

Decision No. 86985

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter Application of
 C. Wesley Bird and Jennie C. Bird,
 husband and wife, for authority to
 sell to James H. Kitchen and
 Bernice K. Kitchen, husband and
 wife, as joint tenants, all of
 their right, title and interest in
 the water systems now owned by C.
 Wesley Bird and Mrs. Jennie C. Bird,
 and known as the Wesmilton Water
 System, and the Anoosh-Van Water
 System, in the County of Fresno,
 State of California, and to transfer
 certificate of public convenience
 and necessity.

Application No. 56436
 (Petitions for Orders
 Enjoining Interference
 with Operation of a
 Public Utility Water
 Company filed February
 4 and 7, 1977)

O P I N I O N

In Decision No. 86238, effective August 30, 1976, the Commission conditionally authorized C. Wesley Bird and Jennie C. Bird (sellers) to transfer the Wesmilton Water System and the Anoosh-Van Water System to James H. Kitchen and Bernice K. Kitchen (buyers) in accordance with the agreement of sale attached to their Application No. 56436. In the agreement of sale, sellers had agreed to give clear title to the water systems to the buyers. Authorization to complete the transaction is December 1, 1977.

The petitions and affidavits of sellers and buyers show that after the transaction was placed in escrow it was discovered that judgment liens totaling approximately \$14,000 were outstanding against the systems' real property. A dispute caused by the discovery ensued between sellers and buyers. Sellers, in an attempt

to resolve the dispute, on August 25, 1976 prepared and recorded a grant deed covering the real property in question. The deed named the sellers as the grantors and the buyers as the grantees.

In an attempt to gain physical possession of the systems, buyers filed an action in the Superior Court of California, county of Fresno, Case No. 208786-4, seeking to enjoin sellers from interfering with the system. A cross complaint was filed by sellers seeking to enjoin the buyers from interfering with the system. The court case is in its early stages.

Late in January 1977 buyers distributed to customers of the systems a written notice stating, in effect, that buyers were now owners of the systems and that all monies in payment of their water bills starting with the February 1977 billing should be remitted to buyers. Sellers responded with a notice to the customers that sellers, not buyers, were the owners of the system and that all payments for water bills should be sent to sellers. Sellers thereafter filed one of the subject petitions in this case requesting that the Commission issue an order requiring buyers to cease and desist from interfering with the total operation of the two systems. Shortly thereafter, buyers filed the other subject petition in this case requesting the Commission to issue its order requiring sellers to cease and desist from interfering with the total operation of the systems. The systems and their records and books apparently have remained in the possession of the sellers.

Sellers, in their petition, allege that the sale of the systems was not consummated; that there has been no completion of the transfer of sale; and that there has been no actual transfer of the system. Buyers, in their petition, allege that there has been a

transfer of title of the systems to sellers; that buyers are paying the taxes and insurance premiums on the systems; and that sellers are wrongfully preventing buyers from complying with several of the conditions of Decision No. 86238. Buyers allege they are ready and able to operate the systems and are more qualified and capable of running the systems than are the sellers.

Discussion

Normally, it is not the Commission's function to determine title to or ownership of public utility property, and we do not attempt to do so in this case. The dispute as to ownership of the systems is now before the Superior Court, and, hopefully, the outcome of that case will determine who is the rightful owner and entitled to possession of and to operate the systems. However, the Commission does exercise the function of determining whether or not a person is a public utility subject to our jurisdiction (Section 2707 of the Public Utilities Code). Sellers have been operating the two water systems for a good many years and wrongfully or rightfully they are still operating the systems. Hence, they are a public utility water company. Additionally, Ordering Paragraph 7 of Decision No. 86238 reads:

"Upon compliance with all of the terms and conditions of this order, sellers shall be relieved of their public utility obligations in connection with the water systems transferred."

The conditions set out in Ordering Paragraphs 2, 3, and 4 of Decision No. 86238 have not been complied with. Hence, Ordering Paragraph 7 has not operated to relieve sellers of their public utility responsibilities. The right to operate the systems, as between the sellers and buyers, is now in litigation. Until the issues in that litigation are finally settled or some other significant change in the situation takes place, the Commission will

continue to charge sellers with the obligations of a public utility water corporation. Along with those obligations is the correlative right to receive compensation at the rates and charges set forth in the utility's tariff. We do not mean to say that such compensation is not touchable by court decree, where the right to conduct the business is contested, or for the payment of rent for the use of a physical system owned by another. We will, therefore, deny without prejudice buyers' request for an order requiring sellers to cease and desist from interfering with the operation of the two systems, and grant sellers' request for an order requiring buyers to cease and desist from interfering with the operation of the two systems until such time that buyers meet the conditions set out in the order in Decision No. 86238.

Findings

1. Sellers have been operating the two systems as public utilities for many years and, without interruption, remain in possession of the systems and continue to operate them as public utilities.
2. Decision No. 86238 gave permission to sellers to transfer the two systems to buyers.
3. The time within which the permission to transfer is December 1, 1977.
4. Ordering Paragraph 7 of Decision No. 86238 reads:
"7. Upon compliance with all of the terms and conditions of this order, sellers shall be relieved of their public utility obligations in connection with the water systems transferred."
5. The conditions set out in Ordering Paragraphs 2, 3, and 4 of Decision No. 86238 have not been complied with, hence, Ordering Paragraph 7 of said decision has not operated to relieve sellers of their public utility obligations.

6. Even if sellers have effectively transferred title to the real property of the water systems to buyers, the mere ownership of the physical plant does not make buyers a public utility.

7. The operators of the two systems require income from the customers of the systems in order to discharge their public utility obligations so that water service to the customers will not be interrupted.

8. Buyers and sellers have joined issue in court over who is entitled to ownership and possession of the two systems.

9. Buyers have circulated among the customers of the systems a written notice wherein buyers claim ownership of the systems and the right to receive payment of the customers' water bills.

10. Some customers of the systems have made payment of their water bills to buyers.

11. Until the issues which have been joined in court are finally settled or some other significant change in the situation takes place, and buyers satisfy the conditions in Ordering Paragraphs 2, 3, and 4 of Decision No. 86238, sellers, as to the two systems involved, are a public utility.

12. Buyers have not been shown to be a public utility as to the two systems involved.

Conclusions

1. The Commission should deny, without prejudice, buyers' request for an order requiring sellers to cease and desist from interfering with the operations of the two systems.

2. The Commission should grant sellers' request for an order requiring buyers to cease and desist from interfering with the operation of the two systems and the collection of water bill payments by the buyers.

3. Because of the emergency nature of the situation, the order below should be made effective on the date signed.

O R D E R

IT IS ORDERED that:

1. James H. Kitchen and Bernice K. Kitchen are ordered to cease and desist from interfering with the operation of the water systems known as Wesmilton Water System and Anoosh-Van Water System currently operated by C. Wesley Bird and/or Jennie C. Bird and from interfering with the collection of monies by C. Wesley Bird and/or Jennie C. Bird required to be paid in satisfaction of water bills covering water service rendered by said water systems.

2. C. Wesley Bird and/or Jennie C. Bird are ordered not to interrupt or discontinue the service of any customer of the water systems known currently as Wesmilton Water System and Anoosh-Van Water System for nonpayment of a customer's water bills where such customer remitted water bill payments to James H. Kitchen and/or Bernice K. Kitchen covering water bills submitted prior to the date of this order.

3. The request of James H. Kitchen and Bernice K. Kitchen for a cease and desist order is denied without prejudice.

4. This order shall remain in effect for a period of nine months after the effective date of this order unless sooner canceled, modified, or extended by order of the Commission.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15th
day of FEBRUARY, 1977.

Robert Bateman
President
William J. Quinn
Leonard Ross
Richard D. Howell
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.