

**ORIGINAL**

Decision No. 52249

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 LUKINS BROTHERS WATER COMPANY, and )  
 GLENN J. LUKINS and MELVIN L. LUKINS, )  
 owners of said Lukins Brothers Water )  
 Company, to operate a water system )  
 in Hillcrest Meadows Subdivision, )  
 County of Sutter. )

Application No. 37221

Russell F. Milham, for applicants;  
N. Paul Hansen, for New Helvetia Terrace  
 Subdivision and self, interested party;  
John F. Donovan and W. B. Stradley, for  
 the Commission staff.

O P I N I O N

Applicants' Request

Glenn J. Lukins and Melvin L. Lukins, copartners, doing business as Lukins Brothers Water Company, on August 16, 1955, filed the above-entitled application requesting authority to operate a public utility water system in Hillcrest Meadows Subdivision, located approximately 2 miles southwest of the center of Yuba City, in Sutter County.

Public Hearing

After due notice public hearing on this application was held before Examiner M. W. Edwards on October 11, 1955, at Yuba City. Testimony and supplementary facts regarding the application were presented by one of the partners. Prior to the hearing the staff had studied the application and discovered what it considered to be certain inaccuracies and unsound provisions in the application. The staff proceeded to bring these points out, through cross-examination of the witness.

Points Developed by Staff

The first point developed by the staff was that the cost of \$14,173.42 for the water system shown in the application was only about two thirds of the probable total cost of the system and was advanced entirely by the subdividers of the tract.

The second point was that the applicants have advanced an additional amount of about \$6,500 toward the total cost of the system and their equity will be less than one third of the total investment, an amount which the staff considered to be considerably below a sound ratio for the start of a new water utility.

The third point was that the proposed refund of 35 per cent of revenues to pay off subdividers' advance is so high that it probably would not leave sufficient revenue to cover the regular expenses of operation. This conceivably could place the applicants in the unsound position of having to obtain money from outside sources to pay the ordinary day to day operating expenses of the utility.

Applicants' attention was invited to the fact that the promissory note providing for the 35 per cent of revenue refunds did not provide that the payments will be discontinued if the full amount of the note is paid off before the end of a 20-year refund period. Applicants' counsel attempted to correct the situation by means of a late-filed revised promissory note back dated to July 7, 1955. Counsel was given opportunity to further amend the application to meet the staff's points prior to submission for Commission decision, but he desired a ruling on the application as presented and as augmented by the testimony of witness.

Findings

In addition to the points developed by the staff the Commission finds that:

1. The application is deficient in that it was not drawn in strict accordance with the Commission's rules of procedure. At no place in the application did it mention public convenience and necessity or request a certificate to begin construction (see Section 1001 of the Public Utilities Code) as indicated in Rule 18 of the Commission's rules of procedure. Instead of the recommended concluding sentence, as specified in Rule 79, which contains a clear and concise statement of the specific authorization sought by applicants, the application reads "Wherefore, your applicants pray that authority of the Public Utilities Commission of the State of California be granted in accordance with the terms of this application." In view of the deficiencies in the application such concluding sentence is inadequate.
2. The agreement attached to the application is deficient in that it requires the 35 per cent of revenue refund in perpetuity and does not limit it to the total amount of \$14,173.42. While the revised promissory note corrects this deficiency the agreement should likewise limit the total amount of refund.
3. The testimony indicates that applicants' equity in the system will be less than one third of the total capital. Their equity will be so low that the refunds probably will have to be made over a very long period of time. Inasmuch as this is a new utility and development might be slow, the system might be considerably depreciated before it will show a reasonable profit to the applicants.
4. The promissory note requires the applicants to immediately pay any unpaid balance at the end of the 20-year refund period. Such requirement might impair the operations of the utility at the end of 20 years. If the applicants provide substantial equity at the start of operations we find no practical reason for this provision.

Conclusion

It is concluded that the present application should be denied without prejudice to the filing of a supplemental application. The testimony indicates that applicants have other business interests and other sources of funds. We see no reason why applicants cannot

obtain sufficient capital to pay off the subdividers' advance to the point where their equity is substantial and considerably reduce the proposed rate of refund. A complete supplemental application drawn in strict accordance with the rules of the Commission, with reasonable financial arrangements as above indicated and setting forth the complete cost of the proposed system, will warrant the Commission in reconsidering its action.

O R D E R

Public hearing having been held, the matter having been submitted and the Commission basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that the application of Glenn J. Lukins and Melvin L. Lukins, filed herein, be and it is hereby denied without prejudice.

In order to allow applicants to proceed with the preparation of a satisfactory plan of financing and acquiring water facilities without undue delay, this order shall be effective on the date hereof.

Dated at San Francisco, California, this 22<sup>nd</sup> day of November, 1955.

*E. P. [Signature]*  
 President

*Justin J. [Signature]*

*Paul [Signature]*

*[Signature]*

*[Signature]*  
 Commissioners