

Decision No. 88038 OCT 18 1977

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JOHN L. PIERCE to assume control of Mar Vista Water Company following deed in lieu of foreclosure after default in payment of purchase price, and of JIMMIE R. SMITH to buy the Mar Vista Water Company in Santa Cruz County.

Application No. 57480  
(Filed July 28, 1977)

O P I N I O N

Applicant John L. Pierce (Seller) seeks authority to assume control of the water system known as MAR VISTA WATER COMPANY, following deed in lieu of foreclosure after default in payment of the purchase price, and then to sell, and applicant Jimmie R. Smith (Buyer) seeks authority to buy the public utility water system owned by seller. Mar Vista Water Company serves 101 customers in Forest Glenn Subdivision approximately one mile east of the community of Aptos, in Santa Cruz, California.

Seller initially acquired the system from its previous owner pursuant to the authority granted by Decision No. 69033, dated May 11, 1965, in Application No. 47361, and sold the system to Russell T. Whitcomb and Karen J. Whitcomb pursuant to the authority granted by Decision No. 79251, dated October 19, 1971, in Application No. 52767. Said "Whitcomb" paid a portion of the purchase price in cash, but the balance was secured by the water company, and "Whitcomb" executed a deed of trust to perfect said security. Subsequently "Whitcomb" defaulted in payments, and on November 14, 1975, John L. Pierce filed a complaint for specific performance of the deed of trust and requested appointment of a receiver. A receiver was appointed by the Court, and subsequently "Whitcomb" agreed to quit-claim the property in lieu of foreclosure.

A quitclaim deed was filed for record in the County of Santa Cruz on the 9th day of February, 1976, which vested the property in John L. Pierce and Eleanor Pierce. Title to said property was taken in the name of the applicant and his wife because it was community property. Subsequently, the Seller and his wife divided their community assets between them, and on June 14, 1976, Eleanor Pierce quitclaimed her interest in the water company to John L. Pierce, the applicant, as his sole and separate property.

The water system properties consist of one 10-inch well equipped with a 20-hp turbine pump having a capacity of 200 gpm, one storage tank with a capacity of 10,000 gallons, 9,412 feet of water main, 101 services of which 11 are metered, tank lot and pump house. As of December 31, 1976, the original cost of the property being transferred is \$22,923, the depreciation reserve is \$13,482 resulting in a net book cost of \$9,441. The selling price is \$10,000 cash. A copy of the transfer agreement is attached to the application as Exhibit C.

The Seller desires to dispose of the system because he has interests outside of the county and only reacquired the property because of the defaulting previous buyer. The buyer desires to acquire the system because he is a licensed plumbing contractor, and is a customer of the system, and believes it to be an advantageous business purchase. The buyer has experience to qualify him to operate the system, as he is a licensed plumbing contractor, and has been for several years, and he has made many repairs on this system and other systems. The financial statement of buyer attached to the application shows a net worth of approximately \$170,000. The net worth includes real estate with a reported fair market value of \$120,000.

The applicants made the following statement in the application:

"The present condition of the system is satisfactory, and no additional work is necessary to bring it to satisfactory condition. All future upgrading will be the responsibility of the buyer."

However, the Commission staff has found, based on field investigations, that the existing facilities were barely adequate to meet the needs of the customers. The staff recommended in a November 16, 1972 letter to Mar Vista Water Company that the utility install additional storage facilities. The staff has also found that the general condition of the 10,000-gallon tank is poor and that the base supporting timbers were also in poor condition. At some future proceeding, we may order the utility to install additional plant facilities.

The Commission finds that:

1. Seller regained possession of the public utility as a result of the quitclaim by Whitcomb and the quitclaim by Eleanor Pierce.
2. The proposed sale and transfer is not adverse to the public interest.
3. Buyer has the financial resources to acquire and operate the water system known as the Mar Vista Water Company, but Buyer may not have sufficient financial resources to pay for extensive additional plant facilities.
4. It is reasonable for buyer to apply the present rates of seller in the service area of Mar Vista Water Company.
5. A public hearing is not necessary.

On the basis of the foregoing findings, the Commission concludes that the application should be granted as provided in the following order.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred nor as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. John L. Pierce may reassume control of the Mar Vista Water Company.
2. On or after the effective date hereof and on or before December 31, 1977, John L. Pierce (seller), doing business as Mar Vista Water Company, may transfer and sell to Jimmie R. Smith (buyer), and the latter may acquire the public utility water system referred to herein together with the operating rights pertaining thereto, substantially in accordance with the terms of the Agreement of Sale attached to the application herein.
3. Buyer shall file, within ten days after the effective date of the transfer, a notice of adoption of the presently filed rates and rules of seller, in accordance with the procedure prescribed by General Order No. 96-A. No increases in the presently filed rates shall be made unless authorized by this Commission.
4. On or before the date of actual transfer, seller shall refund all customers' deposits and advances for construction, if any, which are due and payable as of the date of transfer. All unrefunded deposits and advances shall be transferred to buyer, who shall be responsible for their refund when due.
5. On or before the date of actual transfer of the properties herein authorized, seller shall transfer and deliver to buyer and the latter shall receive and preserve all records, memoranda and papers pertaining to the construction and operation of the properties herein authorized to be transferred.

6. On or before the end of the third month after consummation of the transfer as herein authorized, buyer shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. Within ten days after the actual date of transfer, seller and buyer jointly shall file in this proceeding (a) a written statement showing the date of transfer and the date upon which buyer assumed operation of the water system herein authorized to be transferred, and (b) a true copy of each instrument of transfer of said water system and operating rights.

8. Upon completion of the sale and transfer authorized herein and upon compliance with all the terms and conditions of this order, seller shall be relieved of his public utility obligations in connection with the utility system herein authorized to be transferred.

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

Dated at San Francisco, California, this 18<sup>th</sup> day of OCTOBER, 1977.

Robert Batminalich  
President  
William Sussman, Jr.  
Vernon L. Stanger  
Charles D. Howell  
Clair T. Deibel  
Commissioners