

ORIGINAL

Decision 93253 JUL 7 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
THOMAS K. JONES, IDA L. JONES, his)
wife, L. R. UNSER and IRENE L. UNSER,)
his wife, doing business as MOUNTAIN-)
AIRE WATER COMPANY, for a certificate)
of public convenience and necessity)
to operate a public utility system in)
Mountain-Aire Subdivision, Tulare)
County.)

Application 43303
(Order Reopening Proceeding
dated December 2, 1980)

Application of L. R. UNSER, IRENE L.)
UNSER, THOMAS K. JONES and IDA L.)
JONES, doing business as MOUNTAIN-AIRE)
WATER COMPANY, to sell and LARIAT)
CORPORATION to buy the water system)
in Tulare County.)

Application 58208
(Filed July 10, 1978)

Frank E. Janoko and Susan Janoko, for Lariat Corporation, and L. R. Unser and Thomas K. Jones, for Mountain-Aire Water Company, applicants.

Carol and Joe Winningham, Jess Land, Mrs. Luell Baker, Mrs. Lawson Farmer, Wesley and Kathryn Price, Bill Airington, Gordon Horton, Stella Steventon, Katherine and William Garner, Joe Faure, and Clyde Ferrell, for themselves, property owners and interested parties.

Lynn T. Carew, Attorney at Law, for the Commission staff.

O P I N I O N

In Application (A.) 58208, Thomas K. and Ida L. Jones and L. R. and Irene L. Unser (Jones and Unser) seek authority to sell and transfer the Mountain-Aire Water Company (Mountain-Aire) to the Lariat Corporation. The Lariat Corporation is wholly owned by Frank E. Janoko (Janoko).

It appears from annual reports filed by Jones and Unser that no operating revenues had ever been received by Mountain-Aire and that no meters or fire hydrants had been installed by Mountain-Aire.^{1/} On December 2, 1980 the Commission issued Decision (D.) 92453 which reopened A.43303. D.62331 dated July 26, 1961 in A.43303 granted a certificate of public convenience and necessity to construct and operate a public utility water system to supply the Mountain-Aire subdivision, a 50-acre area located in Tulare County approximately 35 miles east of Porterville and about 21 miles east of Springville. D.92453 stated that A.43303 was reopened to consider the following questions:

1. Whether the current Mountain-Aire water system serves the objectives of public convenience and necessity.
2. Whether the operations of this water company are economically viable, both from a present and future standpoint.
3. Whether the certificate of public convenience and necessity issued in D.62331 should be suspended, canceled, or revoked.
4. Whether Mountain-Aire, now owned by the Unser and Jones families, should be transferred to the Lariat Corporation.

Public Hearing

D.92453 directed applicants to provide a list of property owners within Mountain-Aire's service area, and further directed the Commission's Executive Director to mail notices of the public hearing in A.43303 and A.58208 to such property owners. The notices were mailed to property owners of approximately 120 lots.

^{1/} Subsequent investigation shows that some meters and fire hydrants have been installed.

Public hearing was held before Administrative Law Judge Mallory in Porterville on March 31, 1981, and attended by 15 owners (or co-owners) of lots in Mountain-Aire's service area. Evidence at the public hearing was presented by Janoko on behalf of applicants, and by M. J. Purcell on behalf of the Commission's Policy and Planning Division. Several property owners made oral statements at the hearing. The Policy Division report received in evidence as Exhibit 2 was furnished after the hearing to property owners appearing at the hearing so that they could furnish written comments to the Commission. The matters were submitted on April 30, 1981. Three written comments were received.

Evidence of Applicants

Janoko's testimony shows that the present water system consists of a 50,000-gallon capacity tank located on Lot 83 of the Mountain-Aire subdivision, 7,496 feet of 4- and 6-inch transite pipe mains, two wells, six fire hydrants, a 25-foot square well site, and a gasoline-powered pump.

There are three cabins (one under construction) in the subdivision. There are no permanent residents. A number of property owners use their lots as campsites. There are approximately 40 to 60 saddle-type hookups, which accommodate hose lines to service campsites. The fire hydrants are used by the United States Forest Service, without charge.

Mountain-Aire has collected no revenues from its water system. The two existing cabin owners have been billed in the past, but have never paid for water service.

Janoko has operated the water system since its inception, except during the last 1½ years, during which time Noble Beeler, a cabin owner, operated the system. Beeler ran the pump at the time he was using his cabin as he is the person "primarily using the water system." Prior to the time Beeler operated the system, Janoko made two or three trips per year to the subdivision to keep the tanks full.

Janoko testified that to this point he has been furnishing water as a convenience to the residents rather than as a water company, primarily so that he could complete sale of the lots in the subdivision. The contractual agreement between Janoko and Jones and Unser entered into in 1969 was that Janoko would acquire the 90 lots then remaining in the subdivision, and upon completion of the sale of those lots, the water system would be transferred to Janoko. During the interim period Janoko would run the water system. Inasmuch as all lots are sold or retained by the original subdividers and all second mortgages have been paid, Janoko wishes to complete his transaction with Jones and Unser. The physical assets of the water system have already been transferred from Jones and Unser to the Lariat Corporation.

The potential growth of the Mountain-Aire subdivision is difficult to judge, depending on whether the Forest Service improves the roads in the vicinity and erects campgrounds. The road providing access to the subdivision has been abandoned by the Forest Service as a logging road, and no public entity is responsible for maintenance and upkeep of the access road. There is no electrical service to the subdivision.

In response to a question from staff counsel whether continued public utility status for the water company is necessary, Janoko replied that he feels he has a moral obligation to continue the water system, and that he would not "want to be sued by Unser and Jones for not complying with our original contract."

Janoko stated that he had several communications with property owners after the notices of hearing were mailed. Some of the property owners assertedly would like to form a homeowners' association to take over and operate the private road to the subdivision, and to operate the water system.

Policy and Planning Division Evidence

The Policy and Planning Division (staff) witness made an on-site inspection of the facilities on August 27, 28, and 29, 1980, and interviewed Jones and Unser, Janoko, officials of the Tulare County Health Department, the Forest Service, and a local realtor. The following are excerpts from the staff report in Exhibit 2:

1. When interviewed, applicants stated that the water company facilities are used by lot owners who camp during the summer. According to applicants, lot owners bring gasoline to activate the pump to fill the storage tank. Although some lot owners apparently use their lots and the water facilities frequently, 4 lot owners live out of the State; 2 live out of the country. Applicants feel the subdivision is unlikely to be developed until the year 2000.
2. The on-site visit of August 28, 1980, the Thursday before Labor Day weekend, found no campers at the subdivision.
3. D.62331 granting the certificate to build and operate the water system stated that the system would not be viable until 80% of the lots were developed.

It is clear that 80% of the lots haven't been developed and in staff's view are not likely to be developed in the foreseeable future.

4. Janoko, in an interview on August 27, 1980, listed expenses of \$170 (property taxes) and \$50 (gasoline). He stated the company has never charged rates. The annual reports for years 1979-1971 confirm the lack of revenues and do not list the above expenses, but show a depreciation expense of \$213 claimed yearly.

5. It is clear that the company has never been, is not now, and can never be a viable public utility as it presently is used and operated. The owners' lack of control over the use of the system, due to the remoteness and inaccessibility of the site, precludes their ability to extract rates from the lot owners through threat of service shut-off. Conversely, the lot owners cannot expect the provision of reliable water service through ongoing maintenance and investment in the system by the owners when no revenues are collected.

The staff witness concluded that Mountain-Aire is not a public utility, that it does not offer public utility service to the public, and that it is unlikely to offer public utility service in the near future. Staff does not believe the certificate serves the public need and necessity at the subdivision.

The staff witness recommended that the certificate should be canceled and revoked, as continued certification of this water company may have the inadvertent effect of providing the purchasers of lots with unrealistic expectations of the quality of service provided. Policy and Planning Division believes this is detrimental to the public interest.

Property Owners' Views

At the hearing, oral statements of position were made by several lot owners. They were principally concerned with the protection of property owners in the period between revocation of the certificate and the formation of a mutual water company or homeowners' association to operate the water system. The property owners ask that we authorize the transfer of the water system to Janoko and that we continue Mountain-Aire as a public utility for sufficient time to permit the property owners to form a mutual and to acquire the system.

Two of the written responses were from parties associated with applicants; Claudia J. Unser, owner of Lot 88, and Stella Steventon, daughter of the Unsers. Mrs. Steventon expressed the view that all parties would be pleased "if the certification could be transferred to Lariat Corporation at this time, the condition it be revoked one year from this date, at which time a mutual water company, similar to the one now operating in the Camp Nelson Area be implemented by the property owners."

Mrs. Unser stated that, as a lot owner, "we would be better served if there was decertification of the present water company upon a successor in the form of a mutual water company; and that the ownership of Mountain-Aire Water Company be transferred to Lariat Corporation so it may be operated as a private corporation."

Carol and Joe Winningham stated that: "We can see there are outdated conditions with the Mountain-Aire Water Company. However, we would like to see a transfer of the company to the Lariat Corporation. We would like to see a decertification by PUC only upon a successor in the form of a mutual water company that would satisfactorily maintain and meet the needs of the property owners. Perhaps a time limit could be set for formation of a mutual company."

On May 26, 1981, the Commission received a letter signed by Janoko stating, in part, as follows:

"In the event of decertification, Lariat Corporation would be willing to transfer to the lot owners of Tract 293, known as Mountain Aire subdivision for the formation of a mutual water company, the following assets:

- "1. 25x25 well site and Lot 83 of Tract 293
- "2. All lines and outlets presently used by Mountain Aire Water Co.
- "3. 50,000-gallon storage tank
- "4. Two wells and pump supplying present water source

"Lariat Corporation would transfer these assets to the mutual water company at no cost other than present taxes and transfer fees. These costs should not exceed \$500.00."

Discussion

It is apparent that the water company has never functioned in the manner in which it was originally conceived. Because the sale of lots in the subdivision was slow and because the two existing cabins are used only intermittently, the owners of the water company have discontinued attempts to bill for the water service. No one is employed on-site to operate and manage the water system. Operation of the pump has been done as an accommodation by a cabin owner. Maintenance and repair to the water system require a special trip by Janoko.

The evidence indicates that development of the subdivision has proceeded very slowly because of the difficulty of access and lack of electricity. Most current lot owners have no plans to build. Many lots are for sale. With the exception of the three cabins, the only use of the property by lot owners has been as weekend campsites.

It is clear that the main purpose for the current request for sale and transfer of the water system is to complete the 12-year old real estate transaction between Jones and Unser and Janoko. Janoko has operated the water system during the 12-year period.

The lot owners are concerned that there will be a hiatus, during which no one will be responsible for the operation and maintenance of the water system, if we rescind the water system's certificate before the lot owners form a mutual water company or homeowners' association to operate the water system. We do not believe that immediate revocation of the water company's certificate will change the water system operation, which is casual at best. However, to furnish some protection to lot owners, however meager, we will authorize the transfer of the water system to Janoko, and provide in the order which follows that the certificate issued in D.62331 will be revoked 60 days after the effective date of this order so that property owners may have sufficient opportunity to organize a mutual water company or other alternative to operate the water system.

The above action is consistent with the Commission's certification policy for small companies set forth in Resolution M-4708 adopted August 28, 1980. Paragraphs (c) and (d) of that resolution state that the Commission will:

- "(c) cancel unexercised certificates for operations unlikely to be viable systems if developed; likewise cancel certificates for constructed systems serving no customers when the owner requests a transfer and sale of the utility which would not be likely to result in a viable operation;
- "(d) support and promote the conversion of unviable or marginal water utilities to public ownership or their mergers with more viable entities when opportunities arise and customer service is more likely to improve through such change than without it."

Findings of Fact

1. A certificate of public convenience was issued to Jones and Unser in D.62331 to construct and operate a public utility water system in the Mountain-Aire subdivision.
2. A water system was constructed in the Mountain-Aire subdivision consisting of about 4,000 feet of main, two wells, a storage tank, well sites, and a gasoline-powered pump.
3. The subdivision consists of approximately 120 lots, all of which have been sold, or have been retained by the Jones and Unser families or by Janoko for their own use.
4. Only three cabins have been built or are under construction in the Mountain-Aire subdivision since its inception. There are no permanent residents of the subdivision.
5. There is no electricity to the subdivision.
6. The roads to the subdivision are in very poor condition, making it difficult to reach the subdivision.
7. Many of the lots in the subdivision have been offered for resale.
8. There has been recreational use by the lot owners who camp out for short periods.

9. Water usage by lot owners is sporadic. It is necessary to fill the water storage tank from the wells by pumping before water is available.

10. The gasoline-powered pump is unlocked so that any lot owner or the United States Forest Service may activate the pump when water is needed.

11. There is no on-site manager or operator of the water system.

12. In recent months a cabin owner has operated the pump on weekends as an accommodation to Janoko.

13. Physical assets of the water company were transferred from Jones and Unser to Janoko several years ago.

14. For the last 12 years Janoko has operated and maintained the water system.

15. D.62331 states that applicants propose to render an 8-month seasonal service between March 1 and October 1 under flat rate and meter rate schedules. The seasonal flat rate is \$48 per single-family residence.

16. No lot holder or cabin owner in the Mountain-Aire subdivision has paid for water service in the past 12 years.

17. Mountain-Aire has received no operating revenues during the past 12 years.

18. The only expenses incurred by Janoko for operation of the water system are for minor repairs, installation of several services to which hoses may be attached, gasoline for the operation of the pump, and travel costs to and from the subdivision.

19. Future development of the Mountain-Aire subdivision will be very slow because of the difficult roads to be traversed to reach the subdivision and because the subdivision has no electric service.

20. The water system is not a viable public utility operation as:

- a. It serves only a very limited portion of the lot owners on a sporadic basis.
- b. No revenues have been collected for past services rendered.
- c. The water system is not an economical operation as it has received no operating revenues, nor has it provided a return to its owners.
- d. There is no responsible person on-site to manage or operate the water system.

21. Public convenience and necessity does not require the operation of Mountain-Aire as a public utility water system.

22. Property owners should have the opportunity to form a public service district, a mutual water company, or other appropriate entity to operate the water system.

23. The proposed transfer is in the public interest only to the extent that it will continue operation of the water system as a public utility until a mutual water company or similar entity can be formed.

24. 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

1. Authority should be granted to permit completion of the transfer of the water system from Jones and Unser to Janoko.

2. After a 60-day period in which property owners may form a public service district, a mutual water company, or other appropriate entity to operate the water system, the certificate of public convenience and necessity originally granted in D.62331 and transferred herein should be canceled and revoked as, at that time, public convenience and necessity will no longer require the operation of Mountain-Aire as a public utility.

3. These actions are consistent with Commission policy enunciated in Resolution M-4708 dated August 28, 1980 concerning certification of small water companies.

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

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. On or before August 31, 1981, Thomas K. Jones, Ida L. Jones, L. R. Unser, and Irene L. Unser may sell and transfer the water system and other assets specified in the application to the Lariat Corporation.

2. As a condition of this grant of authority, buyer shall assume the public utility obligations of seller, shall assume liability for refunds of all existing customer deposits, and shall notify the affected customers.

3. Within 10 days after transfer buyer shall write the Commission, stating the date of transfer and the date the requirements of paragraph 2 were completed.

4. 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.

5. Before the transfer occurs, seller shall deliver to buyer, and buyer shall keep, all records of the construction and operation of the water system.

6. When this order has been complied with, seller shall have no further obligations in connection with this system.

7. Sixty days after the effective date of this order the certificate of public convenience and necessity originally granted in D.62331 and transferred to the Lariat Corporation by Ordering Paragraph 1 above ^{shall be} ~~is~~ revoked and canceled. All tariffs and maps filed with the Commission by the Lariat Corporation, doing business as Mountain-Aire Water Company, ^{shall be} ~~are~~ revoked and canceled.

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8. A copy of this order shall be served on all lot owners who were notified of the public hearing in these proceedings.

This order becomes effective 30 days from today.

Dated JUL 7 1981, at San Francisco, California.

Jul E. Bryan
President

Richard D. Gravello

Victor Calvo

Prescilla C. Myers
Commissioners

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