

ORIGINALDecision No. 84520

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CALIFORNIA CITIES
WATER CO., a California corporation,
to purchase the water utility
properties of PARKWOODS MUTUAL
WATER COMPANY in Lake County,
California.

Application No. 55587
(Filed March 27, 1975)

O P I N I O N

John D. Dillingham, who is authorized to act on behalf of the water company known as Park-Woods Mutual Water Company, Inc. (seller), and California Cities Water Company (buyer), a California corporation, request authority for seller to transfer its water utility properties to buyer and for seller to be relieved of its public utility obligation.

Seller was found to be a public utility by this Commission in Decision No. 78732 dated May 25, 1971 in Case No. 9133 and is presently supplying water to 100 members of the public in an area which is part of Clearlake Woods in Lake County, California.

Park-Woods system consists of approximately 27,750 feet of water mains ranging in size from four inches to six inches in diameter, 100 services, and 100 meters. The total water supply is purchased at the filed annual metered service rates from the Clearlake District of buyer. The original cost of property being transferred is estimated by seller and buyer as \$80,000, with a depreciation reserve as of December 31, 1974 of \$43,800, resulting in a net book cost of \$36,200. These figures are supported by Exhibit A of the application, but

differ, primarily in depreciation reserve, from those shown by the seller on the last annual report filed with the Commission, dated December 31, 1973, which are: original cost \$76,257, reserve for depreciation \$28,629, and net book cost \$47,628.

The selling price is \$36,200 under the following terms:

Cash of \$6,200 minus any balance owed buyer for water sold to seller; in addition, buyer will pay seller \$100 per customer for the first 300 additional customers who come on line on existing AC or plastic water lines within 10 years of the signing of the purchase agreement.

Seller warrants that:

- a. There are no customer deposits to establish credit.
- b. There are no main extension advances.
- c. There are no mechanic's liens against the water system properties to be acquired.
- d. There are no tax liens against the water system properties to be acquired.

Seller desires to dispose of the water system because of the demise of one of the principals, and because a utility of this small size is not an economically feasible operation.

Buyer desires to acquire the system because it is a water purveyor, experienced and qualified to operate the system, and now provides all the water used in seller's operations.

Buyer proposes that the tariffs, rules, and regulations applicable in its Clearlake District will be made applicable to the customers of seller. The acquired system will be incorporated into and operated as part of the Clearlake District of buyer. At present charges are the same in both systems; however, buyer, by Advice Letter No. 35, has requested an offset rate increase of 2.80 percent for the Clearlake District.

Buyer proposes, upon acquisition of the Park-Woods system, to improve the water supply to the system by removing the 2-inch meter connection, replacing the meter with a direct connection, and looping the Park-Woods system into its own.

Ordering Paragraph 6 of Decision No. 78732 dated May 25 1971 in Case No. 9133 reads: "6. Park-Woods Mutual Water Company shall not, without further order of this Commission, extend its water system." Buyer requests that this restriction be removed. In Park Woods Homeowner's Association, Inc. v Park-Woods Mutual Water Company, Inc. (Decision No. 81131 in Case No. 9337) we issued an interim order which continued the restriction on new services until the Commission was satisfied that directed corrective actions had been taken. Case No. 9337 has not been closed, and restrictions imposed by Decision No. 81131 remain in effect.

Both applicants undertook to notify the community of the application. No protests have been received.

Discussion

Decision No. 78732, supra, indicates that Dillingham and Lewis, who owned substantial numbers of residential lots in the territory in question, decided to make them saleable by providing water service through a system which they intended to control and operate. Rather than seek a certificate of public convenience and necessity, the subdividers built and operated the system under the guise of a mutual, representing to the Department of Corporations and to various individual customers that seller was a true mutual. If seller had been operated as a mutual, each lot purchaser would have received a share of stock appurtenant to the lot. However, few, if any, of the shares were ever issued, and the subdividers maintained control of the water company. None of the customers was permitted to participate in the management of the so-called mutual. In at least several instances, land purchasers were told that they were entitled to stock; in several instances, the land buyers paid for the stock.

Decision No. 78732 contains the following findings and conclusions:

"Findings of Fact

"Based upon the above, we find that Park-Woods Mutual Water Company has not restricted itself to delivery of water to its shareholders or lessees thereof. We further find that the holders of shares numbered 1-29 and 126 are captive stockholders in no position to effectively enforce any of their rights as stockholders. We also find that if all owners of lots encompassed by the 84 users of water had in fact been issued one share each, Lewis and Dillingham would still hold a controlling stock interest in the mutual water company.

"Conclusion of Law

"We conclude that Park-Woods Mutual Water Company is not entitled to an exemption from public utility regulation under Section 2705 and therefore has been and is a 'water corporation' as defined in Section 241 of the Public Utilities Code, and a 'public utility' within the meaning of Section 216 of that Code."

Those findings and conclusions were not intended to terminate whatever equitable rights the putative shareholder/consumers may have received as a result of payments made to, or representations made by, the developers. In fact, the very name of the corporation as well as the course of conduct described in Decision No. 78732 may be sufficient to create a presumption that those who were promised or paid for shares of stock are entitled to share rateably in the proceeds of any sale.

Since there has been no showing that Dillingham and the Lewis estate and/or heirs have terminated their domination of the mutual water company, we feel there is a need to insure that our prior actions in Decision No. 78732 and our authorization to sell do not result in any unjust enrichment of those in control of the corporation at the expense of the general membership. While this Commission has

jurisdiction over the relationship between a utility and its customers, the Superior Court has jurisdiction to handle problems arising between a corporation and its stockholders. Our order will preserve a fund created as a result of our order pending settlement of potential claims to that fund, whether by litigation or negotiation.

Findings

1. Buyer has the ability to acquire and operate seller's water system without interruption in service.
2. Buyer will improve service by removing the meter between the systems and looping the Park-Woods system into its own system.
3. There are no customer deposits, main extension advances, mechanic's liens, or tax liens against the properties to be acquired.
4. Upon completion of the proposed transfer seller will no longer be performing public utility service.
5. The transfer is not adverse to the public interest.
6. Restrictions on expansion imposed by Decisions Nos. 78732 and 81131 should not be removed prior to closing Case No. 9337.
7. There is insufficient evidence to support a finding that some customers of seller are not entitled to share in the proceeds of a sale of the company's assets.
8. A public hearing is not necessary.

Conclusions

1. The application should be granted as hereafter provided.
2. The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred nor as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates.
3. The Commission should order the impoundment of all funds resulting from either the sale of the operating property or from dissolution of the seller until all claims to such funds are lawfully resolved.

O R D E R

IT IS ORDERED that:

1. On or before one year after the effective date of this order, Park-Woods Mutual Water Company, Inc. may sell and transfer the water system referred to in the application to the California Cities Water Company.

2. As a condition of this grant of authority, buyer shall assume the public utility obligations of seller within the area served by the water system being transferred.

3. Within ten days after completion of the transfer, buyer shall notify the Commission, in writing, of the date of completion and of the assumption of the obligation set forth in paragraph 2 of this order.

4. Buyer shall either file a statement adopting the tariffs of seller now on file with this Commission or refile under its own name those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.

5. On or before the actual date of transfer, seller shall deliver to buyer, and the latter shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

6. On or before the end of the third month after the date of actual transfer, buyer shall cause to be filed with the Commission, in such form as it may prescribe, an annual report covering the operations of seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. Upon compliance with all of the terms and conditions of this order, seller shall be relieved of its public utility obligations in connection with the water system transferred.

8. Relief requested from restrictions imposed by Ordering Paragraph 6 of Decision No. 78732 is denied without prejudice.

9. Buyer shall deposit all funds due under the contract of sale in an interest-bearing bank account in the name of Park-Woods Mutual Water Company, Inc., said account to require the signature of the Secretary of this Commission, in addition to authorization from seller for release of funds. It is intended that the funds in such account be released when the Commission has received sufficient indication of a settlement of all claims between the utility's customers, as shareholders, or when a court having jurisdiction to determine such claims renders judgment distributing the funds.

10. Within sixty days after the consummation of the purchase herein authorized, California Cities Water Company shall file with the Commission a copy of each journal entry used to record the purchase on its books of account.

11. The Secretary shall furnish applicants with sufficient copies of this decision for notice to all owners of property served by seller. Applicants shall serve a copy of this decision on each owner of property by mailing a copy to each address where water bills are sent. Enclosing a copy of the decision with the next regular bill for water will satisfy this order.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 10th
day of JUNE, 1975.

Vernon L. Sturgeon
President
William Lyons
Leonard Ross
Robert K. Smith
Commissioners