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Decision No. 79613

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
C. WESLEY BIRD and JENNIE C. BIRD,)
husband and wife, for authority to)
sell to JOHN J. KASER and OLIVE M.)
KASER, husband and wife, all of their)
right, title and interest in the water)
system now owned by C. Wesley Bird and)
Jennie C. Bird, and known as the)
HACIENDA HEIGHTS WATER SYSTEM, in the)
City of Fresno, State of California,)
and to transfer Certificate of public)
convenience and necessity.)

Application No. 52477
(Filed March 3, 1971)

O P I N I O N

On March 3, 1971, applicants herein filed this application requesting authority for applicants, C. Wesley Bird and Jennie C. Bird, to sell to applicants, John J. Kaser and Olive M. Kaser, the water system known as Hacienda Heights Water System in the City of Fresno, and to transfer the certificate of public convenience and necessity issued in connection therewith from applicant sellers, C. Wesley Bird and Jennie C. Bird, to applicant buyers, John J. Kaser and Olive M. Kaser.

By letter dated March 9, 1971, a copy of which is hereby received in evidence as Exhibit No. 1, the Commission Secretary directed applicants, C. Wesley Bird and Jennie C. Bird, to serve a copy of the application herein upon Francis H. Ferraro who had filed a letter protesting the granting of the application. By letter dated April 15, 1971, a copy of which is hereby received in evidence as Exhibit No. 2, the Commission Secretary again directed said applicants to serve a copy of the application upon protestant Ferraro.

By letter dated August 17, 1971, a copy of which is hereby received in evidence as Exhibit No. 3, the Commission Secretary advised said applicants that the Commission had received no response

to Exhibits Nos. 1 and 2 directing service of a copy of the application upon protestant Ferraro and submission of proof of such service to the Commission and requesting advice from said applicants regarding suggested hearing dates. Said Exhibit No. 3 further stated that unless a satisfactory reply was received to Exhibits Nos. 1 and 2 on or before September 1, 1971, a proposed order dismissing the application on the ground of lack of prosecution would be prepared and submitted to the Commission for its consideration.

Applicant C. W. Bird replied by letter to the Commission dated August 19, 1971, hereby received in evidence as Exhibit No. 4, as follows:

"Please do exactly as you threaten to do in your letter of August 17, 1971, File No. A 52477.

"The Hacienda Heights Water System was our private property. On April 1, 1971 we sold it to Mr. John Kaser and transferred title, all assets, documents and accounts to Mr. Kaser. He has been operating the system since that date. Please communicate with him in the future concerning all matters pertaining to the Hacienda Heights Water System. His name and address follow:

John J. Kaser
4058 Duke Ave.
Fresno, California

"We have no further interest in the Hacienda Heights Water System, and cannot, therefore, be responsible for any matter whatsoever connected therewith."

The Commission hereby places the applicants herein on notice that Section 851 of the Public Utilities Code in part provides as follows:

"851. No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad,

line, plant, system or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the Commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the Commission authorizing it is void...."

The Commission, based upon a consideration of the application and the exhibits herein, concludes that the application should be dismissed for lack of prosecution.


O R D E R

IT IS ORDERED that the application herein is dismissed for lack of prosecution.


The Secretary shall forthwith serve certified copies of this decision by registered mail upon the applicants herein and upon Francis H. Ferraro, 5355 N. Marcoa, Fresno, California, 93704, upon the Transamerica Title Insurance Company, 1104 N. Van Ness Avenue, Fresno, California, 93728, and upon the County Recorder of Fresno County, 2281 Tulare Street, Fresno, California 93721.

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


Dated at San Francisco, California, this 18th day of JANUARY, 1972.



Chairman



Commissioners



Commissioners
Commissioner William Symons, Jr., being necessarily absent, did not participate
-3- in the disposition of this proceeding.