

Decision 96-07-056 July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into whether the Wolfback Water Company, Inc. is unable or unwilling to serve its ratepayers, has been abandoned by its owners or is unresponsive to the rules, orders, and decisions of the Commission. Order to Show Cause why it should not be fined for failure to comply with Commission rules, orders, and decision. Order to Show Cause why the Commission should not request the Superior Court to appoint a receiver to operate Wolfback Water Company, Inc.

ORIGINAL

Because (See Appendix A for appearances)

Wolfback requested the Commission to regulate Wolfback until the annexation by MMWD. In response to the Commission's request dated 03-10-95 by which the

Background

Wolfback Water Company, Inc. (Wolfback) serves 2800 customers in the Wolfback Ridge area of Sausalito. Wolfback Ridge is located west of U.S. Highway 101 adjacent to the Golden Gate National Recreational Area. While the rest of Sausalito is served by the Marin Municipal Water District (MMWD), Wolfback's service area is outside the service boundary of MMWD. However, since its inception, Wolfback has been receiving its entire water supply from MMWD.

The Wolfback system was developed in 1939 to provide domestic water supply and fire protection in the Wolfback Ridge area. In 1966, James Erway purchased the water system from the original owners. He maintained and operated the water system until he sold it to Allan Patterson and Carolyn Wean for \$160,000. In November 8, 1994,

addition to the water system, Patterson bought 7.8 acres of land in the Wolfback Ridge area with the intention of developing residential housing lots.

Wolfback was not regulated by the Commission until 1992 when the Commission in response to complaints filed by Wolfback's customers, issued Decision (D.) 92-09-031 which found Wolfback to be a public utility under the provisions of Public Utilities (PU) Code § 2701. However, the Commission refrained from regulating Wolfback and ordered it and its customers to proceed with due diligence to form a utility assessment district to finance the necessary system improvements for eventual annexation by MMWD.

Since the issuance of D.92-09-031, it became evident that considerable time may elapse before the annexation of Wolfback by MMWD.

Because of the anticipated delay in annexation, several customers of Wolfback requested the Commission to regulate Wolfback until the annexation by Wolfback is completed. In response to customers' requests the Commission issued D.93-10-025 by which the Commission assumed jurisdiction over Wolfback's operations and began regulation of Wolfback.

On October 6, 1994, Wolfback's sole water supplier, MMWD, sent a letter to Wolfback's customers notifying them that water service would be terminated on October 21, 1994, unless Wolfback either paid the current balance of its account or posted a bond until a billing dispute was resolved. The termination of water service was delayed because Wolfback's representative could not attend a scheduled hearing on the matter. On October 12, 1994, the Commission was first notified of the problem when it received a copy of a letter from Wolfback dated October 8, 1994, and addressed to its customers advising them that MMWD intends to terminate water service. On October 27, 1994, the Commission received a letter from MMWD stating that MMWD had rescheduled the service termination hearing for November 8, 1994.

Wolfback disputed that it was in arrears in payment to MMWD. Wolfback argued that MMWD's claim of water delivery is not confirmed by Wolfback's meters located at each ratepayer's point of delivery. MMWD responded that the billing discrepancy is caused by a large leak in the Wolfback water delivery system. Wolfback disputes this claim of a leak. MMWD has filed a lawsuit in Marin County Superior Court (Case No. 160241) over the matter.

In addition, the Commission Advisory and Compliance Division (CACD) staff accountant, Kenneth Louie, conducted an audit of Wolfback's records. According to Louie only about 20% of the water MMWD claimed to have delivered to Wolfback's system was ever received by Wolfback's customers.

Noting the above mentioned problems, the Commission, on November 22, 1994, issued an Order Instituting Investigation (OII) on its motion I.94-11-032 into the operations of Wolfback. I.94-11-032 directed CACD's staff to investigate whether Wolfback is capable of continuing to operate as a water utility and whether it is in compliance with the provisions of water supply standards contained in Commission's General Order (GO) 103. I.94-11-032 also ordered Wolfback to show (1) that it is capable of providing adequate water service; (2) that it is in compliance with the applicable provision of the PU Code; and (3) why a receiver should not be appointed to operate the utility.

Wolfback filed a timely response to the OII in which it stated that it was capable of providing adequate water service. Wolfback attached a letter from MMWD which states that MMWD will not be terminating Wolfback's service. Wolfback denied that it was in violation of the provisions of GO 103 and the applicable provisions of the PU Code. Wolfback stated that there was no need to appoint a receiver to operate its system.

Wolfback may employ inadequate facilities and equipment.

Current Status of Wolfback's Acquisition by MMWD

An assessment district for the acquisition of Wolfback by MMWD has been formed. New facilities are being installed to bring Wolfback's system to MMWD's standards. MMWD expects that the necessary system improvements will be completed by September 1996. MMWD plans to annex Wolfback by the end of September 1996.

A prehearing conference (PHC) in the OII was held before Administrative Law Judge (ALJ) Gardel on January 9, 1996 in Division 5. According to the records of Wolfback, the PHC was held on January 9, 1996.

At the PHC, CACD agreed to mail its report on the investigation of Wolfback's operations on March 11, 1996. The evidentiary hearing in the OII was held on March 19, 1996.

Rami Kahlon, Allani Patterson, and Ronald Theisen provided testimony for CACD, Wolfback, and MMWD, respectively. Also, Wolfback's customers, Nancy Deaton, Peter Erickson, and James McCarthy, provided testimony on their own behalf.

The proceeding was submitted on April 18, 1996 upon receipt of the transcript. CACD's Report

Rami Kahlon of CACD conducted an investigation of Wolfback's operations. As agreed upon during the PHC, CACD's report on the investigation was mailed to the parties on March 11, 1996.

CACD's report discusses the following three concerns expressed in the OII:

1. Wolfback may not be able to provide adequate service to its customers.

2. Wolfback may be in violation of the provisions of GO 103.

3. Wolfback may employ inadequate facilities and equipment.

Wolfback's Ability to Provide Service

As stated earlier, the Commission was prompted to open this OII because Wolfback's sole supplier of water, MMWD, had threatened to terminate its service to Wolfback for nonpayment of approximately \$53,000 in water bills. Wolfback was in "arrears" because of a billing dispute with MMWD. The billing dispute resulted from a major leak in Wolfback's system. Wolfback receives water through MMWD's master meter and is billed according to the water use registered on the master meter. Instead of paying for the water registered on the master meter, Wolfback only paid for the total amount of water registered on the individual meters of its customers. The discrepancy in the water use registered on MMWD's master meter and the total water use recorded on the individual meters was due to a water leak on Wolfback's side of the master meter. Consequently, Wolfback built up a large unpaid balance to MMWD. Wolfback repaired the leak in its system in the fall of 1995.

MMWD has relieved Wolfback from payment of \$43,000 of the total outstanding balance of \$53,000. Based on its investigation, CACD believes that with the exception of the remaining balance due of \$10,000 on MMWD's books, Wolfback's bill payments to MMWD are current.

CACD concludes that Wolfback has continued to provide service to its customers and is capable of providing continued service to its customers until its eventual annexation by MMWD.

Possible Violation of GO 103

The OII's second concern is that Wolfback may "have" violated General Order 103, Title VIII, S. 'Source of Supply' by operating a water system which supplies water for fire protection with less than two independent sources of supplies.

Wolfback's only source of supply is MMWD which provides Wolfback treated water for distribution to its customers. Wolfback

maintains two fire hydrants which are supplied by a 6-inch main from Wolfback storage tanks.

GO 103, was first adopted by the Commission on June 12, 1956. In Section 1 (Title Purpose) of the order contains a "grandfather" clause that specifically prohibits the replacement or abandonment (of water infrastructure) prior to the expiration of economic utilization of facilities in use at the time of adoption of these rules. This section goes on, however, to state that the Commission has the authority to direct the replacement of facilities it deems inadequate for proper utility service.

Wolfback came into existence in 1939, well before the Commission had adopted GO 103. CACD believes that GO 103 grandfather clause, as cited above, exempts Wolfback from meeting GO 103 requirements for its current system. Further, Wolfback was brought under Commission jurisdiction in 1993. Prior to this time, Wolfback was unaware of GO 103 standards and therefore could not be expected to meet its requirements. Any plant upgrades or replacements made after 1993, should, of course, have met GO 103 standards. Accordingly, CACD concludes that Wolfback is not obligated to have a second source of water supply.

CACD concludes that Wolfback has continued to provide

service to its customers and is capable of providing continued

1 Although CACD uses this language in its report, the actual language contained in GO 103 is as follows:

"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."

In addition, CACD states that it is important to note that while Wolfback's water system might not meet GO 103 standards, it continues to provide adequate water service to its customers. CACD is aware that Wolfback's water service may be sporadic at times because of power failures and other circumstances, both within and beyond the utility's control. However, CACD believes that with the imminent annexation of Wolfback's service territory into MMWD and the formation of an assessment district to rebuild the water system, there is no compelling need for the Commission to order Wolfback to make any improvements.

Inadequate and Improper Facilities

The OII's third concern was that Wolfback may employ equipment and facilities that are inadequate and improper as provided in Public Utilities Code Section 761 and GO 103.

PU Code § 761 allows the Commission, after a hearing finding the practices, equipment, or facilities of any public utility improper, to determine and by order or rule to fix the practices, equipment, or facilities employed.

The standards of service for Wolfback are contained in its tariff rules which include detailed requirements and procedures that Wolfback must follow with regards to items such as deposits, discontinuance and restoration of service, meter tests, disputed bills, etc.

CACD states that Wolfback has generally abided by its tariff rules. In instances where Wolfback has failed to abide by its rules, Wolfback's customers have filed formal complaints against Wolfback.

As to Wolfback's equipment and facilities, CACD concludes that the equipment and facilities used by Wolfback to provide water service can best be classified as marginal, but serviceable. Wolfback provides adequate water service to its customers for their domestic and household needs. Wolfback also furnishes public fire service.

In its concluding remarks, CACD states that:

"It is the staff's opinion that Wolfback and its customers are deadlocked in a no win situation. Wolfback is an aggressive water purveyor that is quick to terminate service and ignore inquiries from its customers. Wolfback customers are equally aggressive; they often withhold payment of their bills and frequently file complaints with the Commission. Over the years this pattern has repeated itself time and again. The animosity between Wolfback and its customers has never been greater.

"But animosity between Wolfback and its customers does not in and of itself warrant further intervention by this Commission. The Commission's existing rules are more than adequate to protect Wolfback's customers. When allegations of rules violations (sic) have been made, the Commission has taken action as necessary--as demonstrated by its complaint decisions. Staff believes that there is no need for the Commission to establish additional rules or orders for Wolfback's practices."

Based on the above, CACD concludes that allegations contained in the OII cannot be substantiated. CACD recommends that the Commission close this investigation without taking any further action.

Positions of Other Parties

Allan Patterson of Wolfback testified that he found CACD's report to be accurate. He agreed with its conclusions and recommendations.

Ronald Theisen of MMWD testified that Wolfback's system is being rebuilt to MMWD's standards. MMWD expects the system would be substantially completed by the end of summer. MMWD still expects the procedure for annexation of Wolfback to begin in late September 1996.

Nancy Deaton and Peter Erickson, both customers of Wolfback, found CACD's investigation to be inadequate. They

suggested that the Commission require CACD to conduct an in-depth investigation of Wolfback's practices. Both Nancy Deaton and Peter Erickson took exception to the two paragraphs from CACD's report which were quoted earlier. They believe that the report should not conclude that all of Wolfback's customers are irresponsible and unwilling to pay their bills. There are only a few customers who may have been irresponsible.

Decision

CACD is the only party which conducted an investigation of Wolfback's operations. The only evidence before us leads us to conclude that the allegations contained in the OII cannot be substantiated. Improvements to Wolfback's system are being made for eventual annexation by MMWD. We see no need to require Wolfback to any action other than to continue to cooperate with MMWD in the annexation process.

As recommended by CACD, we will close this investigation.

Findings of Fact

1. On November 22, 1994, the Commission instituted I.94-11-032, or OII, into the operations of Wolfback.
2. The OII directed CACD's staff to investigate whether Wolfback is capable of continuing to operate as a water utility and whether it is in compliance with the provisions of GO 103 and the PU Code.
3. I.94-11-032 ordered Wolfback to show (1) that it is capable of providing adequate water service; (2) that it is in compliance with the applicable provision of the PU Code; and (3) why a receiver should not be appointed to operate the utility.
4. Wolfback filed a timely response to the OII.
5. Wolfback states that it is capable of providing adequate water service and that it has not violated any provisions of GO 103.

6. Wolfback believes that it is not necessary to appoint a receiver to operate its system. CACD's staff has conducted an investigation of Wolfback's operations. The two paragraphs from CACD's report which were quoted above are:

8. CACD concludes that the allegations against Wolfback contained in the OII cannot be substantiated.

9. CACD recommends that no further action be taken in this OII and that the OII be closed.

Conclusion of Law

The proceeding in I.94-11-032 should be closed without further action. The only evidence before the Commission is the OII. The allegations contained in the OII cannot be substantiated. Improvements to Wolfback's system are being made for eventual annexation by WUSD. No action is needed to require

IT IS ORDERED that the proceeding in Order Instituting Investigation 94-11-032 is closed. This order becomes effective 30 days from today.

Dated July 17, 1996, at Sacramento, California.

- 1. On November 28, 1994, the Commission instituted I.94-11-032 to determine whether Wolfback is capable of providing adequate water service.
- 2. CACD's staff has investigated whether Wolfback is capable of providing adequate water service and whether it is in compliance with the provisions of GC 103 and the PU Code.
- 3. I.94-11-032 ordered Wolfback to show (1) that it is capable of providing adequate water service; (2) that it is in compliance with the applicable provision of the PU Code; and (3) why a receiver should not be appointed to operate the utility.
- 4. Wolfback filed a timely response to the OII.
- 5. Wolfback states that it is capable of providing adequate water service and that it has not violated any provisions of GC

P. GREGORY CONLON
DANIEL W. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
 Commissioners

APPENDIX A

List of Appearances

Respondent: Alan Patterson and William Haag, for Wolfback Water Company, Inc.

Interested Parties: Armand P. Adkins, Attorney at Law, for Alexis Yermakov; Ronald Theisen, for Marin Municipal Water District; and John and Nancy Deaton, Peter Erickson, James R. McCarthy, Kris Morrissey, Frank Leahy, Bob Noori, Jay Strickler, Está Swig, Attorney at Law, and Tom Zimberoff, for themselves.

Commission Advisory and Compliance Division: Rami Kahlon.

(END OF APPENDIX A)