

ORIGINAL

Decision No. 82114

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Petition of
Francis H. Ferraro for rehearing,
recision and/or reversal of
Resolution No. W-1449. }

Case No. 9586
(Filed July 17, 1973)

Francis H. Ferraro, for himself, complainant.
A. C. Greene, Attorney at Law, for California
Water Service Company, respondent.
Chris Jensen, for himself, interested party.
P. W. Avery, for the Commission staff.

OPINION AND ORDER

On rehearing. Our Resolution No. W-1449 dated May 22, 1973 and continuously in effect since that date found as reasonable and justified and at the same time ordered the modification of the service area of C. Wesley Bird (Bird), doing business as Wesmilton Water System (Wesmilton), as requested in Bird's Advice Letter No. 15 dated April 24, 1973 filed in conformity with General Order No. 96-A. The modification allowed by the resolution was the ceding by Wesmilton of a rectangular 500-by 1,800-foot area, the long axis of which runs north and south along Wesmilton's eastern service area boundary located partly within and partly without the city of Selma, Fresno County. California Water Service Company (CWS) subsequently picked up this ceded area for inclusion in its water service system through the filing of its Advice Letter No. 411 dated May 7, 1973. Petitioner Francis H. Ferraro (Ferraro) requests that the Commission rescind and

reverse Resolution No. W-1449 on the ground that Bird did not have the right to effect the abandonment of the 500- by 1,800-foot strip because Wesmilton belonged to Ferraro by right of purchase and that the transfer renders useless and reduced in value the Wesmilton pumping plant installed for the area in question. Ferraro also requests that the Commission (1) institute an order of suspension and investigation; (2) proceed with a field investigation; (3) provide protection for Ferraro; and (4) have the Commission staff make an appraisal of a cooperative effort to serve the ceded area. We granted a rehearing on Resolution No. W-1449 because Ferraro had not been served with either advice letter and had allegedly been unaware of the pendency of the matter until after the resolution was issued. A rehearing was held in San Francisco on August 20, 1973.

Evidence adduced at the rehearing showed that a previously undeveloped land area overlapping the adjacent water service area boundary lines of Wesmilton and CWS is undergoing two subdivision developments. Through a recent annexation the subdivision to the north is entirely within the city of Selma which has franchised CWS to render water service in the city of Selma. The other subdivision to the south, one unit of which is currently being served by CWS, is partly within and partly outside of Selma. The ceded area embraces all of both subdivisions which lay within Wesmilton's water service area and in addition includes two areas not under subdivision development, the western boundaries of which (Thompson Street) coincide with the western boundaries of each of the subdivisions. Neither Wesmilton nor CWS has any facilities for furnishing water in the ceded area though Wesmilton does have a main extending along Thompson Street, which parallels the ceded area for 350 feet, from which it serves customers on the west side of Thompson Street (not in the ceded area). Wesmilton's closest pumping station is located approximately a mile from the closest point in the ceded area while CWS's closest pumping station is a block away and it has four mains presently terminating close to that area.

The witness for CWS testified that his company was ready, willing, and able to render water services to the ceded area and that in so doing it would not impose a burden on his company's other customers.

The subdivider of the extreme north and northeast portions of the ceded area appeared at the hearing and testified that he had worked with CWS in the past "with very good results, plenty of pressure, never any complaints" and that "No one from Wesmilton ever contacted us, whoever the owner may be, to give us estimates, or let us know they were interested in serving our area". He stated that his subdivision map has been approved by the Selma city engineer and that he has \$80,000 committed for improvements for water, electricity, streets, etc. He feels that CWS has done a good job for him in Selma and he would like to have them continue. He has already built 20 homes on his subdivision.

Ferraro also attacks the resolution because the filing date of Advice Letter No. 15 is incorrectly recited in the resolution and that the northern subdivision is not mentioned in the resolution.

In Decision No. 73361 dated November 21, 1967 in Application No. 49665 filed September 7, 1967, the record of which we take official notice, the Commission approved a proposed sale and transfer of Wesmilton and its certificate from Bird to Ferraro. Correspondence in the case file indicates that the proposed sale and transfer is in litigation in the courts. At any rate, we have from time to time extended the time in which the transaction may be consummated, at the request of Ferraro, until now it is December 11, 1973. Ordering Paragraphs 1, 2, 3, 4, and 5 of Decision No. 73361 read as follows:

- "1. Within one year after the effective date of this order, C. Wesley Bird and Jennie C. Bird, husband and wife, may sell and transfer to Francis H. Ferraro the water systems referred to herein, substantially in accordance with the terms described in the agreement attached to the application herein as Exhibit B, provided, however, that the note executed by Francis H. Ferraro shall be in the form prescribed by Exhibit No. 3 and not in the form prescribed by Exhibit H to the application.
- "2. On or before the date of actual transfer, C. Wesley Bird and Jennie C. Bird shall refund all customers' deposits and all amounts under advances for construction agreements representing refunds due and payable as of the date of transfer.
- "3. After the effective date of this order, and not more than thirty days after the date of actual transfer, buyer shall file additional and revised tariff sheets, including tariff service area maps, clearly and accurately indicating the boundaries of the tariff areas established by the transfer, to provide for the application of sellers' present rates and rules to the service areas acquired by the transfer. Such filing shall comply with General Order No. 96-A.
- "4. Within five days after the date of actual transfer, sellers and buyer jointly shall file in this proceeding a written statement showing:
 - a. The date of transfer. A true copy of the instrument or instruments of transfer shall be attached to the statement.
 - b. The dates of compliance with the foregoing Ordering Paragraph 2.
- "5. Upon compliance with all of the conditions of this order, sellers shall stand relieved of their public utility obligations in the areas served by the transferred systems and may discontinue service concurrently with the commencement of service by buyer."

The Commission's records do not reflect that Bird and Ferraro have ever complied with the conditions set out in Ordering Paragraphs 2, 3, 4, and 5 of Decision No. 73361.

In answer to a question from the examiner concerning the "protection" which Ferraro was seeking from the Commission, Ferraro answered, "As a complainant I felt that the Commission had a responsibility, in reviewing the matter, and that my rights should be protected".

Discussion

Compliance with the conditions set out in Ordering Paragraphs 2, 3, 4, and 5 of Decision No. 73361 is necessary to invest Ferraro with the obligations and rights of a public utility water system in connection with Wesmilton. Until the time when the conditions set out in those ordering paragraphs are complied with, Bird retains all the obligations and rights of a public utility water system known as Wesmilton, including the sole right under appropriate conditions to voluntarily revise Wesmilton's service area. Our Decision No. 73361 did not effect a transfer of Wesmilton to Ferraro. Ordering Paragraph 1 of that decision is permissive only, and the Commission has no power to order the consummation of that agreement which was voluntarily entered into at one time by Bird and Ferraro but is now in litigation.

Petitioner makes no claim that CWS will be unable for economic or other reasons to give satisfactory service to potential users in the ceded area; and while he argues that our approval of the transfer has and will have an adverse effect on Wesmilton's system and service, he has presented no evidence to substantiate such allegations. Nor has Ferraro presented us with any reasons for instituting a further investigation into the matter, making an

appraisal of a cooperative service or of conducting a field investigation. What we have here is an amicable agreement between two separately owned water systems covering proposed service to an area located adjacent or close to their respective boundaries. No sufficient reasons have been advanced to show that such agreement and transfer are unreasonable. While parts of the relinquished area are not presently under subdivision plans, the inclusion of these areas makes for a clear-cut and uncomplex boundary between the two water systems as contrasted to leaving both systems with a saw-toothed boundary were we to authorize only the transfer of areas presently under subdivision plans.

Ferraro's contention is without merit that the incorrect recitation of the filing date of Advice Letter No. 15 in the resolution is fatal. The ordering paragraph of the resolution reads:

"IT IS ORDERED that the service area of Wesmilton Water System be modified as requested in Advice Letter No. 15."

The ordering paragraph is clear and there is only one Wesmilton Advice Letter No. 15. Furthermore, since the advice letter, filed April 26, 1973, requests that it become effective on statutory (30-day) notice, our resolution which is dated May 22, 1973 is not premature since our approval runs to the modification as requested in the advice letter, including the requested effective date.

Our failure to mention the northern subdivision - Emma Estates - in our resolution may have been cause for objection on the part of the developer of that subdivision if we had disapproved the modification, but in this case the fact that there is another subdivision in the ceded area which would be without water if we had not approved the modification lends further support to the correctness of our resolution.

The Bird-Ferraro transfer has been in the offing for five years now and how much longer it will remain in litigation is conjecture. We are certain, however, that a present need for water service has arisen in the ceded area and the exigencies of the situation require us to approve the transfer of the area in the face of Bird's decision not to render service in that area. However, we are not unmindful of Ferraro's concern in seeing part of the system area he thinks he bought slipping away, particularly if this is the forerunner to further abandonments of parts of Wesmilton's service area. We will therefore permit, if at all, no further ceding of the Wesmilton system area except after oral hearing with all parties present until the court litigation over the sale and transfer has ended.

Findings

1. C. Wesley Bird, doing business as Wesmilton Water System, at all times pertinent is a water corporation as defined in Section 241 of the Public Utilities Code and as such had the standing to and was the proper party to file Advice Letter No. 15.
2. There is a present need for water service at the subdivision developments in the ceded area which Bird does not desire to serve but CWS does desire to serve. CWS is ready, willing, and able to render satisfactory water service in the ceded area.
3. Wesmilton is not now serving any points in the ceded area nor has Wesmilton any facilities for water service located in such area.
4. In Decision No. 73361 the Commission authorized, subject to certain conditions, Bird to sell and transfer Wesmilton to Ferraro, but to date Bird and Ferraro have not complied with Ordering Paragraphs 2, 3, 4, and 5 of Decision No. 73361 so as to divest Bird of the responsibilities and rights of a public utility and invest Ferraro with those responsibilities and rights.

5. There has been no showing that the subject transfer will render useless or appreciably reduce the value of the Wesmilton system nor will it have an adverse effect on water service rendered or to be rendered by either of the two involved water systems.

6. No facts have been presented to warrant the Commission's staff conducting a field investigation, the Commission's issuing an order of suspension and investigation, or the making of an appraisal of a cooperative effort to serve the involved area.

Conclusions

1. The elimination of the subject 500- by 1,800-foot area from the water service area of Wesmilton is reasonable and justified.

2. Resolution No. W-1449 should be upheld.

IT IS ORDERED that the petition for reversal and rescission of Resolution No. W-1449 and for other relief is denied.

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

Dated at San Francisco, California, this 13th
day of NOVEMBER, 1973.

Vernon L. Lefter
President
William L. Lefter
William L. Lefter
William L. Lefter
Commissioners