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Decision No. 89954 FEB 14 1979**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of ORVAL BURNS, EVELYN BURNS,
VICTOR BURNS, MARJORIE ROBERTS,
ADDISON B. WOOD and ROBERT D.
HOLMES, JR., dba PACIFIC
IMPROVEMENTS, a General
Partnership, to sell and buy the
PALO MESA WATER COMPANY, near
Oceano, in San Luis Obispo County.

Application No. 58071
(Filed May 18, 1978)
(Amended October 5, 1978)

O P I N I O N

Orval Burns, Evelyn Burns, Victor Burns, and Marjorie Roberts (Burnses) request authority under Sections 851-854 of the Public Utilities Code to sell and transfer, and Pacific Improvements (Pacific Improvements), a general partnership, requests permission to buy the Palo Mesa Water Company.

The Palo Mesa Water Company provides water service to approximately 43 customers in an unincorporated area known as Tract 151, approximately two miles southeast of the community of Oceano, San Luis Obispo County.

The Palo Mesa Water Company, a corporation, was by Decision No. 60727, dated September 13, 1960, in Application No. 42286, granted a Certificate of Public Convenience and Necessity to construct and operate a public water system in San Luis Obispo County, to establish rates, and to issue its capital stock not to exceed \$91,600 aggregate par value. Decision No. 60727 was to become effective when Palo Mesa Water Company had made provisions for the reasonable continuation of an adequate supply of water in case of failure of its proposed single well source. By Decision No. 61870, dated April 25, 1961, the Commission found that Palo Mesa Water Company's plans constituted provision for reasonable continuation of an

adequate supply; the Commission ordered that compliance was "deemed to have been effected on March 10, 1961."

By Application No. 50112, filed March 25, 1968, Robert M. Simpson, President of the corporation, requested the certificate be rescinded. He stated that the water company "has never acquired any assets of any description, has never undertaken any service of any kind and has, therefore, never issued any stock or undertaken any operation." Staff investigation disclosed that the corporation had indeed been suspended on January 2, 1963.

Although the water system had been built and, at the time of the above investigation, was serving four customers, the various business entities that had been involved in the property and water system development in Tract 151 had experienced severe financial difficulties. This resulted in several liens being filed and extensive litigation ensuing over title to these properties, including the property containing the well of the water system. At the time of the Commission proceeding, the title appeared to belong to a Mrs. W. Houser, owner of one of the four houses being served; however, further litigation over the title was anticipated.

In order to assure the four existing customers' continuing service, Simpson's application to have the certificate revoked was denied in Decision No. 74874. A petition for rehearing of that decision was denied by Decision No. 75246.

In February of 1973, Commission staff learned that taxes on the water utility property had been delinquent for many years, but that in January of 1973, they were paid by a K. M. Craig of Arroyo Grande, a realtor. He stated that the water utility and several unsold lots in Tract 151 were purchased by him as agent for the Burnses, whose address was Box 104, Brawley, California 92227.

Despite the fact that no application to transfer the water system properties to the Burnses was filed with the Commission at the time that they acquired the water system, the Burnses appear to be the de facto owner. It would serve no useful purpose to insist on an application to transfer ownership to the Burnses at this time. As a practical matter, because the Burnses acquired the water system through a foreclosure proceeding, it probably would not be possible to arrange with the previous owner to join in a transfer request to the Commission. Therefore, the Commission will authorize the 1973 transfer from Palo Mesa Water Company to the Burnses nunc pro tunc.

The Commission staff was further informed that the owner/manager of the water company, O. Burns, moved to Imperial County in 1975, leaving 49 customers. One of these customers, apparently acting as subsequent manager of the system, arranged for repairs to be made on the system and for O. Burns to be billed at his new residence.

In December of 1977, Pacific Improvements allegedly assumed informal operation of the system, and paid for its operation and maintenance from that time on.

An investigation by the Commission staff discloses that the water system is currently in good condition. Pacific Improvements, however, alleges that it is poorly designed, causing continuing problems resulting in excessive costs. It has, therefore, contracted for a feasibility study of system improvements to be undertaken in the future. The extent and cost of these improvements, however, will depend upon whether or not the service area is expanded to include potential further subdivision development in the area.

The application states that the original cost of the utility was \$30,000 and that the purchase price is \$30,000, to be paid in cash. The facilities involved are itemized in the application. No detailed records have been presented to support these figures.

The financial history of this utility is incomplete. The staff has learned that the water system may have been financed, in part at least, through special assessment bonds levied against the property owners. Substantial sums also were expended on repairs and replacements by both the Burnses and Pacific Improvements.

In view of the absence of records showing the original cost of the system, and in view of the likelihood that a substantial portion of the original system was financed by special assessment bonds, only those plant items that can be shown to have been installed and paid for by the Burnses, by Pacific Improvements, or by the original owners of the water system will be accepted for rate-making purposes.

Pacific Improvements desires to purchase the utility because it is acquiring land for development in the existing service area and desires to secure water service from the utility. Pacific Improvements further believes that the water company will be best managed by a residential operator and property owner. One of the employees of Pacific Improvements has been designated as the superintendent of the utility.

The application is silent in regard to notification of the customers, but the Commission staff has been advised that all customers are aware of the proposed sale. The application is also silent on the subject of refund of customers' deposits and payment of refunds due on main extension contracts. The history of the utility, however, indicates that there is little likelihood that either exists. Pacific Improvements has evidenced the ability and the desire to maintain and upgrade the system. The existing rates were established by Resolution No. W-2391, dated August 22, 1978.

The Commission finds that:

1. Acquisition of the water utility by the Burnses should be authorized nunc pro tunc.
2. The utility is no longer a corporation but is a proprietorship with the owners being Orval Burns, Evelyn Burns, Victor Burns, and Marjorie Roberts, the sellers in the matter.

3. There are no known customer deposits, nor are any refunds due on main extension contracts.

4. Purchaser, Pacific Improvements, has evidenced both the desire and the ability to operate, maintain and improve the system.

5. The proposed sale and transfer of the utility by the Burnses to Pacific Improvements is not adverse to the public interest. The application should be granted.

6. The Commission has no formal records of the financing of this water system and subsequent to the last rate increase has learned that at least part of the system may have been financed by assessment bonds. Although a rate base was established for the purpose of the advice letter proceeding, that rate base may be in error and may not be indicative of an amount to be adopted in a future rate proceeding.

7. A public hearing is not necessary.

It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

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

O R D E R

IT IS ORDERED that:

1. The acquisition of the public utility water system described in the application herein by Orval Burns, Evelyn Burns, Victor Burns, and Marjorie Roberts in January 1973 is authorized nunc pro tunc.

2. On or before March 31, 1979, Orval Burns, Evelyn Burns, Victor Burns, and Marjorie Roberts may sell and transfer the subject public utility water system described.

3. As a condition of this grant of authority, Pacific Improvements shall assume the public utility obligations of Burnses within the area served by the water system being transferred and shall assume liability for refunds of all existing customer deposits and advances pertaining to the water system being transferred. Pacific Improvements shall send notice of the assumption of liability for refunds to all customers affected.

4. Within ten days after completion of the transfer, Pacific Improvements shall notify the Commission, in writing, of the date of completion and of the assumption of the obligations set forth in paragraph 2 of this order.

5. Pacific Improvements shall either file a statement adopting the tariffs of Burnses now on file with this Commission or refile under its own name those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.

6. On or before the date of actual transfer, Burnses shall deliver to Pacific Improvements, and the latter shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

7. Upon compliance with all of the terms and conditions of this order, Burnses shall be relieved of its public utility obligations in connection with the water system transferred.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14th day of FEBRUARY, 1979.

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

John E. Burns
President
James L. Sturgeon

Walter J. DeLoach

Commissioners