

Decision 90-07-030 July 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Curtis Bond as Receiver for E. B. )  
Hicks Water Company, Inc., a )  
suspended California Corporation to )  
sell, and the Doney Street )  
Neighborhood Association, a )  
California Corporation to buy the )  
water system at Doney Street in Kern )  
County. )

Application 90-04-038  
(Filed April 23, 1990)

O P I N I O N

Statement of Facts

In 1946, E. B. and Ella Hicks, real estate developers, subdivided two separate noncontiguous tracts of land approximately 6 miles southeast and 5 miles south of Bakersfield in an unincorporated area of Kern County, California. In each of the tracts they drilled a well, installed a pump driven by an electric motor, placed a pressure tank, and installed distribution mains.

By Decision (D.) 45112 issued December 12, 1950 in Application 31534, after a hearing in Bakersfield, the Hicks received authorization to operate a public utility system for the distribution and sale of water within each area, and rates were established.

Much later, the system in Tract 1348 was abandoned, and part of the system was taken over by California Water Service Company, which company at present is serving the customers in that tract and is rehabilitating the distribution system. However, the present proceeding is not concerned with Tract 1348.

Tract 1449, the Doney Street Tract, contains the system of interest in the present proceeding. Laid out on the site of the Depression era Scroggins Camp, where families lived who worked on nearby farms, the tract is served from a 10-inch, 450 foot well

built in 1964 with a deep well pump (a replacement installed in 1981, but again needing replacement) driven by a 19-horsepower electric motor. A 2,000-gallon pressure tank provides low pressure but is badly rusted and also needs replacement. The original 3-inch, steel distribution mains were replaced in 1982 by approximately 1,200 feet of 4-inch, and 170 feet of 2-inch polyvinyl chloride pipe, which, although in good condition, are undersized to provide hydrant fire flow. These mains are in Doney Street and the alley west of the Weedpatch Highway. The quality of service is poor with low pressures and frequent service outages, complaints which have continued since the system's first general rate case in 1957. Today, the system serves 26 services, 3 of which are metered.

Following Hick's death, his daughter and administrator Margo King after 1974 managed the system from her home in Anaheim. Pacific Gas and Electric Company (PG&E) encountered large unpaid electric energy bills. In 1975 the system, still doing business as E. B. Hicks Water Company, was incorporated, and Joseph Serra, a customer, was authorized to purchase all the stock (D.84942). After some service improvements were made, Serra fell behind in payments to PG&E, and by 1984, in considerable financial difficulty, wanted to abandon the system.

In 1986 PG&E obtained appointment of a receiver from the Kern County Judicial District Municipal Court. The receiver collected revenues, paid bills, and only made repairs as necessary to keep the system operating. Health Code violations and continued unpaid bills led PG&E in 1988 to return to the same court and obtain an order (Order No. 048-232) to have the receiver sell the assets of the water company to satisfy unpaid bills and other debts.

Meanwhile, Doney Street property owners and adjacent property owners to the west and south, but north of the East Side Canal, in 1985 proceeded to organize the Doney Street Neighborhood

Association (Association) as a California nonprofit mutual benefit corporation for the purpose of acquiring, operating, and repairing the system as a community water system.

By the present application the Court appointed Receiver, Curtis Bond, for E. B. Hicks Water Company, Inc., a suspended corporation, and the Association, seek authorization from the Commission pursuant to Public Utilities (PU) Code § 851 for the former to sell and transfer the system to the latter; relieve the former of its public obligation in the Doney Street area; declare the latter not subject to Commission regulation after the sale and transfer; and relieve the latter of responsibility for any refund obligations of the former.

Notice of the application appeared in the Commission Daily Calendar of April 27, 1990. There have been no protests received. By date of June 5, 1990 the Water Utilities Branch of the Commission's Advisory and Compliance Division submitted a staff report recommending approval on an ex parte basis as soon as possible in order to protect the arrangements made between the parties thur far. Accordingly, Administrative Law Judge John B. Weiss proceeded ex parte. Since then the system has suffered new breakdowns with outages. ✓

#### Discussion

The design of PU Code § 851 is to prevent the impairment of the public service of a utility by the transfer of its property into the hands of agencies incapable of performing an adequate service at reasonable rates or upon terms which will bring about the same undesirable result. Transfers and reorganizations often are made which leave the utility so burdened with fixed interest charges and crippled financially that it is totally unable to perform its duty to the public; and to prevent the bringing about of such conditions, the Commission has been given the authority to regulate the transfer and encumbrance of its property by a utility. (Southern California Mountain Water Co. (1912) 1 CRRC 520). The

obvious purpose of the section is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition to the transfer, as the public interest may require (San Jose Water Co. (1916) 10 CRRC 56).

In the present situation we have too few customers to realistically permit a public utility operation with any hope of long-term success. Any water system requires dedicated constant maintenance with periodic replacements of components in order to provide dependable service. But this system is bare bones minimum, lacking even fire protection capability. Because this system depends upon deep well pumping for its water supply, electric bills were high, and with escalation of electricity costs over the past decade and a half, these bills necessarily mounted even higher.

After the death of the original local developers of the system, the heiress and estate administrator attempted absentee management with predictable results. Service problems went unresolved, electric bills were not always paid and outages continued. Finally, after incorporation the system was sold and transferred to a local resident on the system who made strong efforts to rehabilitate the system. He replaced the submersible pump and installed new plastic mains, but the financial realities of an uneconomic commercial operation caught up and by 1984 he wanted to abandon the system. Soon thereafter his financial problems overwhelmed him, PG&E took him to Court for unpaid energy bills, and the Court took over all his property including the water system, appointing Receivers to operate the system. The Receivers collected water bills but did minimal repairs. Finally the Court ordered sale of the system assets.

The current Receiver, Bond, intends to obtain sufficient funds from the sale and current monthly revenues to close out all the recorded debts of the system. Accordingly, the purchase price is estimated to be approximately \$17,900.

For the past 2 years under Court receivership the Association members themselves have had to maintain and repair the pump, electrical controls, and mains to provide for daily operations and alleviate outages which continue to occur with the faltering equipment. The Receiver merely collects the revenues. Thus the Association members are aware of the problems and are determined, as a matter of grim necessity if nothing else, to keep the system functioning so that they have water for their homes.

The Association has been assisted by the Visalia office of Self-Help Enterprises to find and obtain funds to purchase and rebuild the system. It is estimated that these costs will approximate \$331,700. Of this total, \$38,000 has been obtained from the Kern County Community Development Program Department, \$4,120 from a Clinica Sierra Vista MESA grant, and \$2,400 from the State Rural Technical Assistance Program. An application is being prepared to Farmers Home Administration and the County of Kern for the remaining estimated amount. The work will be performed by the Association. There are no customer deposits to establish credit and no main extension advances. Under the Association's proposed \$18.00 monthly flat rate per customer, the 26 customers would provide revenue of \$5,616 per year. Assuming full restoration of pump efficiency, the electric energy expense is calculated to be approximately \$1,000 per year. Thus the Association appears to have adequate financing to purchase the system, plans to rehabilitate the system and prospects to pay for this, rehabilitation, and a reasonable operating budget.

The original cost of the plant installed in 1948 and 1949 has since been fully depreciated and retired (using the 5.6 percent depreciation rate required by D.55661 in 1957). This leaves the original cost of the plant installed since to include the \$3,800 for the pump installed in 1981, \$13,700 for the 1,370 feet of PVC

mains installed in 1982,<sup>1</sup> and \$480 for 3 meters installed in 1976 and 1978, for a total of \$17,980. When the depreciation reserve of \$3,522 for this latter installed plant is deducted, the present value of water plant in service is \$14,458. The land on which the well, pump, controls, and pressure tank are located carries a present assessed valuation of \$4,354 (which compares reasonably with recent comparable bare land sales in the area). Adding the land value to the plant value produces a total depreciated value of approximately \$18,812 which compares reasonably with the estimated \$17,500 purchase price. The negotiated price for the system is therefore reasonable.

The Association submitted a copy of its By-Laws as a corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California. Also submitted was a copy of its Articles of Incorporation. Pursuant to PU Code § 2705, as long as the Association delivers water at cost, and delivers water to no one except its members, or, at cost, to the State, City, County, School District, or other public district, or to any other mutual water company, the Association will not be a public utility, and will not be subject to the jurisdiction, control, or regulation of this Commission.

The Court Receiver should be ordered to report and submit the PU Commission Reimbursement Fees collected to the date of sale and transfer to the Commission.<sup>2</sup>

---

1 While no record of costs for installation of the plastic pipe water mains was kept, staff, using a contemporary cost recorded at that time by another Kern County public utility, approximates \$13,700 for the cost.

2 PU Code § 432 requires all public utilities with annual gross intrastate revenues of \$750,000 or less to collect from all customers a surcharge (presently 1-1/2 percent added to all billings), and to remit these fees to the Commission.

The application to sell and transfer the water system of Doney Street to the Association should be granted as soon as possible in order to protect the agreements between the parties that have thus far been made. Notice of this matter did not appear on the Commission's public agenda, however, an emergency exists in that the system needs an urgent infusion of money from the Association to make emergency repairs to maintain even the present level of service in the face of currently experienced breakdowns and outages. This justifies our action today under PU Code § 306(b).

Findings of Fact

1. The E. B. Hicks Water Company, Inc., a public utility within the jurisdiction of this Commission, initially was composed of 2 noncontiguous water systems, located in 2 separate tracts in an unincorporated area of Kern County near Bakersfield.

2. The Tract 1348 system has been abandoned and is not of interest herein.

3. The Doney Street system of Tract 1449, presently serving 26 customers, fails to meet Commission standards, and since 1957 has experienced low pressure and outage problems.

4. After sale to a resident in 1975 some improvements were made, but by 1984 the new owner was in debt and wanted to abandon the system.

5. In 1986 the Kern County Judicial District Municipal Court appointed a Receiver to operate the system, subsequently ordering the current Receiver to sell the system's assets.

6. A resident-customers association, organized and incorporated under the California Nonprofit Mutual Benefit Corporation Law as a mutual, was formed to buy the system from the Court Receiver.

7. The Receiver and the Association have negotiated a reasonable price for the assets, and pursuant to PU Code § 851 have

filed an application seeking Commission authorization for the sale and transfer.

8. The Association has experience and local assistance adequate to rehabilitate, maintain, and operate the water system as a mutual enterprise.

9. The Association has obtained substantial grants and has made arrangements to obtain additional funds in amounts adequate to purchase the system and to proceed with its rehabilitation.

10. Persistent system breakdowns and outages imperil continued operation and the residents' water supply at this time, requiring emergency processing of this application with expedited approval.

11. There is no known opposition to this sale and transfer.

12. It can be seen with reasonable certainty that the sale and transfer to the Association presents no significant impact on the environment.

13. The Court-appointed Receiver remains responsible to the Commission after this sale and transfer for the immediate remittance of PU Commission Reimbursement Fees collected in the service area up to the date the sale and transfer is consummated pursuant to the provision of PU Code §§ 431, et seq.

14. In view of the emergency nature of this application, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. A public hearing is not necessary.

2. The sale and transfer should be authorized.

3. Upon completion of the sale and transfer, the E. B. Hicks Water Company, Inc. should be relieved of its public utility water service obligations in the Tract 1449 area of the unincorporated area of Kern County.



O R D E R

IT IS ORDERED that:

1. Within 6 months after the effective date of this order, Curtis Bond, as the Receiver appointed by the West Kern Judicial District Municipal Court for the E. B. Hicks Water Company, Inc., a suspended corporation (Receiver), may sell and transfer to the Doney Street Neighborhood Association, a California Nonprofit Mutual Benefit Corporation (Association), the Doney Street Water system of the E. B. Hicks Water Company, Inc. in accordance with the terms of the application.

2. Within 10 days of the actual transfer, the Receiver shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification.

3. The Receiver shall make immediate remittance to the Commission of the PU Commission Reimbursement Fees collected to the date of sale and transfer of this Downy Street system.

4. Upon completion of the sale and transfer authorized by this Commission order, the E. B. Hicks Water Company, Inc. shall stand relieved of its public utility water service obligations in the Tract 1449 area of the unincorporated area of Kern County.

5. As a California Nonprofit Mutual Benefit Corporation, pursuant to PU Code § 2705, the Association will not be a public

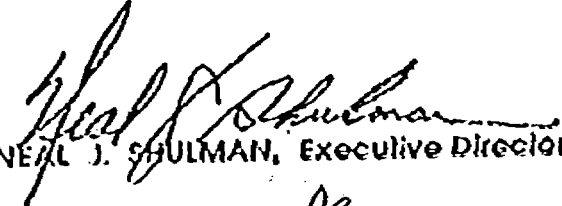
utility, and will not be subject to the jurisdiction, control, or regulation of this Commission.

This order is effective today.

Dated JUL 6 1990, 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

  
NEAL J. SHULMAN, Executive Director

pc