

Decision 88 08 023 AUG 10 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Andrew E. Stevens and )  
of the Coachella Valley Water )  
District for an order authorizing )  
transfer of all Andrew E. Stevens' )  
utility property to the Coachella )  
Valley Water District. )

Application 88-04-054  
(Filed April 20, 1988)

OPINION

This is an application in which Andrew E. Stevens (Stevens), doing business as Tri-Palm Estates, seeks authority to sell and transfer his public utility sewer system to Coachella Valley Water District (District).

Notice of the application was mailed to each Stevens' customer on May 17, 1988. The Commission received petitions signed by 179 of Stevens' customers and 15 letters of concern or protest. The petitions and letters raised one or both of the following matters: (1) District charges a \$1,500 connection fee. Stevens' tariff has no such provision. The customers are fearful that the proposed transfer might result in their having to pay such fee. (2) The customers are concerned that the proposed transfer might result in an increase in rates.

The parties have indicated that the agreement for the proposed transfer provides that no present individual lot owner in the area served by Stevens would be subject to the connection fee. Additionally, the ensuing order will so provide.

The record indicates that the rates presently charged by District are comparable to those charged by Stevens. If the utility remained under Stevens' ownership, he might be entitled to a future increase in rates if there were an increase in costs.

"The theory on which the state exercises control over a public utility is that the property so used is thereby dedicated to a public use. The

dedication is qualified, however, in that the owner retains the right to receive a reasonable compensation for use of such property and for the service performed in the operation and maintenance thereof." (Lyon & Hoag v Railroad Commission (1920) 183 C 145, 147; Federal Power Commission v Hope Natural Gas Co. (1944) 320 US 591.)

Such an increase would be subject to approval by the Commission. If District acquires the system and there is an increase in costs it can raise rates in accordance with its procedures, which are not subject to the jurisdiction of the Commission. However, District's actions would be subject to review by the Superior Court. (Fellows v City of Los Angeles (1907) 151 Cal. 52; Rutherford v Oroville-Wyandotte Irr. Dist. (1933) 218 Cal. 242; Henderson v Oroville-Wyandotte Irr. Dist. (1920) 207 Cal. 215; Durant v City of Beverly Hills (1940) 39 Cal. App. 2d 133.) The Commission has held that without special circumstances a mere preference between two adequate modes of protecting customers' rights is entitled to little weight. (California Pacific Utilities Co. (1964) 63 CPUC 439, 444.) We believe this holding is applicable to the facts presented in this record.

Although not raised by Stevens' customers, examination of the application indicates that the parties agreed that customer deposits paid by Stevens' customers would not be refunded in cash but by a credit to their bill over a period of 11 months. This is inconsistent with the tariff provisions, authorized by the Commission, under which the deposits were made. The order which follows will provide for timely cash refunds in accordance with the existing tariff provisions.

In the light of the foregoing discussion it is apparent that were the Commission to hold a public hearing in the matter the results of that hearing could not be more advantageous to Stevens' customers than the ensuing order. There is no need for a public hearing in these circumstances.

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

Findings of Fact

1. Stevens is an individual who owns and operates a sewer system corporation as defined in Public Utilities (PU) Code § 230.6 which is subject to the jurisdiction of the Commission. Stevens was granted his certificate of public convenience and necessity in Decision 89455 in Application 58230 dated October 3, 1978.

2. The sewer system serves the Tri-Palm Estates Subdivision also described as Section 20, Township 4, South, Range 6 East, which is the location of the collection portion of the system.

The treatment facility portion is located on 13.16 acres in the Southwest 1/4 of Section 21, Township 4 South, Range 6 East also known as Parcel 651140006-7.

The sewer system consists of 4-inch collection pipes running to each lot in Tri-Palm Estates. Those pipes then run into 6-inch and eventually 8-inch collector pipes. All of the collected waste water flows to a pump station wet well adjacent to treatment facilities. The sewage is then pumped from the wet well through an 8-inch diameter force main into the oxidation ponds. The flow of raw sewage is measured and recorded on a 7-day chart by a recording magnetic flow meter located on the force main. The sewage then flows into two aerated oxidation ponds lined with 2-inch asphaltic concrete. The first of the aeration ponds is equipped with two 3-horsepower mechanical aerators and the second is equipped with four 3-horsepower mechanical aerators. The effluent then flows into one or more of the four percolation ponds for infiltration of the treated waste water through the soil.

The system is designed with enough flexibility to provide the desired level of treatment with minimal operations effort regardless of seasonal fluctuations in incoming flow. The sewage treatment system is required under stringent standards by the California Regional Water Quality Control Board, Colorado River

Basin, Region 7. The system is in satisfactory condition. No major capital improvements are anticipated in the foreseeable future.

3. District is a public agency organized and existing under Sections 30,000 et seq. of the Water Code. It provides domestic water and sewer service to approximately 125,000 persons in a service area of approximately 1,000 square miles, which includes the Cities of Cathedral City, Rancho Mirage, Palm Desert, La Quinta, and Indian Wells, and unincorporated areas within the Counties of Riverside, Imperial, and San Diego. District's sanitation collection system has approximately 430 miles of pipeline.

4. On March 22, 1988 District's Board of Directors approved the acquisition of Stevens' sewer system. The District decided to acquire the system because it could not be expanded and in all likelihood would have been taken over by District through the process of eminent domain. The parties entered into an acquisition agreement, which is attached to the application as Exhibit B.

5. The acquisition agreement provides that the price of \$1,150,000, to be paid by District to Stevens, constitutes just compensation within the meaning of Article I, Section 1A, of the California Constitution. As of October 3, 1978, the book cost of the operating property to be transferred is \$666,655. The land cost is \$15,000.

6. As of March 1, 1988, Stevens held customer deposits of \$54,600 representing prepayment of monthly service charges. The acquisition agreement provides that District will give credit to the depositing customers for deposits not refunded at the time of transfer. This provision is not reasonable. At a rate of \$9.50 per month it would take more than 11 months for a customer to obtain a full refund credit, not counting any interest to which the customer would be entitled on the original deposit.

The Commission takes official notice that Rule 7 of Stevens' tariff provides as follows:

"Rule No. 7

"DEPOSITS

"A. Amount to Establish Credit

"1. Flat Rate Service

- "a. Where bills for flat rate service are rendered quarterly, semiannually or annually in advance, no deposit will be required.
- "b. Where bills for flat rate service are rendered monthly or bimonthly, a deposit may be required. The amount of deposit will be twice the estimated monthly bill or \$10, whichever is greater.
- "c. For temporary service, a deposit will be required as prescribed in Rule No. 13.

"2. Metered Service

"The amount of deposit for all classifications of service will be twice the estimated average monthly bill or \$10, whichever is greater.

"B. Amount to Reestablish Credit

"1. Former Customers

"To reestablish credit for an applicant who previously has been a customer of the utility and during the last 12 months of that prior service has had service disconnected for nonpayment of bills, the amount will be twice the estimated average monthly bill to be rendered for the service requested.

"2. Present Customers

"To reestablish credit for a customer who has had service disconnected for nonpayment of bills, the amount will be twice the average monthly bill to be rendered for that service.

"C. Applicability to Unpaid Accounts

"Deposits made under this rule will be applied to unpaid bills for service when such service has been discontinued.

"D. Return of Deposits

"Upon discontinuance of service, the utility will refund the balance of the customer's deposit in excess of unpaid bills for that service for which the deposit was made.

"E. Interest on Deposits

"Interest on deposit held will be paid by the utility at the rate of 7/12 per cent per month (7% annually) upon discontinuance of service, or after the deposit has been held for 12 consecutive months, provided service has not been discontinued for non-payment. No interest shall accrue after mailing to the customer or to the customer's last known address the refund or a notice that the refund is payable."

These tariff provisions authorized by the Commission became part of the contract for service between Stevens and his customers.

Stevens and District cannot change the rights of the customers to their detriment. (U.S. Const., Art. I, Sec. 10; Cal. Const. Art. I, Sec. 9.) Stevens' customers are entitled to refunds in accordance with the tariff provisions which were in effect at the time the deposits were made.

7. There are no main extension advances.

8. The acquisition agreement provides that certain specified lots within Tri-Palm Estates would not be subject to District's \$1,500 sanitary capacity charges (connection fee). Other specified lots would be subject to the fee. In response to an inquiry by the assigned Administrative Law Judge, Stevens wrote to the Commission that:

"It is the understanding of both the seller and buyer that no one who purchased a lot in Tri-Palms, believing they would be exempt from sewer hookup fees, will now have to pay. I

have spoken to Tom Levy, general manager of the buyer, who assures me this is his understanding also."

The letter has been designated as Exhibit 1. It is reasonable to require as a condition of transfer that District shall not apply its sanitary capacity charges to any present customer of Stevens or to any individual, as distinguished from a subdivider, who prior to this decision purchased a lot in the Tri-Palm Estates Subdivision and was eligible to receive sewer service from Stevens.

9. Notice of the application was mailed to each Stevens' customer on May 17, 1988. Petitions signed by 179 Stevens' customers and 15 letters were received by the Commission which expressed concern or protest regarding the application. The petitions and letters raised one or both of the following matters: (1) District charges a \$1,500 connection fee. Stevens' tariff has no such provision. The customers are fearful that the proposed transfer might result in their having to pay such fee. (2) The customers are concerned that the proposed transfer might result in an increase in rates.

10. The rates presently charged by District are comparable to those charged by Stevens.

11. If District acquires Stevens' sewer system the reasonableness of its actions dealing with rates would be subject to review by the Superior Court.

12. In the light of the provisions of the ensuing order, the holding of a public hearing could not result in a decision more favorable to Stevens' customers.

13. A public hearing is not necessary in this matter.

14. PU Code § 431 directs the Commission to fix an annual fee to be paid to the Commission by each regulated sewer system and that fee for 1988 has been set at 1.5% of all sewer revenues collected by each sewer utility for the year. It is reasonable to

require the payment of such fees as may be owing as a condition of transfer.

15. The proposed transfer of Stevens' sewer system to District is not adverse to the public interest.

16. Because the public interest would best be served by having the transfer take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. Since the ensuing order resolves the matters raised in the petitions and letters sent to the Commission most favorably to Stevens' customers, a public hearing is not required.

2. The proposed transfer should be authorized on the express condition that District shall not apply its sanitary capacity charges (connection fee) to any present customer of Stevens' sewer system or to any individual, as distinguished from a subdivider, who, prior to this decision, purchased a lot in the Tri-Palm Estates Subdivision and was eligible to receive sewer service from Stevens.

3. The proposed transfer should be authorized on the express condition that all customer deposits held by Stevens be refunded with appropriate interest in cash in accordance with the provisions of Stevens' tariff: (1) prior to transfer or (2) as each refund would have come due under the terms of Stevens' tariff.

4. The proposed transfer should be authorized on the express condition that all fees due the Commission pursuant to PU Code § 431 be paid to the date of transfer.

5. The application should be granted as hereafter provided.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, Andrew E. Stevens (Stevens) may sell and transfer his public utility sewer



system to Coachella Valley Water District (District) in accordance with the terms of the application except as hereafter modified.

This authority is granted on the following express conditions:

- a. District shall not apply its sanitary capacity charges (connection fee) to any present customer of Stevens' sewer system or to any individual, as distinguished from a subdivider, who, prior to the effective date of this order, purchased a lot in the Tri-Palm Estates Subdivision and was eligible to receive sewer service from Stevens.
- b. All customer deposits held by Stevens shall be refunded with appropriate interest in cash in accordance with the provisions of Stevens' tariff, as set forth in Finding 6, either (1) prior to the transfer to District, or (2) by District as each refund would have become due under the terms of Stevens' tariff.
- c. Before the transfer becomes effective Stevens shall pay to the Commission all fees due under PU Code § 431 to the date of transfer.

2. Within 30 days of the sale and transfer of the assets of Stevens to District, District shall notify the Commission in writing of that fact and within such period shall file with the Commission a true copy of each instrument by which such transaction has been accomplished including an inventory of assets transferred.

3. The foregoing authority is conditioned upon District's assuming liability for all unrefunded customer deposits held by Stevens at the time of transfer. District shall provide the Commission with satisfactory proof of such assumptions in accordance with Ordering Paragraph 1b. within 30 days of the acquisition.

4. Upon compliance with all of the conditions of this order, including the payment of all fees due under PU Code § 431 to the date of transfer, Stevens shall stand relieved of his public

utility obligations and may discontinue service concurrent with the commencement of service by District as contemplated in the agreement between the parties.

5. The authority granted in Ordering Paragraph 1 shall expire on June 30, 1989 if it has not been exercised by that date.


This order is effective today.

Dated AUG 10 1988, 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 Weisser, Executive Director