

WATER/FLC/:jrb

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION NO. W-4384

May 22, 2003

R E S O L U T I O N

**(RES. W-4384), KINGS COUNTY CANAL COMPANY (KCCC).
ORDER DECERTIFICATING KCCC.**

SUMMARY

This Resolution decertificates KCCC because it is an association exempt from regulation under Public Utilities Code Section 2705.

BACKGROUND

In the Spring of 2002, the Water Division undertook to contact all of the 137 smaller water companies that the Commission regulates. One of these, Kings County Canal Company (WTD 276) described its organization as a mutual corporation that serves irrigation water only to its stockholders. A review of the Division's files revealed that KCCC still has its original December 5, 1919 tariffs on file with the Commission. No correspondence has been received with respect to the utility within the last ten years and no customer has ever complained about service quality or billing.

The few decisions relating to the company include Decision (D.) 5159, December 19, 1917, and D.6241, April 4, 1919, which dismissed Application (A.) 3396 and A.3717 respectively. Both applications requested permission to enter into an agreement with the Tulare Lake Water Company, a mutual water company. D.27734, February 5, 1935, granted the request in A.19707 for approval of a schedule of rates and authorized the use of ditches by certain water users. In D.33911, February 18, 1941, the Commission denied A.21983, the utility's request to abandon service as a public utility. D.56429, April 1, 1958 again dismissed the abandonment request, without prejudice, sought in A.38033.

A check of LEXIS records indicates that the utility was on the service list of two rulemakings applicable to all regulated water utilities. Apparently, KCCC did not actively participate in either proceeding.

By letter dated December 13, 1996, KCCC requested that it be deregulated pursuant to Section 2704 of the Public Utilities Code because the utility supplies water as an accommodation. When customers were informed of the request, Mr. Rick Clement of Western Homeland, Inc. submitted his letter in opposition dated January 9, 1996 which states:

“The value of our land is directly linked to its water rights and the deliverability of that water. Without the regulation by the PUC, there is no guarantee that any “accommodation” can be relied on, and this will dramatically devalue our land.”

The company subsequently withdrew its request.

The company filed annual reports in 1999 and 2000. It has not filed a report for 2001 which was due March 31, 2002.

DISCUSSION

By letter dated January 28, 2003, Walter Bricker, Director of KCCC states:

“The Kings County Canal Company has operated for many years as an *association* that delivers its limited water supply only to Company shareholders for agricultural purposes. The Company also leases its canal system to shareholders to facilitate the delivery of their agricultural water. The Company does not deliver water or provide other services to non-shareholders.” (emphasis in original)

The letter goes on to request:

“Based on the manner in which the Company operates, we request the deregulation of the Company such that the California PUC will no longer regulate it.”

Section 2701 of the Public Utilities Code defines the type of water purveyor that is under the jurisdiction and regulation of this Commission, the legislature then

goes on to exempt certain companies from Commission regulation. Specifically, Section 2705 of the Public Utilities Code reads in part:

“2705. Any corporation or association that is organized for the purposes of delivering water to its stockholders and members at cost, including use of works for conserving, treating, and reclaiming water, and that delivers water to no one except its stockholders or members, or to the state or any agency or department thereof, to any city, county, school district, or other public district, or any federal agency that provides fire protection or operates park facilities, or to any other mutual water company, at cost, is not a public utility, and is not subject to the jurisdiction, control or regulation of the commission.”

It appears that KCCC qualifies for exemption as an association under Section 2705. Therefore, Water Division recommends that the company's request for deregulation be granted. There is no reason to require annual reports or user fees from a company whose customers do not benefit from regulation, unless the Public Utilities Code specifically requires it. Notice of the KCCC deregulation request has been served on its customers and published in the local newspaper. There have been no protests. If, in the future, the Kings County Canal Company does provide service to non-shareholders, customers may file a complaint. The Commission can then reconsider the company's utility status. This is how the Commission has been made aware of what appeared to be defacto water utilities in the past.

We note that Mr. Clement's earlier objection to decertification based on serving water as an accommodation in accordance with Section 2704 was well-founded, because the KCCC operation does not qualify as an accommodation. On the other hand, decertification of this utility pursuant to Section 2705 of the Public Utilities Code is appropriate.

NOTICE

Kings County Canal Company sent a copy of its letter requesting deregulation to all of its members on April 8, 2003. No protests were received.

FINDINGS

THE COMMISSION FINDS that:

1. Kings County Canal Company, (WTD 276), has neither requested nor received a rate increase since 1919.
2. Kings County Canal Company now claims that it qualifies for decertification under Section 2704 of the Public Utilities Code as a mutual corporation that serves irrigation water only to its stockholders.
3. No person or entity objects to or protests the request of Kings County Canal Company to be decertified as proscribed in Section 2704 of the Public Utilities Code.
4. Decertification based on serving water as an accommodation in accordance with Section 2704 was not well-founded, because the operation does not qualify as an accommodation, but decertification under Section 2705 is appropriate. Kings County Canal Company is exempt from Commission regulation under Public Utilities Code Section 2705.
5. Kings County Canal Company should be removed from the list of water companies regulated by this Commission.

THEREFORE IT IS ORDERED THAT:

1. The Director of the Water Division shall inform the Kings County Canal Company that it has been deregulated.
2. All Commission records of the Kings County Canal Company shall be properly marked and disposed of or stored, as appropriate.

3. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 22, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners