

Decision 82 04 085 April 21, 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Indian Oaks Sunnymead, a
California general partner-
ship, and Ironwood Estates, a
California joint venture,

Complainants,

vs.

Sunnymead Mutual Water
Company,

Defendant.

Case 10962
(Filed March 9, 1981;
amended June 6, 1981)

Wyman, Bautzer, Rothman, Kuchel & Silbert, by
James P. Gray, Attorney at Law, for Indian
Oaks Sunnymead and Ironwood Estates,
complainants.

Ray O. Womack, Attorney at Law, for Sunnymead
Mutual Water Company, defendant.

Jasjit S. Sekhon, for the Commission staff.

O P I N I O N

Introduction

Complainant, Indian Oaks Sunnymead (Indian Oaks), is a general partnership engaged in the business of developing residential building tracts. Complainant, Ironwood Estates (Ironwood), is a California joint venture also engaged in the business of developing residential building tracts.

Defendant, Sunnymead Mutual Water Company (defendant), is a California corporation engaged in the business of supplying water to its customers in and around Sunnymead, an unincorporated community located several miles east of Riverside.

Indian Oaks and Ironwood alleged in their initial complaint, inter alia, the following:

1. Defendant has, for compensation, been delivering and still continues to deliver, water to individuals other than its stockholders and members, including, but not limited to, owners of real property located within complainants' residential building tracts. None of these parties has ever received or been offered stock or other membership in defendant.
2. As a result of the delivery of water to nonstockholders and nonmembers, defendant is, under the provisions of Public Utilities (PU) Code Section 2702, a public utility subject to the jurisdiction of the Public Utilities Commission (Commission).
3. Defendant, on or about January 22, 1980, levied an initial hookup and/or connection fee of \$750 against complainants for each parcel of real property in certain new residential building tracts developed by complainants within defendant's service area. These fees had to be paid before defendant would deliver water to the residences.
4. Complainants have paid, under protest, each hookup and/or connection charge assessed.
5. Although complainants have demanded that defendant discontinue the assessment of all levies for initial hookup and/or connection fees, and refund all fees paid, defendant has refused to discontinue such assessments or to make refunds.

Complainants therefore request an order from this Commission finding that: (1) defendant is not a mutual water company within the meaning of PU Code Section 2705; (2) defendant is subject to regulation by this Commission; (3) defendant must cease and desist from assessing fees for initial hookups or connection services; (4) defendant must refund all moneys received in payment from complainants for hookup or connection fees; and (5) defendant must pay to complainants their attorney's fees.

Defendant filed its answer to the complaint on April 14, 1981. It conceded that the Commission has the authority to determine whether defendant is a mutual water company, but stated that since defendant is in fact a mutual water company, the Commission has no jurisdiction over it. Defendant denied that it has delivered water to others than its stockholders and members. It admits assessing the hookup fees, but alleges that the owners of the new residences are shareholders in defendant.

Complainants filed their amended complaint on June 6, 1981, alleging that defendant has (1) failed to notify purported stockholders of their ownership of stock in defendant; (2) failed to give notice of annual shareholders' meetings to these purported shareholders; and (3) failed to allow the purported shareholders to vote their shares of stock, in accordance with Section 702(c) of the California Corporations Code.

The matter was joined and duly noticed public hearing was held before Administrative Law Judge (ALJ) John Lemke in Los Angeles on June 22 and 23, 1981. The case was tentatively submitted subject to receipt of late-filed Exhibit 38 and the possible need of counsel for complainants to cross-examine on that exhibit.

Late-filed Exhibit 38 was received on July 1, 1981. The attorney for complainants informed the hearing officer that a brief cross-examination on the exhibit would be necessary. Accordingly, by stipulation of the parties, a telephonic hearing was conducted on July 8, 1981 before ALJ Lemke in San Francisco, counsels and witness for complainants and defendant being situated in Newport Beach and Riverside, respectively. The matter was then submitted subject to filing of concurrent briefs 30 days after receipt of transcripts. Defendant's brief was received September 22, and by agreement complainants' brief was received by the ALJ on October 8, 1981.

Background

Defendant was formed as a mutual water company in 1927 with 182½ shares of capital stock authorized by the State Division of Corporations. These shares are appurtenant to the land served by defendant at the rate of one share per acre. The land is known as Sunnymead Orchard Farms Tract. Ten shares of nonvoting stock represent 10 acres belonging to and used by defendant for its wells, tanks, storage yard, and other plant. Eleven additional shares that go with a freeway right-of-way acquired by the State, and which the State refused to accept, are inactive. The remaining 161½ shares of voting stock are appurtenant to the acreage of the present owners of property within defendant's service area.

Complainants purchased two tracts comprising approximately 24 acres of land within defendant's service area between 1976 and 1978. The tracts were subdivided into 100 residential building lots. The water systems in the two tracts were installed by complainants to conform with defendant's specifications. After defendant's chief engineer completed the inspection of the water system, the title was transferred to defendant.

Prior to the addition of the complainants' subdivisions, defendant's wells had provided adequate water supply to its existing customers. However, defendant was concerned that its service would be lessened by increasing the number of customers from 198 to 297. To assure an adequate water supply, defendant entered into an inter-connection agreement with the Eastern Municipal Water District (EMWD). The agreement commits defendant to a first payment in excess of \$5,000 and to 19 annual payments of slightly over \$10,000 per year, including interest.

Complainants were notified by letter dated May 16, 1979 (Exhibit 16) of defendant's plan to assess each new hookup to partially defray the costs of the EMWD connection. The amount of the hookup fee was not determinable at that time. On January 28, 1980, complainants were notified (Exhibit 4) that the hookup fee would be \$750 per residence. Complainants did not register an objection to either of these communications. However, the payments of the fees for the first two residences received by defendant on May 23, 1980 and all subsequent payments were made under protest with the stated intent of pursuing all administrative and legal actions to recover the fee.

Positions of Parties

Complainants

Complainants assert generally that:

1. Defendant is not entitled to an exemption under PU Code Section 2705 because it has not been operated under the supervision and control of its shareholders.
2. Defendant is therefore a public utility water company subject to regulation by this Commission. ✓
3. Defendant may not legally assess any connection fees and must refund all such fees previously paid.

Defendant

Defendant counters that:

1. Each person listed in Exhibit A to the complaint is a shareholder in defendant and has been accorded all the rights of a shareholder.
2. Defendant is a mutual water company within the meaning of PU Code Section 2705, since it delivers water to no one except its shareholders.
3. Defendant has not violated the rights of any of its shareholders; but assuming, arguendo, there have been violations, any disputes are contractual ones, and do not involve the Commission.

The Evidence

Complainants

Ira Norris is president of Inco Homes, one of the two general partners in Indian Oaks. He testified as follows:

1. Indian Oaks is a builder of small residential subdivisions, and has owned and developed a subdivision on Tract 11082 in Sunnymead.
2. Indian Oaks has never received any shares in defendant.
3. Indian Oaks had never received any notice of a shareholders' meeting from defendant until about one week before the hearing.
4. Indian Oaks has owned the property in Tract 11082 for about two years.
5. Safeco Title Insurance Company insured title to Sykes Enterprises Corp., Inco Homes, Albert C. Sykes, Neely Sykes, and Gertrude Sykes of land which later became Tract 11082.
6. The title policy (Exhibit 3) contains no mention of water company shares being appurtenant to this land.

7. Inco Homes (Ira Norris, President), a partner in Indian Oaks, was informed by defendant by letter dated January 28, 1980 (Exhibit 4) that a hookup charge of \$750 per residence would be assessed against developers of new homes to pay for the entire cost of obtaining additional water from EMWD. Existing shareholders were to be excluded from any assessments. The charges have been paid under protest. Additional similar charges have been paid since the filing of the complaint.
8. Norris has never received, prior to the filing of this complaint, any notice from defendant regarding Indian Oaks' ability to exercise voting rights in defendant.
9. Norris has never been approached or consulted by defendant with respect to the election of the Board of Directors of defendant.
10. Indian Oaks had sold about 36 parcels of land as of June 22, 1981 to individual purchasers, and paid hookup fees in connection with each parcel.
11. Norris purchased a piece of property in Ironwood from Jack Swegles, a member of the Board of Directors of defendant, and resold it to Stewart Pritikin, a partner in complainant Ironwood. Norris never received any shares of defendant's stock for this piece of land nor did he receive any notice of shareholders' meetings.

Albert Sykes is employed by Sykes Enterprises Corporation, the other general partner in Indian Oaks. He testified as follows:

1. Sykes and his brother Neely purchased three parcels of land in Sunnymead between 1976 and 1978. Two parcels were later sold to Indian Oaks.

2. In connection with one parcel, Sykes received a stock certificate from defendant. He received no certificate for the other two parcels. He did not receive notice of shareholders' meetings until a short time before the hearing in this proceeding. He was never approached as a purported shareholder with regard to any decisions relating to the conduct of defendant's business.
3. Sykes acknowledged receipt of the letter dated May 16, 1979 (Exhibit 4) from defendant. The letter was signed by George Soper, secretary of defendant, informing Sykes of the acceptance of a contractor's agreement signed by Sykes on behalf of Indian Oaks. The letter further advised Sykes that the increased residential growth might cause a demand for water service beyond defendant's capacity, and that defendant was negotiating with EMWD for the installation of a connecting valve to provide defendant with supplemental water. The letter also advised of defendant's intent that additional hookup costs should be borne by the developers rather than cause an additional burden on defendant's present shareholders and water users.
4. The area under discussion in this correspondence was Tract 11082, the property developed by Indian Oaks.
5. Sykes acknowledged that he had participated in the preparation of a master escrow agreement for the sale of homes in Tract 11082. He further acknowledged his awareness of a requirement that Indian Oaks would have to be a shareholder in defendant in order to be a water user in the area.
(Tr. page 59.)

6. Sykes also read from a letter shown to him by counsel for defendant dated October 16, 1980, to defendant from Safeco Title Company, transmitting two stock certificates in defendant pertaining to two parcels of land in Tract 11082.

Susan Dalton is an owner and resident on a parcel of land in Indian Oaks. She testified as follows:

1. Escrow on her present home was closed in May, 1980.
2. She has never received any stock certificate evidencing ownership in defendant.
3. She received a notice of annual meetings of the stockholders in defendant some time in June, 1981. However, she had never received any notification of prior shareholders' meetings.
4. Neither she nor her husband has ever been consulted by defendant with regard to setting of rates or electing its board of directors.
5. They have received from defendant, and paid, water bills since first occupying their home in May, 1980.

Jacqueline Check is another resident and owner in the Indian Oaks tract. She testified essentially the same as Mrs. Dalton; however, she recalled paying a \$5 fee for the transfer of water stock, apparently about the time escrow closed on her property.

Betty Simpson is a third resident and owner in the Indian Oaks tract, having only purchased the property in February of 1981 and taken residence in June, 1981. As yet she had received no billing for the transfer of water stock.

Stewart Pritikin testified on behalf of Ironwood. He is a builder and developer with offices located in San Diego. He testified as follows:

1. Ironwood is a joint venture comprised of two venturers, one being H and N Construction and the other Sunnymead, Ltd.
2. Land in Tract 10533, part of the property involved in this proceeding, was purchased by Ironwood from Inco Homes in August, 1979. Ironwood built 48 single-family homes on this property.
3. Neither Pritikin nor any of the people that purchased property from him have ever received stock in defendant. Stock certificates were issued to the lending institution which finances the sale of these homes to the purchasers. However, Pritikin only discovered that the certificates had gone to the lender about 30 or 60 days prior to the hearing. Early in June 1981 the homeowners were notified of a stockholders' meeting to take place on June 26, 1981.
4. Pritikin received a notice of the same meeting, but had not received notice of a shareholders' meeting prior to that time.
5. Pritikin's company designed the water system for defendant which was constructed in order to serve the needs of the new homeowners in the area. Pritikin paid defendant the assessments specified in the letter of January 28, 1980 (\$750 per parcel).
6. Pritikin was never requested to vote for defendant's Board of Directors or for anyone who would make management decisions for defendant.

7. On about May 2, 1980, after learning that Safeco Title Company would not insure title to any of the parcels until they knew that there would be water hookups available, Pritikin amended his escrow instructions (Exhibit 20) to provide for the issuance of shares in defendant. From that time, Pritikin was aware that the escrow instructions were providing for the issuance of water shares to the purchasers of property sold by Pritikin.
8. Pritikin's company still owns unsold property in Tract 10533.

Defendants

George E. Soper testified as follows:

1. Soper holds the office of secretary-treasurer in defendant. He has held that position for 35 years. His duties as secretary-treasurer include handling all correspondence, documentary statements, statistical reports, and transfers of water shares with escrow instructions.
2. Defendant's Board of Directors meets every month. At these meetings, any shares of stock to be transferred are presented to the Board for its approval. No shares of stock are transferred until after approval by the Board of Directors.
3. Defendant is a tax-exempt, nonprofit corporation.
4. Each of the parties shown in the complaint as a purchaser of property was issued a share of stock, naming that person as registered owner, and naming the mortgage holder as pledgee.

5. Shareholders' meetings are held annually on the fourth Friday of June. Shareholders are notified of the meeting by sending a notice with a proxy. Soper is in frequent contact with many of defendant's shareholders, and often requests that they attend these annual meetings, or, if they prefer, tender their proxy to somebody who will vote at the meeting. Notice is published in a local newspaper for four weeks prior to annual meetings specifying date, time, and place where the meeting will be held. The meeting is held each year at the same place--the Sunnymead Women's Clubhouse.
6. With respect to Mrs. Dalton, who testified supra, a stock certificate (No. 863) was issued on June 1, 1980. After approval by defendant's Board of Directors, this stock certificate was mailed to the pledgee (mortgage holder). No notice of the shareholders' meeting was sent to the Daltons because defendant's fiscal year ended May 31, and Soper sends notices to all shareholders of record as of May 31. The Dalton certificate was not issued until June 1. Therefore, Soper believes that the 1981 meeting was the first time he was obliged to send a notice to this particular shareholder.
7. Defendant's articles of incorporation provide that there is one share of stock for each acre of property in the Sunnymead Orchard Farms Tract. There are approximately 182½ acres within the Tract.
8. Defendant entered into an agreement with EMWD on August 1, 1980 whereby EMWD agreed to furnish defendant with supplemental water service so that the approximately 100 parcels of land involved in this complaint proceeding could be furnished with adequate water. The defendant felt at the time that its own capacity was not adequate to serve the additional homes contemplated in the area.

9. In every instance where Soper received escrow instructions to transfer shares of water stock to new buyers, he has done so. Each letter of instructions concerning these transfers stated that 4/15ths of one share would be transferred. This is because the builders constructed approximately four houses to the acre.
10. No shares of stock have been issued to Ironwood; however, shares have been issued to Inco Homes, a general partner in complainant Indian Oaks.
11. At the 1980 shareholders' meeting, a quorum was not obtained. There have been no quorums for the past several years, and during this period any vacancies on the Board were filled by the unanimous consent of the remaining Board members.
12. In response to a letter of instructions (Exhibit 26) from the Valley National Bank, addressed to defendant, Soper issued a new certificate for 2-1/3 shares of stock registered to Neely L. Sykes and naming lenders Jack and Beverly Ward as pledgees. A similar letter of instructions (Exhibit 27) from Valley National Bank requested that defendant reissue 2-1/3 shares of stock to Albert C. Sykes, naming Jack and Beverly Ward as pledgees. Both certificates were sent to the bank in accordance with the bank's request.
13. In response to a letter of instruction from Safeco Title Insurance for a transfer of shares, Soper reissued stock naming Inco Homes as the registered owner. A copy of the stock was mailed on July 15, 1978 to Inco Homes. These certificates were transferred back to defendant for the purpose of parceling out shares to each home buyer.

14. Defendant caused to be published in a legal periodical--The Butterfield Express-- notice of the annual meeting of the stockholders of defendant, to be held at the Sunnymead Women's Clubhouse on Friday, June 26, 1981, for the purpose of election of a new Board of Directors and for the transaction of any other Board business. Publication appeared four times prior to the meeting.
15. Soper mailed to various pledgee lenders certificates of stock evidencing ownership in defendant. Soper has given notice to all shareholders of record on May 31 of each year of the shareholders' annual meetings. Buyers often call Soper and ask him to arrange to turn on the water in their homes. In each case Soper has advised them of the fact that they will be issued shares of stock in defendant, but that their certificates will be sent to their pledgee. Shares of stock are automatically canceled when property is sold. New shares are issued in the name of the buyer because they are appurtenant to the land.
16. Defendant has never made any sales of water outside of the Sunnymead Orchard Farms Tract and to other than its shareholders.

On cross-examination by counsel for complainants, Soper further testified as follows:

17. With respect to Exhibit 7, which is the notice of annual meeting, the notices were mailed by Soper on about June 1, 1981, but were backdated to May 14, 1981. Soper explained this disparity by stating that the May 14 date represents the date defendant's Board of Directors resolved in a formal resolution at the directors' meeting on May 14 to hold the annual meeting on the 26th of June, 1981. He stated that this procedure has been followed for many years.

18. A letter misdated June 1, 1980 (the correct date should be June 1, 1981) received as Exhibit 17, was the first written attempt to notify shareholders that they were in fact shareholders. Many other shareholders were notified verbally by Soper that they would become shareholders upon closing of escrow; many owners were not verbally notified of this fact because they had no discussions with Soper.
19. Exhibit 2 comprises Soper's answers to interrogatories presented by complainants. Soper had stated that there was no information available prior to 1977 with respect to defendant's annual shareholder meetings or other shareholder meetings between January 1, 1971 and June 17, 1981. Soper now testifies that answer was in error, and that the numbers of shares represented at the various meetings will in fact be reflected by the minutes of the actual shareholders' meetings prior to 1977.
20. Defendant's rates throughout the years have been set only by its Board of Directors. Shareholders have never had any participation in the setting of rates. No other shareholders, except for the Board of Directors, participated in defendant's decision to obtain supplemental water from 1971. Directors and officers who were also shareholders own 5-13/15 shares in defendant.
21. At the annual shareholder meeting held June 23, 1978, the meeting was called and the president, The president, the meeting adjourned.

CORRECTION

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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20. Defendant's rates throughout the years have been set only by its Board of Directors. Shareholders have never had any participation in the setting of rates. No other shareholders, except for the Board of Directors and officers who are also shareholders, participated in defendant's decision to obtain supplemental water from EMWD. The directors and officers who made this decision own 5-13/15 shares in defendant.
21. At the annual shareholders' meeting of June 23, 1978, the shareholders' vote was called and there was not a quorum. The president, therefore, declared the meeting adjourned sine die.

Nevertheless, the shareholders present adopted and ratified all the acts of the Board and officers for the year. The Board of Directors has also appropriated funds for the provision of formal dinners for Board Directors and officers during the last several years. Furthermore, the Board also authorized the payment by directors and officers of only the monthly maintenance charge portion of their water bills in recognition of the faithful services provided by these directors and officers.

22. The decision of defendant to install a connection with and receive supplemental water from EMWD, was never ratified by a quorum of shareholders.
23. Defendant's bylaws (Exhibit 9) provide that its Board of Directors may not incur any indebtedness of any kind for the purpose of any improvement or enlargement of the system without first submitting plans and receiving authority from 2/3 majority of votes at a regular or specially called meeting. The bylaws also provide that the Board of Directors has no authority to spend company funds, except for direct expense of maintenance and distribution of water to the lot owners of defendant.
24. Soper testified that he never notified the owners of Ironwood at any time of their rights to vote shares, because shares of stock were not issued in their names. But, shares were issued to Inco Homes and Al Sykes and Associates, partners in complainant Indian Oaks.
25. Soper's understanding was that the property which was developed partially into Ironwood was never owned by anyone other than Sykes or Inco Homes (Indian Oaks). He did not realize that Inco had sold some property to Ironwood.

Staff Presentation

Robert Mahin, an Associate Utility Engineer in the Commission's Utilities Division, testified for the staff. His report, Exhibit 34, relates the following information:

1. At the time of his investigation in May 1981, approximately 200 customers were being served.
2. Complainants purchased about 25 acres of land within defendant's service area, which was subdivided into 100 residential building lots. The water systems in the two tracts were installed by the developers.
3. Defendant was concerned that its service would be lessened by increasing the number of customers by about 100.
4. The staff recommends that defendant be deemed a mutual water company, not subject to the jurisdiction of this Commission. However, should defendant be declared by the Commission to be a public utility, the staff recommends that defendant be ordered to comply with the provisions of General Orders 96-A and 103.

At the time Mahin's report was prepared, he was not aware of the amended complaint, where new issues were raised with respect to lack of shareholder notification. However, Mahin was present during the proceeding and did not alter his recommendation.

Jasjit Sekhon, appearing for the Commission staff, asks that the Commission take official notice of its Resolution M-4708. This resolution was received in evidence as Exhibit 35. The resolution, dated August 28, 1979, expresses the Commission's attitude with respect to certificating small water companies. Among other things, the resolution enunciates the following policies:

1. Denial of certificates for operations which are likely to be marginal or provide inadequate service.
2. Denial of certificates for a potentially viable system if a public district is able to serve the proposed area.

3. Issuance of certificates for proposed water systems only when a need for the utility is demonstrated showing that no other entity is willing and able to serve the area.

Stewart Pritikin was recalled by counsel for complainants.

His further testimony was essentially as follows:

There are two general partners in Sunnymead Ltd.-- one being J. P. McIssac Construction, Inc., and the other Mesa Woods North, Inc. Sunnymead, Ltd. and H. & N. Construction are a joint venture. Sunnymead, Ltd. is the managing and administrative responsibility of Ironwood. Pritikin reviewed his files and found nothing with regard to notification of shareholders' meetings.

Other Evidence

Ira Norris was recalled and testified concerning Exhibit 37, purporting to be a current mailing list for defendant's water customers, and therefore a list of shareholders. He said Ironwood still owns some unsold lots in Tract 10533, but he could find no listing of those specific lots. Regarding Tract 11082, the Indian Oaks development, he said Indian Oaks still owns some unsold lots, but nowhere are these lots listed. However, Bud Sykes is shown as an individual owner. Furthermore, Ironwood Estates and Sunnymead, Ltd. are shown on the list.

At the telephonic hearing conducted in San Francisco on July 1, 1981, Soper sponsored late-filed Exhibit 38. Asked whether he could locate any names of complainants listed as shareholders as of May 31, 1979, Soper identified the name of N. L. Sykes on page 6 of the Exhibit. Sykes is shown as holding 4-10/15 shares of stock in defendant. John S. Swegles is shown as owning 11-4/15 shares as of this date, although he had sold these shares to Ironwood sometime in 1977. Soper explained that Swegles was still shown as the owner of these shares because no request has been received from Swegles or the buyers to transfer them. Soper agreed that other than Sykes none of the complainants in this action had received any form of notification of shareholders' meetings.

Applicable Statutes

The statutes applicable to the circumstances surrounding this case are set forth in the following PU Code Sections: 216, 241, 2702, 2705, 2707, and 2725.

Section 216 defines a public utility:

"216(a) 'Public utility' includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof."

Section 241 defines a water corporation:

"241 'Water corporation' includes every corporation or person owning, controlling, operating, or managing any water system for compensation within this State."

Section 2702 sets forth the circumstances whereby a mutual water company loses its exemption from regulation by this Commission under Section 2705:

"2702. Any corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost which delivers water to others than its stockholders or members, or the State or any department or agency thereof or any school district, or any other mutual water company, for compensation, becomes a public utility and is subject to Part 1 of Division 1 and to the jurisdiction, control, and regulation of the the commission."

Section 2705 reads, in pertinent part:

"2705. Any corporation or association which is organized for the purposes of delivering water to its stockholders or members at cost, including use of works for conserving, treating and reclaiming water, and which delivers water to no one except its stockholders or members, or to the State or any agency or department thereof, to any city, county, school district, or other public district, or to any other mutual water company, at cost, is not a public utility, and is not subject to the jurisdiction, control, or regulation of the commission. . ."

Section 2707 authorizes the Commission to determine the status of water purveyors:

"2707. For the purpose of determining the status of any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system or water supply within this State, the commission may hold hearings and issue process and orders in like manner and to the same extent as provided in Part 1 of Division 1, and the findings and conclusions of the commission on questions of fact arising under this chapter are final and not subject to review, except as provided in Part 1 of Division 1."

Section 2725 defines mutual water company:

"2725. As used in this chapter, 'mutual water company' means any private corporation or association organized for the purposes of delivering water to its stockholders and members at cost, including use of works for conserving, treating, and reclaiming water."

Cases

Complainants and defendant have cited the following principal cases in presenting their respective arguments during the course of the proceedings:

1. Corona City Water Co., et al. v P.U.C. (1960)
54 Cal 2d 834;
2. Yucaipa Water Co. No. 1 v P.U.C. (1960)
54 Cal 2d 823;
3. McDaniel, et al. v Park-Woods Mutual Water Co. (1971) 72 Cal P.U.C. 247; and
4. La Puente Co-Operative Water Co. (1966)
66 Cal P.U.C. 614.

Discussion

It is apparent that defendant has been less than meticulous in the conduct of its business as a corporate mutual water purveyor. We say this because the evidence shows clearly that defendant has:

1. Held shareholders' meetings and conducted corporate business for several years without a quorum of shareholders.
2. Been lax in informing some owners of property in its service area that they are in fact shareholders in defendant.
3. Not informed certain shareholders of defendant's annual shareholders' meetings.

Complainants believe that the holdings of the California Supreme Court in Corona and Yucaipa must be considered controlling in these circumstances.

In Corona the court found a mutual water company to have operated as a public utility water company when the mutual delivered water to nonstockholders through its alter ego public utility water company.

The mutual company owned all of the utility's stock, which was held in trust for the benefit of the mutual's stockholders. There was a combined enterprise conducted by the utility and the mutual company operated in a way which promoted the development of the area. The mutual had even exercised its power of eminent domain in order to secure water sources and production facilities for its own and the utility's purposes. The mutual had supplied water from its lines through the utility meters to nonstockholders of the mutual.

The court found the reasons underlying the Section 2705 exemption not present when a major customer had no voice in the management of the mutual and could not effectively enforce its rights as a shareholder.

But in the case before us defendant's stock certificates (Exhibit 25) provide that shares are appurtenant to the land; purchasers, whether developers or ultimate land owners, are de facto shareholders in defendant by virtue of defendant's articles of incorporation (Exhibit 8). The developers/owners, if they believe they have been harmed by the misfeasance of defendant's Board of Directors, have their remedy in an appropriate court of law. The carelessness of defendant's officers in failing to actually transfer ownership certificates does not prevent actual landowners in defendant's service area from pursuing their legal remedies.

Yucaipa Water Company No. 1 had been organized as a mutual water company. Yucaipa Domestic Water Company was a public utility water corporation. No. 1's shares of stock were freely transferable and were not appurtenant to the land. No. 1 supplied water not only to shareholders but to lessees of shares. It steadily increased its number of service connections and split its shares to double the permissible number of connections.

The court held that delivery of water to lessees of stock is not the same as delivery to stockholders. Yucaipa presented a considerably different factual situation than the case before us; the most important of which is that here defendant's shares are appurtenant to the land in Sunnymead Orchard Farms Tract.

In McDaniel v Park-Woods, defendant's directors, who were land developers, had purchased approximately 1,000 lots. Defendant was formed in order to supply water to and sell the lots. Of 325 shares of stock issued, the directors of defendant owned all but 30. We held that defendant was not substantially customer-controlled and found it to be a public utility. We further found that if all users of water had been issued one share of stock each, the original developers would still hold a controlling interest in defendant. The 30 shareholders other than the developers we found to be captive shareholders, in no position to enforce their rights.

In the case before us, every customer is a shareholder. Stock ownership is not held by any individual or limited group of individuals.

Finally, the La Puente fact situation involved a mutual water company (La Puente), 62% of whose stock was owned by a public utility water corporation. La Puente had provided only untreated irrigation water to its shareholders. But later it commenced domestic water service to new subdivision tracts located in the service area of the public utility.

La Puente's domestic customers were each issued 1/50th of a share in La Puente; however, these customers held in the aggregate only a little over 9 shares of 1,723 capital shares of stock outstanding--less than one percent. These domestic customers provided 44% of La Puente's revenue while receiving only 11.7% of the water it provided. The effect of the utility's using La Puente, its alter ego, to serve the new domestic customers was to have those customers pay La Puente almost twice as much for water as the public utility's customers. We held the La Puente shareholders to be captive shareholders for the benefit of the public utility which controlled La Puente, and in no position to effectively enforce their rights. We found La Puente, as the alter ego of the utility, to be an extension of the utility and subject to our jurisdiction.

In this case there is no alter ego relationship; and defendant's customers, all of whom are shareholders in defendant, are in a position to have any intracorporate dispute resolved by a court of proper jurisdiction.

Based upon the evidence, the applicable statutes and case law we must conclude that defendant has operated as a mutual water company. It is not a public utility. The following facts point to this conclusion:

1. Defendant was organized in 1927 as a mutual water company for the purpose of selling and distributing water to shareholders who must also be landowners in Sunnymead Orchard Farms Tract. It is a tax-exempt, nonprofit corporation.
2. Each party shown in the complaint, according to Soper's testimony, has been issued a share of stock naming the purchaser as registered owner and the mortgage holder as pledgee.
3. Soper testified that in every instance where he has received escrow instructions to transfer shares of stock to new purchasers, he has done so.
4. Shares of stock have been issued to Inco Homes and Albert Sykes, general partners in complainant Indian Oaks. Soper did not realize that Inco had sold property to Ironwood, and therefore he did not issue shares of stock to Ironwood.
5. Shares of stock in defendant are automatically canceled when property is sold, and new shares are issued to buyers because the shares are appurtenant to the land.
6. Defendant has not sold water outside of the Sunnymead Orchard Farms Tract and to other than its shareholders.

7. The requests by Valley National Bank and by Safeco Title Co. (Exhibits 26-28) for defendant to transfer stock to complainants Sykes and Inco Homes were honored by defendant.
8. Complainants, who allege unfair treatment at the hands of defendant through its corporate misfeasance, have adequate opportunity in an appropriate court of law to test their allegations.

A mutual water company delivering water at cost to its stockholders, does not come under our jurisdiction when minority shareholders who believe they have been deprived of their shareholder rights have adequate opportunity to assert their rights in an appropriate court of law. In La Puente we stated:

"Intracorporate matters relating to the matter in which the interests of minority shareholders are dealt with must be resolved by the Superior Court in an appropriate action."

Since we are dismissing the complaint, any discussion regarding complainants' request for attorney's fees would be idle.

Findings of Fact

1. Defendant was incorporated as a mutual water company in 1927 for the purpose of distributing and selling water only to its stockholders, who must be landowners in Sunnymead Orchard Farms Tract.
2. Defendant is a nonprofit organization, exempt from federal income taxation.
3. There is one share of stock in defendant for each acre of property located in the Sunnymead Orchard Farms Tract. The shares are appurtenant to the land, and when property is sold, shares automatically pass to new owners.

4. Complainants purchased land located in defendant's service area, the Sunnymead Orchard Farms Tract between 1976 and 1978, and have subsequently resold some of the land to residential purchasers.

5. George Soper, as secretary-treasurer of defendant, is the person responsible for transferring stock certificates to new owners when property is sold in defendant's service area.

6. In every case where Soper received escrow instructions with respect to the Sunnymead Tract, he transferred shares to the new buyers.

7. Defendant has never sold water to property owners located outside of Sunnymead Orchard Farms Tract.

8. Defendant has not issued shares of stock to complainants Indian Oaks Sunnymead or Ironwood Estates, per se. Defendant has issued shares of stock to Neely Sykes and Albert Sykes (Sykes Enterprises) and to Inco Homes. Sykes Enterprises and Inco Homes are the general partners in complainant Indian Oaks Sunnymead.

9. Defendant has issued shares of stock to the 32 lot owners shown in Exhibit A attached to the complaint.

10. Defendant has not always informed each new property owner of its rights as a shareholder or that it is in fact a shareholder in defendant, nor informed them of annual shareholders' meetings.

11. Complainants have the opportunity to test their allegations concerning defendant's corporate misfeasance in an appropriate court of law.

Conclusions of Law

1. This Commission has authority to determine the status of water purveyors under the provisions of PU Code Section 2707.
2. Defendant operates as a mutual water company as defined in PU Code Section 2725.
3. Defendant is exempt from regulation by this Commission under the provisions of PU Code Section 2705.
4. The complaint of Indian Oaks Sunnymead and Ironwood Estates should be dismissed. ✓

O R D E R

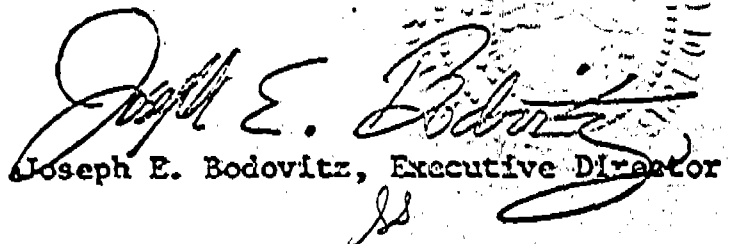
IT IS ORDERED that Case 10962 is dismissed. ✓

This order becomes effective 30 days from today.

Dated April 21, 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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


Joseph E. Bodovitz, Executive Director

ORIGINAL

Decision 82 04 085 APR 21 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Indian Oaks Sunnymead, a)
 California general partner-)
 ship, and Ironwood Estates, a)
 California joint venture.)

Complainants,)

vs.)

Sunnymead Mutual Water)
 Company,)

Defendant.)

Case 10962
 (Filed March 9, 1981,
 amended June 6, 1981)

Wyman, Bautzer, Rothman, Kuchel & Silbert, by
James P. Gray, Attorney at Law, for Indian
 Oaks Sunnymead and Ironwood Estates,
 complainants.

Ray O. Womack, Attorney at Law, for Sunnymead
 Mutual Water Company, defendant.

Jasjit S. Sekhon, for the Commission staff.

O P I N I O NIntroduction

Complainant, Indian Oaks Sunnymead (Indian Oaks), is a general partnership engaged in the business of developing residential building tracts. Complainant, Ironwood Estates (Ironwood), is a California joint venture also engaged in the business of developing residential building tracts.

Defendant, Sunnymead Mutual Water Company (defendant), is a California corporation engaged in the business of supplying water to its customers in and around Sunnymead, an unincorporated community located several miles east of Riverside.

Prior to the addition of the complainants' subdivisions, defendant's wells had provided adequate water supply to its existing customers. However, defendant was concerned that its service would be lessened by increasing the number of customers from 198 to 297. To assure an adequate water supply, defendant entered into an inter-connection agreement with the Eastern Municipal Water District (EMWD). The agreement commits defendant to a first payment in excess of \$5,000 and to 19 annual payments of slightly over \$10,000 per year, including interest.

Complainants were notified by letter dated May 16, 1979 (Exhibit 16) of defendant's plan to assess each new hookup to partially defray the costs of the EMWD connection. The amount of the hookup fee was not determinable at that time. On January 28, 1980, complainants were notified (Exhibit 4) that the hookup fee would be \$750 per residence. Complainants did not register an objection to either of these communications. However, the payments of the fees for the first two residences received by defendant on May 23, 1980 and all subsequent payments were made under protest with the stated intent of pursuing all administrative and legal actions to recover the fee.

Positions of Parties

Complainants

Complainants assert generally that:

1. Defendant is not entitled to an exemption under PU Code Section 2705 because it has not been operated under the supervision and control of its shareholders.
2. Defendant is therefore a public utility water company subject to regulations by this Commission.
3. Defendant may not legally assess any connection fees and must refund all such fees previously paid.

Applicable Statutes

The statutes applicable to the circumstances surrounding this case are set forth in the following PU Code Sections: 216, 241, 2702, 2705, 2707, and 2725.

Section 216 defines a public utility:

"216(a) 'Public utility' includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof."

Section 241 defines a water corporation:

"241 'Water corporation' includes every corporation or person owning, controlling, operating, or managing any water system for compensation within this State."

Section 2702 sets forth the circumstances whereby a mutual water company loses its exemption from regulation by this Commission under Section 2705:

"2702. Any corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost which delivers water to others than its stockholders or members, or the State or any department or agency thereof or any school district, or any other mutual water company, for compensation, becomes a public utility and is subject to Part 1 of Division 1 and to the jurisdiction, control, and regulation of the the commission."

Section 2725 defines mutual water company:

"2725. As used in this chapter, 'mutual water company' means any private corporation or association organized for the purposes of delivering water to its stockholders and members at cost, including use of works for conserving, treating, and reclaiming water."

Cases

Complainants and defendant have cited the following principal cases in presenting their respective arguments during the course of the proceedings:

1. Corona City Water Co, et al. v P.U.C. (1960)
54 Cal 2d 834;
2. Yucaipa Water Co. No. 1 v P.U.C. (1960)
54 Cal 2d 823;
3. McDaniel, et al. v Park-Wood Mutual Water Co. (1971) 72 Cal P.U.C. 247; and
4. La Puente Co-Operative Water Co. (1966)
66 Cal P.U.C. 614.

Conclusions of Law

1. This Commission has authority to determine the status of water purveyors under the provisions of PU Code Section 2707.
2. Defendant operates as a mutual water company as defined in PU Code Section 2725.
3. Defendant is exempt from regulation by this Commission under the provisions of PU Code Section 2705.
4. The complaint of Indian Oaks Sunnymead and Ironwood Estates should be ~~denied~~ *dismissed*. ✓
SS

O R D E R

IT IS ORDERED that Case 10962 is ~~denied~~ *dismissed*. ✓
SS

This order becomes effective 30 days from today.

Dated APR 21 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. CRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners