

Decision 83 06 009 JUN 1 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PALO MESA WATER COMPANY to be relieved of public utility responsibilities and RURAL WATER COMPANY for a Certificate of Public Convenience and Necessity to operate a public utility water system near Arroyo Grande, County of San Luis Obispo.

Application 82-12-69
(Filed December 30, 1982;
amended February 1, 1983)

Morgan, Lewis & Bockius, by F. Jack Liebau and Kevin E. Monson, Attorneys at Law, for Rural Water Company, applicant.
Catherine A. Johnson, Attorney at Law, and Jasjit S. Sekhon, for the Commission staff.

O P I N I O N

Background

Palo Mesa Water Company (Palo Mesa) and Rural Water Company (Rural) submitted a joint application requesting that Palo Mesa be relieved of public utility responsibilities and that Rural be granted a certificate of public convenience and necessity (CPC&N) to operate a public utility water system in the service area previously served by Palo Mesa near Arroyo Grande, San Luis Obispo County.

Palo Mesa provides water service to approximately 54 customers in various described tracts in San Luis Obispo County.

Process
4
6-1

Commission Decision (D.) 89954 of February 14, 1979 granted Pacific Improvements, a general partnership, the authority to acquire Palo Mesa from its previous owners. Pacific Improvements' partners are Robert D. Holmes, Jr. and Addison B. Wood. Pacific Improvements was granted the authority to expand its service by D.82-04-082 dated April 21, 1982. In that latter decision and in the application now before us Pacific Improvements is listed as "Pacific Improvements, Inc.", the general partner in the limited partnership of Palo Mesa.

A duly noticed hearing was held in this matter before Administrative Law Judge Colgan on March 10, 1983. The matter was submitted on the same date, pending receipt of concurrent briefs from the Commission staff and Rural. No representative of Palo Mesa appeared at the hearing, although Addison Wood signed the application to be relieved of public utility responsibilities.

Although Rural initially disagreed, the staff believes that this action is essentially a transfer of a CPC&N certificate and would prefer using that more direct approach instead of relieving Palo Mesa of its certificate and issuing a new certificate to Rural as requested. The staff believes that the result would be equally conclusive in either case and that "transfer" is a more accurate description. Rural no longer objects to describing this as a transfer proceeding.

Based upon the pleadings, prior decisions, and the hearing we make the following findings.

Findings of Fact

1. Palo Mesa is a public utility water corporation as defined in Public Utilities (PU) Code Section 241. Palo Mesa's service area is located in San Luis Obispo County. Palo Mesa is presently authorized to serve Tracts Nos. 151, 658, 922, 1088 (formerly 666), 743, 841, 760, and 49 and the Cool and Cone properties. Palo Mesa presently serves approximately 54 customers.

2. Although there is some uncertainty as to the legal status of the various entities involved with Palo Mesa, the Commission initially authorized its acquisition by a general partnership, the partners of which are Robert D. Holmes, Jr. and Addison B. Wood, doing business as Pacific Improvements. Our D.82-04-082 granted these owners the right to expand the Palo Mesa service area upon certain conditions which have not yet been met. In that decision Palo Mesa is still described as a partnership with the same partners; however, the name of the partnership is set out as Pacific Improvements, Inc. The decision does not authorize transfer of ownership to a corporation.

3. Pacific Improvements, Inc., a corporation, is presently involved in a bankruptcy proceeding.

4. Palo Mesa's owners stopped providing public water service in mid-1982.

5. Rural is a California corporation, incorporated on May 14, 1982. Robert H. Newdell and Robert A. Smith are the sole shareholders, directors, and officers of Rural.

6. Newdell and Smith have operated Palo Mesa at their own expense since mid-1982.

7. On May 11, 1979, Mr. Holmes, as president of Pacific Improvements, Inc., entered into a lease agreement with Roy Hope (now deceased) and Rita Hope in which Pacific Improvements, Inc. sold to and leased back from the Hopes items of property used by Palo Mesa in the necessary course of providing public utility water services. No approval of the lease agreement was sought from or given by the Commission.

8. The current status of title to the easements for the distribution and transmission lines within the Palo Mesa service area is uncertain. The testimony indicated that certain easements are recorded for the benefit of public use and others are recorded in the name of Palo Mesa.

9. Newdoll and Smith, as developers of Tract 1088, have, at their own expense, drilled and tested a well and erected two storage tanks on Tract 1088 having a capacity of 220,000 and 200,000 gallons, respectively.

10. The San Luis Obispo County Department of Public Health has tested water from the new well and finds the quality acceptable.

11. Newdoll and Smith, as developers of Tract 1088, state that they intend to complete approximately \$150,000 of improvements to the public utility water system, including the cost of the well and tanks referred to in paragraph 9, above, and to contribute the improvements to Rural. About two-thirds of the work is reportedly completed.

12. Rural proposes to issue common stock for \$5,000. The testimony from the Commission Staff's Revenue Requirements Division recommends that the issuance of such stock be authorized.

Conclusions of Law

1. Palo Mesa's owners should be relieved of the public utility responsibilities of Palo Mesa.
2. The CPC&N previously issued to Palo Mesa should be transferred to Rural.
3. Rural should adopt the rates, tariffs, and rate base of Palo Mesa.
4. Rural should be authorized to issue common stock for \$5,000.

O R D E R

IT IS ORDERED that:

1. On the effective date of this decision, Robert D. Holmes, Jr. and Addison B. Wood, partners, are relieved of their public utility obligation as to Palo Mesa Water Company (Palo Mesa).
2. On the effective date of this decision, Rural Water Company (Rural) shall assume the public utility obligations of Holmes and Wood, shall assume liability for refunds of all existing customer deposits, and shall notify the affected customers of the transfer.
3. Within 10 days after transfer, Rural shall write to the Commission, stating the date of transfer and the date the requirements of Ordering Paragraph 2 were completed.
4. Rural shall either file a statement adopting Holmes' and Wood's tariffs or refile those tariffs under its own name as prescribed in General Order Series 96-A. This decision makes no determination as to Rural's rate base and buyer is put on notice that for rate-fixing purposes the historical net book value of the system shall be used.
5. After the effective date of this order, Rural shall obtain and keep all records of the construction and operation of the water system.

6. Within 90 days after the effective date of this order Rural shall file, in proper form, an annual report on transferors' operations from the first day of the current year through date of transfer.

7. The certificate of public convenience and necessity transferred to Rural will become effective upon confirmation by the Commission's Executive Director that Rural has posted, in a manner acceptable to the Commission, an amount of cash or cash equivalents equal to \$5,000, payable to the Commission, to ensure that adequate and sufficient service is provided within the service area as authorized by PU Code Section 1006.5. This bond is necessary to ensure compliance with the improvements ordered in D.82-04-082 to a portion of the service territory that Rural is not otherwise developing.

8. Rural shall meet the following conditions within one year of the date of this decision:

- a. Rural shall file with the Commission a copy of each recorded conveyance of title or easement necessary to ensure access to the utility's operative plant sites.
- b. Rural shall submit to the Commission evidence that recorded easements for existing distribution lines and facilities operate in favor of Rural which shall include the dedication of such easements solely to public use.
- c. Rural shall submit evidence of ownership of existing distribution lines.
- d. Rural shall submit to the Commission a copy of each recorded easement and conveyance of title necessary to give Rural use of and access to the proposed facilities on Tract 1088, including well sites and water mains.
- e. If, after good faith effort, Rural is unable to meet any of the above conditions, it may seek to modify this order by showing that compliance is not reasonably possible or that compliance is no longer necessary to protect the ratepayers' interests.

9. Upon this decision becoming effective Rural shall report to the Commission staff every three months regarding its progress in complying with Ordering Paragraph 8 of this decision.

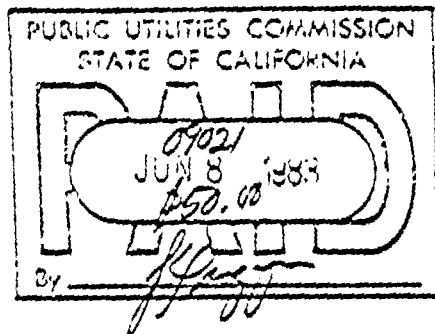
10. Rural shall observe and comply with all of the requirements of D.82-04-082 with the two-year expiration running from the date of this decision; however, if any term or provision of D.82-04-082 is inconsistent with the terms and provisions of this decision, the terms and provisions of this decision shall control.

11. Property which is necessary or useful in the performance of Rural's duties to the public and any permit or right thereunder may not be sold, leased, assigned, mortgaged, or otherwise disposed of or encumbered without prior authorization from the Commission (see PU Code Section 851).

12. Rural is authorized to issue common stock for \$5,000. The authority granted by this order to issue stock will become effective when the buyer pays \$50, set by PU Code Section 1901.1. In all other respects the order becomes effective 30 days from today.

Dated JUN 1 1983, at San Francisco, California.

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



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

Joseph E. Bodovitz
Joseph E. Bodovitz, Executive Director

Commission Decision (D.) 89954 of February 14, 1979 granted Pacific Improvements, a general partnership, the authority to acquire Palo Mesa from its previous owners. Pacific Improvements' partners are Robert D. Holmes, Jr. and Addison B. Wood. Pacific Improvements was granted the authority to expand its service by D.82-04-082 dated April 21, 1982. In that latter decision and in the application now before us Pacific Improvements is listed as "Pacific Improvements, Inc.", the general partner in the limited partnership of Palo Mesa.

A duly noticed hearing was held in this matter before Administrative Law Judge Colgan on March 10, 1983. The matter was submitted on the same date, pending receipt of concurrent briefs from the Commission staff and Rural. No representative of Palo Mesa appeared at the hearing.

Although Rural initially disagreed, the staff believes that this action is essentially a transfer of a CPC&N certificate and would prefer using that more direct approach instead of relieving Palo Mesa of its certificate and issuing a new certificate to Rural as requested. The staff believes that the result would be equally conclusive in either case and that "transfer" is a more accurate description. Rural no longer objects to describing this as a transfer proceeding.

Based upon the pleadings, prior decisions, and the hearing we make the following findings.

6. Within 90 days after the effective date of this order in proper form, an annual report on transferors' operations from the first day of the current year through date of transfer.

7. The certificate of public convenience and necessity transferred to Rural will become effective upon confirmation by the Commission's Executive Director that Rural has posted, in a manner acceptable to the Commission, an amount of cash or cash equivalents equal to \$5,000, payable to the Commission, to ensure that adequate and sufficient service is provided within the service area as authorized by PU Code Section 1006.5. This bond is necessary to ensure compliance with the improvements ordered in D.82-04-082 to a portion of the service territory that Rural is not otherwise developing.

8. Rural shall meet the following conditions within one year of the date of this decision:

- a. Rural shall file with the Commission a copy of each recorded conveyance of title or easement necessary to ensure access to the utility's operative plant sites.
- b. Rural shall submit to the Commission evidence that recorded easements for existing distribution lines and facilities operate in favor of Rural which shall include the dedication of such easements solely to public use.
- c. Rural shall submit evidence of ownership of existing distribution lines.
- d. Rural shall submit to the Commission a copy of each recorded easement and conveyance of title necessary to give Rural use of and access to the proposed facilities on Tract 1088, including well sites and water mains.
- e. If, after good faith effort, Rural is unable to meet any of the above conditions, it may seek to modify this order by showing that compliance is not reasonably possible or that compliance is no longer necessary to protect the ratepayers' interests.