

Decision 98-07-063 July 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Clark and Gudrun Beck,

Complainants,

vs.

Bishop Water Company and California-American  
Water Company,

Defendants.

ORIGINAL

Case 97-05-028  
(Filed May 12, 1997)

Clark and Gudrun Beck, appearing in propria persona,  
complainants.

Steeffel, Levitt & Weiss, by Lenard G. Weiss, Attorney  
at Law, for Bishop Water Company and California-  
American Water Company, defendants.

Lawrence D. Foy, for California-American Water Company,  
interested party.

O P I N I O N

1. Summary

This decision denies the complaint because no violation of commission rule or order has been shown. Complainants fail to show that defendants have performed in an unreasonable manner with regard to the water storage tank in question. Defendant has shown that it has performed in a reasonable manner.

## **2. Procedural History**

### **2.1. Complaint**

This complaint alleges that the defendants, Bishop Water Company (Bishop) or California American Water Company (Cal-Am), own a water tank near complainants' home and that the water tank may be unsafe. The complaint seeks to have the defendants cause to have an inspection of the tank and underlying soil. It also seeks to have the tank replaced if the inspection indicates that the tank is unsafe. The complaint does not cite any code section, commission order, or tariff rule that defendants have violated.

### **2.2. Transfer Bishop to Cal American**

By Decision 97-09-095 in Application 97-04-030, Bishop was authorized to sell and transfer its assets and operating rights to Cal-Am. According to counsel for defendants that sale has not yet been consummated. In the meantime Cal-Am is operating Bishop, but is not empowered to make capital investments on Bishop's behalf. For the purposes of this proceeding, both defendants were represented by Lenard G. Weiss, Attorney at Law.

### **2.3. Answer**

The answer to the complaint was filed on June 26, 1997. The answer denies the complaint. The answer goes on to state that Cal-Am engineers have inspected the tank and verified its structural condition. As a result of the complaint, the defendants had a survey conducted of the tank's foundation and found that it is level and that neither the foundation nor the tank itself shows signs of movement. Defendants also stated that in a then-pending rate increase application, Bishop has requested funds to replace the tank with a new 300,000-gallon steel tank.

#### **2.4. Mediation Process**

By an Administrative Law Judge (ALJ) ruling dated September 12, 1997, the ALJ directed that parties were to meet with a mediator to see if the parties could reach their own mutually acceptable agreement regarding the issues in the complaint. The ruling provided that any meetings or negotiations following the initial presentation of the mediator would be voluntary and confidential. The ruling directed the mediator to notify the ALJ if the initial meeting took place. By letter dated October 1, 1997, the mediator notified the ALJ that the initial meeting had taken place.

Until the hearing in this matter, the parties maintained the confidentiality of the mediation process. However, at the hearing, both parties wanted to discuss certain aspects of the mediation process and both parties waived the confidentiality of the mediation process.

The testimony shows that a mediation session was held with subsequent telephone conversations between the parties and the mediator. The process culminated in a written agreement whereby Cal-Am would undertake the hiring of certain independent engineers for the purpose analyzing the soils at the tank site and the condition of the tank itself. Upon completion of the studies the engineering reports would be made available to the Becks. At the same time the reports were made available to the Becks, the Becks would withdraw their complaint.

Cal-Am hired and paid two independent engineering firms to conduct the studies. The studies were completed and the reports were about to be made available to the Becks. At that time the Becks wanted to add further conditions. The defendant refused to accept any further conditions. The Becks refused to withdraw their complaint and a hearing in this matter was necessary.

At this point the Becks had, in effect, achieved the relief requested in the complaint without substantiating any violation of any law, rule, or order of the commission. The studies were done and paid for by the company; the company had knowledge of the results of the studies. The company would be at high risk if it had knowledge of any unsafe condition and failed to act to ameliorate the unsafe condition.

### **2.5. Hearing**

A hearing was held in this matter on December 10, 1997, in Seaside, California before ALJ Kenneth Henderson. Mr. and Mrs. Beck represented themselves, testified and presented five exhibits. The defendants were represented by an attorney and presented the testimony of Gary Weigand, Distribution Superintendent of Cal-Am.

### **3. Discussion**

The essence of the complaint is the allegation that the defendants are operating a water storage tank that is unsafe. The tank is a 200,000-gallon redwood tank constructed in 1961. It is about 52 feet in diameter and 21 feet high. It is constructed of redwood staves surrounded by metal rod hoops. It sits on a concrete foundation in a cut slope. It is located about 500 feet north and 100 feet higher than the Beck home.

#### **3.1. Jurisdiction**

Public Utilities (PU) Code §§ 701 and 761 provide ample authority for the Commission to entertain this complaint regarding the safety of defendants' facilities and to order any improvements shown necessary after hearing.

PU Code § 1702 provides that the complaint must show that the defendant has violated any law, order or rule of the Commission.

This is a complaint case *not* challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

### **3.2. *Complainants' Evidence***

The Becks live in a hillside home about 500 feet away from and 100 feet below the tank. The Becks are fearful that the tank will collapse or slip down the hill causing 200,000 gallons of mud or water to overwhelm their home.

The evidence that the Becks submitted in an attempt to show that the tank is unsafe is: (1) Testimony regarding a mudslide incident which occurred in 1993 and (2) a set of photographs of the tank as it currently exists.

In 1993 the tank overflowed causing a mudslide that went on to the Beck property and did minor damage to their home. The Becks admit that the tank's overflow pipe has been redirected. They indicate that the tank has overflowed several times since 1993 but no damage has resulted. They are of the opinion that the overflows have been the result of malfunctioning controls at the tank. The controls fail to turn off the pump on occasion.

The photographs show that the tank has incurred some degree of rot on its external surface and is experiencing some degree of leakage. Mr. Beck has a background as an engineer but admits that he is not an expert in soils engineering or in wood tank safety. He has not performed nor had a thorough inspection of the tank performed.

### **3.3. *Defendant's Evidence***

Defendant states in its answer that the filing of the complaint caused it to have a survey of the tank site performed. The result of the survey was that the tank is level and shows no signs of movement.

Further, as a result of the mediation process discussed above, it hired Howard Carter Associates in Monterey. This is a licensed structural

engineering firm. The firm was suggested by Mr. Beck. The firm was made aware of the concerns of the Becks. The firm was asked to do a study and provide an opinion as to the soundness of the tank, any threat of imminent collapse and an overall impression of the tank. It was also made known that the tank would probably be replaced within a two- to three-year timeframe.

The study was done and a report submitted to Cal-Am witness Weigand who read the report and testified that it indicated that the tank was sufficiently sound to present no danger of collapse until its planned replacement. The report did recommend that an additional metal hoop be placed around the tank.

Defendant also hired Reynolds Associates, a soils engineering firm in Watsonville, California. This firm was not currently employed by Cal-Am but had done tank siting work for Cal-Am in the past. This firm was also made aware of the Becks' concerns on request. The firm performed a full set of lab tests on drilled core samples including liquefaction. In addition the firm performed a slope stability analysis. The resulting report was presented to Cal-Am. Weigand testified that after reading the reports he was not aware of any danger that the tank might collapse.

A third study was performed by Cal-Am itself. This study was to consider the necessary size of the tank and the amount of water that is required to be stored in the tank. Weigand testified that he consulted with the Salinas Rural Fire District to determine fire flow requirements in the area. Then, based on the number of people the tank serves, Weigand calculated the amount of storage needed. Weigand testified that the 200,000 gallons is the very minimum amount needed.

### **3.4. Conclusion**

Complainants' evidence is insufficient to establish that there is an unreasonable danger presented by the water tank in question. Defendant presented evidence establishing that the tank in question, with the placement of an additional metal hoop as recommended by a licensed structural engineering firm, is reasonably safe.

### **Findings of Fact**

1. The Becks live in a hillside home about 500 feet away from and 100 feet below a redwood tank.
2. The tank is owned and operated by Bishop or Cal-Am.
3. The tank is a 200,000-gallon redwood tank constructed in 1961. It is about 52 feet in diameter and 21 feet high. It is constructed of redwood staves surrounded by metal rod hoops. It sits on a concrete foundation in a cut slope.
4. The tank has suffered some degree of rot on its external surface and is experiencing some degree of leakage.
5. Cal-Am has commissioned a study by a structural engineering firm to render an opinion on the soundness of the tank.
6. Cal-Am has commissioned a study by a soils engineering firm to render an opinion regarding the danger of the collapse of the tank.
7. Cal-Am has reviewed the reports of the two engineering firms.
8. The reports indicate that there is no imminent danger of collapse of the tank before its anticipated replacement in two to three years.
9. The structural engineering firm recommends that an additional metal hoop be placed around the tank.
10. A tank of at least 200,000-gallon capacity is needed to supply domestic use and fire flow needs of the surrounding neighborhood.

**Conclusions of Law**

1. Bishop and Cal-Am should add an additional metal hoop around the tank, as specified in the report of Howard Carter Associates.
2. In all other respects, the complaint should be denied.
3. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

**O R D E R**

**IT IS ORDERED that:**

1. Bishop Water Company (Bishop) and California American Water Company (Cal-Am) shall install an additional metal hoop around the water tank in question, as specified in the report of Howard Carter Associates, within 60 days.
2. Bishop and Cal-Am shall notify Water Division staff that the additional metal hoop has been installed with 14 days of the installation.
3. Any unresolved motions in this proceeding are denied.
4. In all other respects, this complaint is denied.



C.97-05-028 ALJ/KKH/wav/bwg

5. This proceeding is closed.

This order is effective today.

Dated July 23, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners