

ORIGINAL

Decision No. 76952

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Ray A. Perry doing business as Ray Perry Water Services, P. O. Box 103, Soulsbyville, California, for a certificate of public convenience and necessity to operate a public utility water system near Soulsbyville in Tuolumne County and to establish rates for service.

Application No. 50387
(Filed July 12, 1968)

Investigation on the Commission's own motion into the status, rates, rules, regulations, operations, service facilities, equipment contracts and practices of RAY A. PERRY, an individual, RAY A. PERRY doing business as RAY PERRY WATER SERVICES, Post Office Box 103, Soulsbyville, California, and R. J. BAUNHAUSSER, an individual.

Case No. 8930
(Filed July 1, 1969)

Edward B. Beattie, for Ray A. Perry, applicant
in Application No. 50387 and respondent in
Case No. 8930.

E. L. Gorgas, for R. J. Baunhausser, respondent
in Case No. 8930.

B. A. Peeters, Counsel, for the Commission staff.

O P I N I O N

Application No. 50387 sought a certificate of public convenience and necessity to operate an already existing privately owned water system near Soulsbyville, Tuolumne County, and to establish rates. The evidence received at the hearing on the application (held in Sonora on September 24, 1968) indicated that the system had been constructed and operated as a de facto public utility by one R. J. Baunhausser who, without Commission authorization, had transferred the system to the applicant, Ray A. Perry.

Because of the procedural issues resulting from the lack of a formal appearance by Baunhausser and because of the financial and engineering problems disclosed on the record an interim rather than final decision was issued (Decision No. 75865 issued July 1, 1969). Contemporaneously, the Commission also issued its Order Instituting Investigation (Case No. 8930). The decision reopened the application for further hearings to be consolidated with hearings on the investigation. The primary purpose of the further hearings was to determine whether the water system in question was constructed without a certificate, operated with unfiled rates, charges and rules, by R. J. Baunhausser (hereinafter respondent) and thereafter transferred without Commission approval to Ray A. Perry (hereinafter applicant).

Public hearing was held in Sonora on October 7, 1969 before Examiner Gilman and taken under submission October 20, 1969 after the receipt of late-filed exhibits.

Three customers testified concerning continued problems with water quality and quantity. The supervising sanitarian of Tuolumne County testified concerning water quality. A staff engineer presented oral evidence and exhibits. Respondent testified concerning his construction, operation, and transfer of the system. Applicant testified concerning his past efforts and future plans concerning the system. A stipulation between staff and respondent as to issues of fact raised by the Order Instituting Investigation was received.

Respondent during his testimony expressly recognized a continuing responsibility for achieving acceptable water service to present and prospective customers of the system here concerned. In

satisfaction of this obligation, he undertook to provide sufficient funds to accomplish the staff-recommended system improvements and in addition to forgive the \$4,600 presently owed by Perry to him for advances, system maintenance and improvements.

Respondent does not concede that under Section 851 of the Public Utilities Code the purported sale to applicant was void, and that consequently he is still the owner of the system. Respondent has requested that we ratify the sale. This we cannot do. Section 851 declares an unauthorized sale void, and this Commission has consistently held that it has no power to retroactively validate such a transaction. However, such a transaction might well be considered a valid unexecuted contract for the sale of dedicated property. (Transport Clearings-Bay Area v. Simmonds, 226 Cal. App. 2d 405.) Thus our declaration that the transfer is void poses no threat to applicant's investments of time and effort, made in the belief that he was the system's owner.

A difference of opinion arose at hearing between applicant's and staff's engineers concerning the proper application of the minimum pipe size provisions (paragraph III.2.a.) of General Order No. 103 to the improvements to this system. That dispute was resolved by the late-filed exhibits, Numbers 7 and 8. The proposals of the staff, Exhibit No. 7, would produce a system fully in accordance with those general order provisions.

There appear to be no further issues that require resolution at this time. The discontinuance of investigation ordered herein will, of course, be subject to the right of the staff or any other party herein to petition to reopen for consideration of issues

within the scope of the original Order Instituting Investigation, should such consideration be necessary. It appears that consideration of other issues posed by Application No. 50387 can appropriately be deferred until such time as the orders adopted herein are fulfilled. Once those orders are fulfilled we will entertain an application by Ray A. Perry and R. J. Baunhausser to authorize the transfer of this water system.

Findings

We find that:

1. R. J. Baunhausser constructed a water system intended to serve lots for sale by him to the general public without having obtained a certificate of public convenience and necessity from this Commission.
2. Some of said lots were sold to members of the general public, with the representation that the system would provide water to said lots.
3. R. J. Baunhausser operated the water system and received compensation for water supplied to the owners of said lots.
4. R. J. Baunhausser purported to sell and transfer his right, title and interest in the system to Ray A. Perry without either party having obtained authorization from this Commission.
5. Ray A. Perry is now in possession of the system and manages and controls the operation thereof.
6. No tariff has been filed to establish rates or rules applicable to the service rendered by the system.
7. Reconstruction of parts of the distribution main system in accordance with Exhibit No. 7 will bring the system into conformity with General Order No. 103, paragraph III.2.a.

8. Three lots identified as F-F, E-E and C-C will require a pressure system to maintain a minimum pressure of 25 psig.

9. Additional storage capacity of 30,000 gallons is necessary to adequately supply the potential 43 premises within the area that the system is designed to serve.

10. Until such time as the conditions described in findings 7, 8 and 9 are corrected, additional new customers would detract from the utility's ability to provide adequate service to present customers.

Conclusions

We conclude that:

1. Based on Findings 1, 2 and 3, respondent dedicated a water system to a public use, and thereby became a "water corporation" and a "public utility" within the meaning of Sections 216(a) and (b) and 241 of the Public Utilities Code.

2. The purported sale and transfer of the property necessary or useful in the performance of public utility obligations by respondent Baunhausser was void under the provisions of Section 851, Public Utilities Code. The utility property was, and still is, Baunhausser's as are the attendant public utility obligations.

3. Applicant Perry by means of this transaction obtained no greater rights than those of a vendee in possession under an unexecuted contract of sale; as regards the public utility obligations, Perry is nothing more than an agent of respondent.

4. The public interest does not require us to interfere with applicant Perry's possession of the system or with his status as the operator and manager thereof, as agent for the owner.

5. Respondent should not accept new customers for the water system until such time as the system is brought into conformity with General Order No. 103.

6. It is at present the responsibility of respondent Baunhausser to accomplish the tariff filings required by General Order No. 96-A to accommodate the interim rates authorized by Decision No. 75865.

7. It is respondent Baunhausser's responsibility to accomplish the reconstruction of the system to the standards provided in the Commission's General Order No. 103.

O R D E R

IT IS ORDERED that:

1. Respondent shall reconstruct such parts of the system's mains so as to comply with the provisions of this Commission's General Order No. 103. Upon completion of said improvements respondent shall prepare and keep current the system map required by General Order No. 103, paragraph I.10.a.

2. Respondent shall construct and place in operation a 30,000-gallon storage tank and also a pressure system to serve lots F-F, E-E and C-C as part of the system.

3. Respondent shall file tariffs incorporating the rates, rules and conditions set forth in Exhibit 6 herein, a tariff service area map clearly indicating the boundaries of the service area, and appropriate general rules and copies of printed forms to be used in dealing with customers. Such filings shall comply with General Order No. 96-A, shall be filed within thirty days after the effective date of this order and shall become effective on the fourth day after the date of filing.

4. Respondent shall not permit any new service connections until such time as ordering paragraphs 1 and 2 are complied with.

5. Respondent shall take all reasonable steps to notify all owners of lots in utility's service area, which are still undeveloped, of the terms of ordering paragraph 4. Respondent shall also notify any prospective purchaser of the lots in said area still owned by him of the provisions of ordering paragraph 4.

6. Case No. 8930 is hereby discontinued.

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

Dated at San Francisco, California, this 17th day of MARCH, 1970.

William J. Moore, Jr.
President
Augustine
P. J. Wilson
James L. Sturgeon
Commissioners