

Decision 90 08 034 AUG 8 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Joseph E. Steely, Jr.)
doing business as Clements Water)
Works to sell and San Joaquin County,)
County Service Area No. 43 to buy the)
water system in the Town of Clements,)
San Joaquin County.)

Application 90-06-065
(Filed June 29, 1990)

O P I N I O N

Statement of Facts

The water system in the Town of Clements (Clements) in San Joaquin County was installed as a sort of community effort sometime immediately after the First World War. By the mid-1970's, the system was faltering, and a member of a prominent local family, Joseph E. Steely, Jr. (known locally as Ed Steely), took over the operation, accepting the responsibility of operating it as a public utility system. By Commission Resolution W-1681 issued February 4, 1975, Steely received Commission authorization under §§ 854 and 2701 of Public Utilities (PU) Code to do so.

By then the original 90-foot well had gone dry and had been replaced by the present 300-foot well. Today this well is served by a 7-1/2 H.P. pump, a 10,000 gallon tank, and 3,626 feet of 2 and 2-1/2 to 3-1/2 inch distribution mains serving 39 residential customers and 4 hydrants. The system needs complete modification and repairs. While initially the system paid for itself, as time passed the aging system cost more to operate. Rates were unchanged, but nonetheless some customers could not pay and fell into arrears. Today Steely is subsidizing the operation by approximately \$1,000 annually. Steely desires to dispose of the system because he is financially unwilling to make the investment, estimated to be \$756,000, that would be required to bring the system up to the standards of General Order 103, and cannot as

operator of a privately owned system, secure the funding from the State.

The County of San Joaquin (County), with experience in operating and maintaining 25 water systems ranging in size from 20 to 1900 services, delivering 5,100 acre feet of water annually to 4,800 customers, desires to obtain the water service rights because of the urgent need of the public to have safe and clean drinking water. The County has negotiated with Steely to acquire the Clements Water Works (Water Works) for County Service Area No. 43 (Service Area), intending to transfer the water service rights to be used in conjunction with its proposed new and independent water system to initially serve 46 customers (Steely's customers plus another half dozen or so in an adjacent block in Clements). The County would operate the system as a County Service Area pursuant to Government Code § 25210.10, et seq. The County has obtained federal, state, and local grants and loans to install an entirely new water system to supply the needs of those within Clements.

On May 22, 1990, the County, through its Service Area, and Steely, dba Clements Water Works, made an agreement whereby in exchange for \$2,000 Steely will abandon the Water Works, and Service Area will construct and operate the entirely new water system to serve the area, with the abandonment and discontinuance by Steely to take effect on the day the Service Area gives notice it is able to commence operation of its new system. Steely waives all claims and releases his rights including rights of way, easements, and prescriptive easements. The Service Area may take the 40 x 50-foot well site, well, tank, mains, and pump shed if it so elects; otherwise Steely will retain title. There are no customer deposits to establish credit, no main extension advances, and the system's \$2,750 original cost has been depreciated.

The parties to the May 22, 1990 agreement, on June 29, 1990 filed the present application for sale of the system, and seek an ex parte order of the Commission authorizing that sale

and transfer, and for Steely to be relieved of his public utility responsibilities upon consummation of the sale and transfer. Notice of this application appeared on the July 12, 1990 Commission Daily Calendar, and the parties have also assumed joint responsibility for informing the customers of the application. No protests have been received. Accordingly, Administrative Law Judge John B. Weiss has proceeded ex parte. No public hearing is required.

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 often are proposed which could leave the utility so burdened with fixed interest charges and crippled financially that it would be 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 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 in the future. Any water system requires dedicated constant maintenance with periodic replacements of components in order to provide dependable service. This system, designed in earlier years, cannot meet present standards or future health requirements, without complete rebuilding, and there are no prospects for that from the private sector.

Pursuant to provisions of Government Code § 25210.10, et seq., either a County Board of Supervisors or the residents of any unincorporated area of a county may initiate establishment of a County Service Area in order to provide desired essential services in that area. Here the owner-proprietor of the aged and inadequate local public utility, too small an operation to obtain financing for necessary improvements, declines to invest the funds to modify and repair the system to meet present needs and standards, and desires to discontinue operations and abandon the outmoded system. The County, with experience in operating and maintaining other small water systems in unincorporated areas of the County, has determined to intervene and establish a County Service District, obtain financing unavailable to a small privately owned utility, and to construct and operate a needed new water system, taking over the rights of the existing public utility, and compensating the owner for his administrative expenses incurred in winding up this operation.

Upon completion of the construction of the new system, designed to serve not only present customers of Water Works, but also a small number of adjacent new customers, and planned for the future needs of the small community as well, the public utility system will be abandoned and cease to serve. All the customers will benefit from service by a modern system.

The seller, Ed Steely, should be ordered to report and transmit to the Public Utilities Commission the Public Utilities Commission Reimbursement fees collected to the date of the actual sale and transfer and abandonment of his system to the Service Area.¹

¹ 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% added to all billings), and to remit these fees to the Commission.

The application to sell and transfer the water system to the County Service Area should be granted as soon as possible in order to protect the agreement between the parties and to enable the Service Area to undertake remaining financing applications so that construction of the new system can begin before the winter months.

Findings of Fact

1. The Clements Water Works, a public utility water system within the jurisdiction of this Commission, has developed deficiencies in its system which require modifications and repairs to bring it up to acceptable standards.
2. The owner of the Water Works is unwilling to invest funds necessary to correct the deficiencies, and the small system is unable to obtain financing for the necessary modifications and repairs.
3. The owner of the Water Works no longer desires to operate the water system.
4. Service Area is a San Joaquin County agency willing to take over the responsibility of providing water service to all present as well as new local customers, and is ready and able to construct and operate an entirely new water system to supply these water needs.
5. The owner of the Water Works and Service Area have negotiated a reasonable transfer of the system and responsibilities, and pursuant to PU Code § 851 have filed this application seeking Commission authorization for the sale and transfer.
6. The Service Area has access to the experience and assistance adequate to construct, maintain and operate a system, and has access to funding to accomplish these objectives.
7. There is no known opposition to this application.
8. It can be seen with reasonable certainty that this sale and transfer presents no significant impact on the environment.

9. The owner of Water Works, Ed Steely, will remain responsible to the Commission after the sale and transfer for the immediate remittance of PU Commission Reimbursement Fees collected in the service area up to the date of consummation of the sale and transfer and abandonment of his system, pursuant to the provisions of PU Code §§ 431, et seq.

10. To expedite construction of the replacement system 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, as proposed in the agreement attached as Exhibit A to the application, should be authorized.
3. Upon completion of the sale and transfer, and abandonment of the present water system, Steely, and the Water Works, should be relieved of their public utility water service obligations in Clements in the unincorporated area of San Joaquin County.

ORDER

IT IS ORDERED that:

1. Within 9 months after the effective date of this order, Joseph E. Steely, Jr. (Steely), dba Clements Water Works, may sell and transfer to San Joaquin County Service Area No. 43 the water system in the Town of Clements, San Joaquin County, in accordance with the terms of the May 22, 1990 agreement, Exhibit A to their present Application 90-06-065.
2. Within 10 days of the actual transfer, and abandonment of the present system works, Steely shall notify the Commission in writing of the date on which the transfer was consummated. A true copy of the instrument affecting the sale and transfer shall be attached to the written notification.

3. Steely shall make immediate remittance to the Commission of the PU Commission Reimbursement Fees collected to the date of sale, transfer, and abandonment of this system.

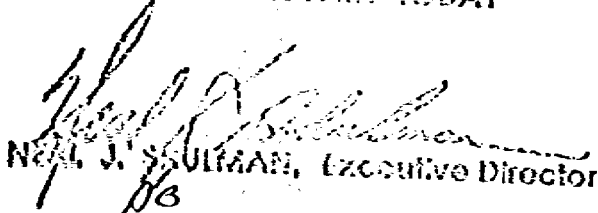
4. Upon completion of the sale, transfer, and abandonment authorized by this Commission order, Steely, dba Clements Water Works, shall stand relieved of his public utility water service obligations in the Town of Clements in the unincorporated area of San Joaquin County.

This order is effective today.

Dated AUG 8 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. SULLIVAN, Executive Director