

Decision 99-10-047 October 21, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Vera J. Johnson,

Complainant,

vs.

Santa Clarita Water Company,

Defendant.

Case 99-07-008  
(Filed July 6, 1999)

**O P I N I O N**

**Summary**

Vera J. Johnson's complaint that Santa Clarita Water Company is negotiating to sell its public utility water system to Castaic Lake Water Agency is dismissed for failure to state a cause of action.

**Background**

Complainant Vera J. Johnson (Johnson) alleges that Castaic Lake Water Agency (Castaic) intends to purchase Santa Clarita Water Company's (Santa Clarita) Commission-regulated water system. According to Johnson, negotiations are being carried out behind closed doors between Santa Clarita and a select group of Castaic board members and Castaic's general manager, and no information is being provided to other Castaic board members. Johnson believes that Castaic may agree to pay more than fair market value, ultimately forcing local taxpayers to bear the brunt of financing costs and the system's users to pay excessive water rates. Johnson further alleges that Castaic, by its own bylaws, is

mandated by state law to deal only with wholesale water distribution. Johnson would have the Commission require Santa Clarita to file a formal application for transfer and ensure that Castaic pays no more than fair market value for Santa Clarita.

Santa Clarita's Answer to Complaint acknowledges that it is in the process of being purchased by Castaic, but denies that the process is being done behind closed doors, or that it has in any way acted illegally or improperly. According to Santa Clarita, "On August 11, 1999, following a public hearing, the Board of Directors of [Castaic] approved a resolution of necessity authorizing and directing the condemnation of the stock of the Santa Clarita Water Company."

### **Discussion**

Sales of regulated water systems such as Santa Clarita's are covered by Pub. Util. Code § 851, which provides in pertinent part:

No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its ...plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, ...without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void.

Note, however, that transfers authorized by the courts through condemnation or similar proceedings do not require Commission approval to take effect. (People v. Fresno (1967) 254 CA2d 76, 62 Cal Rptr 79.)

That Johnson is aware of both of these provisions is evident from the fact that she attached to the complaint a copy of a 1985 internal memorandum from the Chief of the Commission's Hydraulics Branch to his staff citing the need for

formal application and approval under § 851 and the exception provided for transfers under court-ordered condemnations. She has also attached an April 28, 1999 letter from Castaic's general manager to Santa Clarita customers notifying them that negotiations were under way and when completed would have to be approved by the Castaic board of directors. Santa Clarita, in its answer, states that it "intends to comply fully with all PUC rules and regulations and specifically the [Hydraulics Branch memorandum]."

It is well-established that parties contemplating the sale of a public utility may enter into a contractual sales agreement before applying for Commission approval, provided that the transfer is not effective until approval is obtained:

Although a *transfer* of property within the ambit of section 851 may be void until approved by the commission, the statute does not prevent parties from entering into *contracts* for the sale or transfer of the assets of a public utility. (emphasis in original)(Transport Clearings – Bay Area v. Simmonds (1964) 226 CA2d 405, 38 Cal Repr 116.)

It is not necessary that the Commission, upon learning of a utility's negotiations to sell its system, order the utility to file an application for approval.

Complaints are brought before the Commission under Pub. Util. Code § 1702 and Rule 9 of the Commission's Rules of Practice and Procedure. A complaint must:

set[ ] forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. (Pub. Util. Code § 1702.)

Since Castaic is not a Commission-regulated public utility, Johnson's allegations regarding its conduct fall outside of the Commission's jurisdiction.

In her complaint, Johnson does not maintain that Santa Clarita has already consummated a transfer to Castaic, or that their negotiations violate any provision of law or any Commission order or rule, nor is any such violation discernible from information in the complaint or Santa Clarita's answer. She thus fails to state a cause of action upon which the Commission may act, and the complaint must be dismissed.

### **Procedural Matters**

The Instructions to Answer sent to defendant Santa Clarita on July 21, 1999 designated the assigned Commissioner and Administrative Law Judge, and stated that this would be categorized as an adjudicatory proceeding and set for hearing. Neither party appealed the categorization as permitted under Rule 6.4(a), so we see no need to disturb that designation. Because we have decided to dismiss the complaint, no scoping memo is necessary, nor is a hearing required.

The assigned Administrative Law Judge's draft decision was served on the parties and made available for public review and comment as required by Pub. Util. Code § 311(g)(1). No comments were received within the 20-day period permitted under Rule 77.2. However, Johnson did serve a document four days after the deadline that she characterized as comments on the draft decision. That document did not refer in any other way to the draft decision, but rather posed a new and different request for relief. Johnson's comments were neither timely nor within the permissible scope defined in Rule 77.3, Scope of Comments, and will not be considered.

### **Finding of Fact**

The complaint does not state what violation of any provision of law or any order or rule of the Commission Santa Clarita is alleged to have committed.

**Conclusions of Law**

1. The Commission lacks jurisdiction over Castaic.
2. Parties contemplating the sale of a public utility may negotiate a contractual sales agreement before applying for Commission approval, provided that the transfer is not effective until approval is obtained.
3. Transfers authorized by the courts through condemnation or similar proceedings do not require Commission approval to take effect.
4. The complaint fails to state a cause of action against Santa Clarita as required by Pub. Util. Code § 1702 and Rule 9 of the Commission's Rules of Practice and Procedure.
5. The complaint should be dismissed.
6. No hearing is required.

**O R D E R**

**IT IS ORDERED** that:

1. The complaint in Case 99-07-008 is dismissed for failure to state a cause of action.

2. This proceeding is closed.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

CARL W. WOOD

Commissioners