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ORIGINAL

Decision No. 87807 SEP 7 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DICK R. FRIESEN, doing business as Angwin Water Works, for an Order determining that utility use of certain properties has terminated, and authorizing the transfer of certain property.

Application No. 43443
(Filed May 26, 1961)

In the Matter of the Application of (1) Pearl Friesen (dba Angwin Water Company) for an Order Authorizing the Transfer of Utility Property and (2) the Silverado Lakes Water Company (a California corporation) for an Order Authorizing the Issuance of Stock.

Application No. 53359
(Filed May 26, 1972)

Angwin Chamber of Commerce,

Complainant,

vs.

Pearl Friesen (dba Silverado Lakes Water Company, formally Angwin Water Company),

Defendant.

Case No. 10187
(Filed October 1, 1976)

Dowell E. Martz, for Angwin Chamber of Commerce, complainant.

Thomas Watson, for Pearl Friesen, doing business as Angwin Water Company, defendant.

Jasper Williams, Attorney at Law, for the Commission staff.

O P I N I O N

By its complaint filed October 1, 1976 Angwin Chamber of Commerce (Chamber) requests the Commission to:

1. Restore to the Angwin Water Company certain watershed lands that were separated by Decision No. 81550 dated July 3, 1973 in Application No. 53359.
2. Restore to a dedicated use two reservoirs known as Deer Lake and Oroville Lake, which this Commission found by Decision No. 62277 dated July 18, 1961 in Application No 43443 to be "...no longer necessary or useful in the performance of public service heretofore rendered".
3. Require Angwin Water Company to make system improvements which are needed to solve service deficiencies by applying funds gained from the sale of certain lands.

Public hearing was held before Examiner Daly on February 3 and 4, 1977 at Angwin, with the matter being submitted upon the receipt of concurrent briefs since filed and considered.

The utility serves the unincorporated community of Angwin. It is located approximately eight miles northeast of the city of St. Helena, Napa County. The main service area comprises approximately two square miles on the westerly slopes of Howell Mountain adjacent to, but not including, Pacific Union College. The utility also serves the 16-acre Champion tract located about two miles southwest of the main service area, near the St. Helena Sanitarium. The Champion system is supplied from the Angwin system by a 2-inch transmission main. As of December 31, 1975, the system served 367 residences, 4 multiple housing units, 1 mutual water company, and 13 fire hydrants.

Surface water rain runoff from four man-made reservoirs are part of a 10-lake cluster. Six of these reservoirs are used for irrigation, of which two are also used for recreational purposes.

The record indicates that the initial system, consisting of springs and a pipeline located within and adjacent to the White Cottage Ranch on Howell Mountain, was installed about 1870 by a Mr. Goetche and a Mr. Henne. In 1930 Mr. Dick Friesen purchased the White Cottage Ranch, which at that time was being operated as a resort, and he continued the distribution of water to his neighbors. He subsequently constructed six earth-filled dams to impound runoff water from the ranch.

By Decision No. 57751 dated December 16, 1958 in Cases Nos. 5910 and 5683 and Application No. 36736, the Commission found that all of the water facilities, including six lakes (Red, Newton, Granite, Whitehead, Oroville, and Deer), had been dedicated to public utility service. The Commission further found that the water supply had reached its capacity to adequately serve the existing customers.

By Decision No. 62277 dated July 18, 1961 in Application No. 43443 the Commission found that Deer Lake and Oroville Lake, which had only been used to provide water to Pacific Union College, were no longer necessary for the rendering of public utility service. The order relieved Friesen of all further public utility obligations and liabilities relating to water storage and delivery from the two reservoirs. It also authorized the transfer of Deer Lake, together with a parcel of land surrounding it, to Friesen's daughter, Bette Cooksley. Pearl Friesen, wife of Dick Friesen, subsequently acquired the Deer Lake properties from her daughter, Bette Cooksley.

Dick Friesen died on April 25, 1962 and bequeathed all of his right, title, and interest in the White Cottage Ranch and the Angwin water system to Pearl Friesen.

Because of advanced age and poor health, Pearl Friesen, on July 26, 1971, entered into an agreement to sell 3,600 acres comprising the White Cottage Ranch to a joint venture consisting of a general contractor and land developer, MacDonald, Nelson and Heck, Inc., and a firm of civil engineers, Murphy-Pulice Associates, Inc. The agreement also provided for the sale of the Angwin water system to the Silverado Lakes Water Company, a California corporation, formed by the joint venture.

By Decision No. 81550 dated July 3, 1973 in Application No. 53359 the Commission authorized the transfer of the assets and certificates of public convenience and necessity of Angwin Water Company from Mrs. Friesen to the Silverado Lakes Water Company and authorized the latter to issue 16,300 shares of its \$10 par value common stock to Mrs. Friesen in consideration thereof. The order also authorized Mrs. Friesen, upon acquiring the stock, to thereupon transfer said stock and control of the water system to the joint venture.

While authorizing the transfer the Commission in Decision No. 81550 found, among other things, that:

- "1. The reservoirs known as Red, Whitehead, Granite, and Newton have been unequivocally dedicated to public utility use.
- "2. The reservoirs known as Deer and Oroville, previously found not to be necessary for public utility use, have not been rededicated to such use.
- "3. The reservoirs known as Cocksley, Doe, Fawn, and Henne are not now nor have they ever been dedicated to public utility use.

- "4. The four dedicated reservoirs are adequate to provide storage of water to meet the existing requirements of the utility's present customers.
- "5. The watershed tributary to the four reservoirs is adequate to provide the runoff necessary to supply the existing water supply requirements of present customers in all years with a rainfall of 29 inches and above.
- "6. In a year having precipitation below 29 inches, runoff from the remaining watershed tributary to the ten lakes considered herein will be required.
- "7. The watershed used to supply the Angwin Water Company system has never been dedicated exclusively to public water supply purposes.
- "8. Use of the watershed for historically compatible nonutility use is not adverse to the public interest.
- "9. Improvement of the transmission and distribution system is required to bring the operation up to reasonable operating standards.
- "10. All water users, including so-called multiple unit housing connections, should be metered.
- "11. The restrictions against service of new or additional customers, other than those presently served

(including MJH's) at the effective date of this decision, should be continued until modified or rescinded by order of the Commission.

- "12. The retention by the joint venture of the watershed lands and all lakes and reservoirs except the four found to be dedicated to public use, is not, if protected by suitable deed restrictions and covenants running with the land, adverse to the public use. The deed restrictions and covenants should preserve the quantity and quality of water presently available for public utility use and reserve the land in its natural state of open space for use for grazing, horseback riding, biking, and picnicking."

The joint venture was subsequently declared bankrupt and all of the land, as well as the water system stock, reverted to Mrs. Friesen. Decision No. 85500 dated March 2, 1976 granted Mrs. Friesen authority to operate the company and ordered the continuance of the improvements as required in Decision No. 81550. Mrs. Friesen is presently residing in Oregon and the water system is being managed by her son-in-law, Thomas Watson. On February 6, 1976, Thomas Watson executed separate agreements to purchase from Mrs. Friesen certain portions of real property and all of the shares of stock in the Silverado Lakes Water Company. The full consideration for the sale of the stock is \$50,000 payable as follows: \$10,000 in cash and the balance in monthly installments of \$775 at the rate of 7 percent per annum on the unpaid balance. According to the terms of the agreement, title will not pass until the purchase price has been paid in full. The full purchase price of the real property is \$75,000 payable in monthly installments of \$775 with interest at the rate of 7 percent per annum on the unpaid balance.

An application requesting authority to transfer the stock has not as yet been filed with the Commission.

Staff's Investigation

As a result of its investigation the staff reached the following conclusions:

1. The utility's present sources of supply are not adequate to meet system demands for years below normal rainfall. The utility would be in a precarious position if two consecutive years of below normal rainfall occurred.

2. The utility storage facilities, though sufficient to meet peak demand requirements, are not strategically located to meet system demands during high usage in the area of Eastern Avenue and Lukens Place, and Viewridge Drive.

3. Approximately 39,000 feet of the utility's distribution system is undersized and fails to provide the level of service required by the Commission through General Order No. 103.

The staff recommends that:

1. The utility should augment its present source of supply to produce at least 75 gallons per minute by reactivating its three existing wells to serve its present customers. The utility should also make provisions to have first priority on water stored in the six lakes used for irrigation and recreation.

2. The utility should install an additional storage tank to serve Eastern Avenue and Lukens Place, and Viewridge Drive as set forth in the report which was filed with the Commission on December 1, 1974.

3. The utility should install a 6-inch line on Bay Street and Manzanita Drive to complete the loop around Manzanita Drive.

4. The utility should replace the existing 2-inch line serving the Champion tract with a 6-inch line.

5. The utility should establish a 5-year program, beginning with the ensuing year to replace all mains under 4 inches in diameter with mains of at least 4-inch diameter and preferably 6 inches or more in diameter.

6. The program should be filed with the Commission within 120 days after the effective date of the decision in this matter. The Commission should be notified within 60 days of any alteration of the program.

7. The restrictions on new connections as set forth in Decision No. 57751 should remain in effect until the utility can make a showing, satisfactory to the Commission, that there is an adequate supply of water to service any new connections.

A representative of the Commission's Finance and Accounts Division testified that an examination of the utility's financial records indicates a failure on the part of the utility to maintain its records in accordance with the Uniform System of Accounts. In certain instances Mr. Watson expended personal funds for utility expenses.

With an estimated net income of \$10,000 for 1976 and a depreciation allowance of \$5,700, the utility has a cash flow of \$15,700 which the staff believes is sufficient to make plant improvements.

Dedicated Facilities

In compliance with the Commission's requirements in Decision No. 81550 Mrs. Friesen granted the Silverado Lakes Water Company an easement which provided that:

"No water shall be diverted to storage in Cooksley, Deer, Doe, or Fawn Lakes during any year until the four lakes described in Exhibit A hereto have been filled to capacity." 1/

The water referred to in the easement refers to rain runoff from the watershed property and not to water that is stored in the nondedicated lakes. The record fails to demonstrate any material change in the use of the water from these lakes. The nondedicated lakes are still being used primarily for recreational purposes and for the irrigation of grazing land.

According to the testimony of Thomas Watson, the only use of nondedicated water in 1976 was the draining of Lake Henne which was with the permission of Mrs. Friesen and in accordance with the terms of the land sale agreement. He further testified that some water was used from Deer and Oroville Lakes because 1976 was an unusually dry year.

The staff, therefore, contends that there is an express dedication of the current runoff from the watershed of the non-dedicated lakes and an implied dedication of the accumulated water in Lakes Deer, Oroville, and Henne. The express dedication of the rain runoff is clearly covered by the easement. The only question is whether there has been an implied dedication of water stored in Lakes Deer, Oroville, and Henne.

1/ The lakes referred to in Exhibit A are the four dedicated lakes.

The staff argues that when an individual holds property in a personal capacity and utility property through a corporation, and uses the personal and utility property together to serve the public, legal title is no bar to the finding of an implied dedication of the privately held property. (Rancho Green Valley, et al. (1953) 53 CPUC 83, 84, 85.) It further argues that because of the admitted use of these services in 1976 there has been a partial dedication of Lakes Deer, Oroville, and Henne to the extent necessary to meet the deficiency between the amount of water demanded and the amount of water available to the utility.

In our opinion, providing water to the utility during the time of an emergency hardly indicates an unequivocal intent on the part of Mrs. Pearl Friesen to dedicate the sources of such water to a public use.

Mr. Watson testified that if the water supply were to become critical, and water from nondedicated lakes was needed, it could be diverted into the water system pursuant to a written agreement between the owner of the nondedicated lake property and the utility. He believes that in accordance with the terms of such a written agreement a prescribed number of cubic feet could be set aside each year as a backup supply for the system.

Service Deficiencies

A number of witnesses testifying on behalf of Chamber complained of water outages, especially during the spring and summer months. There was no criticism of the water quality. In fact several witnesses were highly complimentary of the water's purity and taste.

A few witnesses testified that the water pressure in their areas was too low. According to the staff witness 75 percent of the transmission system consists of 6-inch mains, but a major portion of the distribution system is undersized which results in low pressure in certain areas.

Several witnesses who expressed problems with pressure have their homes at a higher elevation than the service connection. According to the record, these connections in most instances were made a considerable time ago and with full knowledge by the customer that service from the utility's distribution system to the higher elevation of the home would result in pressure problems. The utility maintains a 40-pound pressure at the point of connection, which is in full compliance with its tariff provisions. The problem can be readily solved if these customers are willing to install booster pumps.

Mr. Watson testified that the utility is willing to file a 5-year plan of operation covering projected repairs, replacements, and additions. He further testified that the utility has reactivated two standby wells, that Moning Well was providing 150 gpm, and that Goodwell was providing 35 gpm.

After consideration the Commission finds that:

1. Except for the draining of Lake Henne and the use of some of the water from Deer and Oroville lakes in 1976 there has been no substantial change in the use of water from the non-dedicated lakes, and the emergency use of such nondedicated water fails to demonstrate an unequivocal intent on the part of Mrs. Pearl Friesen to dedicate Henne, Oroville, and Deer lakes to a public use.

2. The utility's present sources of supply are not adequate to meet system demands for years below normal rainfall although the reactivation of three presently inactive wells will be helpful in supplementing existing sources. Mr. Watson has expressed a willingness to provide water from nondedicated sources on an emergency basis pursuant to an agreement to be entered into with Mrs. Pearl Friesen.

3. The storage facilities of the utility are not sufficient to meet peak demands and a substantial portion of its distribution system is undersized, which results in pressure problems that can only be solved by a 5-year main replacement program.

4. The restriction on new connections as set forth in Decision No. 57751 should remain in effect; however, the 20 meters that are presently inactive may be reassigned.

5. Pending final payment of the stock purchase agreement Pearl Friesen will be considered by the Commission to be the legal owner of the utility, and Mr. and Mrs. Watson will be considered as her agents. These parties are placed on notice that the portion of the sales agreement which would increase the installments by one-half the percentage of any general rate increase will not create any priority over other utility expenses.

6. The utility has failed to maintain its records in complete compliance with the Commission's Uniform System of Accounts.

O R D E R

IT IS ORDERED that:

1. Within sixty days after the effective date of this order Mrs. Pearl Friesen and Mr. and Mrs. Thomas Watson shall file with this Commission a priority agreement to provide water to the utility from nondedicated sources on an emergency basis.

2. The utility shall augment its present sources of supply to produce at least 75 gallons per minute by reactivating the three wells that have heretofore been inactive.

3. Within one hundred twenty days after the effective date of this order the utility shall file with this Commission a five-year program beginning with the year 1978 for the replacement of all mains under 4 inches with mains of at least 4 inches and preferably with 6-inch mains. The Commission shall be notified within sixty days of any alteration of the program.

A.43443, et al. car

4. Within one year after the effective date of this order the utility shall:

- (a) Install an additional storage tank to serve Eastern Avenue, Lukens Place, and Viewridge.
- (b) Complete the loop around Manzanita Drive by installing a 6-inch main on Bay Street and Manzanita Drive.
- (c) Replace the existing 2-inch main serving the Champion tract with a 6-inch main.
- (d) Maintain its records in accordance with the Commission's Uniform System of Accounts.

5. The restriction on new connections as set forth in Decision No. 57751 shall remain in effect, but all inactive meters may be reassigned.

6. In all other respects the relief requested in the complaint filed in this proceeding is denied.

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

Dated at San Francisco, California, this 7th day of SEPTEMBER, 1977.

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

Robert B. Berman
President

Richard D. Stovall
Clair J. Schindler
Commissioners