to the number of customers and the area to be served. Said decision required that all facilities to serve said Tract 230 be financed from personal funds of said John Pestana.
2. Pursuant to supplemental opinions and orders thereafter issued in Application No. 42652, said customer service and area restrictions were modified to authorize: (a) service to all customers in Tract 230 (Decision No. 63203, dated February 6, 1962); (b) service to a contiguous subdivision, Tract 323, containing 85 lots, the in-tract facilities for which were to be financed, according to applicant's request for authority, by refundable advances under his main extension rule (Decision No. 63767, dated June 4, 1962), but were subsequently claimed, by letter advice from applicant dated November 13, 1965 and by testimony in this record, to have been assigned by the subdivider to applicant for the sum of \$1.00; and (c) service to Tract 438, a contiguous subdivision containing 71 lots, owned, according to this record, by Santa Cruz Savings & Loan Association and formerly belonging to Ernest E. Pestana, applicant's

son, a sewer and water piping contractor who has installed most of the Pestana water system piping (Decision No. 70196, dated January 11, 1966). The cost of in-tract facilities for Tract 438 amounted to approximately \$17,000, to be financed, according to applicant's previous representations to a staff investigator and a letter, dated November 8, 1965, from the tract owners to applicant's attorney, by a refundable advance under a main extension contract; applicant on February 16, 1967, informed the Commission staff that the subdividers had contributed to the utility the water facilities in Tract 438.

3. No record exists with this Commission of a main extension contract, or of authority to applicant to deviate from his water main extension rule, in connection with construction or installation of water facilities to serve Tracts 323 or 438, Santa Cruz Gardens.

4. The land comprising Tracts 230, 323 and 438, of Santa Cruz Gardens, was owned, prior to subdivision development, by John Pestana and (Mrs.) Corrine U. Chirco, in equal interests; Santa Cruz Gardens, a corporation (now under suspension), formed to develop and sell lots in said land, is owned, as to a one-half interest, by John Pestana and, as to the remaining one-half interest, by Corrine U. Chirco and Ernest E. Pestana; Ernest E. Pestana also is the owner of the 11.5 acre, presently unsubdivided, parcel of land for which authority is here requested to extend water facilities and service.

5. John Pestana, pursuant to arrangements concluded at an unspecified date prior to the hearing in the instant application (June 23, 1967), purported to transfer to (Mrs.) Corrine U. Chirco, without prior Commission authorization, a one-half proprietary interest in the properties used and useful by him in rendering water service to the public.

6. Present facilities of the John Pestana Water Company are adequate for metered water service to approximately 400 residential lots and a public school. Said facilities meet the minimum standards prescribed by General Order No. 103. Approximately 188 metered residential customers and said public school were being served by the utility at the end of 1966. Applicant's present request is for authorization to serve an additional 42 lots located in a presently unsubdivided 11.5 acre parcel of land contiguous to his existing service area. If this application is granted, the total number of lots in applicant's service area authorized to be furnished with metered water service will be 306, plus the aforementioned public school.

The Commission concludes that:

1. The application should be granted, but that the effective date of the authority herein requested should be established by appropriate supplemental order herein, after applicant has carried out the staff's recommendations, hereinabove adopted by the Commission, and has filed the exhibits and other documented information as required by said recommendations as so adopted.
2. Authority for the transfer by John Pestana to (Mrs.) Corriac U. Chirco of a one-half proprietary interest in applicant's water system should now be authorized.

O R D E R

IT IS ORDERED that:

1. Applicant, subject to compliance within one hundred twenty days after the date of issuance of this decision with the staff recommendations set forth in lettered paragraphs a, b, c, d and e of the foregoing opinion, may extend water facilities and service to

a presently unsubdivided 11.5 acre parcel of land contiguous to the northwest boundary of applicant's existing service area in Santa Cruz County; provided, however, that the effective date of the authority herein granted, except that granted by the next succeeding paragraph of this order, shall be established by appropriate supplemental order or orders herein, after satisfactory compliance by applicant with the aforementioned staff recommendations; otherwise, the application herein shall be denied.

2. Transfer from John Pestana to (Mrs.) Corrine U. Chirco of one-half the proprietary interest in the water system herein, referred to in the foregoing opinion, is hereby authorized, it being hereby found that such transfer authorization, to be effective on and after the date of issuance of this decision, is not adverse to the public interest.

Dated at Los Angeles, California, this 3<sup>rd</sup> day of OCTOBER, 1967.

[Signature]  
President

[Signature]  
[Signature]  
[Signature]  
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.