

Decision 83 06 067 JUN 15 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of REHOBOTH FARMS, a)
limited partnership, State of)
Colorado and CUYAMA VALLEY COMMUNITY)
INC., a California corporation)
(Public Utility Sewer Co.) for an)
order pursuant to Section 851, 852)
and 854 of the Public Utilities Code,)
authorizing REHOBOTH FARMS to acquire)
ownership of the water facilities)
located in, and presently serving,)
the community of New Cuyama, Santa)
Barbara County and authorizing)
REHOBOTH FARMS to acquire the out-)
standing shares of stock of CUYAMA)
VALLEY COMMUNITY INC. presently)
providing sewer service to the)
community of New Cuyama, Santa)
Barbara County.)

Application 82-09-06
(Filed September 3, 1982;
amended March 31, 1983)

Robert M. Jones, Attorney at Law, for
applicant.
Borton, Petrini & Conron, by M. Scott
Radovich, Attorney at Law, for Cuyama
Community Services District, protestant.

O P I N I O N

By this application, as amended, Rehoboth Farms (Rehoboth), a limited partnership, seeks authority to acquire ownership of the water facilities located in and presently serving the community of New Cuyama, Santa Barbara County, and authorizing it to acquire the outstanding shares of stock of Cuyama Valley Community, Inc. (CVC), which presently provides sewer service to the community of New Cuyama, Santa Barbara County.

Process
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Following notice a formal public hearing on this application was held in Los Angeles on November 29, 1982 before Administrative Law Judge (ALJ) William A. Turkish and the matter was submitted on that date. Subsequent to the hearing, Rehoboth was advised by the ALJ to amend its application to conform to the evidence, and the amendment was filed on March 31, 1983.

Background

CVC was organized and incorporated by Richfield Oil Corporation, now Atlantic Richfield Company (ARCO), for the purpose of owning, controlling, operating, and maintaining the sewage system which served the townsite of New Cuyama, Santa Barbara County. At the time, CVC did not own any water facilities. All of the outstanding shares of CVC stock were owned by ARCO until January 26, 1973 at which time the stock was sold and transferred by ARCO, without first obtaining Commission approval, to an organization known as Foundation for Airborne Relief (FAR). In addition to purchasing the sewage system from ARCO, FAR also purchased land and improvements in the townsite, as well as the water system which included water well sites, water pumping, and water storage facilities. Both the water and sewer systems served 180 customers in New Cuyama. FAR, which is no longer an active corporation, allowed CVC to be suspended from conducting business in September 1978. On March 31, 1982 CVC was reactivated and reinstated as a California corporation when the stock was purchased from FAR by Rehoboth. Rehoboth is a limited partnership which owns other property in the area. It intends to have its wholly owned subsidiary, CVC, operate the water and sewer utilities.

Although FAR was a nonprofit California corporation, it used the CVC stock and the real properties it owned in New Cuyama as collateral for loans from several sources prior to May 1974. In Decision (D.) 84172 dated March 4, 1975 in Case (C.) 9661, the Commission declared CVC to be a public utility sewer corporation and FAR to be a public utility water corporation. The operations and maintenance of both water and sewer facilities were ordered to be performed by and be the obligation of FAR. In later hearings before the Commission (July 1975) evidence was introduced which showed that:

1. FAR had become a defunct corporation and was no longer operating the water or sewer facilities at New Cuyama.
2. FAR defaulted on a loan from Estado Home Loan Company (Estado), a California corporation.
3. FAR defaulted on a loan from Arkansas Valley Development Corporation (AVDC), an Oklahoma corporation.
4. Estado foreclosed on its loan to FAR and received title to the physical assets, real property, water well sites, water pumping equipment, and water storage facilities at New Cuyama.
5. At no time did Estado own any CVC stock or the physical properties of the sewer facilities.
6. AVDC did not foreclose on or pursue any action on the default of the loan by FAR but continued to retain ownership of all the outstanding shares of stock of CVC. These shares of stock represent ownership of the sewer mains and laterals and the easements within the townsite, as well as the sewage treatment facilities located adjacent to the townsite.

7. Estado, in order to protect its interest, was forced to take over and continue operation of both the water and sewage facilities at New Cuyama.

Following the introduction of this evidence, the Commission issued D.85383 dated January 27, 1976 and found Estado to be in control of both the water and sewer operations and declared Estado to be a public utility. Estado was ordered to continue the operation and maintenance of both the water system and the sewer system at New Cuyama, although Estado did not own the sewer system.

Robert M. Mann, supervising engineer of Stetson Engineering, Inc., and James W. Bierl, vice president of Rehoboth, testified on behalf of Rehoboth. Berle K. Halford, a director of the Cuyama Community Services District (District), testified on behalf of protestant.

Following is a summary of the evidence presented by the vice president of CVC and by the supervising engineer of Rehoboth's engineering consultant firm:

1. Rehoboth, in a desire to own both the water system and the sewer system at New Cuyama, began an acquisition program to acquire ownership of both entities. Rehoboth discovered that CVC was the owner of a sewer system and a sewer disposal system but not the land upon which the sewage disposal system was situated. In addition, CVC also owned all of the easements within the townsite in which the sewage system laterals and trunk lines, as well as the water lines, were located. In order to acquire this ownership, Rehoboth acquired the stock of CVC from FAR which had been declared a public utility by this Commission in D.84172 dated March 4, 1975.

Since D.84172, the Commission had several additional hearings in which two other parties came forth as owners. One was Estado and the other a Mr. and Mrs. Vern Wechsler.

2. Rehoboth has entered into agreements to acquire the interests claimed by the other parties by deed, quit claim deed, or by transfer of stock ownership. On June 24, 1980 Rehoboth acquired the water facilities from Estado along with all appurtenances.
3. CVC, which had been suspended from conducting business in the State of California in 1978, was reinstated upon application by Rehoboth in March 1982.
4. Rehoboth, which has entered into purchase agreements with all known parties claiming an interest in the water and sewer systems serving New Cuyama, wishes to transfer all of these ownerships to CVC and thereafter be relieved from all responsibility for the operations of the water and sewer systems serving New Cuyama. CVC will then be the sole surviving public utility responsible for these systems.
5. On January 1, 1983 Rehoboth created a document which, when authorized by the Commission, will transfer all the public utility facilities of the water and sewer distribution systems serving New Cuyama to CVC, a public utility presently under jurisdiction of the Commission (late-filed Exhibit G). Upon Commission approval Rehoboth will execute and record this document. This event will then complete the acquisition of the water and sewer systems in New Cuyama by Rehoboth and the transfer of these utilities to CVC as the surviving public utility.

6. An eminent domain proceeding was initiated by District against Rehoboth et al. on January 16, 1981, but the matter was taken off calendar by District. District wishes to obtain both the water and sewer systems and Rehoboth has no objection to selling the water and sewer systems to District, but the parties have been unsuccessful in negotiating a sales price.

Following is a summary of the evidence presented by

B. Halford, a director of District, protestant in this matter:

1. District is desirous of obtaining the water and sewage systems involved in this proceeding and District has filed an eminent domain action in the Superior Court.
2. District was formed in 1977 and shortly after it was formed, ARCO sold District a note of \$625,000 which had at one time been given to Estado by FAR. Shortly thereafter District foreclosed on this note to Estado and then reached a new agreement with Estado for payment on a new note. The new note called for a down payment of \$50,000 with annual payments of \$100,000 thereafter until the note was paid.
3. District owns Well 4, which is located within the townsite of New Cuyama. This is the only well that produces water within the townsite. District wishes to own and operate the water and sewer systems because it feels it can do it more efficiently, more economically, and at lower cost to the citizens of New Cuyama. In general, the residents of New Cuyama have not been pleased with the way this water system has been operated in the past, although in the last few months it has improved. District intends to proceed with the eminent domain action to acquire the water and sewage systems because it feels it is within the best interest of the citizens.

Discussion

Although District was granted permission to file a late-filed protest in this matter, the testimony of its witness and the documents received into evidence present no valid basis for protesting this application. It is a matter of record that District has filed an action in eminent domain to acquire the water and sewer utilities and it is possible that the protest was filed by District to protect its pending action. However, that action is immaterial with respect to this application and will not be affected by the outcome of this decision.

Although there was some sketchy history of the water and utility systems of New Cuyama presented during this proceeding, a more complete history can be found in D.84172, an interim opinion dated March 4, 1975, in D.84849 dated August 26, 1975, and in D.85383, a second interim opinion dated January 27, 1976 in C.9661 (an investigation on the Commission's own motion into the status, tariffs, rates, rules, regulations, etc., and practices of CVC, ARCO, FAR, and AVDC). In D.84172 we found that CVC was a wholly owned subsidiary of ARCO; that CVC provided water and sewer service to the inhabitants of New Cuyama without charge from the time of its inception until January 26, 1973; and that ARCO sold all of the stock and assets of CVC to FAR on January 26, 1973, including the water and sewer systems. We also found that authority to sell and transfer the water and sewer systems was not sought by nor granted to either ARCO or CVC and that FAR, up to the date of the decision, was found to be operating the water and sewer systems through CVC. We further found that neither FAR nor CVC had sought a certificate of public convenience and necessity but that FAR, through CVC, and CVC as well, were

deemed to be public utilities as defined by the Public Utilities (PU) Code. Other findings in D.84172 found that the ultimate ownership of CVC could not be determined from the record.

In D.84849 the Commission found evidence that FAR had mortgaged or encumbered part or all of respondent CVC's public utility water and sewer system properties to Estado, a California corporation, and to A. E. Pruner, Willard Morrow and Nedra L. Morrow, Sharlet B. Culbertson, Leroy F. Peterson, and Hazel D. Peterson, all being designated by the Commission in that decision as respondent Estado.

In the second interim opinion in D.85383 we found that Estado had acquired the utility property of CVC on May 30, 1975 through a foreclosure sale on FAR's note to Estado in the amount of \$55,000. It was also found that as of June 1, 1975, Estado took over the operation of both the water and sewer utilities of CVC, including the billing, collection of charges for service, and payment of CVC's bills. Authority for this transfer was not sought from nor given by the Commission. However, the Commission found it was in the best public interest to recognize Estado as, at least, the de facto owner of the water and sewer systems, subject to Commission jurisdiction. We ordered that Estado should not sell, lease, sign, merge, consolidate, mortgage, transfer, or otherwise dispose of or encumber the whole or any part of its water system or sewer system necessary or useful in the performance of its duties to the public without having first secured an order from the Commission authorizing it to do so.

In D.85383 the Commission again found that as there were too many contingencies over which it had no control, it could not determine the ownership of CVC at that time. However, subsequent to the issuance of D.85383, there have been no others who have come forth alleging any interest in either the water or the sewer systems.

Among the documents submitted by CVC and appended to its application are the following:

Exhibit A - Contains the original articles of incorporation of CVC as filed on April 17, 1950; the 1981 Annual Report of CVC showing, among other things, that CVC was a corporation in good standing as of April 1982, and a statement of ownership showing as owners A. E. Pruner Trust with a 9.4% proportionate interest in total ownership, F. Ross McMurry with a 45.1% proportional interest in CVC, Estado with a 36.1% interest, and Francis Pruner holding a 9.4% proportional interest in the property; and a letter dated June 4, 1980 from counsel for AVDC to FAR transferring 1,000 shares of CVC's stock, previously pledged as security for a loan, back to FAR by AVDC.

Exhibit E - Contains a grant deed from Vernon W. Wechsler and Harriet Wechsler granting title of the water distribution system serving the New Cuyama townsite vicinity, including all wells, towers, spheres, equipment, appurtenances, reservations, and rights-of-way to Estado.

Exhibit F - Consists of a land contract, secured by deed of trust, by which F. Ross McMurry, Francis Ann Pruner, Estado, and Darryl S. Pruner, trustee under the will of A. E. Pruner, transfer all their rights and interest in various parcels of real estate in the community of New Cuyama containing the water system to Rehoboth.

Inasmuch as Rehoboth has taken steps to acquire both the water and sewer systems serving New Cuyama, intends to further develop both the water and sewer systems through capital expenditures, has the financial resources available to make the necessary improvements for the continued operation of both systems, has reactivated CVC and reinstated it as a California corporation as of March 31, 1982, has executed transfer agreements with all those known to have any interest in either the water or sewer systems, and intends to transfer all its right, title, and interest in the water and sewer systems serving New Cuyama to CVC, we believe that it is in the best public interest to recognize CVC, a wholly owned subsidiary of Rehoboth, as the owner and manager authorized to operate both the water and sewer systems presently serving the township of New Cuyama. This recognition of CVC, as the owner and manager of the water and sewer systems, will enable the Commission to finally fix responsibility and jurisdiction of the water and sewer public utilities serving New Cuyama and help ensure reliable water and sewer service to the inhabitants of New Cuyama. We see no valid or practical reason why the acquisition of rights in the water and sewer properties by Rehoboth and the subsequent transfer of ownership to CVC, as requested, should not be approved.

Findings of Fact

1. CVC was organized by Richfield Oil Corporation (now ARCO) for the purpose of owning and operating a sewage system serving the townsite of New Cuyama, California.

2. A number of unauthorized transfers of the water and sewer systems serving the community of New Cuyama have taken place in the past without authority from this Commission.

3. Rehoboth has acquired all of the issued and outstanding stock of CVC from AVDC.

4. CVC is a wholly owned subsidiary of Rehoboth Corporation.

5. CVC, which was suspended by the State of California for nonpayment of franchise taxes in the year 1978, has been reinstated by the State of California in March 1982.

6. Rehoboth has acquired, by purchase, all known interests of others in the land and public utility facilities used in the operation of the water and sewer systems serving the township of New Cuyama.

7. Rehoboth, through CVC, has been operating a water and sewer system since approximately June 1980.

8. Rehoboth's act, through CVC, constitutes a water corporation and a sewer corporation within the definitions of PU Code Sections 241 and 230.6.

9. Neither Rehoboth nor CVC has a certificate of public convenience and necessity to operate the water or sewer systems serving the township of New Cuyama in Santa Barbara County.

10. Rehoboth wishes to transfer all of its rights and interests in the water and sewer systems serving New Cuyama to CVC.

Conclusions of Law

1. Operation of the New Cuyama water and sewer system, by CVC, is that of a public utility as defined by PU Code Sections 216 and 2701, subject to the jurisdiction of this Commission.

2. The acquisition of the outstanding shares of stock of CVC held by others and for authority to acquire ownership of the water facilities located in and presently serving New Cuyama by Rehoboth should be granted.

3. Rehoboth's acquisition of the land and public utility facilities used in the operation of the water and sewer systems serving the township of New Cuyama for transfer to CVC should be authorized. Rehoboth should be authorized to transfer and assign title to the public utility facilities of both the water and sewer systems as described and set forth in Exhibit A attached to and made a part of the amendment to Application (A.) 82-09-06 to CVC. ✓

4. FAR, Estado, AVDC, Vernon and Harriett Wechsler, and Rehoboth should be relieved from their public utility obligations.

O R D E R

IT IS ORDERED that:

1. Rehoboth Farms (Rehoboth) is authorized to acquire ownership of all the outstanding shares of stock of Cuyama Valley Community, Inc. (CVC) and to acquire ownership and control of the water and sewer facilities serving the community of New Cuyama, California, as per the documents contained in Exhibits "C" through "F" attached to A.82-09-06.

2. Rehoboth is authorized to execute the documents contained in Exhibit "G" attached to the amendment to A.82-09-06, transferring and assigning all its claims and rights in the public utilities facilities of both the water and sewer systems now serving customers in the community of New Cuyama to CVC.

3. Upon execution of the documents of transfer indicated in paragraph 2, Rehoboth is relieved of its public utility obligations in connection with the operations of the water and sewer systems serving customers in the community of New Cuyama, California.

4. CVC is declared to be a public utility, subject to the jurisdiction of this Commission.

5. Foundation for Airborne Relief, Estado Home Loan Company, Arkansas Valley Development Corporation, and Vernon and Harriett Wechsler are relieved from all public utility obligations in connection with the water and sewer systems serving customers in the community of New Cuyama, California.

6. CVC is authorized and directed to file, within 10 days after the effective date of this order, the following items as they relate to each utility:

- a. Schedule of rates set forth in Appendix A of this order.
- b. Tariff service area map clearly indicating the boundaries of the service area.
- c. Appropriate rules and copies of printed forms to be used in dealing with customers.

The filing shall conform to General Order Series 96 and shall become effective 5 days after the date of filing. CVC shall book the estimated utility plant costs and related depreciation reserves developed by staff for water plant installed prior to December 31, 1973. Formal books of accounts shall be set up in accordance with the Uniform System of Accounts for Class D water utilities.

7. CVC shall keep separate plant, revenue, and expense accounts for the sewer system and for the water system.

8. CVC shall not sell, lease, assign, merge, consolidate, mortgage, transfer, or otherwise dispose of or encumber the whole or any part of its water system or sewer system necessary or useful in the performance of its duties to the public without having first secured from the Commission an order authorizing it to do so.

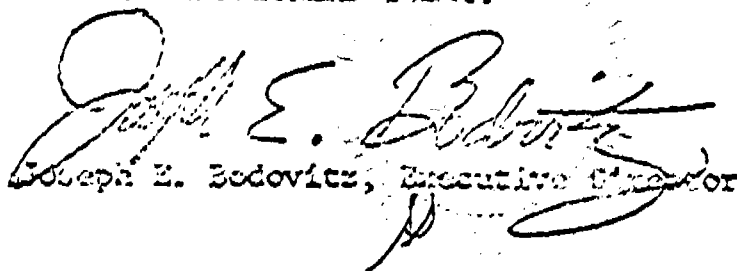
This order becomes effective 30 days from today.

Dated JUN 15 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

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Background

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3. Rehoboth's acquisition of the land and public utility facilities used in the operation of the water and sewer systems serving the township of New Cuyama for transfer to CVC should be ^{and approved} granted. Rehoboth should be ^{authorized} granted authority to transfer and assign title to the public utility facilities of both the water and sewer systems as described and set forth in Exhibit A attached to and made a part of the amendment to Application (A.) 82-09-06 to CVC. SS

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