

ORIGINAL

Decision S2 OS 075 AUG 18 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application
of CRESTMORE VILLAGE WATER COMPANY,
a California corporation, to termi-
nate water service. }

Application 82-03-84
(Filed March 23, 1982)

George C. Lyon, Attorney at Law, for
applicant.
Frank Sherrill, for Palmdale Water
District, interested party.
Jasjit S. Sekhon, for the Commission
staff.

O P I N I O N

By this application, Crestmore Village Water Company (Crestmore) requests an order which would authorize it to terminate water service in its Palmdale Poultry Ranchos (PPR) service area, to abandon to the public all of its water system property devoted to public use, and to cancel its certificate of public convenience and necessity to operate its PPR water system.

After due notice, public hearing in the matter was held before Administrative Law Judge William A. Turkish, in Los Angeles, on May 10 and June 29, 1982. The matter was submitted on the latter date.

Testifying on behalf of Crestmore was its president, John L. Lyon. Testifying on behalf of Palmdale Water District (formerly Palmdale Irrigation District) (District) was its manager, Frank Sherrill. Testifying on behalf of the Commission

staff was Joel Lubin. Public witnesses included two property owners who are affected by the requested application.

The application states that at the time this application was initially filed in 1975,^{1/} the water system operated by Crestmore consisted of nine customers. Since that time, the number of customers served has decreased to four. Crestmore alleges that each year since 1976 it has continued to lose money on its public utility operations. Crestmore alleges that in 1977 its loss was \$100.24, in 1978 its loss was \$140.70, in 1979 its loss was \$1,700.00, in 1980 its loss was \$1,092.94, and in 1981 its loss was \$1,546.83.

History

Crestmore, a California corporation organized on October 25, 1948, acquired the PPR water system from the B.V. Water Company in 1955. The property acquired by Crestmore consisted of two water systems: one, known as the East Palmdale Ranchos, consisted of approximately 60 active service connections; and the other, known as the PPR, serving a tract approximately eight miles way, had approximately 12 active service connections. The water system serving PPR obtained its water supply from a well.

1/ Application (A.) 55217 filed September 27, 1974, amended June 27, 1975, by Crestmore, was an application similar to this application. Two prehearing conferences were held and because the examiner was of the opinion that the system could be made viable with an increase in rates, Crestmore was directed to apply for a rate increase instead of requesting abandonment of its water system. Following hearing, rate increases were authorized in Decision (D.) 85159 issued November 18, 1975.

In D.82283 dated January 3, 1974, the Commission granted Crestmore authority to sell and transfer its East Palmdale Ranchos property to the City of Los Angeles (LA). At that time the PPR system had nine metered customers. Also by this date, Crestmore had abandoned the well furnishing water for the PPR system and obtained water for these nine customers from District. At this time also, Crestmore indicated a willingness to give up this system to anyone who would take over its operation. There were no takers.

PPR consists of 27 parcels of at least five acres each. In D.82283 the Commission acknowledged that the remaining PPR 9-customer system was too small to support continued operations of a public utility water corporation and although the Commission ordered Crestmore to continue service to existing customers, the Commission also found that public convenience and necessity required that some provision be made for the protection of persons served by the PPR system, such as its acquisition by the irrigation district supplying water to it at the time, or by forming a mutual water company. Apparently there was no success in either having the irrigation district acquire the water system or in forming the mutual water company. In authorizing Crestmore to sell and transfer its East Palmdale Ranchos system to LA, the Commission ordered Crestmore to place in escrow the cash received from such sale after providing funds for the discharge of all debts and outstanding obligations at the time and that until further Commission order, these funds were to remain in escrow to be used to assure continued water service in Crestmore's PPR service area. These funds are still in escrow, receiving interest.

In 1975, in A.55217, Crestmore filed an application seeking authority to abandon to the public all of its property devoted to public use and to discontinue its public utility water system in the PPR service area. Crestmore raised the issue that to require Crestmore to continue the operation at a loss amounted to the taking of property without compensation contrary to the constitutional rights of Crestmore. A motion filed by Crestmore to consider PPR as a separate entity was denied by the examiner on the grounds that Crestmore as an entity was still in a profit-making posture because of the interest accruing on the funds in escrow from the sale of its East Palmdale Ranchos property to LA despite the fact that the remaining 9-customer PPR system was operating at a loss. A number of prehearing conferences were held before the examiner in which the possibility of the sale of the system or the formation of a mutual water company was explored, but these efforts proved futile. Because PPR was operating at a loss, Crestmore was advised to file an amended application requesting a rate increase to provide a compensatory rate of return. Such amendment was filed on June 27, 1975, and in D.85159, the Commission authorized an increase in rates while denying the application to terminate water service to the existing nine customers. ✓

In this application to abandon its water system and to terminate water service to the remaining four customers in the PPR service area, Crestmore alleges that the State has no power to compel the continued operation of a public utility at a loss where the owner of the utility is willing to and does, in fact, abandon to the public all of its

property that has been devoted to public use. It is the contention of Crestmore that the U.S. Supreme Court has decided that "a carrier cannot be compelled to carry on even a branch of its business at a loss". (Lyon & Hoag v Railroad Commission of the State of California (1920) 183 Cal 145 at 146; Brooks-Scanlon Company v Railroad Commission of Louisiana (1920) 251 US 396.)

Following is a summary of the evidence presented by the various witnesses:

1. The present water system consists of four customers, two of whom are owners of the property and two of whom are renters. Only 4 of the 27 parcels have residents.
2. Other than 1976, the first year under the new rates, Crestmore has operated the PPR water system at a loss each year.
3. Only one customer uses water for other than personal use. The other three customers use only enough water to pay the minimum rates.
4. The individual maintaining the water system for Crestmore formerly lived in the service area, but has since moved to Lancaster, outside the service area.
5. The present water distribution system is old and leaky and has been capped in various places to cut down on the amount of water leakage. It is not adequate for fire protection purposes.
6. The PPR water system is outside the service area of District from whom Crestmore purchases water to supply the system. The contract with District is nonassignable and District is not

interested in providing water to the four present customers of Crestmore because of its policy of not providing water to customers outside of its service area. In addition, District has no interest in taking over the totally inadequate water distribution system of PPR.

7. Crestmore has contacted people in an attempt to sell the system, but has not been successful in selling it.
8. Two of the property owners indicate an interest in forming an association or mutual under Public Utilities Code § 2705 to provide themselves and the two other water consumers in the service area with water to be purchased from District, providing District will permit this association or mutual to assume the contract which Crestmore currently has with District for the purchase of water. It is the intention of the two property owners to install a new water distribution system to the four existing water users instead of using the distribution system owned by Crestmore because of the deterioration of that system and the resulting water loss due to leaks in that system. It is estimated that the cost of construction of the new water system will be approximately \$5,000 to \$10,000. Other than the cost of the new construction, the proposal is estimated to result in a lower cost for water to the four customers because a new system will not have any costs associated with water loss from leaking pipes, and the rates will not require a rate of return increment or the expenses of a privately owned public water utility.

Because the present water distribution system does not meet the fire-flow requirements, it was the opinion of District that no new houses could be built in the PPR service area and thus, no additional customers can be added to the system for the foreseeable future.

Staff recommends that Crestmore be authorized to abandon its public utility water system serving PPR on the date it signs an agreement with whatever association or mutual is formed by the existing property owners or customers to transfer all of its public utility property, easement rights, and contract rights with District for the purchase of water to that entity or by December 29, 1982, whichever is sooner.

Discussion

At the present time, for all intents and purposes, the existing water distribution system operated by Crestmore is of little useful life or value. Over the years Crestmore has done nothing more than repair leaks as they occurred in the system and Crestmore has made no improvements in the system. The amount of loss because of leaking pipes is unknown, even to Crestmore. As a new distribution system will have to be installed to ensure a reliable and leak-free water system for the existing customers, and Crestmore will now be permitted to withdraw the proceeds of the sale of its East Palmdale Ranchos property to LA from escrow, we find it appropriate that Crestmore should contribute a portion of the expense which will be incurred in the construction and installation of a new distribution system by the association or mutual which will succeed Crestmore.

A \$5,000 contribution by Crestmore to whatever entity is formed to serve the existing customers is reasonable.

Findings of Fact

1. Crestmore provides water to four customers in the PPR service area.
2. The existing water distribution system serving the PPR service area is in a deteriorated, leaking condition and because of various cutoffs of portions of the system over the years due to leaks, it is rendered practically useless.
3. The present water distribution system, which consists of undersized lines, fails to meet fire-flow requirements in the service area.
4. Crestmore has experienced losses in the operation of its water system in every year since 1977.
5. There is little or no likelihood that the number of customers will increase in the foreseeable future since the present system does not meet fire-flow requirements.
6. The proceeds of funds received by Crestmore from the sale of its East Palmdale Ranchos water system property are currently impounded in an escrow account under order of this Commission to ensure Crestmore's continued service to the PPR customers.
7. Half of the property owners/customers desire to form an association or mutual water company to acquire the public utility property and water rights from Crestmore so they may continue to purchase water from District.
8. There are no prospects of the utility's operating the PPR water system at a profit or as an economically viable utility.
9. In a prehearing conference in A.55217 (a prior proceeding in which Crestmore sought to abandon its PPR system), Crestmore offered the sum of \$5,000 to District to take over the PPR system.

Conclusions of Law

1. Those persons intending to form an association or form a mutual water company should be able to succeed to the rights of Crestmore and construct the necessary facilities to provide water for themselves and the other current customers by December 29, 1982.

2. Public convenience and necessity do not require that Crestmore continue its duties as a public utility beyond December 29, 1982.

3. Because the association or mutual formed to provide water to the customers of Crestmore will be required to expend between \$5,000 and \$10,000 for the construction and installation of a new distribution system, we believe it reasonable that Crestmore be required to contribute \$5,000 to that association or mutual to help defray the construction costs.

We conclude that the request of Crestmore should be granted as ordered.

O R D E R

IT IS ORDERED that:

1. Crestmore Village Water Company (Crestmore) is authorized to discontinue water service and is relieved of its public utility obligations to supply water to those customers in the Palmdale Poultry Ranchos service area on the date that the association or mutual water company to be formed by the several property owners/customers executes an agreement with Crestmore for the assumption of all of Crestmore's rights, easements, and public utility property or on December 29, 1982, whichever is

sooner. This order is conditioned upon Crestmore's cooperating at all times with the association or mutual water company which will be formed and upon Crestmore's contributing \$5,000 to that association or mutual water company.

2. The funds from the sale of the East Palmdale Ranchos property to the City of Los Angeles which are currently in an impounded escrow account are authorized to be released to Crestmore upon the effective date of the transfer to the succeeding entity or on December 29, 1982, whichever is sooner.

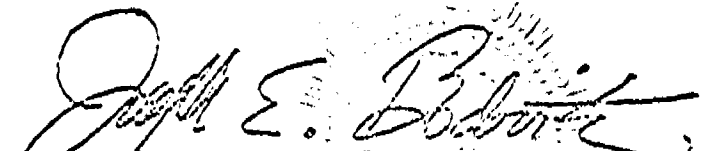
This order becomes effective 30 days from today.

Dated AUG 18 1982, at San Francisco, California.

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

Commissioner Priscilla C. Grew,
being necessarily absent, did
not participate

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


Joseph E. Bodovitz, Executive Director