

ORIGINAL

Decision No. 90698 AUG 28 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of A. C. Nejedly, dba West Beaumont Water Company, for a Certificate of Public Convenience and Necessity to operate a water system and to sell water in the South West Quarter, Section 5, Township 3 South, Range 1 West, San Bernardino Base and Meridian, located in Riverside County, California, and to establish rates.

Application No. 52753  
(Filed July 14, 1971;  
amended August 26 and  
September 1, 1971)  
(Reopened January 16, 1979)

Reginald K. Knaggs, for A. C. Nejedly, dba West Beaumont Water Company, and A. C. Nejedly, for himself, applicant.

Grant E. Tanner, Attorney at Law, and M. J. Purcell, for the Commission staff.

O P I N I O NBackground

By Decision No. 79407, dated November 23, 1971, applicant A. C. Nejedly, dba West Beaumont Water Company (WBWC), was granted a certificate of public convenience and necessity to operate a public utility water system on approximately 50 acres of Tract No. 3963, located in the southwest quarter of Section 5, Township 3 South, Range 1 West, within the limits of the city of Beaumont. Although applicant owned the total tract, the amended application requested the water company service area to be restricted to the boundaries of a mobile home subdivision which applicant proposed to develop in two phases on the 50 acres.

In the first phase applicant would develop 53 individually metered lots for sale to mobile home owners and a mobile home rental park, consisting of 124 lots, to be served by a master meter. In the second phase an additional 50 lots for sale were to be developed, for a total of 227 units.

Although supplemental information to the application indicated that the proposed utility operation would become economically feasible only when 400 customers were being supplied by applicant, the certificate was considered justified because the only nearby water purveyor, the Beaumont Cherry Valley Water District (District), indicated a lack of intention to serve applicant's property.

In order to safeguard against discontinuance of operations prior to profitable operation, the Commission issued the certificate with the following conditions:

- (1) Establishment of an operating fund, funded by applicant, which would guarantee reimbursement of losses, pay certain out-of-pocket expenses, and provide for needed replacement or improvement of plant facilities (Ordering Paragraph 1(c)).
- (2) The financing of the mains, services, and hydrants through main extension contracts with the developer (Ordering Paragraph 1(b)).
- (3) Issuance of the certificate was further conditioned on drilling an additional well and equipping sources of supply so as to provide 750 gallons per minute to the distribution system (Ordering Paragraph 2(a)).

As of November 1977, two annual reports had been filed with the Commission for years 1975 and 1976 indicating that no plant has been installed to serve the area designated in Decision No. 79407. These reports also indicated that there were no customers. No annual report was filed for 1977. On August 18, 1978 applicant wrote to the Commission, requesting it to address all correspondence to A. A. Webb & Associates, its consulting engineers retained to consult on real estate developments and the water utility. This letter was signed WBWC, by A. C. Nejedly, general partner. The status of WBWC's

water utility operations was informally investigated during November and December 1978 and January 1979, by M. J. Purcell of the Commission's Policy and Program Development Unit. This investigation consisted of an on-site inspection of the service area and numerous telephone conversations with applicant, his consulting engineers, Riverside County, and city of Beaumont planning, health, and zoning personnel. This informal investigation disclosed that since 1971, applicant has not drilled any wells (except as indicated below) or constructed any pumping, distribution, or transmission facilities. No development, as proposed in the application or otherwise, has taken place in the proposed service area, and no applications for construction permits or subdivision plant maps have been filed with the relevant county or other local authorities.

Based on this information, the Commission on January 16, 1979 issued Decision No. 89895, reopening Application No. 52753. In Decision No. 89895, the Commission ordered the following questions regarding Application No. 52753 to be considered:

1. Whether public convenience and necessity continue to require the proposed water service in the (designated) area.
2. Whether circumstances have changed such that operation as originally proposed is currently not economically feasible.
3. Whether the certificate of public convenience and necessity issued in Decision No. 79407 should be suspended, canceled, or revoked.

Hearing was held in San Francisco before Administrative Law Judge Gillanders on February 23, 1979. Testimony was presented by two staff witnesses and by applicant and a contractor called by applicant. The matter was submitted on closing statements and the receipt of a late-filed exhibit which was received on February 27, 1979. ✓

Staff Showing

According to the staff, the following facts disclose that water utility plant has not been constructed in the proposed service area:

- a. The County Health Department has not issued a health permit.
- b. No building permits for water utility plant for the service area have been issued.
- c. The initial subdivision map for 23.8 acres (for 103 mobile home lots) in Tract No. 3963 was approved by the city of Beaumont on October 28, 1971, but has since expired. No map has been refiled. The tract is currently zoned RT (mobile home development), but this classification would expire and revert to R-1 (residential) by April 1979, if not renewed.
- d. An environmental information form for the proposed subdivision is required by the city of Beaumont. None has been filed.
- e. Annual reports filed with the Commission have indicated that WBWC serves no customers and has developed no water utility plant in the proposed service area.
- f. In conversations conducted by the staff upon various occasions during the months of December 1978 and January 1979 with applicant's consulting engineers, with the applicant, and with other parties, it was repeatedly stated that no plant construction had taken place. This was confirmed by applicant and the consulting engineers in a joint interview conducted January 31, 1979. The only activity indicated consisted of exploratory well drilling being conducted by applicant's joint venturer outside of the service area. The disposition and ultimate ownership of this well, if it is outfitted, is inconclusive.

The staff presented Exhibit 4 which detailed the cost of applicant's proposed system at 1979 construction costs which total \$134,200. Based on these costs, the staff developed estimated operating results for 30 services, 50 services, and 103 services. For 30 services, total operating expenses exceeded total operating revenues by \$6,835, for 50 services by \$7,435, and the 103 services by \$7,395.<sup>1/</sup>

Exhibit 3, filed on February 27, 1979, disclosed that District voted at its meeting of February 5, 1979 to object to private supply of water to applicant's subdivision. District's Board of Directors stated that it would "look with favor" on its annexation of the property encompassed by Application No. 52753. District filed a map requesting an enlarged sphere of influence, including applicant's subdivision, with the Riverside County Local Agency Formation Commission in November 1978. Action on this request has not yet been taken.

According to the staff, its investigation disclosed that, at this time, no identifiable customers of WBWC's water service exist and that plans for development within and in areas adjacent to WBWC's service area are speculative.

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<sup>1/</sup> 103 sale lots authorized by Decision No. 79407. The staff exhibit did not consider the 124 mobile home rental spaces discussed in the decision, since water service to these lots would be master metered.

Applicant's Showing

Applicant's witness, W. R. Heers, with whom applicant is a joint venturer in Tract No. 3963, is a developer in the Riverside and San Bernardino County areas. He testified as to general growth potential in the Beaumont-Banning area, but was unable to define the boundaries of WBWC's service area relative to development in Tract No. 3963. Therefore, he was unable to specify market demand for applicant's subdivision.

In terms of water service, Heers testified that acquisition cost of water from outside the service area might increase lot costs so as to impugn the viability of the development.

Applicant Nejedly testified that he is a real estate developer, involved in development in and around the water company service area. He also testified that the area encompassed by the service area is a significant growth area. He also expressed concern that annexation and intertie costs imposed by District for its service to his property would make the development uneconomical.

Other than the \$1,800 per acre annexation fee imposed by District, however, no evidence was presented by either applicant or his witness of actual cost estimates of District's total intertie costs to support their claims regarding potential deleterious impact on the development. Applicant expressed the opinion that these costs might be \$500,000 to \$560,000 which he felt would have to be paid at the outset of the development. In his opinion this would necessitate a doubling of the sale price of the initial 56 lots he plans to develop.

Applicant also testified that exploratory well drilling has been conducted outside the service area near the property line boundary. Evidence regarding future ownership of the well was presented neither by applicant nor his witness.

Discussion

It is apparent from this record that there is not now a demonstrated need for public utility water service in applicant's service area.

The staff results of operation exhibit clearly shows that applicant's proposed operations would result in substantial losses even at ultimate development.

Applicant not only is a public utility but is also a developer who needs his utility to provide his land with water before he can sell the land.

We have learned, through bitter experience, that small water utilities such as proposed herein become economically unfeasible when the development activities are completed. The reasons are self-evident: by law, the owners of a public utility are entitled to a fair return upon the value of their property devoted to public use. Each dollar of net revenue earned by a public utility requires that the utility receive, in all cases, more than a dollar of gross income in order to pay its income taxes. A public utility can only collect revenues from actual users of its service. In order to provide the owner of a small utility with a fair return, a few customers would have to pay prohibitive rates. On the other hand, a public district, such as District, since it pays no income tax need only collect its net revenue on a dollar-for-dollar basis. It has the power to assess charges against all land within the district and generally has available more sources of low cost capital than does an investor-owned utility.

In this case, the operating fund requirement imposed in Decision No. 79407 is not efficacious, since, as disclosed by the evidence, operating revenues will never equal or exceed operating expenses. That decision also required the applicant to finance the water mains, services, and hydrants through main extension contracts. In addition, it established rates that would require, for two months, a payment of \$9.12 for 1,200 cubic feet of water. These 1971

rates applied today would not even cover today's expenses. District, however, recently increased its bimonthly rates for the first 1,200 cubic feet or less to a \$9.00 minimum. It would appear, therefore, that if the project were served by District, the burden of intertie and annexation fees, which the customer would absorb in paying higher lot costs or rental fees, could be offset by the lower water rates. Furthermore, the customer would be assured of service from an on-going, large-scale operation. In the circumstances of this case, we conclude that District's annexation charge is less onerous, both to the applicant and to potential utility customers, than our own requirements.

Henceforth, it will be our policy that a certificate will not be granted for a new water system if an existing water purveyor, i.e., either a public agency or a privately owned utility, is able and willing to serve the area. Moreover, a certificate will not be granted to any system whose owners cannot demonstrate that it will be viable.<sup>2/</sup>

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2/ Viability would be demonstrated, ordinarily, by meeting the following tests:

- a. the utility would be self-sufficient, i.e., expenses would be supported without their being allocated between the proposed utility and other businesses;
- b. the applicant would have a reasonable opportunity to derive a fair return on its investment, comparable to what other water utilities are currently being granted;
- c. proposed revenues would be generated at a rate level not greatly exceeding that set for comparable service by other water purveyors in the general area.



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Findings of Fact

1. No water utility plant has been constructed in or near WBWC's service area as designated in Exhibit 1 in this application.

2. WBWC has not procured building or health permits required for providing water service or plant construction.

3. WBWC currently serves no customers within its designated service area. WBWC has not served any customers subsequent to issuance of its certificate in Decision No. 79407.

4. The ultimate ownership of the exploratory well now being drilled, which would constitute a supply source if drilling is successful, is unclear.

5. District has formally indicated its willingness to serve the area encompassed by WBWC's service area and its opposition to public utility water service in that area. When Decision No. 79407 was issued, District had no intention of serving this area and expressed no objection to public utility service; its sphere of influence did not include this area. However, it requested a new sphere of influence including applicant's property in November of 1978 and voted on February 5, 1979 to look with favor upon annexation of applicant's service area.

6. New minimum water rates required of customers by District consist of a bimonthly \$9.00 charge for 1,200 cubic feet or less.

7. The utility will not be economically viable as revenues are unlikely ever to equal or exceed operating expenses at approved rates.

8. Future development within and near WBWC's service area remains a matter of speculation.

Conclusions of Law

1. Public convenience and necessity do not require applicant's proposed water service.

2. Applicant's proposed water service is not economically feasible.

3. District is willing to furnish water service to the proposed area.

4. Service supplied by District will be at lower rates than those required by public utility.


5. Decision No. 79407 should be rescinded and vacated, which has the effect of revocation of the certificate of public convenience and necessity conferred therein.

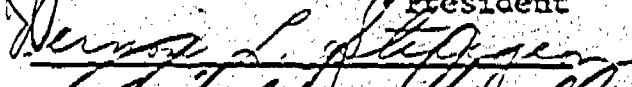

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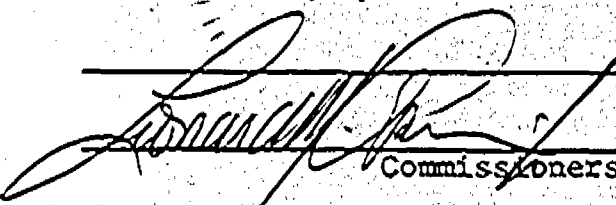
IT IS ORDERED that Decision No. 79407 dated November 23, 1971 is rescinded.

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

Dated AUG. 28 1979, at San Francisco, California.

  
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President

  
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Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.