

Decision S4 05 053

MAY 16 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Nevada C. Jennings,
 doing business as Myers Flat
 Waterworks to sell and Myers Flat
 Mutual Water System to buy the
 water system in Myers Flat, CA,
 Humboldt County.

ORIGINAL

Application 83-11-34
 (Filed November 16, 1983)

Sally M. Dervedde, for Nevada C. Jennings,
 applicant.

Billie Muyres, for herself, protestant.

Larry Hansen, for himself, and William E.

Meagher, for Ambrose, Heimricks, Fisher,
 Meagher, Bauder & Osburn, interested party.

O P I N I O N

This is an application in which Nevada C. Jennings (Jennings), doing business as Myers Flat Waterworks (Waterworks), seeks authority to sell and transfer the public utility water system to Myers Flat Mutual Water System (Mutual).

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in Eureka on March 15, 1984. It was submitted subject to the receipt of transcript which was filed on April 2, 1984.

Waterworks serves approximately 50 customers in Myers Flat, Humboldt County.

At the hearing, Sally M. Dervedde, Mutual's president, testified about the lack of management and deterioration of the system, the extreme water outage in the summer of 1983, which prompted the formation of Mutual and the efforts made by Mutual to acquire Waterworks.

Jeff Arnold, the Director of Environmental Health for the Humboldt County Health Department (who previously held the post of Area sanitarian) testified that Waterworks has so deteriorated that leaks and low pressure presented a good chance that contamination could enter the system. If this occurred the Health Department would shut down the system. Arnold stated that the Health Department supported the application as the best solution to the problem. If Mutual acquires Waterworks it will be subject to the jurisdiction of the Health Department and the Department of Corporations.

Steve DeCamp, the executive officer of the Humboldt County LAFCO, testified that LAFCO supported the application as the quickest and most efficient way to solve a serious problem.

Dennis McLaughlin, an employee of the California Department of Housing and Community Development testified of the help given by the agency to assist in the formation of Mutual in order to acquire Waterworks.

Herbert Morris, Mutual's vice president, testified that he is the supervisor of buildings and grounds at College of the Redwoods. He gave a description of the system and told of his efforts and those of other volunteers to presently operate Waterworks as the agent for Jennings and the program of operation and rehabilitation Mutual intends to follow if the transfer is authorized.

Ned Jennings, Jennings' son, testified that his mother is old, she does not remember things, and she does not care about Waterworks any more. She failed to collect water bills from users for five years. Ned Jennings stated that if the transfer is not approved, he will have nothing to do with the system.

Protestant Billie Muyres and interested parties Larry Hansen and William E. Meagher cross-examined witnesses produced by applicants. At the conclusion of applicants' case, Hansen testified. He expressed concern that Mutual acquire proper title to

the assets and easements being transferred and that Mutual conduct its affairs in accordance with its bylaws. However, he urged the Commission to approve the transfer. Meagher was given the opportunity to testify but declined and stated he was satisfied with the record as developed. Although Muyres cross-examined witnesses, she left the courtroom and did not appear at the time designated for protestant's evidence or the rest of the hearing.

The evidence indicates that Mutual's board of directors has been reluctant to hold meetings called for by the bylaws because the members feel they have no jurisdiction to act until the transfer is approved. If the system is acquired they propose to hold duly noticed meetings as provided in the bylaws. If the transfer is approved the Commission will have no jurisdiction over Mutual. (Public Utilities Code § 2705.) Mutual's shareholders' rights are derived from the Corporations Code. (See, e.g., Corp. Code §§ 602, 708.)

Mutual indicated that it is in its interest and it will attempt to clear up any questions of title. However, questions of title should not impede the transfer. Jennings has agreed to transfer the water system to Mutual. Whatever title Jennings has or to which she is entitled will pass to Mutual, which is in a better position to resolve the matter.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Because of the unforeseen emergency hereafter set forth the public interest requires that Rule 81.5 be waived and this matter be disposed of without appearing on the Commission's Public Agenda.

2. Jennings owns Waterworks, which serves approximately 50 customers in Myers Flat, Humboldt County. Jennings is more than 80 years old. Her memory is not good. She does not wish to have anything to do with Waterworks. For the five years preceding the

first part of 1983, Jennings failed to bill and collect for water furnished to the customers of Waterworks.

3. Waterworks' system may be generally described as having approximately four miles of 3.80 world War II-type eighth-inch wall section pipe that has deteriorated to the point of not holding 50 pounds of water pressure. About a mile of the system is six and eight-inch line interconnecting the balance of uptown to the reservoir. The reservoir is of concrete construction and holds 364,000 gallons of water from the spring from Pete's Creek. There is 1,600 feet of pipe from Pete's Creek to the reservoir. This provides a four-inch stream of water to Waterworks. The 3.80 line that was under the river prior to 1964 is no longer there and has been replaced by a two-inch PVC plastic pipe on a suspended carrier over the river. The total head pressure from Pete's Creek at a static pressure is 70 pounds. The operating pressure from the reservoir is 50 pounds maximum. The pump works against a no-pressure reservoir head pressure. There is no control over pressure except for the water in the reservoir. ✓

4. No major repairs have been made to the system in recent years. Any minor repairs have been done on a voluntary basis by customers of Waterworks.

5. In the summer of 1983, Waterworks experienced severe outage problems. In June 1983 the community fire department notified the California Department of Forestry that it would be unable to assist or answer any fire calls in its jurisdiction because of lack of water. By August 1983, all of Waterworks' customers were experiencing difficulty in receiving water.

6. Waterworks' system poses a threat to public health unless it is properly operated and maintained. Leaks and low pressure present the chance that contamination may enter the system.

7. In August 1983 some of Waterworks' customers commenced a series of meetings to deal with the water problems. These meetings resulted in the formation of Mutual.

8. Mutual's bylaws provide that everyone who is entitled to water service from Waterworks is eligible to become a member of Mutual. A property owner in Myers Flat who does not join Mutual can drill a well on his property, provided the well is 100 feet from the drain field of a septic tank system.

9. At the time of hearing 74% of the property owners in Myers Flat had joined Mutual, 5% refused to join, and 21% had not responded to solicitations.

10. Jennings and Mutual entered into an option whereby Mutual would purchase Waterworks for \$4,000. Mutual would execute a promissory note for that amount. No payments would be required for one year. Thereafter, monthly payments of \$100 or more would be required with interest at 10% per annum.

The sales price is based on the fact that some years ago Jennings paid about \$6,000 for a pump, new well, and the PVC plastic pipe over the river. Some of the monies came from her social security checks. The parties agreed that \$4,000 is the present value of this plant.

The option is attached to the application as Exhibit A. It expires on June 1, 1984.

11. Mutual has formulated plans to repair, operate, and maintain the water system if the transfer is approved. It has collected approximately \$7,700 in membership fees. Mutual's vice president, who is in charge of operations, is the supervisor of buildings and grounds at the College of the Redwoods.

12. Mutual has the resources and ability to acquire and operate Waterworks.

13. Waterworks has no customer deposits or main extension advances.

14. The proposed transfer of the water system here involved is reasonable and not adverse to the public interest.

15. Public health requires that Mutual be authorized to acquire Waterworks by exercising the option before June 1, 1984. This will enable Mutual to commence repair and operation of the system to prevent a reoccurrence of the situation which occurred in the summer of 1983.

16. Because of the emergency nature of this order, it should become effective on the date it is issued.

Conclusions of Law

1. Notice of the following order did not appear on the Commission's Public Agenda as required by the Government Code. This matter is an emergency in that it is necessary for the requested authority to be granted so Mutual can exercise the option to purchase Waterworks before June 1, 1984, which will benefit the public health by enabling Mutual to commence repair and operation of the system to prevent a reoccurrence of the situation which occurred in the summer of 1983.

2. The application should be granted.

O R D E R

IT IS ORDERED that:

1. On or before May 31, 1985, Nevada C. Jennings may transfer the water system referred to in the application to Myers Flat Mutual Water System in accordance with the terms set forth in Exhibit A attached to the application.

2. Within 10 days after transfer, buyer shall write the Commission notifying it of the transfer and submit a copy of the transfer documents.

3. Upon compliance with this order, seller shall be relieved of her public utility obligation to the transferred system.

This order is effective today.

Dated MAY 16 1984 , at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

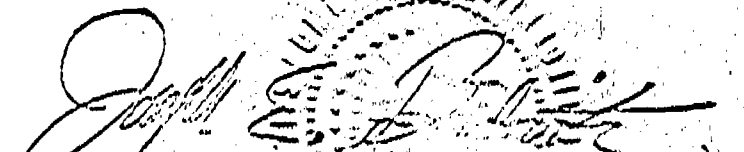
PRISCILLA C. GREW

DONALD VIAL

Commissioners

Commissioner William T. Bagley
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS.


Joseph E. Bodovitch, Executive Director

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