

Decision 84 06 087

JUN 6 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application
of the Little Lake Water Co. for
authority to increase rates and
charges for water service in the
City of Willits and vicinity in
Mendocino County.

Application 82-10-47
(Filed October 19, 1982)

Graham & James, by Thomas J. MacBride, Jr.,
Attorney at Law, for Little Lake Water
Company, applicant.

Peter W. Hanschen and Andrew L. Nevin, Attorneys
at Law, for Pacific Gas and Electric Company;
Barry Wood, City Attorney, for the City of
Willits; B. David Clark, District Engineer,
for California Department of Health Services;
and Steven A. Geringer, Attorney at Law, for
California Farm Bureau Federation; interested
parties.

Lester J. Marston, Attorney at Law, for Little
Lake County Water District, intervenor.

F. Javier Plasencia, Attorney at Law, for the
Commission staff.

O P I N I O N

Statement of Facts

In 1944, as part of an acquisition of a number of Mendocino County electric public utility properties and businesses from California Public Service Company, Pacific Gas and Electric Company (PG&E) also acquired certain water public utility properties and businesses. Because it is a water corporation only incidentally and in most areas does not wish to remain in the water business, PG&E from time to time has sold portions of these water acquisitions. One of these is the Willits Water System (the system), which was sold under the following circumstances.

Under PG&E's operation of the system, incidental to its electric and gas business, the people of Willits and vicinity had enjoyed very cheap water, having had no change in rates for 26 years. But then, in 1978 PG&E determined that the system should pay its way and provide a reasonable return on investment. Accordingly, by Application (A.) 50629 filed in January 1979 it sought a 368% increase in rates to generate additional revenues of \$627,190. After hearing, by Decision (D.) 92192 dated September 3, 1980 the Commission authorized a 3-step increase to yield \$249,000 additional revenues. Meanwhile, concluding that the system was not of use in its local electric and gas business, and would not provide sufficient revenues to earn what the utility considered to be a reasonable rate of return on its investment, PG&E determined to sell the system.

A Redwood City, California investor, business consultant, and former business management professor, Clifford V. Horn, and his wife negotiated a purchase contract for the system, and in July of 1980 by A.82-10-47 PG&E and the Horns sought Commission authorization for the sale and transfer.

Under the terms of the proposal presented to the Commission, the Horns were to pay for the system by conveying to PG&E their interest in certain Hawaiian properties understood to be worth \$1.7 million, and by giving PG&E a 25-year first deed of trust bearing a variable interest rate for the balance.

At conveyance time, however, it was ascertained that the Hawaiian properties were valued at \$1.4 million, which would have resulted in a larger mortgage than cash flow studies indicated the system could carry. Accordingly, changes to the proposal before the Commission were proposed. The result was an ex parte order, D.92921

dated April 21, 1981, by which the Commission sanctioned the sale and transfer with the understanding that Horn's note would be reduced to \$1.1 million through elimination of certain substantial capital expenditures budgeted for 1981 and 1982, and that for a 10-year period PG&E would pay Horn timber revenues accrued annually from the 1980-81 timber harvest from the utility's 3,189 acres of timbered watershed lands, and that these payments would be applied toward operating expenses and taxes of the system.

But then, without advising the Commission or securing Commission authorization, PG&E and the Horns changed the deal, reducing Horn's note to \$647,560.13 by applying against that note the full discounted value of the net 10-year timber revenues. The parties then completed the sale and transfer in June 1981, and the system was thereafter operated by the Horns as a sole proprietorship under the name of Little Lake Water Company (Little Lake).

Unfortunately the utility did not prosper after Horn's takeover. Latent problems long inherent in the use of the Morris Dam reservoir and in the system itself turned chronic. Drilling ventures for alternate or supplementive water sources were unsuccessful.¹ Operating expenses increased substantially while water revenues failed to meet the predictions which had been adopted in the 1980 rate proceeding. The resulting negative cash flow left Horn unable to meet his mortgage payments and other financial commitments. Storm damage necessitated immediate costly repairs. Service problems mushroomed. PG&E started foreclosure proceedings. Consequently, Horn filed this application seeking a 269% increase in rates. Failure to follow the Commission's Notice of Intent procedure resulted in delay. Intense local interest rapidly developed and dismay over the size of the

¹ These ventures were begun after the Department of Health Services in 1981 requested that Horn discontinue commitments for new service connections until additional drinking water resources were realized.

requested increase stunned the community. In March 1983 Horn petitioned the Commission for immediate interim relief.

There was no question but that Little Lake faced an emergency. To keep service going pending a thorough hearing of all the issues surfacing an immediate improvement in cash flow was essential. Accordingly, the Commission by D.83-07-011 dated July 20, 1983 authorized an interim increase averaging 32.8%, adopting staff's estimate of current operating expenses as contained in a June 17, 1983 staff report prepared after a field investigation, and using current water revenues.

Thereafter, duly noticed public hearings were held before Administrative Law Judge (ALJ) John B. Weiss, in Willits on August 24, 1983, and in San Francisco on September 27, 1983, October 17, 1983, November 7, 1983, November 8, 1983, and November 23, 1983. Submission was to follow final briefing after receipt by the parties of transcripts. During the hearing extensive testimony and numerous exhibits were introduced by the general public, the applicant, interested parties, intervenor, and our staff, covering all aspects of the June 1981 sale and transfer involving PG&E and Horn, Horn's operation of the utility, public health agency concerns, staff studies, and local public opinion. As the hearings progressed, it increasingly became apparent that the most appropriate resolution of the entire complex matter would probably be acquisition of the system by a local public entity. Horn's local credibility was seriously if not irretrievably eroded, the public was fed up and wanted change, PG&E clearly wanted to stay out, and the city and the water district sensed an opportunity. Against this backdrop both the City of Willits and the Little Lake County Water District entered negotiations with Horn.

Consequently, on November 29, 1983 the City of Willits and the Horns made an agreement whereby the city, provided it could by February 28, 1984 obtain financing, would acquire the system from the Horns for \$1.4 million (with appropriate subordinate transactions agreed upon to cover such matters as materials and supplies, main extension agreements, incidental capital obligations, accounts receivable, equipment leases, existing purchase contracts, etc.), and the city would assume all amounts due or payable under Horn's PG&E mortgage. The city agreed to diligently pursue to judgment an action in eminent domain to condemn Little Lake for the purpose of itself owning, operating, and maintaining the system as a public water facility, and to obtain judicial confirmation of the agreed-upon acquisition price as being just compensation for the assets to be acquired. Escrow was to be established with a local title company to close on or before March 30, 1984.

In its turn, on December 8, 1983 PG&E, by a letter of that date to the Willits City Manager, agreed, in the event the city acquired the system pursuant to the terms of the November 29, 1983 City of Willits-Horn agreement, to reduce the principal amount of the Horn note to PG&E from \$647,560.13 to \$400,000, and upon receipt of payment of that amount, to reconvey the Deed of Trust to the city, and to quitclaim in favor of the city those mineral rights below 500 feet which had been retained by PG&E when in 1981 the utility had sold the system to the Horns.

Kept apprised of progress in the negotiations, and desirous of sparing the parties the substantial legal expenses that would be involved with possibly unnecessary briefing, on January 10, 1984 ALJ Weiss suspended the briefing schedule to await the outcome of the escrow on March 30, 1984.

On January 26, 1984 the City of Willits initiated an action in eminent domain in Superior Court in Mendocino County

pursuant to Section 1250.020 of the California Code of Civil Procedure. The city having been successful in its endeavors to obtain the necessary financing, in March the parties in Mendocino County Superior Court Docket 48706 filed a stipulation to entry of judgment in condemnation and final order of condemnation. On March 29, 1984 the Superior Court, Judge Arthur B. Broadbuss presiding, issued its Final Order of Condemnation. On March 30, 1984 Barry Wood, the City Attorney for City of Willits, formally advised ALJ Weiss that escrow closed, and that as of March 30, 1984 Willits had taken over as owner and operator of the system. Horn's attorney also advised the ALJ that upon acquisition of the system by the city, it would be appropriate for applicant to withdraw its application. Immediately following the acquisition, Horn asked that he and his wife be relieved of their public utility responsibilities.

Discussion

Now that the City of Willits has acquired responsibility for provision of water service and ownership of the system, it would seemingly be appropriate to permit applicant to withdraw its application and to relieve the Horns of their public utility responsibilities. However, before disposing of this application and granting Horn's request, it is necessary that the Commission make certain determinations and affirm certain previous actions as follows:

The 1981 PG&E - Horns Sale and Transfer

Section 851 of the Public Utilities (PU) Code, as relevant here, provides that:

"No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...system, or other property necessary or useful in the performance of its duties to the public or any franchise or permit or any right thereunder, ...without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void..."

In D.92192 dated September 3, 1980 the Commission noted that the timbered watershed of this utility was in rate base and concluded from this that the net yield from the 1980-1981 harvest of timber from this watershed was utility property, and reasonably should be amortized and included in estimated revenues; that for test year 1980 the appropriate amount to be included would be one-tenth off the projected net yield, or \$172,658. Proceeding further, the Pro Forma Operating Results set forth on page 4 of D.92921 dated April 21, 1981, which were relied upon in reaching that decision, indicate that those amortized timber harvest revenues were included as anticipated revenue from PG&E in computing the total operating revenues. Therefore, it was clearly contemplated that these timber harvest revenues would be counted upon for application to offset system operating expenses, taxes, etc. in the 1980 and subsequent operating years. The sale and transfer of the system from PG&E to the Horns was authorized with that disposition of the timber revenues property in mind.

But without authorization from this Commission, in concluding their transaction transferring the system to the Horns, the Horns, with PG&E's concurrence, changed the terms of the deal and otherwise disposed of this utility property previously determined to be necessary and useful in performance of the utility's obligations to its ratepayers. They applied the full discounted value of this property, calculated at \$806,218, against the \$1,453,778 amount of Horn's obligation, thereby reducing the mortgage requirement, but losing the timber revenues except as an amount to be imputed for ratemaking purposes. This change constituted a disposition of utility property. Any such disposition other than in accordance with an order of the Commission authorizing it is void.

Unless this unauthorized disposition of that timber revenue property can be ratified by the Commission, the disposition of the timber revenue property being void, the 1981 sale and transfer of the system by PG&E to the Horns must also be null and void, and PG&E must remain as the de jure owner of the system. In this latter event, the March 1984 Mendocino County Superior Court condemnation action, having been entered against a party not being the legal owner of the system, must also be null and void.

Fortunately, so drastic a denouement and resolution of this problem is neither required nor to be recommended. Section 853 of the PU Code, as relevant here, provides that "... The commission may from time to time...exempt any public utility from the provisions of Sections 851...if it finds that the application thereof with respect to such public utility...is not necessary in the public interest." Such is the situation here.

First, it must be understood that it was contemplated that the rate of return requirement was to have been the same under either the full note method or under the discounted note method. Under the full note method the timber revenues would actually have been paid to and received by Little Lake and would have been included for ratemaking purposes as operating revenues. Under the discounted note method while the timber revenues would have disappeared, they were to be imputed for ratemaking purposes as though received. Further, the method of payment on Horn's note would have had no effect on determination of rate of return. Thus the ratepayers were to be substantially insulated.

Secondly, in the context of the impact to the system itself, an economic comparison introduced by PG&E's economists of the cash outflow requirements Little Lake faced under the full mortgage method contemplated and authorized by D.92921, as contrasted to those

under the discounted mortgage method adopted in practice, produces mixed results, depending upon the aspect from which it is viewed. The system under the Horns was operated not as a corporation but as a sole proprietorship. But whether considered in either context, with allowance for the differing appropriate tax consequences, the PG&E economic comparison of the cash flow required to meet the PG&E mortgage showed that while for the first two years of the 25-year mortgage the cash requirement would be substantially greater under the discounted note method, in all succeeding 23 years the cash requirement would be less, and especially far less after the tenth year.

While these economic comparisons are certainly subject to exceptions and open to differing interpretation (for example, the premise of the 25-year mortgage changes if a future 1990 harvest year yield were then used to retire or reduce the remaining mortgage (again, assuming there was a timber harvest available in 1990; that appropriate permits to cut could then be obtained so as to obtain a similar yield, or any yield; that environmentalist opposition did not successfully intervene, etc.)), the comparisons do serve to illustrate that the discounted mortgage method adopted, albeit without Commission authorization, was not unreasonable per se. Indeed, had the water revenues forecast in 1980 come up to the forecast, had Horn's management been more conservative and aware of public utility limitations, had the weather been more normal and cooperative, had Horn been willing and able to inject more funds in the enterprise to get it over the initial years of his operation, etc., the operations as cast might have been financially successful.

The uncertainties are legion, the "ifs" we might consider are also numerous as the lengthy record of six days of hearing

attests, but clearly, given the system's future needs, limitations, and potential, the consumer attitude in Willits, the unbridgeable antagonisms opened, the local politics involved, the Department of Health interests, PG&E's strong intention to completely disengage as the local water purveyor, and the opportunities here so uniquely opened by local, city ownership and management now, it is heavily to the public interest to exempt PG&E and Little Lake from the provisions of Section 851 through exercise of our authority under Section 853.

Accordingly, the Commission will ratify the June 1981 alteration of the terms of the sale and transfer authorized by D.92921, by which alteration Horns' remaining financial obligation, after application of the Hawaiian property proceeds, was reduced to \$647,560.13 by application of the then present value of the timber revenue from the 1980-81 harvest of the watershed timber. We do this to remove any impediment to the Horns' title which arises from any application of Section 851 to the 1981 sale and transfer.

The Interim Increase Granted by
D.83-07-011 Dated July 20, 1983

The Commission views an interim rate increase as an emergency measure, applicable only in the instance where the minimum financial obligations of a utility cannot be met prior to the establishment of definitive rates and where such increase is necessary to protect integrity of service. Characteristically, interim increases are granted upon a truncated showing of justification. However, in this instance although applicant sought a 269% increase, the interim rate relief granted by D.83-07-011 was based on considerable information relative to operating results already in hand, including a current detailed staff report made after field investigation, so that the interim increase served to support a rate of return previously determined to be reasonable.

As a consequence of the March 29, 1984, condemnation order of the Mendocino County Superior Court, the Commission was relieved of jurisdiction over this system effective March 29, 1984. Accordingly, the interim rates established by D.83-07-011 dated July 20, 1983 are confirmed as being the final rates established under Commission jurisdiction.

Termination of the Horns' Public Utility Responsibilities

Inasmuch as the condemnation order of the Mendocino County Superior Court has enabled the City of Willits to acquire the system by eminent domain effective March 29, 1984, as of that date the Horns no longer own, operate, control, or manage a system for the production, transmission, or furnishing of water directly or indirectly to the public in and about Willits. Accordingly, they no longer are public utility operators and should formally be relieved of their public utility obligations.

However, it must be noted that water utilities subject to the jurisdiction of this Commission were ordered by the Legislature beginning January 1, 1983 to impose a user's fee of 1-1/2% on customer's bills (See Chapter 2.5 Public Utilities Commission Reimbursement Fees, Sections 401 et seq., PU Code). As Little Lake has gross intrastate revenues of less than \$750,000 annually, payment of the resulting fees to the Commission is to be made on an annual basis on or before January 15 following the year of collection. Horn collected and remitted the \$5,127 collected for 1983. With the end of this Commission's jurisdiction March 29, 1984, collection of this fee will no longer be required, but for the period January 1, 1984 through March 28, 1984 that obligation was in existence, and presumably Horn collected the user's fee during that quarter. It has not been remitted to the Commission. As soon as Horn remits those first quarter 1984 fees to the Commission, the Horns will be relieved of their public utility responsibilities.

The Status of Application 82-10-47

The City of Willits having taken ownership and operation of the system effective March 29, 1984 by eminent domain under provisions of the Condemnation Order No. 48706 of the Mendocino County Superior Court, this Commission has lost jurisdiction over the system and the application for rate relief becomes moot.

Accordingly, it will immediately be dismissed with prejudice.

Findings of Fact

1. The water utility system at Willits, for years owned by PG&E, has, during that period, been a public utility operation under the jurisdiction of this Commission.

2. By D.92192 dated September 3, 1980 the Commission determined that revenues from timber harvesting of system watershed lands were properly to be applied as operating income to offset operating expenses of the utility.

3. In June 1981 the Horns acquired the system from PG&E under color of authorization granted by the Commission in D.92921 dated April 21, 1981 in A.59792.

4. In consummating the sale and transaction authorized, the Horns and PG&E did not adhere to the terms upon which D.92921 was premised in that the timber revenues to be paid by PG&E to the utility were instead applied to reduce Horns' note to PG&E, a note given as partial payment for the system.

5. As the apparent consequence of realization of less water revenues than forecast, much higher-claimed administrative and general expenses than forecast, severe storm damages, etc., and loss of the timber revenues from PG&E, the system fell into serious financial difficulties, leading to this filing for substantial rate relief.

6. Considerable opposition to this requested rate relief, and wide intervention developed, threatening prolonged hearings and delay in resolution of the many corollary issues being introduced.

7. Because of the emergency financial situation and the threat to continued ability to serve, as well as substantial evidence that some rate relief was in order, the Commission on July 20, 1983 by D.83-07-011 granted an interim rate increase.

8. Before conclusion of the extended hearings it became increasingly obvious that harmonious resolution of the issues would be impossible, seriously threatening the future of the utility, and that a takeover by the City of Willits would be in the best interests of the parties.

9. After prolonged negotiations, the City of Willits and the Horns, with the cooperation and participation of PG&E, reached an agreement by which the city would acquire the system under terms, conditions and purchase price acceptable to the parties.

10. Appraised of progress, the ALJ suspended the briefing schedule in this proceeding pending resolution of the negotiations and subsequent financial and court proceedings.

11. The city commenced an action in eminent domain in Mendocino County Superior Court in January 1984, and, subsequently, pursuant to stipulation for entry of judgment based on the parties' agreement, the court on March 29, 1984 issued its order of condemnation.

12. On March 29, 1984 the City of Willits assumed ownership, management, and operation of the system, and this Commission's jurisdiction over the system ended.

13. The 1981 unauthorized disposition of the utility's timber revenue property (previously determined to be necessary and useful in performance of the utility's obligations to its ratepayers) to reduce the Horns' obligation to PG&E violated Section 851 of the PU Code,

and therefore was void, thereby making the 1981 sale and transfer of the system to the Horns a nullity, and leaving PG&E the de jure owner of the system.

14. Should PG&E be left standing as the owner of the system, the 1984 eminent domain action taken by Willits in Mendocino County Superior Court, being entered against the Horns, was not taken against the legal owner of the system, and therefore must be a nullity.

15. Section 853 of the PU Code permits the Commission to exempt a utility from the provisions of Section 851 where application of Section 851 would not be necessary in the public interest.

16. The economic consequences of discounting the timber revenues to apply them to reduce Horns' note provide benefits as well as disabilities, and balancing these indicates that the application actually adopted was not per se unreasonable.

17. Accordingly, taking into consideration all the factors involved, and in the overall public interest, the Commission nunc pro tunc should ratify the June 1981 use of the timber revenues property to reduce the Horns' note, thereby removing any impediment to the title to the system the Horns acquired in June 1981, and leaving the Horns as the appropriate owner-defendants to the condemnation action brought by Willits in 1984.

18. The Commission no longer having jurisdiction, this application for rate relief should immediately be dismissed with prejudice.

19. The interim rates established by D.83-07-011 dated July 20, 1983 should be confirmed as being the final rates established under Commission jurisdiction. ✓

20. The Horns, having had responsibility as the sole proprietor owner-operators of the system between January 1, 1984 and March 28, 1984, to collect the water utility user's fee mandated by the

Legislature, remain responsible as trustees of these funds for their remittance to the Commission.

21. As the Horns as of March 29, 1984 no longer own, operate, control, or manage a public utility water system at Willits, upon receipt by the Commission of these user fee funds for the first three months of 1984, the Horns should be relieved of their public utility responsibilities for that system.

Conclusions of Law

1. As of March 29, 1984 the Commission no longer has jurisdiction over the water system at Willits.
2. This application should be dismissed with prejudice.
3. The effective date of this order should be the date of signature in that the Commission no longer has jurisdiction over the system.

O R D E R

IT IS ORDERED that:

1. Nunc pro tunc, the Commission ratifies the June 1981 sale and transfer of the public utility water system at Willits, California from Pacific Gas and Electric Company to Mr. and Mrs. Clifford V. Horn pursuant to the terms discussed in this proceeding and followed at the time of the sale and transfer.
2. Upon receipt by the Commission from the Horns of the water users' fees mandated by the Legislature to be collected for the period January 1, 1984 through March 28, 1984, the Horns will stand relieved of their public utility obligations with respect to the water system at Willits.

3. The interim rates established by D.83-07-011 dated July 20, 1983 are confirmed as just and reasonable and as being the final rates established under Commission jurisdiction. The application is dismissed with prejudice.

This order is effective today.

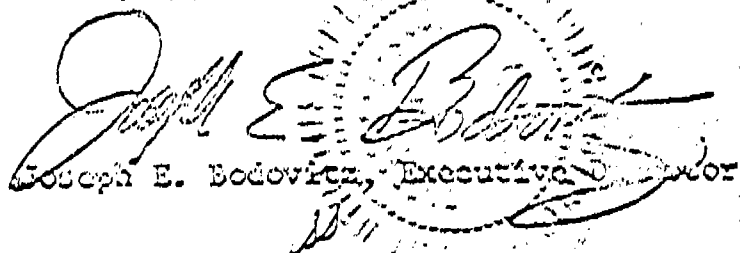
Dated June 6, 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Priscilla C. Grew,
being necessarily absent, did not
participate.

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


Joseph E. Bodovitz, Executive Director

Consequently, on November 29, 1983 the City of Willits and the Horns made an agreement whereby the city, provided it could by February 28, 1984 obtain financing, would acquire the system from the Horns for \$1.4 million (with appropriate subordinate transactions agreed upon to cover such matters as materials and supplies, main extension agreements, incidental capital obligations, accounts receivable, equipment leases, existing purchase contracts, etc.), and the city would assume all amounts due or payable under Horn's PG&E mortgage. The city agreed to diligently pursue to judgment an action in eminent domain to condemn Little Lake for the purpose of itself owning, operating, and maintaining the system as a public water facility, and to obtain judicial confirmation of the agreed-upon acquisition price as being just compensation for the assets to be acquired. Escrow was to be established with a local title company to close on or before March 30, 1984.

In its turn, on December 8, 1983 PG&E, by a letter of that date to the Willit's City Manager, agreed, in the event the city acquired the system pursuant to the terms of the November 29, 1983 City of Willits-Horn agreement, to reduce the principal amount of the Horn note to PG&E from \$647,560.13 to \$400,000, and upon receipt of payment of that amount, to reconvey the Deed of Trust to the city, and to quitclaim in favor of the city those mineral rights below 500 feet which had been retained by PG&E when in 1981 the utility had sold the system to the Horns.

Kept appraised of progress in the negotiations, and desirous of sparing the parties the substantial legal expenses that would be involved with possibly unnecessary briefing, on January 10, 1984 ALJ Weiss suspended the briefing schedule to await the outcome of the escrow on March 30, 1984.

On January 26, 1984 the City of Willits initiated an action in eminent domain in Superior Court in Mendocino County

attests, but clearly, given the system's future needs, limitations, and potential, the consumer attitude in Willits, the unbridgeable antagonisms opened, the local politics involved, the Department of Health interests, PG&E's strong intention to completely disengage as the local water purveyor, and the opportunities here so uniquely opened by local, city ownership and management now, it is heavily to the public interest to exempt PG&E and Little Lake from the provisions of Section 851 through exercise of our authority under Section 853.

Accordingly, the Commission will ratify the June 1981 alteration of the terms of the sale and transfer authorized by D.92921, by which alteration Horns' remaining financial obligation, after application of the Hawaiian property proceeds, was reduced to \$647,560.13 by application of the then present value of the timber revenue from the 1980-81 harvest of the watershed timber. We do this to remove any impediment to the Horns' title which arises from any application of Section 851 to the 1981 sale and transfer.

The Interim Increase Granted by
D.83-07-91 Dated July 20, 1983

MAN

The Commission views an interim rate increase as an emergency measure, applicable only in the instance where the minimum financial obligations of a utility cannot be met prior to the establishment of definitive rates and where such increase is necessary to protect integrity of service. Characteristically, interim increases are granted upon a truncated showing of justification. However, in this instance although applicant sought a 269% increase, the interim rate relief granted by D.83-07-91 was based on considerable information relative to operating results already in hand, including a current detailed staff report made after field investigation, so that the interim increase served to support a rate of return previously determined to be reasonable.

HAS

As a consequence of the March 29, 1984 condemnation order of the Mendocino County Superior Court, the Commission was relieved of jurisdiction over this system effective March 29, 1984. Accordingly, the interim rates established by D.83-07-91 dated July 20, 1983 are confirmed as being the final rates established under Commission jurisdiction.

Termination of the Horns' Public Utility Responsibilities

Inasmuch as the condemnation order of the Mendocino County Superior Court has enabled the City of Willits to acquire the system by eminent domain effective March 29, 1984, as of that date the Horns no longer own, operate, control, or manage a system for the production, transmission, or furnishing of water directly or indirectly to the public in and about Willits. Accordingly, they no longer are public utility operators and should formally be relieved of their public utility obligations.

However, it must be noted that water utilities subject to the jurisdiction of this Commission were ordered by the Legislature beginning January 1, 1983 to impose a user's fee of 1-1/2% on customer's bills (See Chapter 2.5 Public Utilities Commission Reimbursement Fees, Sections 401 et seq., PU Code). As Little Lake has gross intrastate revenues of less than \$750,000 annually, payment of the resulting fees to the Commission is to be made on an annual basis on or before January 15 following the year of collection. Horn collected and remitted the \$5,127 collected for 1983. With the end of this Commission's jurisdiction March 29, 1984, collection of this fee will no longer be required, but for the period January 1, 1984 through March 28, 1984 that obligation was in existence, and presumably Horn collected the user's fee during that quarter. It has not been remitted to the Commission. As soon as Horn remits those first quarter 1984 fees to the Commission, the Horns will be relieved of their public utility responsibilities.

and therefore was void, thereby making the 1981 sale and transfer of the system to the Horns a nullity, and leaving PG&E the de jure owner of the system.

14. Should PG&E be left standing as the owner of the system, the 1984 eminent domain action taken by Willits in Mendocino County Superior Court, being entered against the Horns, was not taken against the legal owner of the system, and therefore must be a nullity.

15. Section 853 of the PU Code permits the Commission to exempt a utility from the provisions of Section 851 where application of Section 851 would not be necessary in the public interest.

16. The economic consequences of discounting the timber revenues to apply them to reduce Horns' note provide benefits as well as disabilities, and balancing these indicates that the application actually adopted was not per se unreasonable.

17. Accordingly, taking into consideration all the factors involved, and in the overall public interest, the Commission nunc pro tunc should ratify the June 1981 use of the timber revenues property to reduce the Horns' note, thereby removing any impediment to the title to the system the Horns acquired in June 1981, and leaving the Horns as the appropriate owner-defendants to the condemnation action brought by Willits in 1984.

18. The Commission no longer having jurisdiction, this application for rate relief should immediately be dismissed with prejudice.

19. The interim rates established by D.83-0791 dated July 20, 1983 should be confirmed as being the final rates established under Commission jurisdiction.

20. The Horns, having had responsibility as the sole proprietor owner-operators of the system between January 1, 1984 and March 28, 1984, to collect the water utility user's fee mandated by the

Legislature, remain responsible as trustees of these funds for their remittance to the Commission.

21. As the Horns as of March 29, 1984 no longer own, operate, control, or manage a public utility water system at Willits, upon receipt by the Commission of these user fee funds for the first three months of 1984, the Horns should be relieved of their public utility responsibilities for that system.

Conclusions of Law

1. As of March 29, 1984 the Commission no longer has jurisdiction over the water system at Willits.

2. This application should be dismissed with prejudice.

3. The effective date of this order should be the date of signature in that the Commission no longer has jurisdiction over the system.

O R D E R

IT IS ORDERED that:

1. Nunc pro tunc, the Commission ratifies the June 1981 sale and transfer of the public utility water system at Willits, California from Pacific Gas and Electric Company to Mr. and Mrs. Clifford V. Horn pursuant to the terms discussed in this proceeding and followed at the time of the sale and transfer.

2. The interim rates established by D.83-07-11 dated July 20, 1983 are confirmed as just and reasonable and as being the final rates established under Commission jurisdiction.

3. Upon receipt by the Commission from the Horns of the water users' fees mandated by the Legislature to be collected for the period January 1, 1984 through March 28, 1984, the Horns will stand relieved of their public utility obligations with respect to the water system at Willits.

4. The present application seeking rate relief is dismissed with prejudice as set forth above.

This order is effective today.

Dated JUN 6 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Priscilla C. Grew,
being necessarily absent, did
not participate