

ORIGINAL

Decision 93195 JUN 16 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ERNEST E. HANSEN for)
 authorization to sell all outstand-)
 ing shares of stock of the)
 MEADOWBROOK WATER COMPANY, incorpo-)
 rated, to JOHN F. RAUSCH.)

Application 50157
 (Filed December 23, 1980)

O P I N I O NAuthority Sought

By Application (A.) 60157 filed December 23, 1980, Ernest E. Hansen (Hansen) seeks authority under Public Utilities Code §§ 851-854 to sell all of the outstanding shares of stock of the Meadowbrook Water Company, Inc. (MB) to John F. Rausch (Rausch). MB supplies domestic water service to approximately 143 customers in the Crest Park area, also known as Inspiration Park and Meadowbrook Woods, of San Bernardino County. Hansen proposes to transfer to Rausch all 320 outstanding shares of stock of MB. The stock interest represents all assets of the water company, including a 107,000-gallon storage tank, and approximately 20,000 feet of transmission lines. The agreed purchase price for the water company is \$3,000. No written sales contract was submitted with the application.

Hansen has been the principal shareholder of MB since August 1977 when he acquired ownership of MB at a foreclosure sale. In August 1979, Hansen designated Rausch as president of MB. From 1979 to the present Rausch has been solely responsible for managing and controlling the water system. On August 2, 1979 Rausch paid Hansen \$3,000 in cash in exchange for all the outstanding stock of MB. Rausch is in physical possession of the stock.

Hansen proposes to transfer the system for the reason that to continue operation of the company on a profitable basis would consume more personal time than he has available.

The application further requests that the Commission modify Decision (D.) 92307 (infra) but provides no detail as to the nature of modification.

Prior Proceedings

By Resolution W-2393 issued September 6, 1978, the Commission granted a rate increase to MB on the condition that it implement a five-phase improvement program to correct serious deficiencies in the water system. The rates authorized were subject to refund if the improvements were not timely made.

D.91855 issued June 3, 1980 in A.59182 granted interim authority to delay implementation of the improvements, but required MB to select one of three options as to the manner it would operate the system in the future. MB did not comply with D.91855, and filed a petition on June 3, 1980 seeking further delay in the implementation of the improvements. D.92307 dated October 8, 1980 denied MB's request and ordered a rate reduction and refunds to its customers.

D.92307 recited that MB had elected not to transfer the water system to Crestline-Lake Arrowhead Water Agency (CLAWA) (option (a)) or to timely complete its five-phase improvement plan (option (b)). The remaining option (c) directs Hansen or MB to explain: (1) why MB is incapable or unwilling to proceed with the needed funding and construction previously ordered, (2) other information relevant to MB's failure to comply with construction and reporting requirements ordered by the Commission, and (3) information concerning rate reductions and refunds that were to take place if options (a) and (b) were not exercised.

The Commission found that MB had not complied with any of the three options offered in D.91855. We concluded that customer refunds and a rate decrease should be made as originally provided in Resolution No. W-2393. D.92307 ordered as follows:

- "1. Meadowbrook Water Company, Inc. shall within twenty days of the date hereof file with the Commission revised tariffs reflecting the rate schedule described in Appendix A.
- "2. Within sixty days of this date, Meadowbrook Water Company, Inc. shall make refunds to its customers for the period of June 1, 1979 through October 7, 1980 based on the difference of the rates in effect on September 5, 1978 and the rates authorized by Resolution No. W-2393.
- "3. For a reinstatement of the rate level in effect on October 7, 1980 Meadowbrook shall file an advice letter upon completion of Phases I through III of the improvements ordered in Resolution No. W-2393."

On January 22, 1981 the Hydraulic Branch of the Commission staff (staff) filed a protest to A.60157. Staff opposed the sale of MB for the following reasons:

- "1. By Decision No. 92307, dated October 8, 1980, the Commission ordered MB to file revised tariffs reflecting the rate schedule set forth in Appendix A of that decision. Such filing was due October 28, 1980, twenty days after the effective date of Decision No. 92307. To date, the Hydraulic Branch has not received the required filing. MB is therefore in violation of Decision No. 92307.
- "2. Decision No. 92307 further ordered MB to make refunds to its customers for the amount specified in that decision. Such refunds were due no later than December 8, 1980, or sixty days after the effective date of Decision No. 92307. To date, the

Hydraulic Branch has no record of MB's compliance with this order. MB is therefore in violation of Decision No. 92307."

The protest contends that unless and until MB fully complies with the Commission orders as set forth in D.92307, the Commission should not entertain the application to transfer ownership, and should dismiss it as being premature.

Staff also asserts that Rausch, as de facto manager of the system since 1979, has failed to comply with Commission orders in the following respects, which failures are grounds for denial of A.60157:

- "1. Comply with the ordering paragraphs of Interim D.91855, setting forth three options for MB to pursue. (D.92307, mimeo., pp. 5-6.)
- "2. Actively pursue the securing of a Safe Drinking Water Bond Act Loan from the Department of Water Resources (DWR) to make the water system improvements outlined in Resolution No. W-2393. The attached declaration of M. J. Purcell [staff member] indicates that MB has failed to provide necessary information to continue timely processing of the loan application, filed in June, 1980.
- "3. Provide adequate notice to MB's customers of upcoming hearings, as expressly directed in Interim Decision No. 91855, and, subsequently, by letter of the administrative law judge (ALJ), dated June 13, 1980. (D.92307, mimeo., p. 5.)
- "4. Properly bill its customers, a fact undisputed at the hearings of July 14 and 15, 1980. (D.92307, mimeo., p. 5.)
- "5. Timely make the required improvements to the MB system. (D.92307, mimeo., p. 7.)"

Notice to Customers

The assigned administrative law judge (ALJ) advised Hansen and Rausch by letter dated January 27, 1981 that customers of MB were to be notified by February 13, 1981 of the pending application. By letter dated February 13, 1981 Rausch indicated that he had complied with the ALJ's direction by specifically documenting the steps he had taken to satisfy the request.

Three customers responded to the notice of the instant application. A protest to the application was made by Helen A. Diehl, a customer, who challenged the claims made by MB in its filing. She also asked whether the residents in MB's service area could be served by the local public water district, instead of service by MB.

Mrs. R. E. Roberts inquired when the refunds ordered in D.92307 would be made. B. L. Black commented that he was opposed to the transfer if it would result in excessive charges to the service offered.

No hearing has been held in this matter.

Discussion

In D.92307 we found that MB had repeatedly failed to comply with our orders, including orders of the ALJ. Specifically, we found that MB had yet to complete the first phase of the five-phase improvement plan, had failed to obtain financing for the program, and had failed to correct pressure and flow problems, despite the installation of additional mains. We pointed out that the customers of MB should not have to tolerate further delay in receiving adequate water service because of management's inability to obtain proper funding for needed improvements in a timely manner. Accordingly, we directed that rates be reduced and refunds be made in the hope that this action would spur MB to make the necessary improvements.

In lieu of complying, MB petitioned for rehearing of D.92307. Our denial of that petition led to MB filing a petition

for writ of review with the California Supreme Court. MB's petition was denied by the Court on April 1, 1981. We delayed consideration of A.60157 because of the then pending litigation stemming from D.92307. That litigation has since ended, and we are now ready to render a decision.

We are gravely concerned with MB's continuing failure to comply with our prior decisions. As previously indicated, several customers are seeking the refunds ordered in D.92307. We also take notice of a letter by Terry A. Smith, Battalion Chief of the Lake Arrowhead Fire Protection District, filed on April 24, 1981, which indicates that MB has failed to provide adequate water for fire protection service, their safety appears endangered because of inadequate water to fight fires.

Hansen, the legal owner of MB, has not made the refunds required by D.92307. We consider the instant application a device by Hansen to evade his responsibility to make the ordered refunds and to reduce rates. We believe compliance with that decision is required before we can entertain an application to transfer ownership. Until compliance is made we need not address the substantive issue of whether the transfer of MB to Rausch is in the public interest.

Accordingly, we will dismiss the application without prejudice. However, we expect MB to comply with D.92307. We will, therefore, allow MB 30 days from the effective date of this decision to refund the total amount designated in D.92307 and to reduce rates. If MB fails to comply, we will direct our staff to prepare an order to show cause why MB/Hansen should not be punished for contempt. From the application, it appears that Hansen has already transferred

ownership of MB to Rausch. That transaction is null and void without Commission approval prior to the actual transfer. As a result, we will still regard Hansen as the legal owner of MB and hold him responsible for compliance with all Commission decisions and orders.

Findings of Fact

1. Public hearing in this matter is not necessary.
2. Rausch, the proposed buyer of MB, in effect, has been solely responsible for maintaining and operating the water system since August 1979.
3. Neither Rausch nor Hansen have made the customer rate refunds ordered in D.92307.
4. Rausch, the purported buyer, has already paid Hansen \$3,000 for the water system.
5. Rausch has operated the water system since 1979.

Conclusions of Law

1. Failure of Hansen and Rausch to comply with a valid order of this Commission is sufficient reason to deny the relief sought.
2. Hansen's request to sell and transfer MB to Rausch should be denied until Hansen has complied with D.92307.
3. A.60157 should be dismissed without prejudice.
4. A transfer of public utility property without prior Commission authorization is null and void.
5. Hansen remains the legal owner of MB.
6. Hansen should be directed to comply with Ordering Paragraphs 1 and 2 of D.92307 within 30 days after the effective date of this order. If refunds are not made within that time, our Legal Division staff should be directed to prepare an order to show cause why Hansen and/or MB should not be punished for contempt.
7. As Hansen may be subject to a contempt action if he fails to comply with this order, the order should become effective upon personal service on Hansen.

O R D E R

IT IS ORDERED that:

1. The application of Meadowbrook Water Company, Inc. (MB) to sell and transfer the company to John F. Rausch is dismissed without prejudice.


2. MB is directed through its legal owner, Ernest E. Hansen, to comply with D.92307 by filing the revised tariff as specified in Ordering Paragraph 1 and by paying the total amount of customer refunds no later than 30 days from the effective date of this decision.


3. MB is directed to notify the Commission when the refunds ordered in the preceding paragraph have been made no later than 10 days from the date of refund.


4. The Executive Director is directed to cause personal service of this order on Ernest E. Hansen.


This order becomes effective on the date that it is served on Ernest E. Hansen.

Dated JUN 16 1981, at San Francisco, California.



President






Commissioners