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Decision No. 86633

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Glen D. Koskela, Berry Matheny,  
Charles Migliavacca and Roger L.  
Yates,

Complainants,

vs.

Brown's Water Works, a public  
utility, the executor, heirs, and  
beneficiaries of the estate of  
Palle H. Andersen, deceased, Does  
1 through 8, inclusive,

Defendants.

Case No. 9888  
(Filed March 26, 1975;  
amended June 2, 1975)

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ALBION-LITTLE RIVER FIRE DEPARTMENT,  
BUD THOMPSON, CABI NEWGARD, LENA  
LUZZI, T. L. SPROCK, W. D. PUGH,  
DAVID NIERHAHE, GERRETT GREGORY,  
GLEN KOSKELA, ROGER YATES, SARAH  
ADELMAN, MARK GAUCHE, DON SILL,  
CHARLES MIGLIAVACCA, BYRON D.  
RANDALL, W. B. MATHENY, and MRS.  
A. L. ROMER,

Plaintiffs,

vs.

EARL LATHAM, CHARLES LATHAM, ALICE  
MAE LATHAM FRAZELL, PEARL D. GROOM,  
PAUL E. ANDERSEN, LOIS B. TOWNSEND,  
HARVEY BEAN, BROWN WATER WORKS,  
VERNE BEAN and PACIFIC GAS AND  
ELECTRIC CO., a public utility, and  
DOES ONE through FIVE, inclusive,

Defendants.

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Case No. 9897  
(Filed April 9, 1975;  
amended April 17, 1975)

(Appearances are listed in Appendix A)

THIRD INTERIM OPINION

The heirs and executor of the estate of Palle H. Andersen, deceased owner of Brown's Water Works, were joined as defendants in these complaint proceedings. By Decision No. 84872 dated September 3, 1975, the Commission ratified an order by the presiding examiner which directed defendants to have a water chlorination system installed and to conduct certain test drilling in the area known as Well No. 1. The Commission issued a second interim decision (Decision No. 85941 dated June 15, 1976), which stated that these steps were taken. However, the well which was dug in response to the earlier decision has not produced water.

Decision No. 85941 also ordered that further specific steps be taken by September 1, 1976, including the installation of new gathering lines and repair of the distribution system to insure distribution of available water to all customers; the filing of a legal description of all watershed land and system right-of-way; and evidence of recordation of covenants running with the land for protection of the quality and quantity of water "generated from all watershed lands supplying the water system." In addition, the Commission instituted a ban on the extension of service to any new customers without its prior approval, and ordered that no sale or other disposition of watershed lands be made without prior Commission approval.

Subsequently, we have been advised that the ordered improvements and repairs have not been made, and that water service by Brown's Water Works remains inadequate. Furthermore, as a result of a communication from counsel for Mrs. James H. Groom, one of the heirs of Palle H. Andersen, the Commission is informed that

a Final Decree of Distribution of the estate of Palle H. Andersen was entered by the Superior Court of Mendocino County on May 14, 1976.

Counsel for Mrs. Groom, Morris M. Mawson, Esq., of Santa Rosa, California, suggests that the heirs might quit claim their interests back to the executor of the estate, citing Public Utilities Code Section 851, for the proposition that an assignment of public utility property without prior approval of this Commission is void, and suggests, further, that the heirs may be unable to "centralize decision-making power" for the control and operation of the public utility.

Because the improvements and repairs ordered by Decision No. 85491 have not been made by September 1, 1976, and because the recent letter from counsel for Mrs. Groom suggests that the heirs fail to understand or are unwilling to assume the responsibilities of ownership of a public utility water company, a third interim order is necessary. Ownership of Brown's Water Works, which is a public utility, devolved to the heirs at the moment of Mr. Andersen's death. (Probate Code Sections 28, 300; Reed v. Hayward (1943) 23 C.2d 336.) Vesting is not contingent upon a court decree (see 24 Cal Jur. 3d 104, and 53 Cal Jur. 2d 586). Only possession and control rest in the executor until distribution. He is responsible for marshalling and preserving the assets for the benefit of the heirs until the estate is in a condition for distribution, and then for distributing the estate promptly. (In re Morelli Estate (1951) 102 C. A2d 39.)

Under Public Utilities Code Section 851, any transfer of property necessary or useful in the performance of a public utility's duties requires authorization of this Commission. As related in Decision No. 85941, mimeo. p. 4, the heirs of Palle H. Andersen did not obtain authorization to transfer part of the public utility assets to the customers of Brown's Water Works after the preliminary

distribution; and they have not indicated together in any formal manner to the Commission that they are willing to assume their public utility duties and responsibilities. Final distribution of the estate is an appropriate time for them to seek Commission authority for the transfer of the certificate of public convenience and necessity to themselves. This enables the Commission to recognize possession of the current owners and make any rulings that may be appropriate. The procedure does not create ownership because that existed from the time of death of the testator.

Section 851 is designed to prevent an existing owner from disposing of assets necessary to the service of the utility's customers, that is to say, the separation of necessary assets from public service. As pointed out in Decision No. 85941, the heirs have already made one attempt to transfer to the customers the water tower and a small plot of land on which it is located, while retaining the vastly more valuable watershed lands for themselves. This purported transfer has not been approved by the Commission, and our Second Interim Order directed that none of the watershed or right-of-way lands should be sold or disposed of in any way without prior approval of this Commission. By this Third Interim Decision, we reaffirm that order in Decision No. 85491, including the directive respecting necessary repairs and improvements to the system and shall serve this order on all the heirs of Mr. Andersen to provide them with notice in the event that it becomes necessary to initiate contempt proceedings against the heirs.

Finally, it is not this Commission's function to advise owners of a public utility how to agree amongst themselves. All that is necessary to the performance of our duties is that the parties responsible be identified and held accountable for the public utility service. At the time of our Decision No. 84872 those parties were the executor and the heirs of Palle H. Andersen.

Those parties were present and acquiesced in the motion subsequently ratified by Decision No. 84872 and, apparently, attempted to comply with that decision, but apparently they have not complied with Decision No. 85941.

Now that the Superior Court has entered a Final Decree of Distribution, the parties solely responsible for the operation of Brown's Water Works are the heirs. This is not a new responsibility for them. By taking the assets of the estate of Palle H. Andersen, they take also the legal responsibilities adhering to those assets. It is time for the owners of Brown's Water Works to recognize their public utility responsibilities by filing a joint application for transfer of the utility certificate from Mr. Andersen to themselves as joint owners in accordance with the Final Decree of Distribution, and to employ a manager to operate the system in accordance with the Commission's regulations and orders until such time as they succeed in properly transferring the utility with Commission approval to other parties.

Findings

1. The heirs of Palle H. Andersen, as legal owners of Brown's Water Works since the time of death of their predecessor-in-interest, have the ultimate responsibility for maintaining adequate service to the customers of the public utility.
2. After the final distribution of the estate of Palle H. Andersen, the heirs are jointly responsible for all of the duties pertaining to the ownership of Brown's Water Works.
3. The owners of Brown's Water Works should be ordered to apply to this Commission for a transfer of the certificate of convenience and necessity applicable to Brown's Water Works.
4. The owners of Brown's Water Works and each of them should be served personally with a copy of this decision. At the same time, the owners should be served a copy of our previous decision,

Decision No. 85941 containing specific instructions to be complied with for the protection of service to the customers of Brown's Water Works.

Conclusion

The heirs of Palle H. Andersen are joint owners of Brown's Water Works, a public utility within the purview of Public Utilities Code Sections 240 and 241 and are, jointly and severally, responsible for all of the duties pertaining to that status.

THIRD INTERIM ORDER

IT IS ORDERED that:


1. The heirs of Palle H. Andersen, named in Appendix B attached hereto, as the owners of Brown's Water Works are joint owners of a public utility and they and each of them are hereby ordered to apply within thirty days of the effective date of this decision to this Commission for a transfer of the certificate of public convenience and necessity applicable to Brown's Water Works.
2. The owners of Brown's Water Works who reside in California and each of them shall be served personally with a copy of this decision. Any owner who resides outside of California shall be served by registered mail. At the same time, the owners shall be served with a copy of our Decision No. 85941 containing specific instructions to be complied with for the protection of service to the customers of Brown's Water Works. Proof of service shall be appended to the copy of this decision in the Commission's formal files.
3. All the provisions set forth in our Second Interim Order in Decision No. 85941, pp. 7-8 are hereby reaffirmed, and except Ordering Paragraphs 3, 4, and 5, shall be fully complied with within twenty days of service of this decision. The action required by Ordering Paragraphs 4 and 5 shall be completed no later than thirty days after the effective date of this decision.

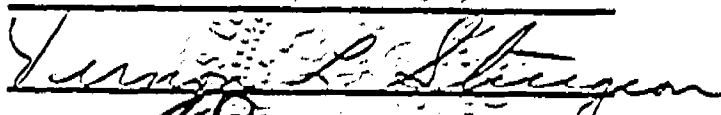
4. As to Ordering Paragraph 3 of Decision No. 85941, the owners of Brown's Water Works and each of them shall, within forty-five days of the effective date of this decision, file a statement with this Commission concerning the progress made towards compliance with Ordering Paragraph 3, and shall provide an estimate for the timely progression of work toward complete satisfaction of the Second Interim Order. Each statement shall be signed under penalty of perjury.

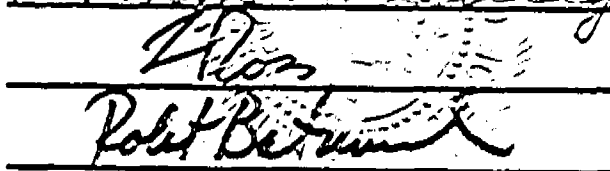
5. A copy of this decision shall be furnished by mail to Morris M. Mawson and to each of the parties in these proceedings.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 10<sup>th</sup>  
day of NOVEMBER, 1976.

  
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President

  
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Commissioner

  
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Commissioner

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

Complainants: Roger L. Yates, Christopher Charpentier, Harold A. Irish, Attorney at Law, Glen D. Koskela, Raymond A. Yates, W. E. Matheny, Gerrett W. Gregory, David and Margo Nierhane, Mrs. A. L. Romer, and Arthur Piscitelli, for themselves; Charles Migliavacca, for Water Users and Customers of Brown's Water Works; and Jonathan M. Lehan, Attorney at Law, for Albion-Little River Fire Protection District.

Defendants: Paul E. Andersen, for himself; Kathy Graham, Attorney at Law, for Pacific Gas and Electric Company; and Conrad L. Cox, Attorney at Law, for Crocker National Bank.

Intervenor: Scott A. Miller, for Mendocino County Health Department, and Marguerite C. Dawson, for Whilesboro Grange.

Interested Party: Margaret L. Parducci.

Commission Staff: Freda Abbott, Attorney at Law.



APPENDIX B

1. The parties named below are to be personally served with a copy of this decision and of Decision No. 85941, and proof of service shall be appended to the copy of this decision in the Commission's formal files.

Earl Latham  
10-A Willowbank Road  
Davis, CA 95616

Lois B. Townsend  
171 N.W. Street  
Vacaville, CA 95688

Paul E. Andersen  
1543 3rd Avenue  
Alameda, CA 94501

Pearl D. Groom  
1625 Fair Oaks Court  
Santa Rosa, CA 95401

Alice Mae Latham Frazell  
145 Ruby Drive  
Lakeport, CA 95453

Vern Bean  
1616 K Street  
Eureka, CA

Charles Latham  
2947 Duran Avenue  
Visalia, CA 93277

2. The party named below who resides outside of the State of California shall be served with a copy of this decision and of Decision No. 85941 by registered mail, and proof of such service shall be appended to the copy of this decision in the Commission's formal files.

Harvey Bean  
Route 1  
Box 140-B  
Myrtle Creek, OR 97457