

Decision No. 57222

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION )

OF )

N. A. AYERS, FORMERLY ADMINISTRATOR OF )  
THE ESTATE OF EDITH AUSTIN AYERS, DE- )  
CEASED, FOR AUTHORITY TO TRANSFER THE )  
CERTIFICATE AND WATER SYSTEM OF EDITH )  
AUSTIN AYERS TO N. A. AYERS AND EMMA )  
MAY FERNALD AS HEIRS. )

Application No. 40306

IN THE MATTER OF THE APPLICATION )

OF )

N. A. AYERS AND EMMA MAY FERNALD, ALSO )  
KNOWN AS E. M. FERNALD, FOR AUTHORITY )  
TO SELL THE WHISPERING PINES WATER )  
COMPANY TO THE KENTWOOD IN THE PINES )  
COMMUNITY ASSOCIATION, A CORPORATION. )

Application No. 40307

OPINION AND ORDER

By Application No. 40306, filed July 30, 1958, N. A. Ayers, formerly administrator of the estate of Edith Austin Ayers, deceased, requests an order authorizing the transfer of the public utility water system, formerly owned by Edith Austin Ayers, and known as Whispering Pines Water Company, to the heirs of the estate, N. A. Ayers and Emma May Fernald.<sup>1/</sup>

The application alleges that, after the death of Edith Austin Ayers on March 31, 1950, her estate, including the Whispering Pines Water Company properties, was probated and distributed to Heirs pursuant to a decree of the Superior Court of San Diego County. A certified copy of the court order directing such distribution, the nunc pro tunc order directing the Registrar of Titles, and the administrator's deed is attached to the application.

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<sup>1/</sup> Sometimes hereinafter called Heirs.

Concurrently with the filing of the said Application No. 40306, Heirs filed Application No. 40307 requesting authority to transfer the subject water system properties to Kentwood in the Pines Community Association,<sup>2/</sup> a non-profit corporation, which joins in the application. The two applications hereinabove mentioned will be combined for decision.

The water system proposed to be transferred herein serves an area near the unincorporated community of Julian, San Diego County. Records of the Commission indicate that at the end of 1957 the utility was furnishing water service to 105 customers.

The terms of the proposed transfer, as outlined in Application No. 40307, provide that the water system properties are to be sold to Kentwood for a consideration of \$30,000, of which \$15,000 is to be paid in cash and a promissory note secured by a deed of trust, payable on or before December 31, 1958, is to be executed for the remaining \$15,000. The note is to bear interest at the rate of 6% per year from August 1, 1958. A copy each of the proposed grant deed, bill of sale, promissory note and deed of trust is attached to the application.

Edith Austin Ayers was granted a certificate of public convenience and necessity to operate the subject water system by Decision No. 43245, dated August 23, 1949, in Application No. 29855.

The utility's annual report to the Commission for the year ended December 31, 1957 shows total utility plant in the amount of \$61,486.58, a reserve for depreciation of \$12,513.42, and net utility plant of \$48,973.16.

Application No. 40306 states that, due to the administrator's lack of knowledge of the requirements of the Public Utilities Code, no application was made heretofore to this Commission to request authority to transfer the water system to Heirs. Further,

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<sup>2/</sup> Sometimes hereinafter called Kentwood.

according to the application, the water system has been operated by Heirs since 1952, and they have improved the physical plant and filed annual reports each year since that date.

Heirs state in their application that they find it difficult to continue operating the water system without severe hardship on their abilities to conduct their other businesses. Further, it is alleged in the same application that Kentwood intends to continue serving water to the areas presently served and will extend public utility water service to the properties of its shareholders.

It appears that the proposed transfer is contingent upon the transaction's being completed by September 1, 1958, and for this reason applicants have verbally requested, through their counsel, that the order of the Commission be made effective before that date. Accordingly, the order herein will be made effective five days after the date hereof.

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

The Commission having considered the above-entitled application and being of the opinion that the proposed transfer will not be adverse to the public interest, that a public hearing is not necessary, that the execution of the deed of trust hereinafter authorized is reasonably required by Kentwood in the Pines Community Association for the purposes herein stated, and that the application should be granted, therefore

IT IS HEREBY ORDERED that:

1. The transfer of the public utility water system known as Whispering Pines Water Company according to the "Order Settling and Approving First and Final Account and Decree of Distribution" dated March 7, 1952 to N. A. Ayers and Emma May Fernald, hereby is authorized.

2. N. A. Ayers and Emma May Fernald may, on or after the effective date hereof and on or before December 31, 1958, sell and transfer the public utility water system, known as Whispering Pines Water Company, to Kentwood in the Pines Community Association, substantially in accordance with the terms of the instruments entitled "Grant Deed," "Bill of Sale," "Promissory Note" and "Deed of Trust and Assignment of Rents," copies of which are attached to the application.

3. Kentwood in the Pines Community Association, after the effective date hereof, and on or before December 31, 1958, may issue the deed of trust, substantially in the form of the instrument attached to the application as Exhibit V, and shall, within fifteen days thereafter, file with this Commission one certified copy of said deed of trust as actually executed and of each deed, bill of sale, and any other instrument by which the transfer is effected.

4. The rates and rules of N. A. Ayers and Emma May Fernald, now on file with the Commission, shall be refiled within thirty days from the date of actual transfer under the name of Kentwood in the Pines Community Association in accordance with procedure prescribed by General Order No. 96, or, in lieu of such refiling, Kentwood may file a notice of adoption of said presently filed rates and rules. No increases in the presently filed rates and rules shall be made unless otherwise properly authorized by this Commission.

5. On or before the date of actual transfer, N. A. Ayers and Emma May Fernald shall refund all customers' deposits and all advances for construction, if any, which are subject to refund. Any such unrefunded deposits and advances shall be transferred to and become the obligation for refund of Kentwood in the Pines Community Association.

6. If the authority herein granted is exercised, N. A. Ayers and Emma May Fernald shall, within thirty days thereafter, notify this Commission in writing of the date of such completion of the property transfer herein authorized and of their compliance with the conditions hereof.

7. On or before the date of actual transfer of the physical properties herein authorized, N. A. Ayers and Emma May Fernald shall deliver to Kentwood in the Pines Community Association, and the latter shall receive and preserve, all records, memoranda and papers pertaining to the construction and operation of the properties herein authorized to be transferred.

8. Upon due compliance with all the conditions of this order, N. A. Ayers and Emma May Fernald shall stand relieved of all further public utility obligations and liabilities in connection with the operation of the public utility water system herein authorized to be transferred.

The effective date of this order shall be five days after the date hereof.

Dated at San Francisco, California, this 19th day of August, 1958.

[Signature]  
President

[Signature]

[Signature]

[Signature]

Commissioners