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Decision 84 G7 077

JUL 5 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Moon Meadow Utility Company
Customers,

Complainants,

vs.

Mrs. Pearl Erlandson or
Mrs. Ruth Denning,

Defendant.

Case 10848
(Filed April 9, 1980)

Steven and Patti Larsen, for Moon Meadow
Utility Company Customers, complainants.
Phillip M. Steinbock, Attorney at Law, for
Coast County Development, defendant.
William P. Adams, for the Commission staff.

ORDER OF DISMISSAL

Statement of Facts

In the mid-1970 period, Paul Bahr owned a substantial tract of land off West Zayante, east of the town of Felton in the Santa Cruz range, which he desired to subdivide and develop. The tract was bisected by Bahr Drive, a typical subdivision paved street. Water service in the area was provided by the San Lorenzo Valley County Water District (District). District had a 6-inch main, which, after crossing West Zayante, ran westward to and down Bahr Drive. District also provided for fire protection by means of fire hydrants in the area. However, in the mid-1970 period a severe drought was ravaging this section of California, causing District to impose a moratorium upon further service connections.

Unable to obtain water service from District, with county approval Bahr and his son David, also a resident of the area, without reference to this Commission, in 1976 constructed and thereafter

operated their own water utility, known as Moon Meadow Utility Company (Moon Meadow), using as their water source a producing well on Bahr senior's property. The subdivision homes were built, some by the Bahrs and others by individual buyers, and together with some existing homes in the area, were connected to Moon Meadow.

Bahr's well, which he turned over to Moon Meadow, was developed to 384-foot depth with a 6-5/8 inch casing and provided a 3-hp submersible pump. The well assertedly was capable of producing approximately 8 gallons per minute. The well water was pumped into a nearby 15,000-gallon storage tank which in turn led in succession by gravity flow to a 6,000-gallon and a 2,000-gallon storage tank. By means of booster pumps and pressure tanks water was distributed from the first two tanks uphill to approximately a dozen of the homes on Bahr Drive. The remaining homes, situated downhill, were supplied by gravity flow from the second and third tanks.

For the first several years the system, operated by David Bahr, was well maintained and there were no problems. Allegedly the water was of good quality and taste, and the system was adequate for the demands made upon it. Metered, in all about 26 homes were served. But then in 1978 the system was sold by Paul Bahr to a Mrs. Ruth Denning of Scotts Valley. Apparently thereafter maintenance was minimal. In 1979 Mrs. Denning sold the system to a Mrs. Pearl Erlandson, who resided in a trailer camp in Watsonville, who believed she was purchasing an investment. The system deteriorated. In March of 1980 the sale was rescinded as the result of a lawsuit settlement and reverted back to Mrs. Denning. Two months later Mrs. Denning quitclaimed to Coast County Development,

Development, the defendant of record herein, whose president was Mrs. Denning's son.¹ In April of 1980 20 customers filed this complaint, alleging frequent service interruptions, poor water quality, maintenance problems, and unavailability of the owners or their agents.

A duly noticed and substantially attended public hearing was held in Felton on July 21, 1980 before Administrative Law Judge John B. Weiss. The evidence adduced showed an inadequate well source of supply of water for a number of customers, a sadly neglected and mismaintained plant, water so turbid that it could not be tested for bacteria, frequent service interruptions--one lasting 8 days, and inept, unavailable, and indifferent management. The District offered to provide a temporary intertie at reasonable rates to relieve the emergency situation. By Decision 92092 dated August 1, 1980 the Commission in an interim order directed the defendant to effect a temporary intertie and authorized a monthly surcharge to each customer to pay the extra costs.

Although the immediate problem was more or less resolved, it was clear that the Moon Meadow system was no longer capable of meeting the demands being made upon it. The upper tank could no longer fill the two lower-level tanks and still maintain a level of water sufficient to serve the needs of the upper-level customers. The solution indicated was to relieve the system of a number of customers. Most logically, these should be the customers on the upper elevations, those hardest to serve. The District, after initially expressing to staff an interest in acquiring the Moon Meadow system, changed its mind and declined acquisition. It did,

¹ None of these sales and transfers were authorized by this Commission.

however, advise staff of its willingness to permit the upper-elevation residents along Bahr Drive to join the District. But the District had a \$3,000 connection fee per resident. A few Moon Meadow customers immediately took advantage of the opportunity. A number of others wanted to but had problems paying the connection fee. Some of the latter petitioned the District for formation of an assessment district so that the connection costs could be funded by bonding, and thereby paid over a period of years. The District cooperated and within a few months authorized formation of a Moon Meadow assessment district. Bonds were issued and sold, and by mid-1981 residents had been connected to the District.

During this period service from Moon Meadow continued, although beset with pressure problems and supply interruptions as the utility's owners strove to rehabilitate its well and system. Denning had disputes over payment of the District's intertie water bill. Debts were incurred with Capitola Pump Company and Pacific Gas and Electric Company (PG&E). Denning reportedly was entering litigation to try to have the earlier sale of the utility from the Bahrs to his mother rescinded. But service did continue. Later the intertie to the District was disconnected.

Finally, a group of six of Moon Meadow's downhill customers stepped in and purchased the utility from Denning's Coast County Development. The approximate \$7,000 purchase price included payment of the Capitola Pump Co. and PG&E debts. The group is organized and operates as a de facto mutual, and service is limited to members of the mutual group. Assertedly they are in conformity with

California's Nonprofit Mutual Benefit Corporation Law (Corporations Code, §§ 7110 et seq.), although they lack the financial resources to complete the legal filing necessary to obtain de jure status. The mutual has rehabilitated the well and is using only the 15,000-gallon storage tank (having bypassed the other two tanks), providing gravity flow service to mutual members down the hillside to the east and south. Members split the PG&E electric bill proportionate to their metered usage and add a \$7.50 per month service charge. At present they have paid all their bills and have an approximate \$700 balance for maintenance and emergencies.

Discussion

Any corporation or association organized for the purpose of delivering water to its stockholders as members at cost, and which delivers water to no one except its stockholders or members, is not a public utility and is not subject to the jurisdiction, control or regulation of this Commission (See Public Utilities (PU) Code § 2705). As presently constituted, Moon Meadow is a nonprofit mutual within the scope of § 2705, and therefore would not be subject to our jurisdiction. However, Moon Meadow, as constituted at the times it was initially organized, constructed and operated by Paul Bahr; sold by Bahr to Mrs. Denning; sold by Mrs. Denning to Mrs. Erlandson; subsequently returned to Mrs. Denning; quitclaimed by Mrs. Denning to Coast County Development, and finally sold to the present ownership, was a public utility subject to the jurisdiction, control and regulation of this Commission (See § 216(b) of PU Code). And, as

a public utility, its property (being not only useful but absolutely necessary for its operation) could not be sold, leased, assigned, mortgaged or otherwise disposed of without prior authority to do so from this Commission.² Furthermore, any such disposition made without our authorization is void, unless the Commission determines that the application of § 851 would not be necessary in the public interest.³

² As relevant here, § 851 of the PU Code provides that:
"No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of...the whole or any part of its...system, or other property 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. Every such sale, lease, assignment, mortgage, disposition...made other than in accordance with the order of the commission authorizing it is void..."

³ As relevant here, § 853 of the PU Code provides that:
"...The commission may from time to time by order or rule and subject to such terms and conditions as may be prescribed therein exempt any public utility or class of public utility from the provisions of Sections 851...if it finds that the application thereof with respect to such public utility or class of public utility is not necessary in the public interest."

The Moon Meadow system should not have come into existence in the original instance. Without Commission authorization⁴ it was improperly constructed. It was also constructed within the existing service territory of a lawfully organized and constituted public utility district, the District, at a time when that entity was preoccupied with a drought emergency that had prevented addition for the time being of further connections. But once constructed and operating, it was nonetheless a public utility and came within the jurisdiction of this Commission. Thereafter homes were constructed and sold to innocent purchasers who were dependent upon the system for water. Water is an element vitally necessary to the very existence of life itself. By connection to the District most of these former Moon Meadow customers are now assured of utility water service. The remainder are members of the nonprofit mutual that

⁴ As relevant here, § 1001 of the PU Code provides that: "No...water corporation...shall begin the construction...of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction."

has been formed and which has purchased the system and corporate shell.⁵ The well, repaired, has the demonstrated capability of adequately handling the needs of that number of consumers. The storage tank and distribution lines are in excellent condition and, being downhill from the source and storage, can depend upon gravity flow to accommodate the members of the mutual in the future. No useful purpose would be served were we at this late date to conclude that the provisions of § 851 should remain in effect so as to nullify and void the various sales and transfers of Moon Meadow property leading to the present owners. To unscramble the omelet would serve to benefit no one; it would merely lead to further discord, expensive litigation, hardship and inconvenience for innocent people. Rather, it is strongly to the public interest overall to quiet the situation by exempting each of the chain of successive owners from Paul Bahr to the present mutual owners from the provisions of § 851 through exercise of our authority under § 853. Consonantly, all previous owners should now be relieved of their public utility responsibilities.

Accordingly, the Commission will ratify the various sales and transfers retroactively to remove any impediment to the title presently resting with the mutual owners which arises or could arise from any application of § 851 to those sales and transfers.

⁵ The present members of the Moon Meadow Utility Co. mutual are:
Juel Edwards, 151 Moon Meadow, Felton
Brian Judson, 295 Moon Meadow, Felton
Harold Basinger, 7495 West Zayante, Felton
Donald W. Hawkinson, 161 Moon Meadow, Felton
Orville W. Anthony, 395 El Alamein, Felton
Wayne G. Pearce, 1411 Moon Meadow, Felton

The majority of the former customers of Moon Meadow, who in 1980 had joined as complainants in this case, have since left the system and are customers of the District. The remainder of the former customers now own the system and are constituted as a nonprofit mutual corporation handling their own water requirements. As a result the Commission has lost jurisdiction over the Moon Meadow system and this complaint becomes moot. Accordingly, it will immediately be dismissed with prejudice.

Findings of Fact

1. Moon Meadow, constructed inside the service territory of an existing water public utility district without prior Commission authorization, for a number of years provided water for compensation to a portion of the public.

2. Beginning in 1978, the water system, in violation of § 851 of the PU Code, was sold or transferred without Commission authorization to a number of successive owners, with putative title coming to rest in 1980 in Coast County Development.

3. As a consequence of a limited source supply of water, poor maintenance and an inadequate distribution system, the water system was unable to supply all its customers and suffered frequent service interruptions resulting in its customers' filing this complaint.

4. Temporary relief was obtained by Commission intercession and a Commission-ordered intertie to the District.

5. The majority of Moon Meadow's customers thereafter were able to effect connection permanently to the District's existing main on Bahr Drive, and left the Moon Meadow system, relieving much of the supply problem.

6. The remainder of Moon Meadow's customers subsequently purchased Moon Meadow and its water system from Coast County Development, paid the utility debts, rehabilitated and reconstructed the system, and constituted themselves as a de facto nonprofit mutual corporation serving only themselves.

7. The various unauthorized sales and transfers of the system violated § 851 of the PU Code, and therefore were void, leaving Paul Bahr as the de jure owner of the water system.

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

9. To unscramble and roll back the successive sales and transfers in the face of changed economic and factual circumstances, as exemplified by the changed consumer situation and the present composition of the utility as a mutual no longer serving the public for compensation, would not be to the public interest.

10. Accordingly, taking into consideration all the factors involved, and in the overall public interest, the Commission nunc pro tunc should ratify the various sales and transfers, thereby removing any impediment to the title acquired by the present mutual owners.

11. The Commission then no longer having jurisdiction over the mutual, this complaint should immediately be dismissed with prejudice.

12. The various successive putative owners prior to the mutual owners, but including Paul Bahr, should be relieved of their public utility responsibilities for the Moon Meadow water system.

Conclusions of Law

1. Moon Meadow was a de facto public water utility under the jurisdiction and regulation of this Commission.

2. As of the date of the following order, the Commission would no longer have jurisdiction over the Moon Meadow water system.

3. This complaint should be dismissed with prejudice.

4. 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 various sales and transfers of the Moon Meadow Utility Company public utility water system, beginning with the 1978 sale from Paul Bahr, and ending with the purchase of the system by the present members of the de facto nonprofit mutual corporation in possession.

2. The various owners of the Moon Meadow system prior to the present mutual owners are relieved of their public utility responsibilities for the system.

3. The present complaint is dismissed with prejudice as set forth above.

This order is effective today.

Dated JUL 5 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

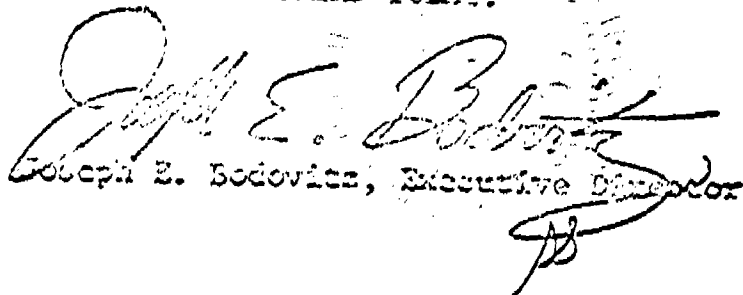
PRISCILLA C. GRESH

DONALD VIAL

WILLIAM T. BACLEY

Commissioners

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


Joseph E. Bodovics, Executive Director

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