

Decision No. 79658

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the ownership,  
rates, operations, service, main-  
tenance, facilities, equipment,  
water supply, billing practices,  
and records of GREAT WESTERN WATER  
SERVICE, a corporation, and JERRY  
L. COLE and WARREN O. WAGNER,  
individuals, and MICHELLE  
ENTERPRISES, LTD., a corporation.

Case No. 9242  
(Filed June 29, 1971)

- Jerry J. Cole, for Great Western Water Service  
and for himself, respondents.
- Warren W. Wingad, for Michelle Enterprises, Ltd.,  
respondent.
- Charles W. Bartlett, Warren Maiden, Loretta C.  
Mc Calman and C. F. Meinkey, for themselves,  
interested parties.
- Cyril M. Saroyan, Attorney at Law, for the  
Commission staff.

INTERIM OPINION

The Commission instituted this investigation of respondents Great Western Water Service<sup>1/</sup> (Great Western), Jerry L. Cole, Warren O. Wagner and Michelle Enterprises, Ltd. (Michelle) as a result of customer complaints and a preliminary investigation of those complaints by the Commission's staff.

Public hearing was held before Examiner Catey in Palmdale on October 13 and 14, 1971. Testimony was presented by an engineer of the Commission staff, by a sanitarian from the Los Angeles County Health Department, by ten customers of Great Western, by respondent Cole and by a representative of respondent Michelle.

---

<sup>1/</sup> Changed to "Great Western Environment, Inc." on March 20, 1970.

After all parties had been given an opportunity to present evidence in this proceeding, counsel for the Commission staff suggested that the investigation be held open for a period of time and that any decision rendered upon the present record be interim in nature. The examiner concurred and stated that if and when it appears appropriate to bring the record up to date with further hearings, the parties will be so notified.

Service Area

Great Western serves water to three separate districts in the Antelope Valley near Palmdale, Los Angeles County. Westmont, the largest of those districts, serves 91 customers out of a potential of about 314 upon full development, in the vicinity of 40th Street East and Avenue T. Littlerock Farms serves 12 customers out of a potential of 56, in the vicinity of 117th Street East and Avenue S-10. Palmdale Acres serves 12 customers out of a potential of about 52, in the vicinity of 97th Street East and Avenue N-8.

Westmont District resulted from the consolidation of the operations of two predecessor utilities: Chester C. Bagstad (Circle-C-Ranchos) and Desacres Water Company, together with an extension into contiguous Tract No. 23445. The consolidation and extension were effected pursuant to Commission authorizations.

Littlerock Farms District and Palmdale Acres District were created by the unauthorized expansion by Great Western into territory not contiguous to its Westmont District. Even if the two additional areas had been contiguous to the Westmont District, the serving of them would still have been unlawful, inasmuch as Great Western was subject to a prohibition against such expansion. The restrictions are in Decision No. 59934, dated April 12, 1960, in Application No. 39083 and Decision No. 71667, dated December 6, 1966, in Application No. 48862. By the time the unauthorized expansions came to the Commission's attention in Case No. 9003, customers had been served for several years and apparently would have suffered great inconvenience if Great Western had been ordered to cease and desist the

unlawful service. Instead, by Decision No. 77151, dated April 28, 1970, the two systems were declared to be part of Great Western's utility operations.

Ownership

Great Western's immediate predecessor is Warren O. Wagner, an individual who had been doing business as "Great Western Water Service". In Application No. 38394, hereby incorporated by reference, Wagner requested authorization to transfer the water system to Great Western, the common stock of which initially Wagner would be sole owner. The pleading filed in that proceeding stated, in part:

"The purpose of said applied for transfer... is to enable the applicant public utility to attract individual and institutional investment in its operations, as well as to enable the creation of an entity of greater permanence and stability."

The transfer requested in Application No. 38394 was authorized by Decision No. 53985, dated October 30, 1956. Despite precautions incorporated in that decision and subsequent Decision No. 55106, dated June 11, 1957, the anticipated "greater permanence and stability" were not achieved.

One of the precautions was to authorize the issuance of up to \$200,000 (par value) of Great Western's Class B common stock to Wagner in exchange for nonutility assets consisting of land-sales contracts and trust deeds with an aggregate face value of not less than \$200,000, the income from which would be used for construction of water system additions and improvements. The record showed that those assets should have produced at least \$1,200 per month, the amount which Wagner had been providing as working capital while operating the utility as a proprietorship. Respondent Cole, the present president of Great Western, testified that his search of the utility's records disclosed that over \$100,000 was collected by the utility and used for further development of the water company. He was unable to discover what disposition had been made of the remainder of the \$200,000 of nonutility assets of the corporation.

A further precaution was to require that the \$200,000 of Class B common stock be placed in escrow and that Wagner could not consummate a sale or transfer of such shares, or any interest therein, or receive any consideration therefor, until further order of the Commission. Inasmuch as all of Great Western's common stock is voting stock, pursuant to its articles of incorporation, and the issuance of only some \$75,000 of Class A stock was authorized by the Commission, ownership of the Class B stock presumably represented effective control of the corporation.

The placing of the Class B stock in escrow should have prevented shift of control to any new party. Nevertheless, in April 1969<sup>2/</sup> respondent Michelle Enterprises considered that it had in some manner acquired title to Great Western's common stock. This, of course, was not possible as to the Class B stock but could have been true as to the Class A stock, upon which no sales or transfer restrictions had been placed. The Class A stock apparently now is owned by respondent Cole.

#### Present Operations

The Commission staff has investigated Great Western's operations. The results of that investigation are summarized in Exhibit No. 1, presented by a staff engineer. That evidence, together with the supplemental testimony of customers and respondents, forms the basis for this brief discussion of the utility's operations.

The present management of Great Western inherited a multitude of problems. Over the years, the various corporate officials have not operated the utility properly. They have extended into new territory in violation of Commission orders, have failed to keep adequate records and have failed to maintain the water properties in reasonably workable condition. The historical deficiencies were

---

<sup>2/</sup> Decision No. 77151, dated April 28, 1970 in Cases Nos. 9003 and 9030.

aggravated for several months by dispute over control and ownership of the corporation. The utility's books, meager as they are, were not even available to the present management during the dispute. This required reconstruction of customer ledgers, estimates of customer billings and resulted in rendering of many erroneous bills.

A few weeks prior to the hearing, respondent Cole retrieved the impounded corporate books. This should permit the correction of billing errors but does not solve the basic problems. Without adequate records of plant costs and operating expenses, a proper rate level cannot be determined. Respondent Cole alleges that lack of rate relief has resulted in some of the financial difficulties of Great Western, such as delinquent taxes and delinquent power bills. From the customers' viewpoint, it is also hard to justify a rate increase until service improvements have been effected.

A further problem results from absentee management. Cole's principal business is situated in San Francisco. His "local" representative who maintains the water system lives eighty miles from the service area.

#### Other Nearby Water Purveyors

Various Los Angeles County Water Works Districts and Palmdale Irrigation District serve areas contiguous to or near to the areas served by Great Western.

The Westmont service area is largely within the boundaries of Palmdale Irrigation District. A small portion is within the boundaries of Littlerock Irrigation District, but recent enactment of legislation relating to Palmdale Irrigation District was designed to simplify annexations. Directors of Palmdale Irrigation District have expressed an interest in incorporating the entire Westmont system into the Irrigation District's operations. Cole testified that the County Engineer's office was also investigating the possible acquisition by the county of the entire Great Western water system. Cole estimated that it would be sometime from April to June, 1972 before anything would be done with respect to transfer of the Westmont system.

Petitions to annex Littlerock Farms to Los Angeles County Water Works District No. 33 were circulated in August, 1971 and the County Engineer's office has completed preliminary engineering work to carry out the annexation. The amount of bonds that would be required has been determined and preliminary steps toward annexation have been completed. Cole testified that, in his opinion, Littlerock Farms could be taken over by the County before December 31, 1971.

The Palmdale Acres service area is not within the boundaries of a public agency from which water service readily can be provided. The County Engineer's office has, however, made a preliminary study of annexing this area to an existing County Water Works District as an improvement district. At the time of the staff investigation, the residents of Palmdale Acres had not yet circulated a petition nor applied to the Board of Supervisors for this annexation. One of the customers in that area testified that, in his opinion, no public agency would be willing to acquire the Palmdale Acres system because the land may be acquired in five years by the Palmdale International Airport. He also felt that the owner of five of the twelve residences in that area would be opposed to formation of an improvement district, thus defeating any such move. This customer's fears may be groundless because (1) it is unlikely that the County Engineer would have undertaken to study possible annexation if the county were unwilling to serve the area, (2) the landlord of the five rental houses would be better able to keep the houses rented with a reliable water supply, and (3) investment in water facilities presumably would be reimbursed if the property were condemned for airport use.

Findings and Conclusions

The Commission finds that:

1. Respondent Great Western Environment, Inc. (Great Western) has failed to furnish and maintain adequate, efficient and reasonable service.

2. Great Western has failed to bill and collect proper charges from customers on a timely basis due, in part, to the temporary impounding of Great Western's books by respondent Michelle Enterprises, Ltd. (Michelle).

3. Great Western has failed to file with the Commission annual reports for the years 1968, 1969 and 1970.

4. Great Western has failed to maintain adequate records which would permit a determination of the reasonableness of its rates.

5. Great Western has failed to meet its financial burdens.

6. Great Western has had interruptions in its public utility service, but has not refused to render service.

7. Respondent Jerry L. Cole (Cole), as Great Western's president and holder of its Class A common stock, is now operating Great Western.

8. Michelle has turned Great Western's books and records over to Cole and no longer contends it has an interest in Great Western.

9. Respondent Warren O. Wagner originally formed Great Western and apparently still has nominal ownership of Great Western's Class B common stock, but no longer exercises any management control over Great Western.

10. There are public agency water purveyors adjacent to or reasonably near Great Western's service areas which could take over operation of Great Western's water systems.

The Commission concurs with the conclusion of its staff and of Great Western that, under the circumstances disclosed by the record in this proceeding, it would be in the best interests of Great Western's customers for one or more of the nearby water purveyors to take over Great Western's operations. We also concur with the staff's suggestion that a final order not be issued at this time. The progress reports which the order herein requires Great Western to file will determine what future Commission action is appropriate.

INTERIM ORDER

IT IS ORDERED that, until further order of this Commission, respondent Great Western Environment, Inc. shall file monthly progress reports by the tenth day of each month starting with ~~January~~ <sup>March 10</sup> 1972, EFS showing the status of each of the following:

- a. Correction of billing errors.
- b. Repairs of all known leaks.
- c. Negotiations for transfer of all or portions of the water system to nearby water purveyors.

The effective date of this order is the date hereof.

Dated at San Francisco California, this 1st day of FEBRUARY, 1972.

[Signature]  
 Chairman

[Signature]  
 William Johnson

[Signature]

[Signature]  
 Commissioners