

MS

Decision No. 74874

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PALO MESA WATER COMPANY, a corpora-
tion, of Santa Cruz, California, for
authority to abandon water service
and cancel tariff schedules.

Application No. 50112
(Filed March 25, 1968)

Robert M. Simpson, for Palo Mesa Water Company,
applicant.
Harry C. Murphy, for the Estate of William Miles
Houser, Jr., and Rebecca Houser, protestants.
Hugh J. Haferkamp, for C. F. Kettering, Inc. and
Mower Lumber Company; Robert Welby, for Santa
Barbara Savings and Loan Association; and
Peggy Irving, for Savage Water Company; inter-
ested parties.
W. B. Stradley, for the Commission staff.

O P I N I O N

A single-page document was filed on March 25, 1968 wherein it was stated that Palo Mesa Water Company herein had never issued stock, acquired assets, undertaken any service or operated as a water company. It was requested that the certificate of public convenience and necessity issued to Palo Mesa Water Company authorizing it to operate as a public utility water company be rescinded and that all of Palo Mesa Water Company's rates and tariff pages be cancelled. The document was neither titled nor labeled, was filed by Robert Simpson, a consulting engineer, and was given an application number by the Commission because of its content. The Commission staff advised the four people listed as customers that such an application had been filed and also notified various county officials, since the water system was constructed with county funds. All

of the customers protested and demanded a public hearing. A hearing was scheduled and held before Examiner Fraser in San Luis Obispo on June 6, 1968. The matter was submitted on the date of hearing.

Palo Mesa Water Company was incorporated on May 12, 1960. It filed Application No. 42286 for a certificate on May 24, 1960. Decision No. 60727, dated September 13, 1960 granted the certificate without a hearing. The service area is defined in the decision as Tract No. 151, next to State Highway No. 1 about 2 miles southeast of the community of Oceano, San Luis Obispo County. The tract consists of 47 acres, which was to be divided into 163 individual parcels of about 7,500 square feet. The decision reveals that 46 lots were to be developed under the existing water system and that the system was to be expanded after the original 46 lots were sold. The decision authorized the issue of \$91,600 (916 shares at a par value of \$100 per share) in common stock to finance the acquisition of the water system which had been constructed during the first six months of 1960. The water company filed a tariff in 1961 but no stock was ever issued and in recent years the water system has been operated by the four families who reside in the original tract of 46 lots.

The Water System

Construction of the water system started in 1959 when the well was dug. Most of the work was probably completed before June of 1960 although there is evidence that construction continued in 1961 and 1962 as more money was received to finance the project. Each lot sold was to have been assessed its share of the

expense of construction. The first county health department report on the system and water was dated on June 11, 1960. The report was favorable and a "water supply permit" was issued.

Documents on file (as Exhibit 1) show that a 302-foot well, 12 inches in diameter was drilled and that a deep-well 25 H.P. turbine pump was installed to pump the water into a 105,000 gallon storage tank next to the well site. A booster pump of 30 H.P. moves the water from the large storage tank into a 5,000 gallon pressure tank from which it flows into the distribution mains. There are sufficient mains and individual connections to serve the original 46 lots in the tract.

The lots in the tract did not sell and by 1963 the entire project was burdened with tax liens, mortgages and threats of foreclosure. On November 1, 1963 the developer of the tract, Jerry Moore, executed a deed which gave his attorney title to the well site and other property. Moore later (July 1, 1964) deeded the same property to P. D. Associates of Fresno. The property, less the well site, was returned to Moore in 1966. Moore was adjudged a bankrupt and his associates abandoned the land development and water system. Four houses had been constructed on the tract and connected to the water system. All four houses were occupied and two of the four were owned by the family of Moore's former attorney. The people connected to the water system have combined to pay the P. G. and E. power bill and the necessary maintenance bills. The Palo Mesa Water Company is now managed as a community project by the four families it serves.

The Application

Simpson testified that about ten years ago Jerry Moore asked him to supervise the construction of a water distribution system, qualify it as a public utility, and manage it. Simpson stated he accepted the offer and organized P. D. Associates, a partnership, as the business entity to handle the supervision of construction and to hold title to the well site and the tracts on which the water mains and distribution system would be placed. Simpson testified that it was agreed as soon as all 46 lots were sold a water company would be incorporated by Simpson to take over the ownership and management from the partnership, which would then be dissolved. Taxes and other bills were not paid, however, and the entire tract was soon burdened with liens and judgments. This frightened prospective purchasers and the encumbered lots could not be sold. Simpson testified that he tried to operate the system but finally had to abandon it due to the necessity of making a living. He stated the company he incorporated has not operated for years and its certificate is of no use to anyone.

Simpson testified he is the principal stockholder in Savage Water Company, which now holds a deed of trust on the land on which the Palo Mesa water distribution system is located. The deed of trust does not include the well site. He testified he plans to exercise power of sale under the deed of trust and take over the water distribution system. He stated he will probably not serve the families who now use the system. He testified that he is anticipating some cooperation from the other lienholders and debtors; otherwise, his deed will not be of much use.

A spokesman for the four families connected to the system recommended that the application be denied. He emphasized if the water is turned off their houses will be worthless and can neither be lived in nor sold.

Discussion

The certificate was granted to insure that the purchasers of lots in Tract No. 151 would be supplied with water service. The water system operating under the certificate has accomplished this purpose. A certificate should not be revoked because the water company is serving fewer people than anticipated; or because a prior manager of the system applies to have the distribution mains and connections converted to his own use. Simpson's application should be denied. The right of the residents to have continued water service is of primary importance; if a new water service area is to be incorporated the four users of the present system should be included.

Findings

Upon consideration of the evidence the Commission finds that:

1. The Palo Mesa Water Company was incorporated on May 12, 1960 and was granted a certificate to provide water service to the 46 lots in Tract No. 151, San Luis Obispo County on September 13, 1960.

2. The water system was granted a county permit to operate in June 1960 and was completed in 1961 or 1962.

3. The lots failed to sell and the water company has never served more than five families. The system is now used by four families who divide the power and maintenance bills among themselves.

4. The entire tract is burdened with tax liens, mortgages, and judgments. It is not likely that any more lots will be sold in the foreseeable future.

5. The revocation of the certificate is requested by a former manager of the system who plans to obtain title to the distribution mains by sale pursuant to a deed of trust on the land where they are located.

6. If the certificate is revoked the holder of the deed of trust will stop water service to the present customers. This action would make the homes now served completely worthless; without water they could neither be lived in nor sold.

Based on the foregoing findings we conclude that:

1. The Palo Mesa Water Company has existed since the first lots were sold.

2. The people who purchased lots in good faith after being assured that they had a water system operating under a certificate from this Commission are entitled to the protection of such certificate.

3. The application should be denied.

A. 50112 ms

O R D E R

IT IS ORDERED that Application No. 50112 is denied.
The effective date of this order shall be twenty days
after the date hereof.

Dated at San Francisco, California, this 29th
day of OCTOBER, 1968.

William J. ...
President
...
William ...
Augustus
Commissioners

Commissioner Fred P. Morrissey, being
necessarily absent, did not participate
in the disposition of this proceeding.