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Decision 92-03-075 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Louis C. DePerine,)
 Complainant,)
 vs.)
 Milton G. Cole, DBA/Freshwater)
 Water Company,)
 Defendant.)

ORIGINAL
 Case 91-05-059
 (Filed May 30, 1991)

O P I N I O N

Statement of Facts

Freshwater Valley is located to the southeast of the city of Eureka in Humboldt County. Freshwater Water Company (Freshwater) has been operated on the Cole family property since 1960. Organized as a sole proprietorship selling water for profit to the small Freshwater Valley community, it provides water to approximately 53 connections. Its water is obtained from the McCready Gulch Creek by means of a simple diversion dam on the Cole property. The water is then pumped through a pressure filter to two 5,000 gallon holding tanks on a hilltop from which it flows by gravity through 2,400 feet of 4-inch and 2,000 feet of 2-inch and under plastic pipe to the customers. But water flow has been reduced as a consequence of five years of drought, and the filter system cannot meet the latest turbidity standards. The County Health Department indicates that the system will require expensive filtration and purification system upgrades to meet new Federal and State standards. Efforts to find new water sources have been unsuccessful despite the drilling of six exploratory wells (some as deep as 400 feet). These produced only "dry holes."

Freshwater is owned by Milton G. Cole, a 76-year old gentleman suffering from chronic obstructive pulmonary disease, and no longer able to maintain the system. Cole would like to get out of the water purveyance business.

The Humboldt Community Services District (HCSD), a water district organized pursuant to California law, presently provides water services to approximately 6,100 connections in the area around the perimeter or suburbs of Eureka, but not in the city itself. In 1987, 32 property owners served by Freshwater organized a committee to seek extension of HCSD's system into their valley to supplant the Freshwater system. HCSD could provide more pure water, as well as fire protection. Cole favors this move. HCSD has obtained a commitment from the Department of Water Resources for a \$2,100,000 Safe Drinking Water Bond Act loan to extend its water line approximately 4 miles to serve approximately 205 households (including those in Freshwater Valley and Lower Mitchell Heights) and two elementary schools with 344 students. It appears that a majority of Freshwater's customers desire to join the HCSD, and staff reports that Freshwater and HCSD estimate that the district will "take over" Freshwater by August 1992.

Louis C. DePerine became a resident of the valley early in 1990, and fears that Cole may elect to abandon the Freshwater system, leaving the community with no water service. By the present complaint, he asks that the Commission assume jurisdiction over Freshwater, and in the event of abandonment that the Commission pursuant to Public Utilities (PU) Code § 855 petition Superior Court for appointment of a receiver to assume possession and operate the system. DePerine further asks that the Commission support and promote the merger of HCSD to service the present Freshwater system rather than replace it at substantial cost.

Discussion

The underlying facts presented by this complaint are not in dispute. The complaint and answer, both verified, establish,

and the staff report confirms, that Cole owns and operates a water system, selling water for profit to various persons in Freshwater Valley. Accordingly, we find, as a matter of law¹ that Freshwater is a water public utility subject to the jurisdiction, control, and regulation of this Commission. And the fact that the defendant is found to be a public utility requires that the Commission order it to comply with those provisions of the PU Code which impose particular duties upon public utilities, such as the filing and observance of rate tariffs, together with the rules and regulations affecting such rates. Our staff will assist Cole in this regard.²

DePerine fears that Cole may abandon continued operations. Cole's answer states that: "There is no expectation or contemplated abandonment of the Freshwater Water Service." In any event, before a public utility may discontinue operations, Commission approval to do so is required; and the right of the residents to have continued service is of primary importance in determining whether authorization to abandon service will be granted (Palo Mesa Water Co. (1968) 69 CPUC 22). We will cross that bridge if and when it becomes necessary, and on the basis of

1 PU Code § 2701 provides:

"Any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning controlling, operating, or managing any water system within this State, who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public utility, and is subject to the provisions of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the Commission, except as otherwise provided in this chapter."

2 With reasonable consideration for the imminence of possible HCSD takeover, staff will assist Cole in filing a tariff and maps as required by Commission General Order 96-A and/or 103.

these facts, any consideration of Commission recourse to PU Code § 855 to secure appointment of a receiver is substantially premature.

It appears that Freshwater is not earning a reasonable return on its owner's investment or costs, and should HCSD not take over, a substantial rate increase will likely be needed. In addition, the County Health Department indicates that an upgraded filtration and purification system to meet the new standards will be needed if Freshwater is to continue to operate. The costs, estimated in excess of \$23,000, are prohibitive considering the number of customers involved.

It is staff's opinion that merger with HCSD would be beneficial to Freshwater's customers, as it would provide adequate supplies of good water as well as fire protection.³ This Commission's policy, as enumerated in Resolution M-4708 dated August 28, 1979, states:

"[This Commission's policy is to]...support and promote the conversion of unviable or marginal water utilities to public ownership when opportunities arise and customer service is more likely to improve through such change than without it..."

Under the facts presented by this situation, a takeover of the Freshwater system by HCSD would meet our policy objectives. Clearly, Cole's interest and ability to continue to operate and

³ Freshwater now charges a monthly flat rate of \$15 for a single person, \$20 for a couple, \$25 for three persons, and \$28 for four or more persons per household.

District now charges an \$8 monthly service charge and a quantity charge of \$1.20 per hundred cubic feet (ccf). At an average 11 ccf per month, the average monthly bill for a couple would increase from \$20 to \$21.20. District takeover would add an additional amount per month to amortize the Safe Drinking Water Bond Act Loan of \$2,100,000.

maintain this small water system are declining. The present rates provide no incentive - indeed they do not produce adequate remuneration for his efforts, much less any return on his investment.⁴ Considerable investment for filtration equipment to meet the new Federal and State requirements would be necessary for continued private ownership and operation; and fire protection would still be lacking. While HCSD's rates would be higher than Cole's present rates, the latter could not continue at present levels.

Since, as a matter of law, Freshwater must be declared to be a public utility subject to the jurisdiction, control, and regulation of this Commission, DePerine's requested relief in that regard will be granted without any necessity of a public hearing. There having been no abandonment, inability or unwillingness to adequately serve, or unresponsiveness to the rules or orders of the Commission, and no apparent immediate prospects of such actions by the owner, any consideration of Commission action under provisions of PU Code § 855 are quite premature.

Findings of Fact

1. The allegations of the complaint and the answer establish that Cole owns and operates a water system, namely Freshwater, and is selling water to persons in the Freshwater Valley in Humboldt County.

2. Freshwater's water supply has been severely impacted by five years of drought; in addition, the system will require substantial infusion of money to fund expensive additional water purification equipment to meet new Federal and State laws.

⁴ Cole's verified answer estimates that Cole received approximately 60¢/hour for the 1,095 hours of effort in maintaining the system.

3. Cole's answer to the complaint asserts, and staff concurs, that Freshwater's present rates are inadequate for existing service.

4. HCSD, serving thousands in the suburbs and area around Eureka, proposes to extend its service facilities into the Freshwater Valley area and to this end has obtained approval for a Safe Drinking Water Bond Act Loan to cover the costs of such extension.

5. It appears likely that, with Cole's acquiescence, HCSD later in 1992 will "take over" or otherwise replace Freshwater's system, thereby providing a greater volume of pure water as well as new fire protection for the residents of Freshwater Valley.

6. Cole does not now plan or contemplate abandonment of Freshwater.

Conclusions of Law

1. Pursuant to provisions of PU Code § 2701, the actions found in Finding 1 serve to constitute Cole's Freshwater system a public water utility subject to the jurisdiction, control, and regulation of this Commission.

2. It is premature for this Commission under the facts set forth to entertain any consideration of an application of PU Code § 855.

3. A public hearing is not required.

ORDER

IT IS ORDERED that:

1. Milton G. Cole, dba Freshwater Water Company is a public utility subject to the jurisdiction, control, and regulation of the Commission.

2. Within 180 days after the effective date of this order, defendant shall file a tariff schedule with the Commission, such schedule to consist of rate schedules, service area map (to a scale

of approximately 1 inch equals 100 feet), rules and copies of printed forms to be used in dealing with customers. Such filings shall comply with General Order (GO) Series 96 and shall become effective five days after filing.

3. Defendant shall prepare and keep current system maps of the water facilities as required by GO Series 103. Within six months after the effective date of this order, defendants shall file with this Commission two copies of the map for the system.

4. Defendant shall set up formal books of account in conformity with the Uniform System of Accounts for Class D water utilities as prescribed by this Commission and record therein the appropriate charges to plant accounts.

5. As a public utility, defendant shall immediately adjust its rates for each billing period so as to collect from its customers the Public Utilities Commission Reimbursement Fee (Public Utilities Code § 401 et seq.) mandated by the Legislature. The fee for 1992 has been set at 1.5 percent monthly of all water revenues collected.

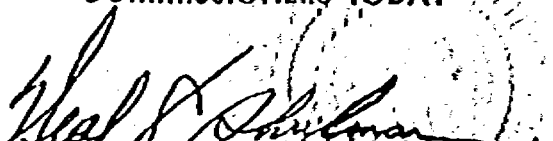
6. In all other respects, the complaint is denied and the case is closed.

This order becomes effective 30 days from today.

Dated March 31, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


Neal J. SHULMAN, Executive Director