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ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Yucaipa Highlands Estates,)

Complainant,)

vs.)

Western Heights Water Company,)

Defendant.)

Case 86-02-007
(Filed February 5, 1986)

Ross L. Williams, Attorney at Law, for
complainant.

Reid & Hellyer, by David G. Moore and
Alexandria S. Ward, Attorneys at Law,
for defendant.

Kenneth Louie, for the Commission Advisory
and Compliance Division.

FINAL OPINION

In Interim Decision (D.) 87-03-028 rendered on March 6, 1987, we concluded, for the reasons stated therein, that defendant Western Heights Water Company (Western) was not entitled to an exemption from public utility regulation under Public Utilities (PU) Code Section 2705 (exemption of mutual water companies from public utilities regulation) and, therefore, has been and is a "water corporation" as defined in PU Code Section 241 and a "public utility" within the meaning of Sections 216 and 2703 of that code.

We further concluded that inasmuch as Western was created as a mutual water company and has expressed its intention to continue to operate as a mutual water company although presently operating as a public utility, it was likely that Western could in the near future conform its operations to those of a mutual water company subject to PU Code Section 2705 exemption. We agreed to allow Western a period of time to either provide documentation

showing that it was once again operating as a mutual water company or showing its compliance with all statutes and regulations applicable to small public utility regulated water companies. We also ordered that the proceeding could be reopened for the receipt of further evidence.

On June 15, 1987, in D.87-06-019, the Commission denied Western's application for rehearing of Interim D.87-03-028 after considering all the allegations of error contained therein, concluding that good cause for rehearing had not been shown. Western's request for a reopened hearing ordered in Ordering Paragraph 2 of D.87-03-028 was granted and set for July 6, 1987.

On July 2, 1987, complainant Yucaipa Highlands Estates (Yucaipa) and Western notified the assigned administrative law judge (ALJ) that the parties had settled this matter in its entirety, requiring that the interim decision be vacated, and that the complaint be dismissed. The parties were advised by the ALJ that although they could settle the complaint between themselves, there was insufficient grounds for vacating the interim decision which, in the absence of evidence to the contrary, found Western to be a public utility subject to public utility regulation. At the request of Western, the reopened hearing was reset from July 6, 1987 to September 3, 1987 to allow Western to call a special meeting of Western's shareholders.

On September 3, 1987, the reopened hearing was held in Los Angeles before ALJ William A. Turkish. Following receipt of evidence, the matter was submitted for decision. Testifying on behalf of Western was Bernice Long, secretary-treasurer of Western.

The relevant portions of her testimony were as follows:

1. In her previous declaration, she had mistakenly stated that Western had 3,900 shareholders. The true fact is that Western has issued 3,900 shares of stock which are held by 1,921 shareholders.
2. Of the 1,921 shareholders, 1,798 shareholders, who own 2,916.5 shares, are

"users" of water supplied by Western. The remaining 123 shareholders, who own 983.5 shares, have no water meters and, therefore, are not "users" of water. They own vacant land in the service area and can have a meter installed if they wish. They may be holding their property for sale or for development and will eventually request water service, or they may have sold the property and are currently trying to sell their shares. The sale of shares is separate from the sale of any property. The largest shareholder, who holds 187 shares, owns vacant land.

3. No dividends of any kind or monetary rewards have ever been paid to Western's shareholders.
4. Western has never furnished water to nonshareholders.
5. Each officer and director in Western owns one or more shares of Western's stock. Specifically, Virgil L. Rupe, a director and president of Western, owns 12 shares; Chester L. Crilly, a director, owns 9 shares; Charles Dundas, an officer, owns 2 shares; John P. Perez, a director, owns 4 shares; Robert J. Zappia, a director, owns 5 shares; Bernice Long, an officer owns 1 share. All own land in the service area and are or have been users of water furnished by Western.
6. A special shareholders' meeting for the election of directors was held on August 4, 1987 pursuant to notice and proxy material mailed to each shareholder. The certified public accounting firm of McKenzie, Bovee & White, with offices in San Bernardino, served as inspector of elections; the results of such election are contained in Exhibit 1.
7. Western has conducted annual shareholders' meetings in accordance with its by-laws in every year of its existence. The last annual meeting at which there was a quorum

of shareholders present in accordance with the by-laws was on March 17, 1965. Thereafter, although each annual shareholders' meeting was properly noticed, published, and proxies mailed out, no quorum of shareholders was present at any subsequent meeting. A review of the minutes of the March 17, 1965 shareholders' meeting indicates that a motion was made and carried to amend the by-laws to decrease the quorum requirements from 50% to 20% of the shareholders. However, the by-laws were never amended to incorporate the change as voted upon. Assuming that the change in quorum requirements was effective, a quorum would have been present at each and every meeting since March 17, 1965, except for those meetings held in 1973 and 1983.

8. Water is supplied to shareholders at cost. They are billed for the water consumed in an amount equal to the cost of supplying that water to the shareholder. No profits are derived from the sale of water. Any surplus funds at the end of the year are used for repair of Western's six wells or retained for a needed reservoir.
9. Western is authorized to sell 5,000 shares of capital stock and can sell stock to any landowner in its service area if no shareholder has stock for sale.
10. The board of directors meets once each month in addition to any special meetings which may be called.
11. The public entities serviced by Western are also required to own stock in order to receive water. These public entities include the Department of Forestry, the Yucaipa Joint Unified School District, the State of California, the County of San Bernardino, the California Department of Parks and Recreation, and the Redlands Unified School District.

Elena Perez, a financial examiner with the Auditing and Compliance Branch of the Commission Advisory and Compliance Division, conducted an investigation and audit of Western on August 31, 1987 and testified as follows:

1. An examination of Western's stock register verified that the company had 3,900 shares issued and outstanding among 1,921 shareholders. Of the 1,921 shareholders, 1,798 were metered water users; 123 shareholders had no water meter connections. The 123 shareholders own vacant land and will either eventually have meters installed or are in the process of selling their stock.
2. An audit of the financial records for the years 1965-1986 indicates that no dividends were declared. The auditor's report indicated the company was a mutual company. Federal income tax returns verified mutual company status and that no federal taxes were paid.
3. A review of the minutes of the annual stockholders' meeting since 1965 determined that because there was not a quorum since 1965, no decisions were made at the meetings and the meetings generally turned out to be question and answer sessions. All meetings were publicized in the local newspaper. At the annual meeting in 1965, a motion was made and approved to change the 50% quorum requirements to 20%, but the by-laws were never amended to reflect this change.
4. A review of the board of directors' minutes has determined that the board met once a month or more often if necessary. Major issues were discussed and approved during the board meetings. The board voted on assessments, selected new board members if a vacancy occurred, discussed the financial status of the company, approved the financial statements as prepared by the certified public accountant, and discussed and solved any pending issues/problems. Yucaipa was often discussed during the year

1985-86. The minutes indicate that several attempts were made to contact Yucaipa after the cost letter was sent to it on November 22, 1985, but no response was received.

5. She verified that the board members were actual shareholders. Virgil Rupe, president, owns 12 shares, Charles Dundas, vice president, owns 2 shares; Chester Crilley owns 9 shares; Robert Zappia owns 5 shares; John Perez owns 4 shares, and Bernice Long, secretary/treasurer, owns 1 share.
6. A special shareholders' meeting was held on August 4, 1987 at the Yucaipa High School. The special meeting was called for the election of directors if a quorum was met and also to discuss the Commission's investigation into the status of the mutual company. A quorum was present and the shareholders reelected the board. A motion was made to change the quorum requirements from 50% plus 1 to 20%. The motion was carried.
7. It is the conclusion of the witness that Western is substantially controlled by its shareholders and she recommends that the company be found to be a mutual water company.

Discussion

The testimony of the secretary/treasurer of Western and of the Commission's financial examiner who conducted an investigation of the status of the company clearly indicates that the number of shareholders who are "water users" substantially outnumber the shareholders who own shares but are currently not water users. The records of the company verify that the sale of water to shareholder water users is at cost and that no profits are being derived from the sale of water. The record also indicates that no dividends or other pecuniary benefits have been paid by the company

and, further, that the company has from time to time levied assessments among shareholders.

Western was founded as a mutual water company, has operated as a mutual water company, and desires to maintain its mutual water company status.

Findings of Fact

1. Western was incorporated as a nonprofit mutual water company in the State of California on February 19, 1912.
2. Western is controlled and operated by a five-person board of directors who are elected by the shareholders of the company.
3. All members of the board of directors are shareholders of the company.
4. Annual shareholders' meetings are held for the election of members of the board of directors.
5. Water is sold at cost only to shareholders, and assessments are levied upon shareholders as needed from time to time.
6. No dividends to shareholders have ever been declared by the company.
7. Water is sold to shareholders in relation to the number of shares held.
8. The sale of land within the service area of Western is separate from the sale of shares by shareholders.
9. Purchasers of land within the service area may purchase shares of stock of Western from shareholders if available or from the company.
10. Although shareholders voted in 1965 to change the quorum requirements from 50% to 20%, the by-laws were not amended to reflect this change; at each annual shareholders' meeting from 1965 to 1987, it was determined that no quorum was achieved, resulting in a failure to elect new members of the board. If the minutes of the 1965 annual meeting had been deemed controlling, the company would have achieved a quorum in each year except 1973 and 1983.

11. A special meeting of shareholders was held on August 4, 1987 and a quorum was achieved under the 50% requirement. A board of directors was elected and a motion to amend the by-laws quorum requirements from 50% to 20% was carried.

12. The shareholders and board of directors desire to maintain their status as a mutual water company.

13. Of the 3,900 shares of Western outstanding, 2,916.5 shares are held by shareholders with connected water meters (water users) and 983.5 shares are held by 123 shareholders who currently do not have connected water meters (non-water users).

14. The 123 shareholders who are not currently water users own vacant land within Western's service area and may install water meters sometime in the future or may sell their land and/or their shares of stock.

15. Yucaipa and Western have reached a settlement agreement and request that the complaint be dismissed.

Conclusions of Law

1. Western is a bona fide mutual water company and is entitled to the exemption from public utility regulation under PU Code Section 2705.

2. Interim D.87-03-028 should be rescinded.

3. The complaint in Case 86-02-007 should be dismissed.

FINAL ORDER

IT IS ORDERED that:

1. Interim Decision 87-03-028 is rescinded.
2. The complaint in Case 86-02-007 is dismissed.

This order is effective today.

Dated DEC 17 1987, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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



Victor Weissert, Executive Director

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The San Gabriel Valley District, located in the County of Los Angeles, includes two systems that are not physically interconnected. The South San Gabriel system serves portions of the cities of Monterey Park, Rosemead, and San Gabriel. The South Arcadia system serves portions of the cities of Arcadia, El Monte, Irwindale, Monrovia, and Temple City, and adjacent areas. The area is primarily residential with small industrial and commercial areas. As of December 31, 1986 the San Gabriel Valley District was providing water service to 11,209 customers, including private fire service to 35 customers. Of the total customers served, over 97% were in the commercial classification which consists of residential and business customers.

The water supply for the South Arcadia system is obtained from 14 company-owned wells located within the system as well as two purchased water interconnections with the City of Arcadia. The wells range in size from 12 to 26 inches in diameter, and in depth to 1,000 feet. All wells are equipped with deep well turbine pumps - 11 operated by electric motors and three by natural gas engines.

The water supply for the South San Gabriel system is obtained from seven company-owned wells located within the system and through a connection to the Upper San Gabriel Valley Municipal Water District, a member agency of the Metropolitan Water District of Southern California. The wells range in size from 12 to 18 inches in diameter, and in depth to 700 feet. All wells are equipped with electric-driven deep well turbine pumps. Some portion of the water supply is stored at night and allowed to flow by gravity or pumped from storage by booster stations to the distribution system to meet peak demands.

There are three booster stations - Garvey, Tegner, and Teresa - all located in the South San Gabriel system. SCWC is in the process of adding a gas-powered booster pump at the Teresa Plant.

CORRECTION

**THIS DOCUMENT HAS
BEEN REPHOTOGRAPHED**

TO ASSURE

LEGIBILITY