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ORIGINAL

Decision No. 90974 NOV 6 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Beryl S. Smith, dba
as WEST TAHOE WATER SYSTEM, to sell,
and Betts Realty Co., a California
corporation; Lyle L. Jewell and
Dorothy E. Jewell, husband and wife;
Terry Jewell and Lynne Jewell, hus-
band and wife; to buy the water
system in West Lake Tahoe, El Dorado,
County.

Application No. 58348
(Filed September 11, 1978)

Formal Complaint of the STATE OF
CALIFORNIA, acting by and through the
Department of Transportation,

Complainant,

vs.

Beryl S. Smith, dba WEST TAHOE WATER
COMPANY,

Defendant.

Case No. 10193
(Filed October 20, 1976)

Interim O P I N I O N

Case No. 10193

The State of California, acting by and through the Depart-
ment of Transportation (Caltrans), filed the complaint in Case No.
10193 on October 20, 1976. The complaint alleges that defendant,
Beryl S. Smith, doing business as West Tahoe Water System (West
Tahoe), is a public utility operating pursuant to a certificate of
public convenience and necessity granted in Decision No. 64147 dated
August 21, 1962 in Application No. 44243. That decision authorized
Lawrence H. Smith and Beryl S. Smith to construct and operate a pub-
lic utility water system within the Rubicon Bay Vista Subdivision.

The complaint further alleges that Caltrans is the owner of approximately 12.5 acres located at Rubicon Bay, and known as Rubicon Bay Vista Subdivision Units 1 and 2. Unit 1 consists of approximately 11 lots plus a single lot on which is located Beryl S. Smith's residence. Unit 2 is undeveloped property. The aforementioned Units 1 and 2 were acquired from Beryl S. Smith by means of condemnation for use as a state highway. Plans to build the highway were canceled. The complaint states that Caltrans plans to offer the property for sale. Caltrans alleges that it cannot sell Unit 1 because defendant, through her attorney, formally refused, in writing, Caltrans' request for service to the 11 lots proposed to be sold. Caltrans further alleges that it is unable to sell the 11 lots at their fair market value unless defendant is required to provide water service to said lots.

Complainant requests an order:

1. That defendant, Beryl S. Smith, doing business as the West Tahoe Water Company, be required to provide water service to State's 11 lots which are located within the service area of defendant's public utility; or
2. In the alternative, order that defendant has abandoned its facilities, and thus allow another water service to take over defendant's service area; and
3. For whatever other and further relief this Commission deems appropriate.

In her answer filed December 31, 1976, defendant states as follows:

- "12. Defendant does acknowledge the statement in paragraph 12 [of the complaint] that the State of California did declare in its sale notice that water to the 11 lots would be available from the West Tahoe Water Company, but they were aware of the situations involved and had been informed many times by the owner, Beryl S. Smith, of the West Tahoe Water System, that the returns from 11 vacant lots and one house was not economically feasible when the system was built to serve 30,

plus, lots and additional area to the North, should the system be brought up to PUC standards or even minimum standards that would make it also feasible. . . .

* * *

"15. Defendant did formally refuse to serve 11 lots under the prevailing conditions. The system was built to service more, permits cover more, and economy of serving 11 lots is in question."

Action on the complaint was deferred from time to time at complainant's request in order to provide opportunity for the parties to reach settlement. The Commission was advised by letter dated September 11, 1978 from Caltrans as follows:

"As we discussed, the parties have reached a settlement in the case through a resale of the property to Mrs. Smith. The sale is currently in escrow, and all signs indicate that it will close without the need for a hearing. Therefore, plaintiff State of California requests that the matter be continued in its present status until January 1, 1979, or until escrow closes, whichever comes first. Upon the closing of escrow, I will notify you and request a dismissal of the State's petition now on file."

Upon inquiry from the assigned Administrative Law Judge concerning the status of this matter, Caltrans advised as follows in its letter dated March 8, 1979:

"This letter is to confirm our telephone conversation of February 28, 1979, regarding the above-named case. As I stated to you on the phone, due to a moratorium on sewer permits which exist in the Tahoe Basin area, Caltrans has agreed with the developer who is under a contract of sale for the property of Mrs. Smith to grant a one-year moratorium to see if there are any changes in the present policy in the Tahoe Basin area.

"Consequently, Caltrans would ask that the Commission delay considering placing this case on its calendar until after January 1980. If there are any changes in this case between now and then I will notify you immediately."

Application No. 58348

On September 11, 1978, Beryl S. Smith joined with Betts Realty Co., Lyle L. Jewell, Dorothy E. Jewell, Terry Jewell, and Lynae Jewell in the filing of Application No. 58348, which seeks the transfer of the West Tahoe Water System from Beryl S. Smith to the other named applicants. The application states that seller wishes to dispose of the system because buyers are developing the lots and putting the water to use and buyers desire to acquire the water system because they want full authority for use of the water.

The consideration for the sale and transfer as set forth in the bill of sale attached to the application is \$23,000, of which \$3,000 will be cash and \$20,000 will be in the form of a deed of trust.

Consolidation

Case No. 10193 and Application No. 58348 are consolidated for decision as the facts or record in each proceeding are applicable to both. The correspondence in Case No. 10193 and letter from Mrs. Smith to the ALJ referred to hereinafter are made a part of the consolidated record.

Statement of Facts

The pleadings and correspondence in Case No. 10193 disclose that Caltrans acquired the Rubicon Bay Vista Subdivision (Units 1 and 2) from the Smiths through eminent domain procedures for the purpose of constructing a public highway on portions of that property. The deed for the property acquired by Caltrans was recorded on June 17, 1969. When plans to build the highway were canceled, Caltrans placed the 12.5 acres in Rubicon Bay Vista Subdivision (Units 1 and 2) up for auction, which was scheduled for October 27, 1976. The sale notice stated that water to the 11 lots in Unit 1 would be available from West Tahoe Water System. By letter dated September 21, 1976 from a firm of attorneys representing Mrs. Smith, Caltrans was informed, inter alia, that a directive dated July 15, 1967 was received by Mrs. Smith from the State Water Resources Board that no

commitment for water service should be made by her until the expired water permit issued by the Board was extended. The letter also stated as follows:

- "3. Because of reduction in size of the subdivision from 30 lots to 11 lots, it would not be economically feasible for the West Tahoe Water Company to service the 11 lots your Department proposes to sell."

The announced sale of Rubicon Bay Vista Subdivision (Units 1 and 2) was indefinitely postponed by Caltrans because of the refusal of water service to Unit 1.

Based on the foregoing statement of facts, including the letter from Mrs. Smith's attorney, Caltrans filed the complaint in Case No. 10193. In her answer to the complaint, Mrs. Smith averred that: "The returns from 11 vacant lots and one house was not economically feasible when the system was built to serve 30, plus, lots and additional area to the North, should the system be brought up to PUC standards or even minimum standards that would make it also feasible. . . ." Mrs. Smith also acknowledged in her answer that she refused water service to Caltrans under the then prevailing conditions.

The facts set forth in Application No. 58348 and the correspondence in Case No. 10193 show that Mrs. Smith reacquired the Rubicon Bay Vista Subdivision (Units 1 and 2) from Caltrans without going through public bidding procedures contemplated by Caltrans and that she, in turn, has arranged the sale of that property, together with its water system, to buyers.

In response to a written inquiry from the assigned Administrative Law Judge requesting the names of all present and former water customers of the utility, Mrs. Smith replied on April 2, 1979 as follows:

"In answer to your request of March 30th 1979, the County of El Dorado paid me for several years for the fire protection hydrants when we first developed the Rubicon Bay Vista

Subdivision, but the State of California Department of Transportation has never paid me for monthly service to the lots or the water furnished for irrigation.

"Have billed both the County and the State, but they have not paid.

"We, the developers, have been the occupants of the home until the sale of the home with the water system to the Bettis Realty."

Discussion

It is apparent from the recitation of the above facts and from a review of Decision No. 64147, supra, that only 11 of the lots in Unit 1 have been developed, in addition to the lot on which Mrs. Smith had her residence, that no water service was furnished to any customer other than Mrs. Smith for domestic use, and that there is a restriction on the issuance of sewer permits in the Tahoe Basin for an indeterminate time. The record is not clear whether seller holds a current valid water purveyor permit from the Department of Water Resources, but the latest information available to us is that seller's permit has expired. Mrs. Smith's verified answer to the complaint in Case No. 10193 indicates that it is uneconomical to operate the water system for the 11 undeveloped lots in the Rubicon Bay Vista Subdivision and on that basis service to Caltrans was refused.

In the 17 years since the issuance of Decision No. 64147, the only domestic connection made to the water system is to the owner's residence. The facts show that there is little likelihood that additional lots soon will be developed in the subdivision or that any building will occur on the existing lots because of the moratorium on sewer permits, except for the one sewer permit issued to one of the purchasers through a recent lottery.

In order to grant a transfer application, we are required to make a finding that the transfer of the water system is not adverse to the public interest. (Dyke Water Co. (1946) 63 CPUC 641 and Radio Paging Co. (1966) 65 CPUC 635.) Clearly, it would not be in the public interest to transfer the ownership of a public utility

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water system that has not served the public in the past, -which will have no opportunity to serve the public in the foreseeable future, and which admittedly has a very small chance of financial success. Our duty to the public under the Public Utilities Code and to the prospective purchasers of the water system requires that the transfer of the water system be denied. (Tahquitz Lake Water Co., Decision No. 76916, dated November 18, 1969 in Case No. 8556, et al. (unreported).)

This Commission has refused to grant a certificate for construction of a water system that would be uneconomical (Monte Vista Utility Co. (1970) 71 CPUC 3337) and also has refused to grant a certificate for a water system that was sought for the sole purpose of promoting the sale of lots (Castle Butte Water Co. (1962) 59 CPUC 500). Those reasons are equally valid for denial of the transfer of an existing certificate.

Just as it is not in the public interest to transfer this unused public utility water system, there appears to be no valid reason to continue its phantom existence. It is only a statistic performing no useful function and with no likelihood of changing.

We will therefore order that the certificate shall be revoked 60 days from the effective date of this decision. Should any party wish to protest the revocation of the certificate of public convenience and necessity by this order they may do so by writing to the Commission. If a protest is received we shall arrange for a public hearing on the matter.

Findings of Fact

1. Decision No. 64147 dated August 21, 1962 in Application No. 44243 granted a certificate of public convenience and necessity to Lawrence H. Smith (deceased) and Beryl S. Smith, doing business as West Tahoe Water System, to construct a water system within Rubicon Bay Vista Subdivision Units 1 and 2 (Lake Tahoe).
2. Rubicon Bay Vista Subdivision, Unit 1, consists of approximately 11 undeveloped lots and the residence of Beryl S. Smith.

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Unit 2 is undeveloped. A water system was constructed by the Smiths to serve that subdivision.

3. The property in Rubicon Bay Vista Subdivision was acquired by Caltrans through eminent domain procedures for the purpose of constructing a public highway.

4. When the plans to build a public highway through the Rubicon Bay Vista Subdivision were canceled, Caltrans offered the property in the subdivision for sale.

5. That sale was postponed when Beryl S. Smith refused water service to the subdivision on the basis that the service would be unprofitable and that the water system does not meet the standards of our General Order No. 103.

6. The property in the subdivision was reconveyed by Caltrans to Beryl S. Smith.

7. By Application No. 58348, Beryl S. Smith seeks to transfer the West Tahoe Water System to the Betts Realty Co. and other buyers named in the application.

8. No domestic customers other than the present owner of the water system have been served by the West Tahoe Water System.

9. We take official notice of the moratorium imposed upon the issuance of additional sewer permits in the Lake Tahoe basin.

10. In view of Findings 5, 8 and 9, the proposed transfer of the water system is adverse to the public interest.

11. A public hearing does not appear necessary, inasmuch as it appears that all material facts are part of the record in Application No. 58348 and Case No. 10193.

12. Public convenience and necessity does not require continuation of this public utility water corporation.

Conclusions of Law

1. The request to transfer the certificate of public convenience and necessity issued to Beryl S. and Lawrence H. Smith in Decision No. 64147 should be denied.

2. In view of the reconveyance of the property in the Rubicon Bay Vista Subdivision to Mrs. Smith by Caltrans, no cause of action lies in Case No. 10193, and the complaint in that proceeding should be dismissed.

ALT - LD

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Interim ORDER

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IT IS ORDERED that:

1. Application No. 58348 is denied.
2. The complaint in Case No. 10193 is dismissed.
3. The certificate of convenience and necessity of West Tahoe Water System is revoked 60 days from the effective date of this order.

Should any party wish to protest the revocation of the certificate of public convenience and necessity by this order they may do so by writing to the Commission. If a protest is received we shall arrange for a public hearing on the matter.

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

Dated NOV 6 1979, at San Francisco, California.

John E. Gyles

President

James P. Hamilton

Commissioner

Robert O. Kneale

Commissioner

Alvin J. ...

Commissioner

James W. ...

Commissioners