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ORIGINAL

Decision No. 90646

AUG 14 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GEORGE COOPER)
dba West Water Company for a)
Certificate of Public)
Convenience and Necessity)
under Section 854 of the)
Public Utilities Code.)

Application No. 56842
(Filed November 2, 1976)

O P I N I O N

Applicant presently operates a public utility water system, West Water Company, serving 12 customers and 17 lots in Preston, Sonoma County. Applicant became the owner of the water company by means of an unauthorized transfer on January 1, 1975. Applicant acknowledges that this transfer was without Commission approval as required by Public Utilities Code Sections 851 and 854. A certificate of public convenience and necessity was issued for the water company on July 22, 1952, by D.47498 in A.33214 (Application of West Water Company). Applicant is not the person to whom the certificate was issued. Applicant now seeks the approval of the Commission to operate the water company.

Section 854, cited by applicant, requires Commission authorization for the acquisition or control of any public utility. However, in the instant case, it is the transfer of public utility assets without Commission approval in 1975, not a problem of control, which is significant. Such transfers are governed by Section 851.

Section 851 requires Commission authorization for the sale or other disposition or encumbrance of property necessary to the operation of a public utility. Any sale or encumbrance without such approval is void and of no effect.

The purpose of Section 851 is to prevent the impairment of the public service of a utility by the transfer of its property into the hands of agencies incapable of performing an adequate service at reasonable rates or upon terms which will bring about the same undesirable result. (So. Cal. Mt. Water Co. (1912) 1 CRC 520.)

The primary question to be determined in a transfer proceeding pursuant to Section 851 is whether the proposed transfer would be adverse to the public interest. (Application of Radio Paging Co. (1966) 65 CPUC 635.)

Section 853 allows the Commission to exempt a company from the requirements of Section 851 when it finds that the application for transfer with respect to such public utility is not necessary in the public interest.

The applicant states that he has successfully operated the company for one year; there are no competing utilities in the requested area; and the service, operation of the system, and rates charged would not be affected by the retroactive approval of the unauthorized 1975 transfer.

Given the passage of time since the first unauthorized transfer of West Water Company and the fact that the public is served adequately, a Section 851 proceeding would be a useless formality.

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Findings of Fact

1. A certificate of public convenience and necessity to construct the West Water Company system was granted in D.47498, dated July 22, 1952, in A.33214.
2. Applicant has acquired ownership of West Water Company, which now serves 17 lots and 12 customers.
3. The transfer to applicant was not approved by the Commission.
4. Transfer of the certificate and system would be in the public interest and should be made lawful.
5. A public hearing is not necessary.

Conclusions of Law

1. No additional certificate should be issued.
2. Applicant should be exempted from the provisions of Section 851 of the Public Utilities Code and should be authorized to acquire the public utility water system known as West Water Company.

O R D E R

IT IS ORDERED that George Cooper is exempted from the provisions of Section 851 of the Public Utilities Code and is authorized to acquire title, possession, and control of the public utility water system known as West Water Company in Preston, Sonoma County.

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

Dated AUG 14 1979, at San Francisco, California.

John E. Cooper President
Vernon L. Stegeman

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

Charles T. Griffin
Harold J. Quinn Commissioners