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MAIL DATE

4/7/2000

Decision 00-04-036

April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PONDEROSA  
COMMUNITY SERVICES DISTRICT  
to the Public Utilities Commission.

Application 98-07-062  
(Filed July 23, 1998)

**ORDER GRANTING REHEARING AND VACATING  
DECISION 99-11-020**

On November 23, 1999, Ray and Juanita Fox filed an application for rehearing of Decision (D.) 99-11-020, which granted the application of the Ponderosa Community Services District to declare certain transfers of alleged utility property void pursuant to Public Utilities Code section 851.<sup>1</sup> In particular, D.99-11-020 declared a 1991 deed of trust executed by DMC, Inc. void as regards Rosella Water Company's property. No response to the Foxes' application for rehearing was filed.

We have carefully considered all arguments presented by the Foxes, and are of the opinion that good cause for granting rehearing has been demonstrated. We decline, however, to hold further proceedings because upon further consideration we note that the central issue presented is one of title to property and not utility law. We will therefore make limited findings as are justified by the record, but we leave the central issue of the ownership and rights to the well site and water pipes to the Superior Court or other appropriate forum to determine. Accordingly, in today's order, we vacate D.99-11-020 and close this proceeding.

<sup>1</sup> Unless otherwise stated all statutory references refer to the Public Utilities Code.

## **I. BACKGROUND**

This proceeding arises from certain property transactions between Donald G. Carter, the owner of Rosella Water Company, and the Foxes. Carter, now deceased, owned both a corporation, DMC Enterprises, Inc., and a water utility, Rosella. In 1983, the Foxes lent DMC \$50,000 secured by a deed of trust to a 40-acre parcel in Tulare County near Sequoia Park. After this encumbrance Carter made certain improvements to the property by installing a well and water pipes ("well site"). The Commission acknowledged these improvements as part of the Rosella utility in a 1990 decision, D.90-01-033, which treated the well site as utility property.

On March 5, 1991 the Foxes reconveyed their deed of trust to DMC, and DMC executed a new deed of trust in favor of the Foxes covering a 13-acre portion of the original parcel which contained the well site. On April 18, 1991 DMC filed a subdivision map for the 13-acre parcel. Subsequently, the Foxes recorded the March 5, 1991 deed of trust on May 1, 1991.

Donald Carter died in 1992, although the Commission did not authorize anyone to take over the operations of Rosella. In any event, in July, 1993 DMC transferred and recorded an easement to the well site to Rosella. In September, 1993 the Foxes foreclosed on the 13-acre parcel and took title. Finally, in March, 1996 Donald Carter's son, Donald Geoffrey Carter, issued a grant deed to the Foxes purportedly extinguishing the 1993 easement. In the wake of these transactions, a controversy ensued between the Foxes and Ponderosa regarding who owned the rights to the well site.

In D.99-11-020 we concluded that since the Commission had considered the well site to be Rosella's as of 1990, and the Commission had not authorized any transfer of the well site, the 1991 deed of trust "is void as regards Rosella Water Company's property." (D.99-11-020, at 12.) We also concluded that Rosella was the sole owner of the well site, which had been transferred to Rosella by 1990.

## II. DISCUSSION

The Foxes argue that there is no evidence in the record to support the conclusion that DMC transferred the well site to Rosella prior to the Foxes' 1991 encumbrance. Although the Foxes' filing does not meet the Commission's usual standards for applications for rehearing (see Commission Rules of Practice and Procedure, Rule 86.1), we agree with the Foxes that legal error has occurred.

The entity which encumbered the property was DMC, a separate entity from Rosella, although they had the same owner, Donald Carter. A review of the record confirms that there was no evidence of an actual legal transfer of the property from DMC to Rosella prior to 1991 in the form of a deed, contract, or recordation. Indeed, the 1993 purported transfer of the easement from DMC to Rosella calls into question whether any actual transfer occurred at an earlier date.

In D.99-11-020 we relied on the Commission's prior findings to support our conclusion that the well had become Rosella's property. Upon further consideration, we realize that the reliance upon the earlier Commission decisions is not justified. In D.90-04-032, we assumed that the well site was Rosella's property, and treated it as such for regulatory purposes. However, there is no Commission finding that an actual transfer to Rosella had occurred, or that Rosella had a legal easement, title, or other legal right to the well site.

Although we have considered the well site to be dedicated to public use, we recognize that it is not clear from the Commission decisions that Rosella ever had title to the property. In addition, as the applicant the burden is on Ponderosa to demonstrate that Rosella had rights to the well site. It is the legal title to the property which would make the provisions of section 851, requiring Commission approval before disposing of utility property, applicable. (City of Oakland v. El Dorado T. Co. (1940) 41 Cal.App.2d 320, 328.)

In light of the foregoing, it is also clear that the main issue in this proceeding is in fact one of title. Although framed as an application concerning section 851, there is no controversy regarding the section 851 issue. If the well

site had belonged to Rosella in 1991, it is clear that any subsequent transfers are invalid because no Commission authorization was obtained. The real controversy concerns whether Rosella had rights to the property at the time of the Foxes' 1991 deed of trust.

We reaffirm that the Commission may construe the property rights of a utility for the purposes of exercising its regulatory or ratemaking authority. (Camp Meeker Water System, Inc. v. Public Utilities Com. (1990) 51 Cal.3d 845, 861.) However, the Commission only undertakes to resolve these issues when necessary as part of its broader regulatory mandate. "Normally, it is not the Commission's function to determine title to or ownership of public utility property." (Re Golconda Utilities Co. (1968) 68 Cal.P.U.C. 296.)

In this case, upon reconsideration we decline to resolve the issue of whether Rosella owned or had legal rights to the well site in 1991. We find that this issue can be more appropriately decided in Superior Court. However, we will assist the Superior Court with limited findings germane to our regulation of Rosella.

#### **FINDINGS OF FACT**

1. The Commission did not authorize any transfers of any wells or water pipes from Rosella Water Company's system after 1990.
2. As of January, 1990 the Commission considered the well site and water pipes on Tract 652 to be necessary and useful to Rosella's water service.

#### **CONCLUSIONS OF LAW**

1. Ponderosa's application presents issues of Rosella's and the Foxes' property rights, which are more appropriately resolved in Superior Court.

**THEREFORE, IT IS ORDERED** that:

1. Rehearing of D.99-11-020 is granted.
2. D.99-11-020 is vacated.
3. This proceeding is closed.

This order is effective today.

Dated, April 6, 2000 at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners