

SEP, 3 1992

Decision 92-09-031 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Vahab A. Noori, Yuriko Furuya, and Dorothy Ellenberg,

Complainants,

vs.

Wolfback Water Co., Inc.,

Defendant.

Case 91-10-010
(Filed October 1, 1991)

John Deaton,

Complainant,

vs.

Wolfback Water Co., Inc.,

Defendant.

Case 91-10-014
(Filed October 2, 1991)

O P I N I O N

Summary of Decision

The Commission finds Wolfback Ridge Water Company, Inc. (Wolfback) to be a public utility. However, the Commission refrains from regulating Wolfback and encourages it and its customers to form a utility assessment district and to be annexed by Marin Municipal Water District (MMWD).

Background

Wolfback serves 28 customers in the Wolfback Ridge area in the city of Sausalito. Wolfback Ridge is located west of U.S. Highway 101 adjacent to the Golden Gate National Recreational Area. While the rest of Sausalito is served by MMWD, Wolfback's service area is outside the service boundary of MMWD.

The Wolfback system was developed in 1939 to provide domestic water supply and fire protection in the Wolfback Ridge area. In 1966, James Erway purchased the water system from the original owners. He maintained and operated the system until he sold it to Allan Patterson and Carolyn Wean for \$160,000. In addition to the water system, Patterson bought 7.8 acres of land in the Wolfback Ridge area with the intent of developing approximately 12 residential housing lots.

The development of the property is currently held up due to lack of permits by the city of Sausalito and problems with lack of sewage treatment facilities. Patterson has obtained a favorable judgment against the city of Sausalito in the Superior Court of Marin County with regard to obtaining approval for his development. The city of Sausalito has appealed the Superior Court's decision. A decision on the appeal is pending.

Current Status of Wolfback

In the "Statement by Domestic Corporation" filed with the Secretary of State, Patterson asserts that Wolfback is a mutual water company. However, during the hearings, he conceded that the filing was in error and that Wolfback is not a mutual water company. Although Wolfback is not regulated by the Commission, it is a public utility under the provisions of Public Utilities (PU) Code § 2701 and is subject to Commission regulation.

Source of Water Supply

Since its inception in 1939, Wolfback has been receiving its entire water supply from MMWD. While Wolfback is outside of MMWD's service area, it was receiving water from MMWD as a surplus customer. As a result of the extended drought, MMWD terminated delivery of water to Wolfback in 1991. To procure water supply for its customers, Wolfback executed a joint agreement with the North Marin Water District (North Marin) and MMWD on August 29, 1991. According to the agreement, Wolfback will receive water from North Marin for three years. The water will be transported from North

Marin's system to Wolfback by MMWD for a wheeling charge of \$2.42 per hundred cubic feet (Ccf).

According to Patterson, North Marin is willing to provide water to Wolfback for as long as it is needed.

Wolfback's Rates

After acquiring Wolfback, Patterson did not operate and maintain the water system as the previous owner Erway did. Instead, Patterson employed professionals to perform the various operating functions of Wolfback. Consequently, the operating expenses of Wolfback increased considerably. Patterson increased his rates to meet the additional expenses. As shown in Table 1 below, in 1991, Wolfback's commodity rates increased by 35% and customer charges were increased by 75%.

Table 1

Wolfback Water Company Customer Billing Rate Structure

<u>Commodity Charge</u>	
<u>1991</u>	<u>Per Ccf</u>
Jan.-Apr.	\$4.80
May-Aug.	5.76
Sep.-current	6.51

<u>Customer charge (Billed every two months)</u>		
<u>1991</u>	<u>Small Meters</u>	<u>Large Meters</u>
Jan.-Jun.	\$11.20	\$13.91
Jul.-current	21.20	23.90

Wolfback has not provided any justification for these arbitrary rate increases.

In addition to rate increase in 1991, Wolfback assessed a special charge of \$518.25 in May 1991, to all customers to recover its operating losses for the 1989. The breakdown of the special assessment is shown in Table 2.

Table 2

Summary for the period ending 31 December 1989:
(a consolidation of some 15 accounts, cash basis)

Gross receipts from customers		\$11,421
Purchases from MMWD and PG&E	\$7,657	
Acctg., bookkeeping & billing	4,148	
Engineering, maint. & repairs	5,911	
Property & franchise taxes	2,306	
Legal expense	1,868	
Bank, business license, phone, meter reading, etc.	2,141	24,031
	loss	(12,610)
'88 loss carryover		(1,383)
		(13,993)

\$13,993/27 customers = \$518.25 per customer.

Complaints

Faced with increasing rates and the special assessment, customers of Wolfback filed two complaints against Wolfback, Case (C.) 91-10-010 and C.91-10-014.

C.91-10-010 was filed by Vahab Noori and his neighbors Yuriko Furuya and Dorothy Eilenberg. Complainants request that the Commission declare Wolfback a public utility and regulate it in accordance with the law establishing fair rates. Complainants also request that Wolfback be required to rescind the special assessment charge of \$518.25 per customer.

C.91-10-014 was filed by John Deaton who requests that Wolfback be regulated by the Commission as a public utility.

Hearings

A prehearing conference on the consolidated proceeding was held before Administrative Law Judge (ALJ) Garde on January 22, 1992. Evidentiary hearings were held on April 21, 1992. The proceedings were submitted upon completion of the hearings.

Report by the Water Utilities Branch

In response to the ALJ request, the Water Utilities Branch (Branch) of the Commission Advisory and Compliance Division

prepared a comprehensive report regarding Wolfback's current and future operations. The report was received in evidence as Exhibit 1.

Branch's report makes the following significant findings:

1. Wolfback is not a mutual water company. It is a privately-owned water company which delivers water to its customers for compensation and as such is a public utility under the provisions of PU Code § 2701.

2. Wolfback's fire protection system is woefully inadequate.

3. Wolfback's operating expenses shown on Table 2 include several expenses that are not associated with the operation of the water system. Staff estimates that out of the total expenses of \$24,031 shown on Table 2, only \$12,072 were for the water system. The remaining expenses were for Patterson's other businesses or for himself.

As to Wolfback's future operations, Branch opines that the following are three feasible options available to Commission:

1. Option #1 - Annexation of Wolfback by MMWD,
2. Option #2 - Formation of a mutual water company, and
3. Option #3 - Regulation of Wolfback by the Commission as a public utility.

Following is a brief discussion of each option.

Option #1 - Annexation by MMWD

MMWD has expressed its willingness to annex Wolfback provided the water system is improved to MMWD's standards. In fact, the agreement which requires MMWD to transport water from North Marin to Wolfback specifically requires Wolfback to proceed with due diligence with financing and construction of improvements to its water system which are necessary for annexation by MMWD.

MMWD estimates that the cost of improving Wolfback's system would be approximately \$1 million. Given the limited number of customers, the cost of improvements per customer would be

prohibitive. However, the city of Sausalito's planning department has suggested that Wolfback Homeowners Association consider the formation of a utility assessment district to finance the improvements to the water system. Formation of a utility assessment district will enable Wolfback's customers to benefit from the city's authority to issue low interest municipal revenue bonds for construction of the improvements. According to estimates prepared by a consulting engineer, financing through the formation of an assessment district will cost each customer approximately \$300 per month for 15-year bonds at 8% and \$250 per month for 20-year bonds at 8%.

Option #2 - Formation of a Mutual Water Company

The customers of Wolfback can form a mutual water company by acquiring shares in the water company. The necessary requirements for the formation of a mutual water company are set forth in PU Code §§ 2725 through 2729.

While the formation of a mutual water company is feasible for Wolfback's customers, it would be difficult for them to secure a long-term source of water supply. The current agreement to obtain water from North Marin is only valid until August 1994. Any future supply of water can only be obtained through MMWD's cooperation. MMWD expects improvements in the water system before it makes a commitment for long-term supply of water.

Option #3 - Regulation by the Commission

Wolfback is a public water utility under the provisions of PU Code § 2701. The Commission can regulate its operations. However, the water system will need major improvements to meet the minimum fire flow requirements of General Order (GO) 103. Given the limited number customers, such improvements may result in unrealistically high rates.

Branch's Recommendation

Based on its analysis, Branch asserts that whichever option is chosen, Wolfback's system has to be improved to MMWD's standards if Wolfback is to continue receiving water from MMWD. Branch contends that while Wolfback may be able to procure water from North Marin, it still has to rely on MMWD for transportation of water. Branch points out that MMWD is transporting water from North Marin to Wolfback with the understanding that Wolfback will proceed with due diligence to improve its system. According to Branch, if Wolfback does not improve its system, it may not have a source of water supply.

Branch opines that Option #1, formation of an assessment district and annexation by MMWD, would be the least expensive and equitable option for Wolfback's customers. Annexation by MMWD will assure the residents of the Wolfback area a reliable water supply and adequate fire protection.

Branch recommends that the Commission issue an interim decision selecting Option #1 as the preferred alternative. According to Branch, the interim decision should allow Wolfback and its customers six months to form a utility assessment district and to take initial steps towards annexation by MMWD.

Branch further recommends that six months from the effective date of the interim order, the Commission reopen the proceedings to determine if reasonable progress has been made towards the formation of the assessment district, improvements in the water system, and annexation by MMWD. According to Branch, if the Commission finds that Wolfback's progress has been unsatisfactory, Wolfback should be declared a public utility and brought under the Commission's jurisdiction.

Wolfback's Position

Wolfback accepts Branch's recommendation that the Commission allow it and its customers an opportunity to proceed with the formation of an assessment district, system improvements,

and eventual annexation by MMWD. Wolfback agrees that other than pass-through rate increases imposed by MMWD and/or North Marin, there would be no rate increases for its customers during the six-month evaluation period proposed by Branch. Wolfback also agrees that if the Commission's order does not impose any additional expenses for the company, there will be no special assessment during the six-month period.

Discussion

It is evident that Wolfback is a public utility under the provisions of the PU Code § 2701. However, the water system is in need of major improvements. Wolfback's distribution system does not meet the minimum fire flow requirements set forth in GO 103. The minimum necessary improvements to the system will be very expensive and result in excessive rate increases for the small number of customers.

Even if it is feasible to make the necessary improvements to the system, Wolfback will be dependent on MMWD for its water supply. As condition of continued water supply, MMWD will require Wolfback to improve the system to MMWD's standards at an expense of approximately \$1 million. If Wolfback's system has to be improved to MMWD's standards to ensure water service, annexation by MMWD will be the least expensive and prudent alternative available to Wolfback's customers.

While Wolfback's customers can form a mutual water company under the provisions of PU Code §§ 2725 et seq., they will still have to improve the water system to MMWD's standards to ensure water service. In addition to the expense of system improvements, formation of a mutual water company will entail an additional expense for Wolfback's customers to buy shares in the water company.

Based on the above, we conclude that annexation by MMWD is the most reasonable alternative available to Wolfback's customers. While the system improvements required for annexation

by MMWD are expensive, formation of a special assessment district for the Wolfback area provides a source of funds which will allow the customers to defer the costs over a period of 15 to 20 years. In addition, the customers will receive the benefit of reduced interest rates available through issuance of municipal bonds. We believe that Wolfback's customers should proceed with due diligence to form a utility assessment district for the Wolfback area. In conjunction with the formation of a utility assessment district, Wolfback should take the necessary steps towards annexation of the water company by MMWD.

Branch's report provides the necessary steps for the formation of an assessment district and for annexation by MMWD. These steps are shown in Appendix A to this order.

Next, we will consider Branch's recommendation to issue an interim order and to reopen the proceeding after six months to evaluate Wolfback's progress towards eventual annexation by MMWD. We believe that if sufficient progress is made by all parties involved, further Commission action may not be necessary. However, if parties fail to make sufficient progress toward annexation, further action by the Commission may be necessary. Accordingly, we will allow any party in this proceeding or any customer of Wolfback to petition the Commission to reopen these proceedings after six months from the effective date of this order. We will serve a copy of this order on all customers of Wolfback.

Findings of Fact

1. Wolfback owns and operates a water system and sells water to its customers.
2. Wolfback's customers do not own shares in the company.
3. Wolfback's system does not meet the standards of MMWD.
4. Wolfback's distribution system does not meet the minimum fire flow requirements set forth in GO 103.
5. Wolfback was receiving water from MMWD as a surplus customer.

6. MMWD was unable to continue supplying water to Wolfback because of a drought-caused water shortage.

7. In August 1991, Wolfback signed an agreement with North Marin and MMWD. According to the agreement, North Marin provides water to Wolfback and MMWD transports the water to Wolfback over its system.

8. The agreement between North Marin, MMWD, and Wolfback requires Wolfback to proceed with due diligence to improve its system to MMWD's standards to enable MMWD to annex Wolfback.

9. To ensure continued source of water supply, Wolfback has to improve its system to MMWD's standards at a cost of approximately \$1 million.

10. System improvements of \$1 million would be prohibitively expensive for Wolfback's small number of customers.

11. Formation of a utility assessment district for the Wolfback area would be the least expensive way for Wolfback's customers to finance system improvements.

12. Branch recommends that Wolfback's customers form a utility assessment district to finance improvements to the water system thus enabling MMWD to annex the system.

13. Branch recommends that the Commission issue an interim decision allowing Wolfback and its customers six months to form a utility assessment district and to take initial steps towards annexation by MMWD.

14. Branch recommends that six months after the effective date of the interim decision, the Commission reopen the proceedings for further action as necessary.

15. Wolfback accepts Branch's recommendation and agrees not to increase rates during the six-month period following the effective date of the interim decision.

16. If the Wolfback and its customers are able to make reasonable progress in their efforts towards annexation by MMWD, no further Commission action will be necessary.

17. If further action by the Commission is necessary, parties to these proceedings or any customer of Wolfback can petition the Commission to reopen these proceedings.

18. Complainants, Noori, Furuya, Ellenberg, and Deaton request that the Commission regulate Wolfback as a public utility.

19. While regulation by the Commission is an available alternative, it would be more expensive than the alternative of formation of an assessment district and annexation by MMWD.

20. PU Code § 454 prohibits a utility to modify its rates without the Commission's approval.

21. Wolfback has increased its rates and imposed special assessment of \$518 per customer without obtaining authorization from the Commission.

22. Approximately 50% of the expenses included in the computations for special assessment were not for the operation of the water utility.

Conclusions of Law

1. Wolfback is a public utility under the provisions of PU Code § 2701.

2. The Commission should refrain from regulating rates and service quality of Wolfback as a public utility to allow Wolfback and its customers an opportunity to form a utility assessment district to finance the necessary system improvements for eventual annexation by MMWD.

3. If the efforts towards eventual annexation by MMWD fail, parties to these proceedings or any customer of Wolfback should be allowed to petition the Commission to reopen these proceedings to consider other alternatives or any other action by the Commission.

4. The decision to regulate Wolfback should not be made at this time.

5. Wolfback should refrain from modifying its rates without the Commission's approval.

6. Wolfback should rescind the special assessment of \$518 per customer.

ORDER

IT IS ORDERED that:

1. Wolfback Ridge Water Company, Inc. (Wolfback), with the cooperation of its customers, shall proceed with due diligence to form a utility assessment district to finance the necessary system improvements for eventual annexation by the Marin Municipal Water District (MMWD).

2. Within six months after the effective date of this order, parties to these proceedings or any customer of Wolfback shall have the opportunity to petition the Commission to reopen these proceedings to consider alternatives other than annexation of Wolfback by MMWD or for any other action by the Commission.

3. The Executive Director shall serve a copy of this order on all customers of Wolfback listed in Appendix B to this order.

4. The proceedings in Case (C.) 91-10-010 and C.91-10-014 are closed with leave to reopen.

This order becomes effective 30 days from today.

Dated September 2, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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

APPENDIX A

Page 1

Required Steps to Complete Option #1

A.1 Formation of the assessment district and subsequent annexation to MMWD will require the following steps be completed:

A.2 Preparation and distribution of a petition to all members of the proposed assessment district for the purpose of creating this assessment district. The petition accomplishes the following:

1) Legally, it waives investigation proceedings and all other provisions of Division 4, Streets & Highway Code, as provided in Section 2804 of that Code.

2) Politically, the petition tends to demonstrate the level of support for the project among the homeowner-citizen-voters in the proposed assessment district. This is particularly important to the city council members whose approval of the proposed district is required.

A.3 The bond attorney working on behalf of the homeowners has indicated the following steps must be completed before the petition can be prepared:

- 1- Approval by MMWD of the engineer's plans (work description and proposed system) and cost estimates.
- 2- Approval of assessment district parcels and allocation of assessments per parcel by homeowners association.
- 3- Approval of 1 and 2 by the bond attorney.
- 4- The bond attorney has required from the engineer a map clearly marking the number and location of the parcels in the assessment district.

A.4 Once the petition is completed and distributed to the homeowners it becomes their responsibility to complete the petition by signing it and showing their support. After this step is completed the following events will occur:

- * Petition is presented to and (assumed) approved by city council.
- * The assessment district is formed, a loan secured, and the new system is constructed.
- * Annexation by MMWD.
- * Upon inclusion in the MMWD the complainants' request no longer applies because the CPUC has no jurisdiction in a municipal water district.

A.5 The progress made to date on forming the assessment district is still at the stage of having MMWD accept the engineer's work. The engineer's description of work is not

APPENDIX A

Page 2

satisfactory to the MMWD engineer. The cost estimates have been approved by the MMWD, except for the tank as designed and the associated costs of the pumps. MMWD must approve both the system to be built, and all costs for each component of the proposed system. The location of the tank, as mentioned earlier, is in question.

A.6 An acceptable map has not been sent to the bond attorney. This is due in part because the exact number of parcels to be included in the assessment district has not been determined. The assessment district criteria can be allocated several ways, but once agreed upon, cannot be changed. Assessments are levied in fixed amounts at the time of the assessment district formation. This is a fixed amount, and does not change as conditions change. They are assessed according to the "estimated benefit" of each parcel at the time of formation. Again, these assessments do not change if the estimates turn out to be inaccurate. Any change would constitute a new assessment district, essentially beginning the process all over again. There are different methods of allocating the assessment costs per parcel and are described below.

A.7 A typical method of allocating or spreading the assessments for a water system would be based on the single-family unit. This would involve dividing the total cost for the new water system by the number of single-family units in the district to arrive at the assessment amount for each. If a parcel is to be subdivided into more than one single-family unit such parcel is assigned some number of "equivalent dwelling units" (EDU's) in order to calculate its share. If the number of subdivisions is unknown, it is estimated and the property is assessed in accordance with this estimated benefit.

A.8 Such estimated benefit can result in an inequity if the ultimate number of EDU's on a parcel is more or less than the calculated estimated benefit. A contingent assessment involving an additional but complex process can try to erase any inequities arising from an inaccurate estimated benefit. However, such an assessment causes higher initial assessment values, since in this method the EDU's are based on a minimum number. If the EDU per parcel is eventually adjusted on a final map showing more lots, the original assessment would be apportioned among those lots and, in addition, the contingent assessment would be immediately due and payable in cash. This amount would be used to retire bonds and hence reduce everyone's annual assessment.

A.9 The first method has lower initial assessments and prevents Patterson from being liable for any cash amounts. A third method is to have any additional lots pay a connection fee, so long as those connection fees are used (at least the appropriate portion of them if other things are included in the charges) to buy down the assessment bonds.

(END OF APPENDIX A)

Wolfback Water Co, Inc.
Customer List

Carolyn Wean
51 Wolfback Ridge
Sausalito, CA 94965-2062

Mr. John G. Deaton
1 Canto-Gal
Sausalito, CA 94965-2003

Mr. Otto Butz
No. 1 Rose Bowl Dr.
Sausalito, CA 94965-2014

Dr. Rodney E. Johnson
35 Wolfback Ridge Road
Sausalito, CA 94965-2062

Mr. Peter Applegate
4 Wolfback Terrace
Sausalito, CA 94965-2058

Mr. J. Strickler
3 Wolfback Terrace
Sausalito, CA 94965-2058

Mr. Richard D. Hutchins
7 Wolfback Terrace
Sausalito, CA 94965-2058

Mr. Tom Zimberoff
31 Wolfback Ridge Road
Sausalito, CA 94965-2061

George Burndt
2318 Parnell
Los Angeles, Ca 90064
213-470-6550

Mrs. Florence Zolezzi
27 Wolfback Ridge Road
Sausalito, CA 94965-2061

Dr. David Stockford
25 Wolfback Ridge Road
Sausalito, CA 94965-2061

Sundial Broadcasting Co.,
2822 Van Ness Ave.
San Francisco, CA 94109-1492

Dr. Jay Saccone
156 Cloud View Trail
Sausalito, CA 94965-2009

Mr. Jim Capparelli
21 Wolfback Ridge Road
Sausalito, CA 94965-2061

Dale Bredeesen
715 Coyle Ave Apt# 218
Los Angeles, Ca 90024

Mr. James R. McCarthy
23 Wolfback Ridge Road
Sausalito, CA 94965-2061

Mr. Martin L. Swig
SF Auto Center
2300 16TH St.
San Fran, CA 94103-4878

Greg H Solk
17 Wolfback Ridge Road
Sausalito, Ca 94965

Mrs. Yuriko Furuya
11 Wolfback Ridge Road
Sausalito, CA 94965-2063

Mr. V.A. Noori
9 Wolfback Ridge Road
Sausalito, CA 94965-2063

Mr. Clark L. Gergardt, Jr.
600 Montgomery St., Ste. 2200
San Francisco, CA 94107

Mr. Donald R. Telford
7 Wolfback Ridge Road
Suasalito, CA 94965-2063

Mr. John P. Erickson
5 Wolfback Ridge Road
Sausalito, CA 94965-2063

Ronald Posner
7 Cloud View Trail
Sausalito, CA 94965-2009

Mr. Steven Graber
152 Cloud View Trail
Sausalito, CA 94965-2009

Mr. William Curley
150 Cloud View Trail
Sausalito, CA 94965-2009

5 Cloudve

C.91-10-010, C.91-10-014 ALJ/AVG/tcg

APPENDIX B

Page 2

Alexis Yermakov
11 Cloud View Trail
Sausalito, CA 94965-2009

Sara Petersen
c/o Elizabeth Benton Appell
79 Water St

San Francisco, Ca 94133

Mr. Franklyn M. Silva
1 Wolfback Terrace
Sausalito, CA 94965-2058

(END OF APPENDIX B)