

Decision No. 85383

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the status, tariffs, rates, rules, regulations, facilities, equipment, water supply, operations, service, contracts, and practices of CUYAMA VALLEY COMMUNITY, INC., a California corporation; ATLANTIC RICHFIELD COMPANY, a Pennsylvania corporation; FOUNDATION FOR AIRBORNE RELIEF, a California corporation; and ARKANSAS VALLEY DEVELOPMENT CORPORATION, an Oklahoma corporation.

Case No. 9661
(Filed February 13, 1974;
amended August 26, 1975)

O'Melveny & Meyers, by Harold M. Messmer, Jr.,
Guido R. Henry, Jr., and Clark Waddoups,
Attorneys at Law, for Atlantic Richfield Company;
Stephen E. Wall, Attorney at Law, for Foundation
for Airborne Relief; and L. Donald Boden, Attorney
at Law, for Arkansas Development Corp.; respondents.
Peter Arth, Jr., Attorney at Law, and Robert C.
Durkin, for the Commission staff.

SECOND INTERIM OPINION

In our first interim opinion^{1/} we found respondent Foundation for Airborne Relief (FAR) to be a water corporation and a sewer system corporation subject to the jurisdiction of this Commission, and that respondent Cuyama Valley Community, Inc., (CVC) is a public utility subject to the jurisdiction of this Commission. It was also found that ultimate ownership of CVC could not be determined on the record at the time. Further hearings were scheduled to resolve the issue of ownership. After duly published notice, hearings were held on July 28 and 29, 1975 in New Cuyama before Examiner Bernard A. Peeters. FAR did not appear at the July hearings, but a representative of FAR was called as a witness by the staff.

^{1/} D.84172 dated March 4, 1975 in C.9661.

The Additional Evidence

The staff developed, through the manager of Estado Home Loan Company of Santa Barbara (Estado) that Estado had acquired the utility property of CVC on May 30, 1975 through a foreclosure sale on FAR's note to Estado in the amount of \$55,000. The note was secured by a deed of trust executed by FAR which covered certain properties in New Cuyama, including the utility property of CVC. As of June 1, 1975 Estado took over the operation of both the water and sewer utilities of CVC, including the billing, collection of charges for services, and payment of CVC's bills. Authority for this transfer was not sought from nor given by the Commission.

Respondent Atlantic Richfield Corporation (ARCO) produced documentary evidence that it conveyed all properties, personal and real, in connection with the water and sewer systems, including Well Site No. 4, to FAR. No evidence was adduced with respect to FAR's default on its indebtedness to ARCO, nor what ARCO's intentions are with respect to taking action on the default.

Respondent Arkansas Valley Development, Inc. (AVDC) through its counsel stated that it is instituting litigation with respect to the ownership of the CVC stock, and offered a stipulation of fact that an escrow account has been opened with \$100,000 for the purchase of the property owned in New Cuyama by AVDC and its interest in the CVC stock, subject to Commission approval before the sale if consummated.

The manager of Estado testified that he is now fully aware of the responsibilities he has assumed in connection with CVC's utility operations and is willing to continue the operations in accordance with the law and the Commission's rules and regulations.

Mr. O'Quinn, president of FAR, testified that he had no objection to the arrangement whereby Estado will operate the utilities, including collecting rates.

The staff engineer's report pointed out that CVC had not complied with the following items required by D.84172:

- a. It has not printed forms to be used in dealing with its customers.
- b. It has not filed current maps showing the facilities of the two systems.
- c. It has not performed the contract relating to the exchange of services with the Cuyama Valley High School.
- d. It has not installed a meter to record water usage of the Cuyama Valley High School or the water production from the pumping facilities located at the high school.

On August 26, 1975, D.84849 was issued which broadened the scope of this investigation by naming Estado Corporation as a respondent.

Discussion

It is obvious from the additional evidence that it is still not possible to determine the ownership of CVC. It is also obvious that FAR has entered into other unauthorized transfers of utility property, and is apparently in no financial position to operate the utility systems.

There is presently a viable operator in possession of the utility systems (Estado) which is willing to continue the operations. Although Estado has acquired title to the utility properties, in view of the special circumstances surrounding all the transactions involving these properties from the time ARCO first built the townsite to the present, the litigation over CVC stock ownership, and other events depending upon future action of parties over whom we have no control, we will not rule, at this time, upon the validity of the transfer to Estado.

To insure reliable water and sewer service to the inhabitants of New Cuyama, we believe it in the best public interest to recognize Estado as, at least, the de facto owner of the systems subject to our jurisdiction, and we will prescribe orders to Estado accordingly.

Additional Findings of Fact

1. ARCO has transferred all its right, title, and interest in the personal and real properties of CVC.
2. ARCO has not acted with respect to FAR's default; therefore, there is a possibility, although remote, that the utility properties may revert to ARCO.
3. ARCO should not be dismissed as a respondent until the ultimate ownership question is resolved.
4. FAR encumbered the utility property of CVC by a Deed of Trust without authority from this Commission, to secure a \$55,000 note to Estado.
5. FAR defaulted on its \$55,000 note to Estado.
6. Estado foreclosed on the Deed of Trust and obtained title to CVC's property without prior authority from this Commission.
7. Estado is in possession and controls and operates the water and sewer systems of CVC.
8. Estado had agreed to continue to operate the utility, subject to our jurisdiction, pending the outcome of this investigation.
9. There are too many contingencies, over which we have no control, to determine the ownership of CVC at this time.
10. Estado is a water corporation within the meaning of Section 241, and a sewer system corporation within the meaning of Section 230.6 of the Public Utilities Code.
11. To the extent that FAR did not comply with D.84172, Estado should be ordered to comply with Ordering Paragraphs 5 through 12 of D.84172, a copy of which should be served upon Estado.

Additional Conclusions of Law

1. Estado's control, operation, and management of CVC constitutes it a water corporation and a sewer system corporation, as defined in Section 241 and 230.6 of the Public Utilities Code, subject to the jurisdiction of this Commission.

2. Cuyama Valley Community, Inc., Atlantic Richfield Company, Foundation for Airborne Relief, and Arkansas Valley Development Corporation, and Estado Home Loan Company are admonished to obey Public Utilities Code Section 854 under penalty of law. Section 854 states:

"854. No person or corporation, whether or not organized under the laws of this State, shall, after the effective date of this section, acquire or control either directly or indirectly any public utility organized and doing business in this State without first securing authorization to do so from the commission. Any such acquisition or control without such prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this State shall aid or abet any violation of this section. "

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Atlantic Richfield Corporation shall remain a respondent until the ownership of Cuyama Valley Community, Inc. can be determined.
2. Estado Home Loan Company is declared to be a water corporation and a sewer system corporation subject to the jurisdiction of this Commission.
3. Estado Home Loan Company shall comply with Ordering Paragraphs 5 through 12 of D.84172 dated March 4, 1975.
4. Estado Home Loan Company shall not sell, lease, assign, merge, consolidate, mortgage, transfer, or otherwise dispose of or encumber the whole or any part of its water system or sewer system necessary or useful in the performance of its duties to the public without first having secured from the Commission an order authorizing it so to do.

5. Further hearings in this matter will be held at a time and place to be set.

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

Dated at San Francisco, California, this 27th
day of JANUARY, 1976.

William J. Lyons Jr. President
William L. Sturgeon
Robert B. Baker Commissioners