

ORIGINAL

Decision 83 05 049 MAY 18 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Carol J. Mozako and Andrea Scott,)
)
 Complainants,)

vs.)

HLM Mutual Water Company and)
 Myrlan D. Handeland, John W. Lamb,)
 and Robert A. Menke,)
)
 Defendants.)

Case 10999
(Filed June 15, 1981)

In the Matter of the Application)
 of HLM WATER COMPANY, a corpora-)
 tion for a certificate of public)
 convenience and necessity to)
 construct a public utility water)
 system near Ridgecrest in San)
 Bernardino County and to establish)
 rates for service.)

Application 60527
(Filed May 6, 1981)

Andrea F. Scott and Carol J. Mozako, for themselves, complainants in C.10999.

R. A. Menke and McMurtrey, Etcheverry & Pridgen, by Therese M. Foley, Attorney at Law, for HLM Mutual Water Company and Myrlan D. Handeland, John W. Lamb, and Robert A. Menke, defendants in C.10999 and applicant in A.60527.

Ivan Hopkins, Attorney at Law, and James H. Stramler, for Indian Wells Valley Water District, and Perry S. Patterson, Jr., Attorney at Law (Iowa), for Naval Weapons Center, interested parties.

Carl K. Oshiro, Attorney at Law, and Jasjit S. Sekhon, for the Commission staff.

ORDER OF DISMISSAL

HLM Water Company (HLM), a California corporation, operated a water system in San Bernardino County serving approximately 100 customers. In Application (A.) 60527 HLM sought a certificate of public convenience and necessity. In Case (C.) 10999 Carol J. Mozako and Andrea Scott (complainants) sought to have HLM Mutual Water Company^{1/} declared to be a public utility subject to the jurisdiction, control, and regulation of the Commission. Complainants also sought orders requiring HLM to:

- a. Make improvements to its water system.
- b. Provide additional water supplies to its system.
- c. Upgrade the quality of water it serves.
- d. Refund moneys paid to HLM or its predecessor for mutual water company shares.
- e. Not add additional customers to its system until necessary improvements have been made.
- f. Establish just and reasonable rates.

The Indian Wells Valley Water District (District) was unsuccessful in negotiations to set a price for purchase of the water system operated by HLM. District filed a Complaint in Eminent Domain, C.VCV4141, with the San Bernardino County Superior Court. District requested the Court to:

^{1/} HLM admits that its articles of incorporation were amended to eliminate the word "Mutual" from its company name.

- a. Approve the condemnation of the system.
- b. Determine and award just compensation for the system.
- c. Extinguish all liens and encumbrances against the condemned property and deduct the amounts owed on those properties from the payment for the system.
- d. Grant District possession of the system prior to entering its judgment.

Judge Joseph A. Katz issued an order of possession conditioned upon District's making a deposit of \$110,400, the probable compensation for the system. District made the required deposit. On January 24, 1983 District took possession of the water system and has operated it since then.

In a subsequent order the Court will address conflicting claims on the compensation to be paid by District to defendants in the condemnation action. If District pays the final compensation established by the Court, the issues raised in the subject proceedings will be moot.

A prehearing conference was held on February 23, 1983 before Administrative Law Judge Levander to determine the position of the parties on the proceedings before the Commission. The parties agreed that C.10999 and A.60527 should be dismissed without prejudice. In the event that District does not agree to pay the final compensation established by the Court, the system could be returned to defendants in the condemnation action. In that event complainants want to reopen their complaint and HLM may wish to file a new application.

Evidence at earlier hearings in C.10999,^{2/} described below, establish that HLM operated as a public utility water corporation. At that time, the parties requested that no action be taken by the Commission to allow the parties to arrive at a negotiated price for the sale of the system to the District. The ALJ authorized extensions of time for further negotiations. District filed its condemnation action when no agreement could be reached.

HLM admits that it is a public utility water company. Defendant John W. Lamb testified that:

- a. Valley View Water Company (Valley), a partnership owned by Myrlan D. Handeland, Robert A. Menke, and himself, held title to the water system and leased it to HLM.^{3/}
- b. The Herlings sold a portion of the present water system to Valley.
- c. HLM operated the system.
- d. The system sale did not include assumption of the Herlings' liabilities^{4/} related to those assets.

^{2/} HLM chose not to present evidence in support of its application at a consolidated hearing with the complaint due to unresolved issues, e.g., the United States Navy planned to acquire 860 acres of private land located within the proposed HLM service area.

^{3/} However, Exhibit 6 is a contract of sale for real and personal water property signed by Theodore L. Herling and Nadine Herling (sellers) and John W. Lamb and Helen J. Lamb (buyers).

^{4/} At the February 23, 1983 prehearing conference, complainants stated they would not seek a Commission decision to obtain refunds of customer advances for purchase of mutual water company shares made when the system's owners contemplated formation of a mutual water company.

- e. HLM established water rates to offset its operating expenses but revenues at its metered rates, established at the level charged by District, did not cover its out-of-pocket expenses.
- f. HLM could not be a viable company if the Navy condemned 860 acres in its proposed 1,920-acre service area.
- g. Herling could not supply all of the pipeline easements or title to well sites he had sold to Valley.
- h. If HLM received a certificate, Valley would transfer all water system assets to HLM.
- i. Valley was continuing to make improvements to upgrade the quality of its water service, including the addition of another operative well.

A Commission staff witness testified that:

- a. Resolution (R) M-4708 dated August 28, 1979 (see attachment to Exhibit 2) sets Commission policy on certification of small water companies and of the conversion of small water companies to public status; namely, that certificates would be denied for operations (1) which were likely to be unviable or marginally viable at rate levels comparable to that charged for similar service by other water purveyors in the general area or (2) would provide inadequate service.
- b. Based on the criteria found in R M-4708, HLM would not be self-sufficient for the foreseeable future.

5/ The Herlings did not charge for water supplied when they operated the system. In July 1980 HLM established a \$16 per month flat rate. It established monthly metered rates in September 1980 at \$7 which included 300 cubic feet (Ccf) of water and billed for additional consumption at a rate of 0.47 per Ccf. In A.60527 HLM sought to establish higher metered rates.

- c. The water obtained from HLM's operative well was high in nitrates and chlorides.
- d. The system lacked a required second potable source of water.
- e. The distribution system consisted of agricultural grade pipe instead of pipe designed for high-pressure domestic service.
- f. The complaint alleges that additional fire hydrants capacity is needed.
- g. The Lambs own a portion of the water system.
- h. The local groundwater table was falling at a rate of one foot per year.
- i. HLM should be restricted to supplying customers in its existing service area and to three customers supplied water from a new main extension when the customers' own supply failed.

Further Discussion

A.60527 and C.10999 should be dismissed without prejudice.

If District is unwilling to pay the final compensation for the condemned property set by the Court and the system is returned to its former owners, these proceedings should be reopened and the restriction on extension of service set forth in footnote 6 should be reinstated pending further order of the Commission. District should furnish the Commission with copies of any further order(s) issued in C.VCV4141 and advise the Commission of its actions with respect to that order(s).

6/ HLM agreed to this restriction on an interim basis with the following exception: If another homeowner's well failed and his property was adjacent to the HLM system, HLM would supply water to his residence if it received approval from the Commission staff. The San Bernardino County Environmental Health Services subsequently found that HLM's supply was not always potable, directed HLM to immediately develop a plan to develop a satisfactory source of water, and requested building and mobile home restrictions to avoid adding new customers to the HLM system.

Findings of Fact

1. District has acquired the system formerly operated by HLM in a condemnation proceeding, C.VCV4141.
2. A final order setting the compensation to be paid by District for the condemned assets has not been issued by the Court.
3. HLM requests dismissal of A.60527, without prejudice.
4. Complainants request dismissal of C.10999, without prejudice.

Conclusions of Law

1. The issues raised in A.60527 and in C.10999 become moot if District pays the final compensation set for the condemned assets.
2. A.60527 and C.10999 should be dismissed without prejudice.
3. HLM operated as a public utility water corporation as defined in Public Utilities Code Sections 216 and 241.

C.10999, A.60527 ALJ/EA

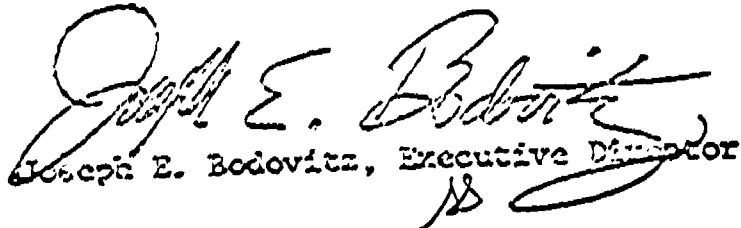
IT IS ORDERED that A.60527 and C.10999 are dismissed without prejudice.

This order becomes effective 30 days from today.

Dated MAY 18 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAZ
Commissioners

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


Joseph E. Bodovitz, Executive Director