

**ORIGINAL**

Decision No. 56486

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Title	)	
Insurance & Trust Company, a corporation,	)	
and Pioneer Title Insurance Company, a	)	
corporation, for permission to sell and	)	Application No. 39354
transfer certain assets to Cucamonga	)	(Amended)
County Water District, a body corporate	)	
and politic, and to cancel a certificate	)	
of public convenience and necessity to	)	
operate a water service system.	)	

Surr & Hellyer, attorneys, by James R. Edwards,  
for applicants.

Michael J. Fasman, attorney, for Country Club  
Plaza, Inc., and Fasallen Investments, Inc.,  
interested parties.

Theodore Stein, Donald B. Steger, and James G.  
Shields, Commission Staff.

O P I N I O N

Title Insurance & Trust Company, a corporation, hereinafter referred to as Title Trust (formerly Pioneer Title Insurance and Trust Company, a corporation,) and Pioneer Title Insurance Company, hereinafter referred to as Pioneer Insurance, by the above-entitled application, filed August 22, 1957, seek authority to sell certain water system properties, as shown on Exhibit A attached to the application, operated by Title Trust, as trustee, for the estate of H. F. Naisbitt, deceased, who did business as Estates Water Company, and certain other water system properties, consisting of 112 shares of stock of Cucamonga Water Company, a mutual company, hereinafter

referred to as the mutual, owned by Pioneer Insurance but leased to said Naisbitt's trustee. Such sale is proposed to be made to Cucamonga County Water District, a municipal water corporation, hereinafter referred to as the water district, in accordance with the terms of the agreement, Exhibit E, attached to the application. Approval of certain compromise agreements for the settlement of outstanding obligations arising out of main extension refund contracts, Exhibits B, C, and D, attached to the application, is also sought. Applicants also seek approval of an option agreement to purchase stock of the mutual, Exhibit F, between Pioneer Insurance and the water district. The application also seeks cancellation of a certificate of public convenience and necessity granted to Estates Water Company, Ltd., hereinafter referred to as Estates, by Decision No. 25167, dated September 12, 1932, in Application No. 18227.

A public hearing on this matter was held before Examiner Kent C. Rogers on October 3, 1957, at Cucamonga. At such hearing the instant matter was submitted for decision.

On January 28, 1958, the submission of the instant matter was ordered by the Commission to be set aside and the proceeding was reopened for further hearing. Such further hearing was held by Examiner Stewart C. Warner on February 19, 1958, at Los Angeles.

Evidence

Exhibit A is a list of Assets of Estates Water Company proposed to be sold by Title Trust, as Naisbitt's trustee, and proposed to be transferred to the water district. Said list includes

a reservoir site; a pumping plant located in Pump House No. 6 of the mutual; and all of the water distribution system known and operated as the Estates Water Company.

Exhibit No. 2 is a map purporting to show the water district's proposed future water system. Said map shows the boundaries of the water district; the locations of reservoirs and pumping stations; the existing district pipe lines; the location of a Metropolitan Water District pump feeder line; the proposed future pipe lines; and the locations of pipe lines to be acquired. It also shows that the service area of the Estates Water Company is embraced in its entirety by the water district boundaries.

Exhibits Nos. 3, 4, and 5, are copies of a Settlement Agreement, dated August 20, 1957, between Title Trust, as Naisbitt's trustee, and Country Club Plaza, Inc., and Fasallen Investments, Inc., Exhibit B supra; an Agreement, dated August 20, 1957, between Title Trust, as Naisbitt's trustee, and Jack G. Booth, Exhibit C supra; and an Agreement, dated August 20, 1957, between Title Trust, as Naisbitt's trustee, and Boyd-Fields, Inc., Exhibit D supra, respectively.

Exhibit No. 7 is an audit report of the water district covering the period from March 14, 1955 to June 30, 1957, and Exhibit No. 8 is a master plan for water system development of the water district, prepared in August 1957.

Item No. 2 is a letter dated November 7, 1935, from H. F. Naisbitt, president of Estates Water Company, Ltd., to this

Commission which relates that, although Estates was authorized by Decision No. 25167 supra, to issue stock to Red Hill Estates, Inc., hereinafter referred to as Red Hill, a subdividing corporation, for the acquisition of a reservoir and site, and pipe lines and installation costs, no such stock was ever issued. The record shows that no capital stock of Estates was ever issued to any one, nor did Estates ever possess any assets or incur any liability. Said letter further relates that Naisbitt operated the water company, received its operating revenues and paid its operating expenses and debts. Exhibit No. 17 is a telegram from the Secretary of State to applicant's counsel relating that Estates was suspended January 6, 1940. Item No. 2 also includes the annual report to the Commission of Estates Water Company, Ltd., for the year ending December 31, 1934. Said annual report shows that said company had no assets or liabilities as of that date.

Exhibit No. 19 is a First and Final Account, Report, Petition for Discharge of Executor and For Payment of Fees and Commissions of Naisbitt's estate, No. 25155 in the Superior Court of San Bernardino County, filed November 20, 1957, and Exhibit No. 20 is a copy of Order Settling Final Account, Attorneys Fees and Commissions, Decree of Distribution and for Extraordinary Fees of Naisbitt's estate, dated December 6, 1957, in Superior Court No. 25155 supra. Said exhibits cover a petition for and an order in the disposition of the estate of Herbert F. Naisbitt, also known as H. F. Naisbitt, deceased February 13, 1955.

Exhibit No. 21 is a Quitclaim and Release in favor of Title Trust, as Naisbitt's trustee, by the Naisbitt heirs to any and all right, title, and interest in and to any and all of the assets which comprise the water distribution system known as "Estates Water Company," except 112 shares of the capital stock of the mutual which stood of record on the date of the death of Naisbitt in the name of Pioneer Insurance. Said document also assigned and transferred to Pioneer Insurance any and all of the Naisbitt heirs' interest in said shares to Pioneer Insurance.

The proposed agreement of sale and purchase between applicants and the water district, Exhibits E and No. 6, supra, provides among other things, for a total purchase price for the water distribution system, known as Estates Water Company, described on Exhibit A supra, of \$40,040.39; for the payment by the water district of the sum of \$20,040.39 in cash to applicants; for the payment by the water district of a \$6,000 claim of the mutual; and for the acceptance by the applicants from the water district of a promissory note for \$14,000.00 bearing interest at the rate of 4 per cent per annum.

The record shows that the water district has funds on hand with which to pay the sum set forth in Exhibits E and No. 6 supra; and that the water district can furnish adequate water service to the water system known and operated as the Estates Water Company.

It is evident from the record that it would not be adverse to the public interest to grant the application. The Commission finds as a fact that Estates Water Company, Ltd., never owned any assets, nor incurred any liabilities, nor exercised the certificate of public convenience and necessity granted by Decision No. 25167 nor issued any of its capital stock pursuant to the authority granted in said decision, nor was it capable of doing any corporate business after January 6, 1940, and that said certificate of public convenience and necessity should be canceled and revoked. The order hereinafter will so provide.

The application of Pioneer Insurance herein is denied on the grounds that Pioneer Insurance has not been, and is not a public utility water corporation engaged in the operation of the water system of either Estates, Naisbitt, or his trustee, and that Commission authority to transfer stock in the mutual is not necessary.

The action taken herein shall not be construed to be a finding of the value of the property hereinafter authorized to be transferred.

The public interest requires that the effective date of the order hereinafter set out shall be the date thereof.

O R D E R

Application as above entitled, as amended, having been filed, public hearings having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED as follows:

1. That the certificate of public convenience and necessity granted to Estates Water Company, Ltd., by Decision No. 25167, dated September 12, 1932, in Application No. 18227, be, and it is canceled, revoked, and is no longer in effect.
2. (a) That Title Insurance & Trust Company, a corporation, as trustee of the estate of H. F. Naisbitt, deceased, who did business as the Estates Water Company, may on or after the effective date hereof, and on or before December 31, 1958, sell and transfer the public utility water system properties of such trustee to Cucamonga County Water District, pursuant to the offer and agreement to purchase the assets of the water distribution system known as Estates Water Company, described in Exhibit A attached to the application, upon the terms and conditions set forth in the letter dated August 13, 1957, from Cucamonga County Water District to Title Insurance & Trust Company - Pioneer Branch, and Pioneer Title Insurance Company, attached to the application as Exhibit E.  
  
(b) That the application of Pioneer Title Insurance Company, a corporation, seeking approval of the Option Agreement, dated August 14, 1957, between said company and Cucamonga County Water District, to purchase 112 shares of Cucamonga Water Company capital stock, which Option Agreement is attached to the application as Exhibit F, and referred to in the aforementioned Exhibit E, be and it is denied.  
  
(c) That Title Insurance & Trust Company, as trustee of the estate of H. F. Naisbitt, deceased, be, and it is authorized to execute the agreements dated August 20, 1957, with Country Club Plaza, Inc., a corporation, and Fasallen Investments, Inc., a corporation, Exhibit B attached to the application; with Jack G. Booth, Exhibit C, attached to the application; and Boyd-Fields, Inc., a corporation, Exhibit D, attached to the application.
3. That on or before the actual date of transfer, Title Insurance & Trust Company, a corporation, as trustee of the estate of H. F. Naisbitt, deceased, shall refund

all deposits which customers of the Estates Water Company are entitled to have refunded, and, within thirty days thereafter, shall notify this Commission in writing of the completion of such refunding.

4. That, if the authority herein granted is exercised, Title Insurance & Trust Company, a corporation, as trustee of the estate of H. F. Naisbitt, deceased, shall, within thirty days thereafter, notify this Commission in writing of the date of such completion of the property transfer herein authorized and of its compliance with the conditions hereof.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 2<sup>th</sup>

day of APRIL 1958.

Paul E. ...  
President  
 ...  
 ...  
 ...

Commissioners