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Decision 92-07-015 July 1, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Claud Rouch, Jr. &
 Patricia Rouch doing business as
 Lemon Cove Water Company to sell
 and Lemon Cove Sanitary District
 to buy the water system in Tulare
 County.

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) Application 91-12-041
) (Filed December 30, 1991)
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O P I N I O NStatement of Facts

In 1908, in Pogue's Addition to Lemon Cove, an unincorporated area of the Town of Lemon Cove in Tulare County, a small water system was constructed to provide water to local residents. No Certificate of Public Convenience and Necessity was ever sought or granted. The system merely existed. However, in 1947, Elsie E. and Mildred V. Koffett, the owners of the water system, at that time serving 35 customers, determined to sell the system to MC and Henrietta Richardson. By Decision (D.) 41035 issued December 17, 1947, the sale and transfer was authorized by the Commission. Thereafter, by D.56352 issued March 17, 1958, the Richardsons sold the water system to Claud Rouch, Jr. and Patricia Rouch who have operated the system since, doing business as (dba) Lemon Cove Water Company (company).

The water system consists of two well sites and easements, two six-inch wells, a 2,000 gallon steel pressure storage tank, and approximately 3,200 feet of under three-inch distribution mains. It serves 41 metered customers and five four-inch fire hydrants. There is no water treatment equipment. The plant is fully depreciated. Currently on annual revenues of \$4,720, with a \$720 management fee, it produces a return of \$382.

The system will need upgrading to meet future standards. While over the years it has produced a small return, the rising costs of water testing (presently \$1,058) and the need to upgrade the aging plant indicate the need to invest more than current income warrants, leading Rouch to determine to dispose of the system.

The Lemon Cove Sanitary District (District) is a special district in Tulare County responsible for the collection and treatment of waste water in Lemon Cove, essentially for the same customer base as the water system. District is empowered by law to also maintain and operate a water system within its boundaries. District proposes to purchase the Rouch system for \$4,000 cash and to construct a new water supply and distribution system to General Order 103 standards to operate in place of and instead of the aged Rouch water system, thereby providing the customers with water of better quality. To this purpose, District has obtained a letter of commitment for a \$400,000 conditional grant under the California Safe Drinking Water Bond Act.

By the captioned application, and pursuant to the provisions of Public Utilities (PU) Code §§ 851 through 854, the Rouches and District seek Commission authorization for the sale and transfer of the water system, including the well and facilities' sites on the west half of lots 10, 11, and 12 in Block 1 of Pogue's Addition to Lemon Cove, for \$4,000 cash. District proposes to adopt the rates presently provided under Rouches' filed tariff. Upon consummation of their agreement of sale dated October 26, 1991, the Rouches ask to be relieved of the public utility service obligations in the water system service area. The community has been made aware of the proposed sale and transfer. Notice of the application appeared in the Commission's Daily Calendar of January 7, 1992. No protests have been received.

Discussion

District is a municipal corporation. In California, a municipal corporation is empowered to acquire, construct, own, operate, or lease any public utility (PU Code § 10002). Thus, it has the power of eminent domain to acquire by judicial proceedings all or any part of any privately owned public utility serving within its boundaries. Faced with this potential eminent domain power, a privately owned public utility, in order to avoid expensive condemnation suits, or simply because it lacks the needed resources to carry out necessary upgrading of facilities to meet today's requirements, is often willing to sell its system to the municipal corporation by direct negotiation and contract for a sale.

Such is the situation and procedure being followed here. In the mutual interest of saving both time and legal expense, and to expedite a modernized water delivery system for the inhabitants, the Rouches and District have bargained for an appreciated price for the system. As PU Code § 851 provides that no public utility other than a common carrier by railroad may sell the whole or any part of its system necessary or useful in the performance of its public utility duties without first obtaining authorization to do so from this Commission, the parties have filed this application.

In the usual private investor to private investor transfer proceeding, the function of the Commission is to protect and safeguard the interests of the public. The concern is to prevent impairment of the public service by the transfer of utility property and functions into the hands of parties incapable of rendering adequate service at reasonable rates or upon terms which would bring about the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 CRC 520). We want assurance that the purchaser is financially capable of the acquisition and of satisfactory operation thereafter.

But in the present proceeding, we do not have the usual private transfer. District, a municipal corporation, is the purchaser, and where a municipality, its corporation, or another governmental entity is the purchaser, our considerations are somewhat different. Since the rates to be charged by a municipally owned utility must be fair, reasonable, just, and nondiscriminatory (American Microsystems, Inc. v. City of Santa Clara (1982) 137 CA 3d 1037, 1041), the sale and transfer involves no risk to the customers going with the system being transferred, even though the system and its customers will thereby pass from Commission jurisdiction. Were the Commission to refuse approval of the proposed sale and transfer, District might proceed in eminent domain to acquire the system and customers without our consent (see People ex rel. PUC v. City of Fresno (1967) 254 CA 2d 76; petition for hearing denied by Supreme Court November 22, 1967). Accordingly, the Commission approves the proposed sale and transfer.

Under these circumstances, we still retain jurisdiction to formally relieve the Rouches of their public utility obligations with respect to water service in the area, and upon consummation of the proposed sale and transfer, and upon payment to the Commission of the Public Utilities Commission Reimbursement fees collected from customers pursuant to provisions of PU Code § 431 et seq. up to the date of transfer, the Rouches will be relieved of these responsibilities.

Given the absence of any protest and the evident benefits that will flow from District ownership and upgrading, there exists no need for a public hearing. The sooner the sale and transfer is authorized, the sooner District can proceed with the plans it has for upgrading the system. Accordingly, the order which follows should be made effective immediately.

Findings of Fact

1. Mr. and Mrs. Rouch, dba Lemon Cove Water Company, provide public utility water service in Pogue's addition to Lemon Cove, an unincorporated area of the Town of Lemon Cove.

2. The water system is very old, provides no water treatment, and needs upgrading.

3. District, a municipal corporation, provides for the collection and treatment of waste water in the community for essentially the same customer base.

4. The Rouches wish to sell and District wants to acquire the water system.

5. With access to Safe Drinking Water Bond Act funds District can and proposes to upgrade the water system after acquisition.

6. On October 26, 1991, the Rouches and District agreed upon a sale and transfer of the water system to District, and in pursuit of this objective have filed the captioned application with the Commission.

7. The purchase price negotiated by the parties is reasonable.

8. There is no known opposition to the proposed sale and transfer.

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

10. Upon completion of the sale and transfer and payment to the Commission of the collected Public Utilities Commission Reimbursement Fees, the Rouches can be relieved of their public utility obligations to provide water service in Pogue's Addition to Lemon Cove.

11. Because the public interest would best be served by having the sale and transfer take place expeditiously, 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 and payment of the collected Public Utilities Commission Reimbursement Fees, the Rouches should be relieved of their public utility water service obligations.

O R D E R

IT IS ORDERED that:

1. Within 6 months after the effective date of this order, Claud Rouch, Jr. & Patricia Rouch doing business as Lemon Cove Water Company, may sell and transfer to the Lemon Cove Sanitary District, the water system including the real property described in the application and its attached Agreement of Sale.
2. Within 10 days of the actual transfer, the Rouches 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 Rouches shall make remittance to the Commission of the Public Utilities Commission Reimbursement Fees collected to the date of sale and transfer.

4. Upon completion of the sale and transfer authorized by this Commission order, and upon payment to the Commission of the collected Public Utilities Commission Reimbursement Fees, the Rouches shall stand relieved of their public utility water service obligations in Pogue's Addition to Lemon Cove.

This order is effective today.

Dated July 1, 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

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