

Decision 93488 SEP 1 1981**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 Meadowbrook Water Company, Inc., to  
 modify Decision 92307 regarding the  
 minimum P.S.I.G. delivery of water  
 to its customers in North Hollywood.

Application 60769  
 (Filed July 21, 1981)

O P I N I O N

In this application Meadowbrook Water Company, Inc. (MB) seeks modification of Decision (D.) 92307 to eliminate the requirement that MB make refunds to its customers.

Background

MB provides water service for some 146 customers in Crest Park (San Bernardino County). On May 31, 1978 MB filed an advice letter seeking to increase rates for water service. By Resolution W-2393, dated September 6, 1978, the Commission granted the increase subject to refund if satisfactory progress were not made on a five-phase series of improvements to MB's distribution system. On October 3, 1979, MB filed Application (A.) 59182 requesting modification of Resolution W-2393, seeking to delay the schedule of system improvements until MB entered into a loan agreement with the State Department of Water Resources (DWR) under the State Safe Drinking Water Bond Act of 1976. Hearings on A.59182 were held in San Bernardino on February 14, 1980 and in Los Angeles on February 15, 1980. On June 3, 1980 the Commission issued an interim opinion, D.91855, denying MB's petition for modification of W-2393 and ordering MB to amend its application to conform to one of three options presented by the Commission:

- a. A request for authorization to convey the MB system to the Crestline-Lake Arrowhead Water Agency (CLAWA);

- b. A plan to fund and construct the five-phase improvement plan set forth in W-2393, modified to provide for completion of Phases I and II (installation of some 2,700 feet of 6-inch main) by September 30, 1980;
- c. A filing explaining why MB was unwilling or unable to proceed with the ordered plan of improvements.

Instead of amending its original application, MB filed a second petition on July 3, 1980, seeking to delay implementation of the five-phase plan for another year. Hearings were held in San Bernardino on July 14 and 15, 1980. Evidence developed at the hearing indicated that MB had taken steps to improve water service to its customers, including transferring two large water users from its system to the CLAWA system and installing 500 feet of 6-inch main only days before the commencement of the hearings. Although MB argued that these improvements resulted in a significant increase in water pressure throughout the system, other evidence, including testimony of MB customers, suggested that while some improvement was apparent, water pressure was still inadequate in many areas.

On October 8, 1980, the Commission issued D.92307, which found, among other things:

1. That W-2393 gave conditional authorization to MB to increase rates, subject to satisfactory completion of the five-phase system of improvements specified in that resolution;
2. That MB had installed some 500 feet of 6-inch main to improve water pressure and volume;
3. That the improvement did not bring the system up to General Order 103 standards; and
4. That MB had not complied with any of the three options presented by D.91855

Accordingly, D.92307 ordered MB to roll back its rates to the level in effect on September 5, 1978 and to refund to customers the additional revenues generated by the conditional rate increases granted by W-2393 MB's petition for rehearing of D.92307 was

denied by D.92543 dated December 16, 1980. MB then filed a petition for a writ of review with the California Supreme Court, which was denied on April 1, 1981.

On December 23, 1980 Ernest Hansen (Hansen), owner of all the capital stock of MB sought authority to transfer the outstanding shares of MB stock to John F. Rausch (Rausch). D.93195 dated June 16, 1981 denied that request. D.93195 contains the following findings, conclusions, and order:

Findings of Fact (D.93195)

- "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 [sic] 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 (D.93195)

- "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."

Order (D.93195)

- "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."

Issues Raised in A.60769

In this application Rausch and MB raise the same issues that have been fully considered and disposed of in D.91855, D.92307, the petition for rehearing, the Supreme Court denial of MB's request for a writ of review, and D.93195. No new facts have been alleged in A.60769 that have not been presented in the proceedings leading to the aforementioned decisions, nor have any arguments been presented that have not been fully considered and disposed of in connection with MB's prior pleadings, including its petition for rehearing of D.91855 and its petition to the Supreme Court.

This application again recites the actions taken by MB to improve its systems. All those actions were considered and discussed in D.92307. This application also alleges that in order to avoid contempt proceedings MB has:

"Filed new rate schedules demanded by the Commission.

"Reinstituted work on the Dept. of Water Resources' loan paper for \$248,000.

"Agreed, by this document, to make the proper returns to the customer. Since the Company has debts, not surplusses, [sic] it must spread the returns at a rate of \$10 per year out of revenues until paid, beginning with the current annual billing. This week the customers will be billed for \$72.00-\$10.00 or \$62.00.

"Advised owners of homes plumbed with 40 to 50-years-old 1/2" pipe to replace with new 1" pipe."

No evidence was submitted with the application to support the above allegations (except that we take official notice of the tariff filing reducing MB's rates.) Allegations concerning reinstatement of MB's request for a loan and refunds to its customers have been made in past proceedings, but reinstatement was not accomplished.

This application alleges that, as a result of new construction and other actions, MB provides water service at water pressures which exceed minimums demanded by Rule No. 2 of its tariff, implying that MB is not governed by the requirements of General Order (GO) 103 (Rules Governing Water Service Including Minimum Standards For Design and Construction). This contention was raised in MB's petition for rehearing of D.92307. Although not discussed in the order denying rehearing (D.92543), the rationale adopted by the Commission in disposing of that issue is as follows: MB asserted in its petition for rehearing that it has never been obliged to conform to the standards of GO 103. Instead, it argued that it is governed by Rule No. 2, "Description of Service," one of the several rules required under General Order 96-A to be filed as a part of the utility's tariff schedule. The fundamental weakness in MB's position is the language of MB's Tariff Rule 2(B)(1), which is based virtually word for word on GO 103(II)(3)(a). The more lenient pressure standards of Rule 2(B)(2), on which MB bases its assertion of compliance, apply only to areas specifically designated as low pressure zones on the utility's service area map. No such designated pressure areas are indicated on the service area map in MB's filed tariff schedule. MB has no justification for trying to invoke the more lenient standards applicable to approved designated pressure areas. Furthermore, the purpose clause of GO 103 indicates that the standards of GO 103 are to be observed whenever all or part of an existing water utility's

plant is replaced.<sup>1/</sup> Having undertaken the installation of some 500 feet of replacement water mains, MB cannot assert that the standards of GO 103 do not apply. Notwithstanding that MB's system improvements are not in full compliance with the order of W-2393, the fact that MB caused any improvements to be made in its facilities brings it within the ambit of GO 103.

Findings of Fact

1. Every fact alleged in A.60769, except MB's filing of a revised tariff reducing its rates, has been considered by this Commission in prior decisions.

2. Every argument raised in A.60769 as a reason to postpone or to revise the requirements of D.92307 and D.93195 has been considered and disposed of by the Commission in prior orders.

Conclusions of Law

1. Insufficient new facts have been alleged and no new legal arguments have been presented in A.60769 which warrant the granting of the relief sought in that application.

2. The relief sought in A.60769 is solely within the discretion of the Commission to grant or deny.

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<sup>1/</sup> "The purpose of these rules is to promote good public utility practices, to encourage efficiency and economy and to establish minimum standards to be hereafter observed in the design, construction and operation of waterworks facilities by water utilities operating under the jurisdiction of the Commission. The standards herein prescribed are intended as minimum standards applicable after adoption and continued full utilization of existing facilities is contemplated. Nothing contained in any of the rules herein promulgated shall be construed to require the replacement or abandonment prior to the expiration of economic utilization of facilities in use at the time of adoption of these rules unless the Commission, after hearing, shall enter an order directing the abandonment or replacement of particular facilities found to be inadequate for the rendition of proper public utility service." (Emphasis added.)

3. A.60769 should be denied.

O R D E R

IT IS ORDERED that A.60769 is denied.

This order becomes effective 30 days from today.

Dated SEP 1 1981, at San Francisco, California.

John E. Bryan  
President  
Richard D. Powell  
Thomas W. Smith  
Walter R. ...  
Priscilla C. ...  
Commissioners