

ORIGINAL

Decision No. 93045 MAY 19 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WALTER SCOTT,

Complainant,

vs.

HILLVIEW WATER COMPANY,

Defendant.

Case No. 10903
(Filed September 8, 1980)

In the Matter of the Application
of INDIAN WELLS WATER COMPANY,
INC., for an order authorizing
the sale and transfer to
HILLVIEW WATER COMPANY, INC., of
the water distribution system and
certificate of public convenience
and necessity.

Application No. 58969
(Filed July 2, 1979)

Linton Forrester, for Hillview Water Company,
Inc., applicant in A.58969 and defendant
in C.10903.

Walter Scott, for himself, complainant in
C.10903.

Anthony J. Vulin, Attorney at Law, for
for William H. Moore and Gunter A. Redlin,
for California Department of Health
Services, interested party in A.58969.

James M. Barnes, for the Commission staff.

O P I N I O N

By their joint application, filed pursuant to Section 851
of the Public Utilities Code, Indian Wells Water Company, Inc.
(Indian Wells) requests authority to sell and transfer and

Hillview Water Company, Inc. (Hillview) requests authority to purchase and acquire a public utility water system located three miles from the community of Coarsegold in Madera County. Consolidated with the application for the purpose of hearing is the complaint of Walter Scott, a customer of Indian Wells, who alleges that Hillview, as agent of Indian Wells, unlawfully charged complainant a \$100 hookup fee, and further alleges that Hillview, as agent of Indian Wells, is assessing flat rates and metered rates in a discriminatory manner.

Public hearing was held before Administrative Law Judge Daly on February 3 and 4, 1981, at Oakhurst and the matters were submitted.
A.58969

History of Indian Wells Water System

Indian Wells serves the Indian Lakes Estates subdivision, which consists of 507 lots situated on 700 acres of gently rolling terrain with elevations varying from 2,100 feet to 2,360 feet.

The development was originally started by John Adams and was taken over in 1965 by Jeff Dennis & Associates. In 1966 Indian Wells, of which Dennis was president and sole stockholder, was authorized to construct and operate a public utility water system to serve the subdivision.

By Decision No. 84904 dated September 16, 1975 in Application No. 55620, Indian Wells was authorized to sell the system to Messrs. Smith and Kiewer, but the sale was never consummated. In 1976, without the knowledge or authority of this Commission, Dennis sold all of his stock interest in Indian Wells to Bill Eads.^{1/}

^{1/} "854. No person or corporation, whether or not organized under the laws of this State, shall, after the effective date of this section, acquire or control either directly or indirectly any public utility organized and doing business in this State without first securing authorization to do so from the commission. Any such acquisition or control without such prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this State shall aid or abet any violation of this section. (Added Stats 1971, Ch. 1373.)"

On May 4, 1979, Eads entered into an agreement with Linton E. Forrester, as president of Hillview, for the sale and purchase of the Indian Wells water system subject to the approval of this Commission.

On July 2, 1979, Indian Wells and Hillview filed a joint application requesting Commission authority to transfer the system and since July 11, 1979, Hillview has been operating and managing the Indian Wells water system as the agent of Indian Wells. Hillview owns and operates seven neighboring water systems.^{2/} As of May 1, 1979, Linton and Elinor Forrester, as sole stockholders of Hillview, indicated a net worth in the amount of \$500,000.

According to the terms of the sales agreement, as set forth in Exhibit 4 attached to the application, the agreed consideration for the Indian Wells system is \$23,130.66 payable as follows:

- a. \$13,130.66 in cash upon approval of this Commission.
- b. The balance of \$10,000 to be paid in the form of a noninterest-bearing note payable one year from the date of execution.

Six individuals made statements in protest to the proposed transfer. The bases of their opposition varied from the assertion that Hillview had a reputation for providing poor water service in its other water companies, to complaints relating to the existing service of Indian Wells, including excessive amounts of air in the waterline and milk-colored water containing rock particles. The transfer was also opposed by Duane Jennings, who is not only a customer of Indian Wells, but chairman of a newly formed organization named Sierra Organization of Concerned Citizens on Water (SOCOW), which consists of 125 members, all of whom are residents of Indian Lakes Estate and customers of Indian Wells. Although he personally has had no problems with the water service because of his close proximity to the main storage tank, he testified that those at higher elevations on the system have experienced water outages and

^{2/} (1) Hillview Estates, (2) Royal Oaks, (3) Coarsegold Highlands, (4) Sierra Lakes, (5) Raymond, (6) Sunnydale, and (7) Goldside Estates.

dirty water as a result of backsiphoning. According to Jennings SOCOW has initiated meetings with members of the Board of Supervisors and the County Counsel with a view toward establishing a water district. He admitted, however, that with recent improvements made under the Hillview management, the outage problem has been all but eliminated except for an occasional outage caused by an electrical utility failure.

Description of Indian Wells Water System

Indian Wells is supplied from four rock wells varying in depth from 300 to 375 feet. All are equipped with submersible pumps. Wells Nos. 1, 2, and 4 are located on Lot 239, and Well No. 3 as well as a 160,000-gallon storage tank are located on Lot 31. From the storage tank, water is pumped into the one pressure zone distribution system by booster pumps through a 5,000-gallon hydropneumatic tank. No treatment of the well water is currently provided. The distribution system consists of cement - mortar-lined, Class 150 steel mains varying from 4 to 10 inches in diameter. Service connections are either 3/4" or 1" in diameter. At the time of hearing, the system served 151 customers.

After taking over the operation of the Indian Wells water system in 1979, Hillview contacted Gunter A. Redlin, Supervising Sanitary Engineer for the San Joaquin Valley Region of the California Department of Health Services, and requested that the system be inspected.

An inspection was made by the Department of Health Services and a report dated February 1980 was received as Exhibit 2.

According to the report, the system had experienced a number of outages, which, because of the hilly terrain, presented a serious health hazard. When pipes commence to dewater as the result of an outage, a vacuum is created which permits contaminated or unpotable water to back into the system. It was also determined that the water pressure at higher elevations was extremely low and that the system

required more storage capacity. In addition, the water produced by the wells exceeded the drinking water standards for manganese.

A major factor contributing to the outage and pressure problems was a misconnected line that caused water to be continuously recirculated through the storage tank. When this was corrected and a new 5,000-gallon storage tank had been erected on Lot 239, thereby enabling the three wells on Lot 293 to pump directly into the smaller tank without having to pump against the head of the higher elevated main tank, and with the installation of a 250 gpm booster pump to deliver water to the main tank, outages have been almost completely eliminated and the system pressure has been corrected to meet the requirements of General Order No. 103.

According to Redlin the manganese standard is not intended to protect public health, but to assure aesthetically acceptable water. He testified that the department would not order the installation of a treatment plant for the removal of iron and manganese, but would merely request an estimate of cost for such a plant and let the customers decide whether they wanted to pay for it. He believes that the system now meets all of the minimum requirements of the Department of Health Services, but believes that it is essential that a new storage tank should be constructed capable of holding one day's requirements to prevent the system from dewatering during future outages. Although he is of the opinion that the system's water production is adequate for present needs, he did not believe that the existing facilities would meet the requirements of the subdivision when fully developed. In response Forrester indicated that Hillview would be willing to make all necessary improvements provided the customers of the system expressed a prior acquiescence.

In refutation of the statements made by several customers who expressed their opposition to the proposed transfer claiming Hillview had a poor reputation for service and cooperation, Redlin testified that Forrester had cooperated fully with the department not only in the case of the Indian Wells water system, but with his other systems as well, and has done everything asked of him.

Ownership of Lot 239

During the course of hearing it was disclosed that in 1974 Jeff Dennis had sold Lot 239 to Bill Eads and in 1977 Eads had sold the property to William H. Moore, who at the same time purchased a total of 85 lots within the subdivision. According to Moore neither the title search nor the grant deed conveying the property indicated an interest by Indian Wells in the property. At the time he entered into the agreement with Eads to purchase the Indian Wells system, Forrester testified that he was of the opinion that he was purchasing all of the real property upon which the system wells and storage tanks were located. Forrester's understanding is supported by the sales agreement which provides "that the purchase includes, without limiting the generality of the foregoing, all operating and customer account records, maps and drawings, equipment, supplies and materials and such land used in connection with the operation of said water system."

Moore advised the Commission that he has no intention of creating a problem over the property and is willing to convey the property to whomever the Commission decides should operate the water system.

Staff's Position

The staff made no affirmative showing but it recommends that the application be denied. The staff contends that the problems relating to title to the land and facilities of Indian Wells could result in litigation, the expense of which could assertedly constitute an undue burden upon the customers of Hillview's other water systems.

Findings of Fact in A.58969

1. Indian Wells is presently serving 151 water customers living in the Indian Lakes Estates subdivision located in Madera County.
2. Hillview operates seven neighboring water systems and since 1979 has operated and managed the Indian Wells system as the agent of Indian Wells.

3. Because of the hilly terrain of the subdivision and insufficient water pressure, customers situated at higher elevations in the Indian Wells system have experienced outages that have caused the mains to dewater, permitting unpotable water to back into the system thereby presenting a health hazard.

4. At the request of the California Department of Health Services, system improvements were made by Hillview which have corrected the outage problem and the system now meets all of the minimum requirements of the Department of Health Services.

5. With the prior consent of the Indian Wells customers, Hillview is willing to make all improvements necessary to meet the needs and requirements of the Indian Lakes subdivision when fully developed, including the installation of a water treatment plant for the removal of iron and manganese.

6. Hillview has the experience and financial ability to operate the Indian Wells water system.

7. The proposed transfer is in the public interest.

8. This authorization is not a finding of the value of the rights and properties to be transferred.

9. The proposed security issue is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes.

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

Conclusions of Law in A.58969

1. The sale and transfer of stock control of Indian Wells from Jeff Dennis to Bill Eads was without the approval of the Commission and was in violation of Section 854 of the Public Utilities Code, but for the purpose of preserving the continuity of the water system, such sale and transfer should be authorized nunc pro tunc.

2. The transfer of all real property upon which the wells and storage tank facilities of the Indian Wells water system are located was in violation of Section 851^{3/} of the Public Utilities Code.

Indian Wells and Hillview, as its agent, are placed upon notice that they shall be required to take all steps necessary by way of negotiations, or by way of appropriate legal proceedings, to establish title to such property and shall be further required to file a monthly written report on the results of their efforts.

3/ "851. No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

"Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers."

3. The applications should be granted subject to the condition that Indian Wells clears title to all real property upon which the facilities of Indian Wells are situated.

C.10903

Complainant, Walter Scott, a resident of Indian Lakes Estates subdivision and a customer of Indian Wells, testified (1) he is the owner of a newly constructed home; (2) on June 1, 1979, he was charged and paid \$100 to Hillview; (3) although he personally made the connection to the system's distribution main, the \$100 was in fact a hookup fee; (4) initially he was on a flat-fee basis of \$5 a month and was placed on a metered rate as of July 1980; and (5) the main leading to his residence contains a considerable amount of air that registers on the meter.

Scott contends that the assessment of a hookup fee is in violation of the Commission's General Order No. 103; that he should be assessed on a flat rate basis until all customers have been placed on meters; and that he should not be required to pay for air that registers on the meter. ✓

On cross-examination Scott admitted that after paying the \$100 charge on June 1, 1979, he made no further payment until May 5, 1980.

Forrester testified that when he took over management of Indian Wells in April of 1979 he found that many homes had been built and had been connected to the system without informing the utility. He further testified that when it was discovered that Scott was on the system, Scott was billed for an estimated period of construction plus a prepayment of water for the period June 1, 1979 to May 5, 1980. In addition, Forrester testified that (1) after taking over operation of the system, a program of metering had been commenced;

(2) as of the time of hearing all customers except two were on meters; (3) the remaining two were to be metered within a week; and (4) the meter rates are being assessed in accordance with the published tariffs of Indian Wells.

In response to Scott's complaint about air in his lines, Hillview introduced the testimony of an employee who had checked the complaint and found that Scott resides just below the storage tank where the pressure leading into the house is about 95 pounds. Under such pressure, the witness testified, there is bound to be turbulence which results in air. According to the witness a pressure regulator might correct the problem.

Findings of Fact in C.10903

1. Complainant personally connected his residence to the Indian Well water system and commenced using water without informing the utility.

2. When the connection was discovered by defendant the complainant was charged and paid \$100 for an estimated 8-month period while the home was under construction and for the 12-month period from June 1, 1979 to May 5, 1980, on the basis of a flat rate of \$5 per month.

3. As part of a systemwide metering program, which has since been completed, complainant was metered in May 1980 and has since been assessed at metered rates pursuant to tariff rates which have been duly on file with this Commission for several years.

4. Because of complainant's close proximity to the storage tank, with resulting high water pressure and turbulence, his meter is affected by saturated air that could possibly be corrected by the installation of a pressure regulator.

Conclusion of Law in C.10903

The record fails to show that defendant was in violation of its published tariffs or the provisions of General Order No. 103 and the relief requested in Case No. 10903 should be denied; however, Indian Wells and Hillview, as agent of Indian Wells, will be required to take steps to correct the problem relating to saturated air and to report the results of their efforts within 60 days after the effective date of this order.

O R D E R

IT IS ORDERED that:

1. On or before June 1, 1982 Indian Wells Water Company, Inc. (seller) may sell and transfer the water system referred to in the application to Hillview Water Company, Inc. (buyer) subject to the condition that all real properties upon which the system's wells and storage facilities are located are included in the transfer.
2. The 1976 stock control transfer from Jeff Dennis to Bill Eads is authorized nunc pro tunc.
3. Applicants shall take all steps necessary to clear and establish title to the property upon which the wells and storage facilities of the Indian Wells water system are located and shall file with the Docket Office of this Commission monthly reports of their efforts until title is clear. The reports shall be placed in the formal file for Application No. 58969.
4. As a condition of this grant of authority, buyer shall assume the public utility obligation of seller, shall assume liability for refunds of all existing customer deposits, and shall notify the affected customers.
5. Within 10 days after the transfer buyer shall write the Commission, stating the date of transfer and the date the requirements of paragraph 4 were completed.
6. Buyer shall either file a statement adopting seller's tariffs or refile those tariffs under its own name as prescribed in General Order Series 96. Rates shall not be increased unless authorized by this Commission.
7. Before the transfer occurs, seller shall deliver to buyer, and buyer shall keep, all records of the construction and operation of the water system.
8. Within 90 days after the actual transfer buyer shall file, in proper form, an annual report on seller's operations from the first day of the current year through date of transfer.
9. When this order has been complied with, seller shall have no further obligations in connection with this water system.

10. On or after the effective date of this order, but before June 1, 1982, for the purposes specified, buyer may issue an evidence of indebtedness in principal not exceeding \$10,000.

11. The relief requested in Case No. 10903 is denied.

12. Hillview Water Company, Inc., as agent of Indian Wells Water Company, Inc., shall take steps to correct the problem of Walter Scott relating to the passage of saturated air through his meter and shall file with the Docket Office of this Commission within 60 days after the effective date hereof a written report of its efforts, and serve a copy of its report on all appearances in these proceedings. The report shall be placed in the proceeding's formal file.

The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer pays \$50, set by Public Utilities Code Section 1904(b). In all other respects this order becomes effective 30 days from today.

Dated MAY 19 1981, at San Francisco, California.

John E. Boyer
President
Richard D. ...
Leonard ...
Walter ...
Prerna C. Green
Commissioners

