

ORIGINAL

Decision 93480 SEP 1 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bryan G. Smillie and Viola E.)
Smillie,)

Complainants,)

vs.)

Apple Valley Water Resources,)

Defendant.)

Case 10864
(Filed May 13, 1980)

Bryan G. Smillie and Viola Smillie, for themselves, complainants.

Eugene F. Keefner, for Keefner Enterprises, Inc., also known as Apple Valley Water Resources (West), defendant.

William Bricca, Attorney at Law, and Arthur Jarrett, for the Commission staff.

O P I N I O N

Summary of Complaint

Bryan G. Smillie and Viola Smillie (complainants) purchased Lot 20 in Tract 5745, in San Bernardino County (County), on November 27, 1960 from the tract developer, George McCarthy.

The State of California Division of Real Estate issued a Final Subdivision Public Report stating that the Aztec Water Company, Inc. (Aztec) "advises it will supply water to this tract". Aztec has ceased operations and the water company operation has been taken over by Keefner Enterprises, Inc. (KEE), doing business as Apple Valley Water Resources West (defendant).

Complainants have unsuccessfully sought to obtain water service from defendant for several years to build their retirement home. County's environmental health services department has advised complainants that it would not permit any new service connections to be made to defendant's water system until certain improvements to the system have been made.

Complainants request that defendant be ordered to supply water to their lot.

Defendant's Position

Defendant admits the allegations in the complaint. Defendant claims that it has been frustrated in carrying out its public utility obligations because (a) it has been unable to acquire all of the water system assets held by its predecessor, Aztec, namely, title to water rights; (b) it needs a change in its filed tariffs to permit charges for service connections; and (c) it requires a rate increase to meet its reasonable operating costs and to construct the improvements needed to obtain a water supply permit, which in turn would result in a lifting of the County building moratorium in effect in defendant's service area.

The stock of KEI was owned by Mr. and Mrs. Eugene F. Keefner.^{1/} KEI filed a fictitious name statement showing that it is doing business as Apple Valley Water Resources West and as Apple Valley Water Resources Co. East. Other divisions of KEI provide manufacturing, designing, consulting, and marketing services. KEI owns a water system repair and a meter service company.

^{1/} We take official notice of defendant's 1980 Annual Report in which Eugene F. Keefner declares that E. F. Keefner, president, owns 100% of the outstanding stock of defendant.

Mr. Keefner is defendant's president. He is a registered professional engineer. He states that unless the conditions preventing him from carrying out his public utility obligations are favorably resolved, he will recommend that the board of directors of "Keefner Enterprises Corporation surrender the title of owner operator, its records, title of property, etc. to the P.U.C. ..."

Hearings

After notice, public hearings were held in Los Angeles on October 30, 1980. The matter was submitted on that day subject to receipt of briefs after receipt of late-filed Exhibit 10. Exhibit 10 was received, but no briefs were filed.

Background

KEI, dba High Desert Water Company,^{2/} was authorized to provide public utility water service to the entire service area of Aztec and to acquire all properties of Aztec that are used and useful in providing such service in Decision (D.) 87841 dated September 13, 1977 in Application (A.) 57132 and in Case (C.) 9923.

Aztec had abandoned the system in 1975. Due to the abandonment some of Aztec's customers filed a formal complaint (C.9923) requesting the Commission to appoint Robert Van der Sluis, a contractor who had performed emergency repairs for Aztec in the past, as system operator with authority to collect and disburse funds until the utility's ownership had been determined. Under the authority granted in D.84565 dated

^{2/} KEI subsequently published a fictitious name statement, stating Keefner Ent., Inc. CA is doing business as Apple Valley Water Resources Co. West (and as Appl[y] Valley Water Resources Co. East). KEI's office is in the City of Commerce in Los Angeles County. KEI notified the Commission of this name change.

June 17, 1975, Van der Sluis performed these services until his resignation on January 24, 1977. A replacement operator was authorized in D.86982 dated February 15, 1977.

D.87841 quotes KEI's application, which states that it "intends to 'operate the Aztec system under present tariffs until the Commission authorizes the filing of new standard rules and regulations and a new meter rate schedule that is more water conservation oriented' is authorized, and proposes the following:

- "1. Perform an engineering study of the Aztec system and submit a rehabilitation plan within 120 days. The rehabilitation program will be phased so that we expect to bring the water system to G.O. No. 103 standards within 30 months.
- "2. Negotiate with Apple Valley Ranchos Water Company for an alternate source of water for use during emergencies.
- "3. Make application to the County of San Bernardino for a water supply permit.
- "4. Make application to the Department of Water Resources for a loan to finance the rehabilitation plan under the Proposition 3 Program, if necessary. '2/'

"2/ Proposition 3 became the California Safe Drinking Water Bond Law of 1976."

In addition, D.87841 states that:

"There are three parcels shown on the San Bernardino County Assessor records to be owned by Aztec:

<u>"Item</u>	<u>Parcel No.</u>	<u>Description</u>	<u>Assessed Value</u>	<u>Full Cash Value</u>	<u>1976/1977 Tax</u>
A	040-005-22	Utility Plant	\$6,750	\$27,000	\$816.08
B	440-022-10	Land	50	200	6.04
C	030-054-05	Water Rights	100	400	12.09

"Item A is all of the water utility plant including two wells, a 60,000-gallon steel reservoir, pressure tanks, booster pumps, water mains, services, and meters. It was sold to Company at the February 11, 1977 County Tax Collector's sale.

"Item B is a .63-acre lot presently used by Aztec as the site for the two wells, the reservoir, a pressure tank, and an enclosed booster pump. Taxes were last paid for tax year 1972. It will be available for tax sale during January 1979, providing the taxes are not paid. The original cost of this land as shown in Aztec's 1973 Annual Report is \$1,098.75.

"Item C is the water rights assessment for water taken from Item B. It is taxed on the basis of estimated annual production of 16.67 acre-feet at a full cash value of \$24 per acre-foot. Taxes were last paid for tax year 1974. It will be available for tax sale during January 1981 providing the taxes are not paid.

"Items B and C are necessary and useful for the purpose of providing public utility water service to Aztec's customers and cannot be transferred without prior authorization of the Commission (P.U. Code Section 851).

"It is essential that Company use the water (Item C) from the wells located on the land (Item B) unless a replacement source is obtained. A permanent connection to Ranchos ³⁷ and use of their water would be the ideal replacement if a contract could be negotiated. Ranchos is receptive only, however, to continue providing assistance, as it has up to now, in emergencies. Ranchos asserts that its water supplies are needed for its own service area."

KEI was ordered to (a) establish a separate bank account to deposit funds to be set aside as fair rental for the use of nonacquired Aztec property until those properties were no longer necessary or useful, and to (b) prepare and file a 30-month rehabilitation plan to bring the water system up to General Order 103 (GO 103) standards, within 120 days after the effective date of the order.

3/ Apple Valley Ranchos Water Company.

Defendant alleges that past Commission actions are responsible for its failure to act to resolve the complaint as follows:

- a. After abandonment of the system, by its prior owners, the Commission operated the system without obtaining needed permits and without providing the services needed by property owners in the tract.
- b. The Commission was aware that the system did not have an adequate water supply.
- c. The Commission was responsible for selling portions of the utility's assets "through the tax collector's office."
- d. The Commission did not notify the new system owner of these problems, except for "instructions in the decision to modify, upgrade, and define a suitable system."
- e. The Commission has not authorized a satisfactory rate increase (including offsets for lost fire hydrant revenues) and allowed customer contributions to pay for service connections (of approximately \$150 per connection)^{4/} or contributions for other improvements.

Staff Counsel Position

Staff counsel states that: While this proceeding deals with resolution of complainants' claims, there were about 60 other persons also entitled to, but unable to obtain, service from defendant. He believes that institution of an order of investigation to deal with defendant's failure to supply other potential customers may be worthwhile. He notes that the Commission has not imposed a connection restriction on defendant and suggests that the failure of the County to issue a Water Supply Permit to defendant,

^{4/} Mr. Smillie would be willing to pay that amount for water service.

and in turn the County's imposition of a building moratorium without hearing, might constitute local infringements of the Commission's statewide regulatory authority governing defendant's operations.

Title Issue

Keefner testified that:

- a. He responded to an advertisement for an auction sale held to satisfy the unsecured property taxes due on property held by Aztec.
- b. An employee in the tax assessor's office advised him that the whole water company was for sale.
- c. He placed the winning and only bid for Aztec's distribution system in KEI's name for \$1,107.86, subject to Commission approval.^{5/}
- d. When he asked for a receipt, the tax collector informed him that he had purchased the water system, but not its land and water rights.
- e. He acquired redemption rights to the land on which the water tank and two wells are located at a January 24, 1979 tax delinquency sale and later acquired clear title to the land.
- f. He had not decided if he would bid for Aztec's water rights at the January 1981 tax delinquency sale.^{6/}

5/ The bill of sale states, in part:

"The property sold and title to which is hereby vested is described as follows: Water Distribution System and Public Utility located at 44002210.

"Purchaser must satisfy Public Utilities Commission Requirements as follows:

"1. Demonstrate ability to operate present water system and comply with Aztec's tariffs that are filed with the PUC.

"2. Demonstrate ability to plan and implement a rehabilitation program that would result in the water system meeting PUC General Order No. 103 standards."

6/ We take official notice that the water rights parcel was not sold in January 1981.

The staff states that there has been no adjudication of rights to the use of water from the local ground water basin.

Defendant was aware of this title problem before it made application to acquire and operate Aztec's system. The issue was discussed in the above-quoted excerpts from D.87841.

Defendant was uncertain about its distribution system easement rights. It should verify that it holds necessary easements or title for all of its facilities.

Parcels are subject to sale after five years of tax delinquency. These dates differed for the three Aztec parcels. It is unfortunate that defendant inherited this problem, but this title problem is not a cause for inaction on improving its system. Defendant is a water corporation as defined in Public Utilities (PU) Code Section 241.^{7/} Another entity may not acquire used and useful public utility property, e.g., the water rights that have been dedicated to serve utility customers. Such an acquisition by another entity, even by tax collector's sale, would be void without an order from the Commission (see PU Code Section 851). Such permission would not be given while defendant was extracting water from its existing wells to supply its customers. Defendant should either bid on those water rights in 1982 with the tax collector or institute a quiet title action to resolve with finality its water rights.

Further Discussion

The Commission did not operate Aztec's system. The Commission met an urgent need to restore service after Aztec's abandonment of the system by appointing a system operator and his successor.

7/ PU Code Section 241 states:

"241. 'Water corporation' includes every corporation or person owning, controlling, operating, or managing any water system for compensation within this State."

Keefner stated his professional and technical qualifications. He was not and is not an unsophisticated buyer. The bill of sale for Aztec's distribution system put him on notice that KEI would have to demonstrate its ability to operate the present system, comply with Aztec's tariffs (which do not contain a charge for making service connections to existing mains), and demonstrate its ability to plan and implement a system rehabilitation program to meet the requirements of GO 103. Prior Commission decisions describing Aztec's system deficiencies (e.g., D.60314 and D.62355) were on file at the Commission's offices and available for public inspection.

KEI's application shows that Keefner knew that system improvements were needed. D.87841 authorized KEI to adopt Aztec's rates, acquire Aztec's assets, operate the system, and file and implement an improvement plan. In adopting Aztec's rates defendant became a public utility water corporation with the obligations of complying with the Commission's orders.

The issue of Commission and health department water supply jurisdiction is addressed in the Commission's GO 103 as follows:

"II. STANDARDS OF SERVICE

"1. Quality of Water.

"a. General. Any utility serving water for human consumption or for domestic uses shall provide water that is wholesome, potable, in no way harmful or dangerous to health and, insofar as practicable, free from objectionable odors, taste, color and turbidity. Any utility supplying water for human consumption shall hold or make application for a permit as provided by the Health and Safety Code of the State of California, and shall comply with the laws and regulations of the state or local Department of Public Health. It is not intended

that any rule contained in this paragraph II 1 shall supersede or conflict with an applicable regulation of the State Department of Public Health. A compliance by a utility with the regulations of the State Department of Public Health on a particular subject matter shall constitute a compliance with such of these rules as relate to the same subject matter except as otherwise ordered by the Commission.

"b. Water Supply. In the absence of comparable requirements of the State Department of Public Health, the following general rules shall apply:"

There is no conflict between the Commission and the County Department of Environmental Health Services (HD). Defendant has failed to comply with Commission orders to file and implement an improvement plan to upgrade its system. In the absence of an adequate system and an adequate water supply, adding customers will increase defendant's service problems. In late-filed Exhibit 10, complainants state that they were advised of water service problems on defendant's system, including water supply shutdowns and rust in the system. A building moratorium and HD's instruction that defendant should not add customers to its system resulted from defendant's failure to comply with Commission orders. The cure lies in compliance with those orders. Defendant will be ordered to secure another water supply meeting the quality and domestic quantity requirements of the HD and of GO 103 from another public utility, purchase an existing well meeting those requirements, or commence drilling for another well within 60 days after the effective date of this order. The fire-flow requirements now incorporated in Section VIII of GO 103 apply to new main extensions or modifications of water systems required to serve new applicants,^{8/} changes in use, or replacement mains used or useful for fire protection

^{8/} Applicants for service connections off of existing mains, except for fire services, are not new applicants for fire-flow purposes.

purposes. In addition, defendant will be ordered to file its improvement plan in belated compliance with D.87841 within 60 days after the effective date of this order with a completion date 180 days after the effective date of this order to complete and equip a new well (in the event another supply had not been obtained), install needed additions of booster capacity and storage, and schedule completion of any additional improvements or repairs needed within 30 months.

This Commission is placing both defendant and Keefner, defendant's system operator and owner, on notice that failure to comply with this order on a timely basis may result in the imposition of enforcement sanctions against defendant and Keefner based on PU Code Chapter 11, VIOLATIONS.

Defendant has expressed dissatisfaction with staff suggestions for advice letter general rate increases. It has the option of filing a rate increase application to demonstrate the need for a higher level of rates^{9/} to meet its reasonable expenses and provide a return on its investment,^{10/} including the investment needed to install improvements on a timely basis. Defendant's proposal could be tested at a public hearing. Since defendant has a nominal rate base, the Commission would consider an alternate rate application proposal based upon defendant's operating ratio rather than upon the return on rate base approach to provide a source of funds for meeting emergencies.

Defendant's 1980 annual report shows a plant addition of \$1,229 in Account 315-Wells, total operating revenues of \$10,163, net income of \$767, and 40 active metered service connections at the end of 1980. If approximately 60 additional

9/ If plant and reserve for depreciation records are unavailable to defendant, these accounts may be reconstructed from prior annual reports filed with the Commission.

10/ Defendant's original investments are the prices paid for Aztec's system and the land. Water plant acquisition adjustments should be placed on defendant's books. (See text of balance sheet Account 100.5 in the Uniform System of Accounts for Class D Water Utilities (USA-D)).

customers were added to defendant's system, defendant's revenues should increase more rapidly than the increase in variable expenses related to customer growth.

We do not accept Keefner's assertions that the USA-D system ✓ of accounts is too complex or would be too costly for his accountant to use and that he must use his own system of accounts. Defendant is required to keep its records in accordance with the simplified USA-D. The Commission staff can advise Keefner how to set up the utility's books. Keefner should file completed annual reports from the time of his acquisition of the system through 1980.^{11/} Prior annual reports listing the dollar amount, by accounts, of Aztec's utility plant and reserve for depreciation may be updated. A reconstruction of detailed plant records for the plant purchased at tax sales is not necessary.

Defendant has acquired a water system and land for nominal amounts. It seeks to avoid committing any additional funds to plan and construct any improvements. Avoidance of further expenditures is not a satisfactory rationale for establishing a service connection charge. A public utility must construct adequate facilities. Thereafter customers, through rates, enable it to recover its reasonable expenses and a return on its capital. Having customers advance the utility's costs, with connection charges, is a reversal of roles; it defeats a major purpose of the investor-owned utility.

^{11/} Defendant filed an incomplete 1980 annual report.

Findings of Fact

1. Defendant is a public utility water corporation.
2. Complainants own a lot in defendant's service area. Complainants request that the Commission order defendant to provide water service to their lot.
3. Defendant's water system was abandoned by the prior owner, Aztec. The Commission authorized other individuals to operate the system to provide service to Aztec's customers.
4. Aztec was delinquent in payment of its property taxes on three assessment parcels.
5. Defendant purchased two of Aztec's parcels, the water system and a parcel of land. Defendant has not acquired the assessment parcel for water rights used and useful in its operations.
6. The Commission authorized defendant to acquire the three assessment parcels owned by Aztec.
7. Defendant's application stated it would submit a plan and would make necessary system improvements. The Commission ordered defendant to file the plan and to implement it in D.87841.
8. Defendant has not filed a plan or made any improvements, which include securing an adequate water supply.
9. HD refused to issue a Water Supply Permit to defendant because of defendant's failure to make necessary system improvements.
10. Defendant's system does not meet the requirements of GO 103.
11. County issued a building moratorium preventing new construction in defendant's service area until a Water Supply Permit is issued to defendant.

12. No service connection or meter installation charge should be authorized.

13. Defendant has not filed completed annual reports from the time it commenced operations to date.

Conclusions of Law

1. Complainants should be able to obtain water service from defendant.

2. Defendant cannot supply additional customers because of its failure to make the needed system improvements, which include obtaining an additional water supply, ordered by the Commission in D.87841.

3. Defendant should be ordered to prepare and file a 30-month improvement rehabilitation plan to bring the existing water system up to domestic GO 103 standards within 60 days after the effective date of this order. This program should contain the following elements: (a) secure a water supply meeting the quality and quantity requirements of HD from another water utility or by purchase of a well, or commence construction of a new well within 60 days after the effective date of this order; (b) complete needed additions of water supply, booster capacity, and storage within 180 days after the effective date of this order; and (c) complete any additional improvements needed within 30 months after the effective date of this order.

4. Defendant should file a copy of its improvement plan with HD, reapply for a water supply permit, and request County to lift the building moratorium in its service area. ✓

5. Defendant should notify complainants and any other individual who had asked for water service to his lot within its service area within 10 days after the moratorium has been lifted. This notice should ask those individuals to contact it to arrange for scheduling of the service connection and meter installation work. A copy of the letter and a list of parties served should be simultaneously filed with the Commission.

6. The water rights obtained from pumping defendant's wells are used and useful in defendant's operations. A transfer or sale of the used and useful water rights of a public utility water corporation to any other person would be void without an order of the Commission.

7. Defendant should obtain clear title to these water rights by bidding for them at the next tax delinquency sale or by institution of a quiet title action.

8. Defendant should verify that it held title to all needed easements and rights-of-way for its water system.

9. Defendant is required to file completed annual reports of its operations from the time it commenced operations to date.

O R D E R

IT IS ORDERED that:

1. Within 60 days after the effective date of this order Keefner Enterprises, Inc., doing business as Apple Valley Water Resources West (defendant), shall prepare and file a 30-month improvement plan designed to bring its water system up to GO 103 standards.

2. Defendant shall include the following requirements in its improvement plan:

- a. Defendant shall secure a water supply meeting the quality and quantity requirements of the County Department of Environmental Health Services (HD) by contracting with another utility, by purchasing a well, or by commencing construction of a new well within 60 days after the effective date of this order.
- b. Defendant shall complete additions to water supply, booster capacity, and storage within 180 days after the effective date of this order.
- c. Defendant shall complete any other improvements within 30 months after the effective date of this order.

3. Within 70 days after the effective date of this order defendant shall file a copy of its improvement plan with HD, reapply for a water supply permit, and request that the County lift the building moratorium in its service area.

4. Within 10 days after the building moratorium is lifted, defendant shall mail notice of the fact to complainants and to any other person who had asked for water service to a lot within defendant's service area. The notice shall state that those persons may contact defendant to arrange for a meter and service connection. Defendant shall concurrently mail a copy of the notice and a list of the persons served to the Commission's Hydraulic Branch.

5. Defendant shall file completed annual reports from the time it commenced operations to date within 90 days after the effective date of this order.

6. Defendant shall acquire title to San Bernardino County Assessor Parcel 030-054-05, water rights, by bidding for those rights at the next tax delinquency sale and/or through a quiet title action.

7. Defendant shall not impose a connection charge upon its customers.

This order becomes effective 30 days from today.

Dated SEP 1 1981, at San Francisco, California.

Jill E. Byron
President
Stephen W. ...
...
Victor ...
...
Commissioners