

Decision 89 05 042 MAY 26 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Ex Parte Action)
of Starlite Water Company to sell)
and Starlite Community Service)
District to buy the water system)
in Inyo County.)

MAY 26 1989

Application 88-07-040
(Filed July 22, 1988)

Daniel Tothoroh and Marie Neis, for Starlite
Community Service District, and Roy S.
Freeman, for Starlite Water Company,
applicants.
Gary Y. C. Lee, for the Commission Advisory
and Compliance Division.

OPINION

This is an application in which Starlite Water Company (Company) seeks authority to sell and transfer its public utility water system (water system) to Starlite Community Service District (District).

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in Bishop on February 8, 1989. The proceeding was submitted subject to the filing of the transcript which was filed on March 10, 1989.

I. Background

Company received its operating authority in 1977. It serves approximately 50 customers in the Starlite Estates area, which is near Bishop in Inyo County. Water system had severe outages in 1982, 1983, 1984, and 1987. In 1986, persons in the community decided that the way in which they could obtain an adequate, uninterrupted supply of water was to form a community

service district and acquire water system. District was formed on November 25, 1986.

In May, 1988, Company agreed to sell water system to District for \$20,000. At that time District did not have the funds to carry out the contract. This application was filed in July, 1988. Notice of the filing of the application was served on all customers of Company. Two customers wrote the Commission to protest the application. The Commission Advisory and Compliance Division Water Branch (Water Branch) had concerns about portions of the application. On November 8, 1988, the persons residing in District approved a special tax measure which provided funds for District including a sufficient amount to enable it to purchase water system. The election results were certified on December 8, 1988. The ALJ then calendared the matter for public hearing.

II. Material Issues

The material issues presented in this proceeding are:

- (1) Should Company be authorized to sell water system to District?
- (2) If the sale is authorized, should the Commission put conditions on the sale?

III. Discussion

As indicated, water system had severe outages in 1982, 1983, 1984, and 1987. Company is unable to finance and install plant improvements to meet the requirements of General Order (GO) 103 and provide adequate service at rates which would be acceptable to its customers. The proposed transfer of water system to District has the support of local government, Inyo County Department of Health Services, and 79% of the voters in District who approved the tax measure to fund the acquisition. The weight of the evidence indicates that the sale of water system to District

would be in the public interest. The remaining question to be decided is whether conditions should be required in approving the sale.

A. Undeveloped Lots in Existing Tracts Served by Company

Some of the opposition to the application is based on the fears of owners of undeveloped lots that if District acquires water system they may be charged a large connection fee when they build a house on their lot. Under Commission rules, Company would not be allowed to charge such a fee.

The record indicates that there are approximately 50 homes in the tracts served by Company. There are approximately 20 undeveloped lots in these tracts. Most of these undeveloped lots have service connections. Some have meters. A few of the lots might require a tap of the main to provide a service connection. The owners of the undeveloped lots are subject to the special tax for District.

In response to a question by the ALJ about the imposition of a condition precluding District from charging a connection fee for providing service to the undeveloped lots, a member of District's Board of Directors testified that: "I would be very surprised if the board didn't accept that wholeheartedly." Since those with homes already built paid no connection fee and the owners of the undeveloped lots are subject to District's special tax, the equities of the situation call for imposing a condition of sale precluding District from charging a connection fee when these lot owners build on their lots.

B. Undeveloped Lands

John Clark (Clark), a partner in some of the undeveloped property in the Starlite Estates area, testified that he wanted the sale conditioned so that the partnership could continue to subdivide with reasonable water requirements. Clark would like a condition which would permit the partnership to receive water from

District whenever its subdivision is approved under the then applicable GO 103 water flow requirements.

In 1980, the partnership filed a tentative subdivision map in seeking to subdivide its property in the Starlite Estates area into 24 lots. The Inyo County authorities turned down the request as submitted and indicated that the application could only be considered if there was a comprehensive water study submitted along with it. The partnership undertook a three-phase study of which one phase is completed. Clark is fearful that District or County may require greater flow requirements than those of GO 103 for the subdivision to be approved or receive water.

The question of whether a subdivision should be built is primarily one for the appropriate local authority. (Cf., Rules of Practice and Procedure Re CEOA (1973) 75 CPUC 133, 146.) Unless a matter of Commission exclusive jurisdiction or statewide concern is present, the Commission should not intrude in the determination.

In addition to regulation by the Commission, privately owned public utility water companies are subject to regulation by state or local health authorities who have the power to act in a manner not inconsistent with Commission jurisdiction.

Health and Safety Code (H&S Code) § 4010.8 gives the responsibility of enforcing various sections of that code with respect to systems of less than 200 service connections to the local health officer. Among these sections of the H&S Code which the local health officer is charged with enforcing is the following:

"§ 4017. Duties of public water system operator

"Any person who operates a public water system shall do all of the following:

- "(a) Comply with primary and secondary drinking water standards.
- "(b) Ensure that the system will not be subject to backflow under normal operating conditions.

- "(c) Provide a reliable and adequate supply of pure, wholesome, healthful, and potable water."
(Emphasis added.)

GO 103 provides in part that:

"II. STANDARDS OF SERVICE

"1. Quality of Water

- "a. General. . . . Any utility supplying water for human consumption shall hold or make application for a permit as provided by the Health and Safety Code of the State of California, and shall comply with the laws and regulations of the state or local Department of Health Services. It is not intended that any rule contained in this paragraph II 1 shall supersede or conflict with an applicable regulation of the State Department of Health Services. A compliance by a utility with the regulations of the State Department of Health Services on a particular subject matter shall constitute a compliance with such of these rules as relate to the same subject matter except as otherwise ordered by the Commission." (Emphasis added.)

* * *

"VIII. FIRE PROTECTION STANDARDS

- "1. Design Requirements. The flow standards for public fire protection purposes set forth below are those the Commission considers appropriate for application on an average statewide basis. However, the Commission recognizes that there are widely varying conditions bearing on fire protection throughout the urban, suburban, and rural areas of California. Therefore, the standards prescribed by the local fire protection

agency or other prevailing local governmental agency will govern."

If water system remained under the Commission's jurisdiction, it would be required to meet local fire flow requirements and the water supply standards required by the local health authorities. If the application is granted, water system would no longer be under the jurisdiction of the Commission. (Cal. Const. Art. XI, Sec. 9; Art. XII, Sec. 3.) It would not be reasonable for the Commission to impose on District conditions relating to water supply which would not be applicable if it retained jurisdiction.

In the course of making phase one of the comprehensive water study, the partnership caused a well to be drilled. Clark would like to have District acquire the well because he believes this would give District a sufficient amount of water to supply the subdivision partnership seeks to develop. A member of District's Board of Directors testified that in his opinion District could obtain more water at less cost from other sources which must be developed.

District has the powers conferred by law to operate a water system, including obtaining new sources of water. (Government Code §§ 61600 et seq.) There is no compelling evidence in this proceeding upon which the Commission should intrude on the District's powers by conditioning the sale of water system to it upon the acquisition of the partnership well. This is a question to be determined by District's Board of Directors in the exercise of their sound discretion in running District.

C. Concerns of the Water Branch

The Water Branch indicated that it strongly supported the proposed transfer. It indicated the following concerns to which it thought conditions might be considered.

1. Excluded Parcels

Four parcels in District's service area within the boundaries of water system have their own wells. They are not

served by Company and District has excluded them from proposed water service. Water Branch expressed a concern that these parcels should have the right to obtain service from District if any of the wells went dry, particularly with respect to fire protection.

The record indicates that District was formed for the purpose of providing domestic water service and fire protection. (Resolution 86-2.) The four parcels are within the boundaries of District. The special tax resolution, which related to acquisition and operation of water system, excluded the four parcels because they have their own wells and will not receive domestic water service from District. The record clearly indicates that these parcels are entitled to fire protection by District. Therefore, no condition about fire protection for these parcels is necessary.

2. Fire Flows

Water Branch indicated that water system presently does not meet existing fire flow requirements. It expressed the concern that improvements should be made to meet these requirements and that there should be a moratorium on new connections until they were met.

District indicated that it was aware of the fire flow deficiency. Testimony was presented that the special tax assessment would be received over a period of two years. District's Board of Directors had concerns about the allocation of the tax monies and funds to be borrowed. In a compromise, it voted to make certain improvements the first year and improvements which would insure adequate fire flow in the second year.

Under the facts presented, the Commission should not intrude on local and District jurisdiction by placing fire flow conditions on the proposed transfer. The problem is known. District and the local building permit authorities are in a position to determine whether a particular service connection should be activated and building permit issued.

It cannot be said that District's decision to make improvements to meet fire flow standards in the second year and other needed improvements the first year is so unreasonable that a condition of sale to force these requirements in the first year is warranted.

Comments

The ALJ filed his proposed decision in this proceeding on April 21, 1989. District filed comments to the proposed decision.

The comments state:

"The Starlite Community Service District Board held a special meeting on April 30, 1989 to consider the 'Proposed Decision of Administrative Law Judge Jarvis' (mailed 4/21/89) relating to the long awaited transfer of the water system serving the Starlite area. We wholeheartedly support and accept the order and conditions set forth therein, and request the speedy adoption by the Commission at the next meeting."

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

Findings of Fact

1. Company operates a public utility water system in Inyo County pursuant to a certificate of public convenience and necessity granted in Decision 86866 in Application 56428, dated January 18, 1977.

2. District is a community service district organized under the laws of California.

3. Water system experienced severe outages in 1982, 1983, 1984, and 1987. Company is unable to finance and install plant improvements in water system which would enable it to meet the requirements of GO 103 and provide adequate water service at rates acceptable to its customer.

4. District was formed on November 25, 1986. In May, 1988, District agreed to buy water system from Company for \$20,000. At that time District did not have the funds to carry out the terms of the agreement. On November 8, 1988, the voters of District, by a 79% margin, approved a special tax measure which gave District the ability to purchase water system and operate it.

5. As of December 31, 1987, the original cost, less depreciation, of water utility's plant was \$34,969.

6. The proposed transfer of water system from Company to District is not adverse to the public interest.

7. Company has no customer deposits to establish credit.

8. Company has no main extension advances.

9. There are approximately 50 homes and 20 undeveloped lots in the tracts served by Company. Most of the undeveloped lots have service connections. Some have meters. All of the undeveloped lots are entitled to receive water from Company without the payment of a connection fee. The owners of the undeveloped lots are subject to the special tax imposed by District. It is reasonable to require as a condition of transfer that District shall not impose a connection fee to provide water service to these lots.

10. A partnership owns undeveloped property in the Starlite Estates area which it seeks to subdivide. It would not be reasonable to impose a condition of transfer which would inhibit local health and permit authorities from exercising their jurisdiction as to whether sufficient water is available to permit a new subdivision.

11. In the course of its attempt to subdivide its property, the partnership caused a well to be drilled on its property to provide a source of water. There is no compelling evidence in this record which would cause the Commission to intrude on District's Board of Directors by conditioning the transfer on District's acquiring the partnership well.

12. Four parcels in Company's service area and within the boundaries of District were excluded from the special tax resolution for acquisition and operation of water system because these parcels have their own wells and will not receive water service from District. Each of the four parcels is entitled to fire protection from District.

13. Water system does not presently meet fire flow requirements. District will receive the special tax assessment over a period of two years. District's Board of Directors voted to use available assessment monies and borrowed funds to make certain

needed improvements the first year and improvements which would insure adequate fire flow the second year. The action of District's directors in establishing their priorities for the expenditure of funds is not imprudent so as to justify the Commission putting a condition relating to fire flow on the transfer.

14. Public Utilities (PU) Code § 431 directs the Commission to fix an annual fee to be paid to the Commission by each regulated water system, and that fee for 1988-89 has been set at 1.5% of all water revenues collected by each water utility for the year. It is reasonable to require the payment of such fees as may be owing as a condition of transfer.

15. 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. The proposed transfer should be authorized on the express condition that District shall not require a connection fee to provide water service to the approximately 20 undeveloped lots which are in the tracts presently served by Company.

2. 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.

3. The application should be granted as hereinafter provided.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, Starlite Water Company (Company) may sell and transfer its public utility water system to Starlite Community Service District (District) in accordance with the terms of the application. This authority is granted on the following express conditions:

- a. District shall not require a connection fee to provide water service to the approximately 20 undeveloped lots which are in the tracts presently served by Company.

b. Before the transfer becomes effective, Company 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 Company 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.

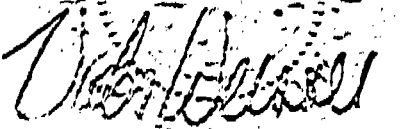
3. Upon compliance with all of the conditions of this order, including the payment of all fees due under PU Code § 431 to the date of transfer, Company shall stand relieved of its public utility obligations and may discontinue service concurrent with the commencement of service by District as contemplated in the agreement between the parties.

4. The authority granted in Ordering Paragraph 1 shall expire on June 30, 1990, if it has not been exercised by that date. This order is effective today.

Dated MAY 26 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


Victor Weisser, Executive Director

It cannot be said that District's decision to make improvements to meet fire flow standards in the second year and other needed improvements the first year is so unreasonable that a condition of sale to force these requirements in the first year is warranted.

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

Findings of Fact

1. Company operates a public utility water system in Inyo County pursuant to a certificate of public convenience and necessity granted in Decision 86866 in Application 56428, dated January 18, 1977.
2. District is a community service district organized under the laws of California.
3. Water system experienced severe outages in 1982, 1983, 1984, and 1987. Company is unable to finance and install plant improvements in water system which would enable it to meet the requirements of GO 103 and provide adequate water service at rates acceptable to its customer.
4. District was formed on November 25, 1986. In May, 1988, District agreed to buy water system from Company for \$20,000. At that time District did not have the funds to carry out the terms of the agreement. On November 8, 1988, the voters of District, by a 79% margin, approved a special tax measure which gave District the ability to purchase water system and operate it.
5. As of December 31, 1987, the original cost, less depreciation, of water utility's plant was \$34,969.
6. The proposed transfer of water system from Company to District is not adverse to the public interest.
7. Company has no customer deposits to establish credit.
8. Company has no main extension advances.
9. There are approximately 50 homes and 20 undeveloped lots in the tracts served by Company. Most of the undeveloped lots have

service connections. Some have meters. All of the undeveloped lots are entitled to receive water from Company without the payment of a connection fee. The owners of the undeveloped lots are subject to the special tax imposed by District. It is reasonable to require as a condition of transfer that District shall not impose a connection fee to provide water service to these lots.

10. A partnership owns undeveloped property in the Starlite Estates area which it seeks to subdivide. It would not be reasonable to impose a condition of transfer which would inhibit local health and permit authorities from exercising their jurisdiction as to whether sufficient water is available to permit a new subdivision.

11. In the course of its attempt to subdivide its property, the partnership caused a well to be drilled on its property to provide a source of water. There is no compelling evidence in this record which would cause the Commission to intrude on District's Board of Directors by conditioning the transfer on District's acquiring the partnership well.

12. Four parcels in Company's service area and within the boundaries of District were excluded from the special tax resolution for acquisition and operation of water system because these parcels have their own wells and will not receive water service from District. Each of the four parcels is entitled to fire protection from District.

13. Water system does not presently meet fire flow requirements. District will receive the special tax assessment over a period of two years. District's Board of Directors voted to use available assessment monies and borrowed funds to make certain needed improvements the first year and improvements which would insure adequate fire flow the second year. The action of District's directors in establishing their priorities for the expenditure of funds is not imprudent so as to justify the

Commission putting a condition relating to fire flow on the transfer.

14. Public Utilities (PU) Code § 431 directs the Commission to fix an annual fee to be paid to the Commission by each regulated water system, and that fee for 1988-89 has been set at 1.5% of all water revenues collected by each water utility for the year. It is reasonable to require the payment of such fees as may be owing as a condition of transfer.

15. 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. The proposed transfer should be authorized on the express condition that District shall not require a connection fee to provide water service to the approximately 20 undeveloped lots which are in the tracts presently served by Company.

2. 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.

3. The application should be granted as hereinafter provided.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, Starlite Water Company (Company) may sell and transfer its public utility water system to Starlite Community Service District (District) in accordance with the terms of the application. This authority is granted on the following express conditions:

- a. District shall not require a connection fee to provide water service to the approximately 20 undeveloped lots which are in the tracts presently served by Company.