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Decision 84 11 007

NOV 7 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pinal Water Co.,)
Inc. to sell and City of Redding,)
a municipal corporation, to buy)
the water system in Redding, Shasta)
County, California.)

Application 84-01-06
(Filed January 4, 1984)

O P I N I O N

Statement of Facts

Pinal Water Company, Inc. (Pinal) is a California corporation, wholly owned by the two Gore brothers, Richard and Robert, and is engaged in the business of supplying and distributing water to approximately 383 residential, 1 public, and 32 commercial customers in the Westwood Manor Subdivision, approximately 3½ miles south of the City of Redding (Redding) in Shasta County.

Redding, a municipal corporation, owns and operates its own water system. The city prefers to provide all utility services within its municipal boundaries. On August 8, 1983 Redding annexed the Westwood Manor Subdivision to the city. As a condition of this annexation Redding required formation of a special assessment district for the purpose of financing purchase of the Pinal system serving the subdivision.

The Gore brothers, sole owners of Pinal, were desirous of disposing of Pinal and retiring from the water business. On October 26, 1983 the directors and shareholders of Pinal adopted a

plan of complete liquidation of Pinal.¹ This plan provided for a voluntary negotiated sale of the utility plant to the Assessment District, and distribution of the sale proceeds and all other assets to the Pinal shareholders (the Gore brothers) in exchange for the outstanding stock. To meet the requirements of Internal Revenue Code § 337, the liquidation had to be accomplished before October 25, 1984.

On November 21, 1983 Redding and Pinal entered into an agreement whereby the city would purchase all the water plant, distribution facilities, real property, easements, and other rights of way owned by Pinal for \$280,000 payable by delivery of 15-year assessment bonds bearing 10.5% per annum interest.² The value of the water facilities presently serving the Westwood Manor commercial area was excluded. Pinal was to donate these facilities to the city upon purchase by the city of the balance of Pinal's assets. In return the Pacific Real Estate Investment Trust, owner of Westwood Village Shopping Center (the improved commercial property in the subdivision) agreed to waive its refund rights under Main Extension Contract Rebate Agreements outstanding.

¹ The intent was to accomplish a sale and liquidation of Pinal under the provisions of Internal Revenue Code Section 337:

§ 337: Gain or loss on sales or exchanges in connection with certain liquidations. (a) General Rule. - If, within the 12-month period beginning on the date on which a corporation adopts a plan of complete liquidation, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims, then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

² The original cost of the water plant in service was \$224,795.35; the depreciation reserve was \$64,024.34, resulting in a net book value of \$160,771.01 as of December 31, 1982. Advances for construction were \$63,759, and contributions in aid of construction were \$31,053.

Pursuant to Public Utilities Code (P.U. Code) § 851 Pinal and Redding sought, by this application, an expedited ex parte order of the Commission authorizing the sale and transfer. Concurrent with the transfer Pinal sought to be relieved of its public utility obligations to serve Westwood Manor Subdivision. Notice of the application appeared in the Commission's Daily Calendar of January 6, 1984. No protest has been received.

Involving as the purchase would, a substantial gain over net book value, it became apparent that it would not be possible to resolve the issue of who, stockholders or ratepayers, would be entitled to receive any gain in time to enable Pinal to liquidate before October 25, 1984 pursuant to the requirements of Internal Revenue Code § 337. For these reasons Pinal determined not to go forward with the voluntary sale and transfer application, and instead invited the city to proceed in eminent domain proceedings.

Accordingly, by date of September 20, 1984 both Pinal and Redding wrote the Commission to withdraw Application (A.) 84-01-06.

The city, as authorized by the provisions of California Government Code §§ 1240.610 and 38730, filed its complaint and on October 5, 1984, in accord with the stipulation of the parties, the Superior Court for the County of Shasta issued its Judgment in Condemnation (No. 81527), followed by its Final Order on October 19, 1984 and payment or deposit of the 1911 Act Improvement Bonds issued by the Westwood Manor Water Assessment District No. 1982-9.

In discussing these developments with Administrative Law Judge Weiss, Pinal's attorney was reminded 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 1½% on customer's bills (See Chapter 2.5 Public Utilities Commission Reimbursement Fees, Sections 401 et seq., P.U. Code). As Pinal has gross 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. With the end of this Commission's jurisdiction October 19, 1984, collection of this fee will no longer be required, but for the period January 1, 1984 through October 1, 1984,³ that obligation was in existence, and the user's fee would have to be paid before Pinal and its directors and sole shareholders, Richard and Robert Gore, could be relieved of their public utility responsibilities.

By date of October 4, 1984 Pinal rendered its Check No. 2594 in the amount of \$637.76 to the Commission representing payment of its 1½% fee on gross revenues of \$42,517.33, and asks to be relieved of its public utility responsibilities.

Discussion

In that we have received written requests from both Pinal and Redding to withdraw their application made under P.U. Code § 851, A.84-01-06 will be dismissed.

In California, a municipal corporation and various other municipal entities, including assessment districts, are empowered to acquire, construct, own, operate, or lease any public utility (West's Ann. P.U. Code § 10002). Thus, Redding had the power of eminent domain to acquire at any time by Superior Court proceedings the Pinal water system. That power has now been exercised, and the final condemnation order of October 19, 1984 of the Shasta County Superior Court relieved the Commission of jurisdiction over this system. Pinal no longer owns, operates, controls, or manages a system for the production, transmission, or furnishing of water directly or indirectly to the public in or about Westwood Manor Subdivision, and should formally be relieved of its public utility responsibilities as

³ Pursuant to stipulation the city took possession October 1, 1984, and assumed meter reading and collection responsibility as of that date.

requested. The last impediment to such a relief was eliminated by Pinal making payment of its 1984 user fee. Accordingly, we will relieve Pinal and the Gore brothers of this responsibility in the order that follows.

Findings of Fact

1. The Pinal water system serving Westwood Manor Subdivision near Redding, owned by the Gore brothers, has been a public water utility operation under the jurisdiction of this Commission.

2. In 1983 Redding annexed the Westwood Manor Subdivision and thereafter sought to acquire the Pinal water system pursuant to the city's policy of city ownership and operation of public utilities serving within the city's boundaries.

3. Pinal and the city filed this application for sale and transfer of the Pinal system to the city under P.U. Code § 851.

4. When it became apparent that the sale and transfer transaction could not receive Commission authorization and be consummated in time to meet Pinal's liquidation plans under Internal Revenue Code § 337, Pinal and Redding determined to proceed under eminent domain proceedings in Shasta County Superior Court.

5. Accordingly, Pinal and Redding wrote, withdrawing A.84-01-06.

6. On October 19, 1984 the Shasta County Superior Court issued its Final Order of Condemnation relative to Pinal's water system, thereby relieving this Commission of jurisdiction over the system.

7. Pinal paid its 1984 user fee thereby completing its P.U. Code Chapter 2.5 obligations.

Conclusions of Law

1. A.84-01-06 should be dismissed.

2. Pinal and the Gore brothers should be relieved of their public utility obligations.

O R D E R

IT IS ORDERED that:

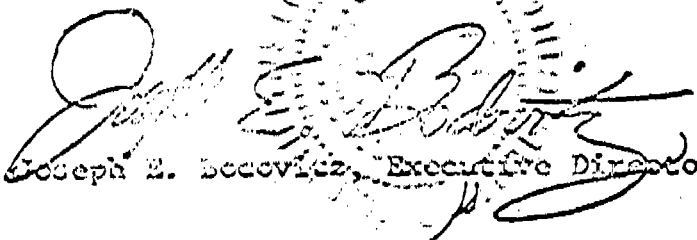
1. A.84-01-06 is dismissed.
2. Pinal Water Company, Inc. and Richard and Robert Gore are relieved of their public utility responsibilities for the water system.

This order is effective today.

Dated NOV 7 1984, at San Francisco, California.

VICTOR CALVO
FRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Becevitz, Executive Director