

Decision No. 61841**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application
of FREMONT VALLEY WATER COMPANY, a
California corporation, and CORINNE
LIVINGSTONE, guardian of the person and
estate of Ethel Elizabeth Gardiner, an
incompetent person, and JAMES W.
GARDINER, doing business as the Isleton
Water System, for an order authorizing
(i) Corinne Livingstone, in her repre-
sentative capacity to sell to James W.
Gardiner all of the interest of said
Ethel Elizabeth Gardiner in said water
system; (ii) authorizing said James W.
Gardiner to sell said water system to
Fremont Valley Water Company; and (iii)
authorizing Fremont Valley Water
Company to issue and sell common
shares.

Application No. 43063

O P I N I O N

In this joint application filed on January 16, 1961, Corinne Livingstone¹ in her representative capacity as guardian of the person and estate of Ethel Elizabeth Gardiner,² an incompetent person, and James W. Gardiner, who has a remainder interest in the Isleton Water System,³ and Fremont Valley Water Company,⁴ a California corporation, request the Commission to make an order (1) authorizing the sale and transfer by Livingstone of all of the right, title and interest of E. E. Gardiner in the utility to James W. Gardiner; (2) authorizing James W. Gardiner to transfer all of the utility properties to Fremont; and (3) authorizing Fremont to issue and sell to Citizens Utilities Company,⁵ a Delaware Corporation, 350 shares of its common stock, for cash, at a price of \$100 per share, and to apply the funds realized from the sale thereof for the purpose of acquiring the said utility properties.

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- 1 Sometimes hereinafter referred to as Livingstone.
2 Sometimes hereinafter referred to as E. E. Gardiner.
3 Sometimes hereinafter referred to as the utility.
4 Sometimes hereinafter referred to as Fremont.
5 Sometimes hereinafter referred to as Citizens.

Fremont was incorporated on December 27, 1956, under the laws of the State of California and was formed primarily for the purpose of constructing and operating public utility water systems, but it has not previously engaged in business. Fremont's Articles of Incorporation, as now in effect and certified by the Secretary of State on April 27, 1960, and a copy of which was filed with the application, authorize the issuance of 2,000 shares of its capital stock all of the same class of the par value of \$100 per share and the aggregate par value of \$200,000. Its principal place of business is located in Sacramento County.

Upon issuance and sale of its stock for which authority is herein requested, Fremont will become affiliated with Citizens Utilities Company of California and other subsidiaries of Citizens, a Delaware corporation. Some of said subsidiaries already own and operate water systems in Sacramento County and their personnel will assist in the management and operation of Fremont. The indicated growth in customers and plant of the utility has been very small in recent years but anticipated growth in the vicinity of the City of Isleton will require substantial expansion of the utility facilities.

Fremont proposes to finance the purchase and expansion of the utility system through the sale of its stock to and borrowings from Citizens. The proceeds of \$35,000 to be realized from the initial sale of stock will be used to pay organization and engineering expenses, to acquire the existing utility properties at the agreed price of \$32,500 and also to provide working capital.

The present management of the utility desires to retire from ownership and operation of the utility due to other activities and engagements and also because further expansion of the system will require substantial financing.

History of the Utility

The public utility water system serving the City of Isleton, and vicinity, in Sacramento County was previously owned and operated by Gardiner Improvement Company, a corporation. Since the water system was in existence prior to 1911, the utility claims a constitutional franchise and no certificate of public convenience and necessity has ever been requested from or issued by this Commission.

By Decision No. 40155, dated April 15, 1957, the Commission authorized the Gardiner Improvement Company to transfer its public utility water properties to J. Wilbur Gardiner.⁶

An increase in rates and charges for water service rendered by the utility was authorized by the Commission's Decision No. 43525, dated November 15, 1949, in Application No. 30301. The schedules of rates filed by J. W. Gardiner became effective on December 15, 1949, and are still in effect.

John Wilbur Gardiner died September 2, 1956, since which time the annual reports of the utility, known also as the Isleton Water Works, have been filed with the Commission by his estate and by successive guardians for his widow, E. E. Gardiner.

The utility's annual report to the Commission for the year 1959 shows utility plant as of December 31, 1959, as follows:

Intangible Plant	\$ 28,790.12
Landed Capital	1,950.00
Depreciable Plant	79,412.86
Total Utility Plant	\$110,152.98
Reserve for Depreciation	<u>47,513.59</u>
Utility Plant Less Reserve	\$ 62,639.39

The report also shows that at the end of the year 1959 there were 299 active metered service connections to general customers and 13

⁶ Also known as John Wilbur Gardiner or J. W. Gardiner.

fire protection connections. The revenues and expenses for the calendar year 1959 were reported as follows:

Total Operating Revenues		\$17,238.78
Operating Expenses	\$13,295.92	
Depreciation	2,291.58	
General Taxes	945.14	
Taxes on Income (not shown)	-	
Total Operating Revenue Deductions		<u>16,532.64</u>
Net Operating Income		\$ 706.14

Terms of Purchase

Exhibit A, attached to the application herein, is a copy of an agreement dated August 18, 1960, whereby James W. Gardiner has agreed to sell and convey to Fremont, subject to the approval of the Commission, all of the water utility assets, with the exception of cash on hand, for the sum of \$32,500. Exhibit B, attached to the application, is a copy of an amendment to the said agreement between Fremont and James W. Gardiner, dated January 9, 1961. Pursuant to the provisions of said agreement, as amended, James W. Gardiner is in the process (1) of acquiring all of the right, title and interest of E. E. Gardiner in the utility, for the sum of \$6,732, through appropriate legal proceedings, and (2) of obtaining a release of lien and reconveyance of all assets of the utility subject to the deed of trust described in said agreement.

Exhibit C, attached to the application, is a copy of the deed and bill of sale to be executed by James W. Gardiner, whereby all of the utility assets and properties, real and personal, except cash on hand, are proposed to be sold and transferred to Fremont.

Supplemental Exhibits

To supplement the application as filed, counsel for applicants have supplied the following documents which are hereby made a part of the record in this proceeding:

Exhibit No. 1 is a certified copy of the "Order Settling Final Account, Report and Decree of Final Distribution" in the matter of the estate of John Wilbur Gardiner, deceased, issued by the Superior Court, County of Sacramento, on January 20, 1958. Among other things, the decree distributed to E. E. Gardiner, for the period of her natural life, various property which included certain intangible and physical assets pertaining to the water works of the City of Isleton, with remainder over to James W. Gardiner, a nephew of J. W. Gardiner, deceased, and also certain parcels of land pertinent thereto.

Exhibit No. 2 is a certified copy of the "Order Amending Decree of Final Distribution" in the matter of the estate of John Wilbur Gardiner, deceased, issued by the Superior Court, County of Sacramento, on December 14, 1960. The effect of this decree was to distribute to E. E. Gardiner for her life, with remainder over to James W. Gardiner, certain parcels of land, described in the original decree, on which are located the water production and other facilities of the utility.

Exhibit No. 3 is a certified copy of "Letters of Guardianship" issued by the Superior Court, County of Sacramento, on March 31, 1959, appointing Corinne Livingstone as guardian of the person and estate of Ethel Elizabeth Gardiner, an incompetent person.

Exhibit No. 4 is a certified copy of the "Order Confirming Sale of Real and Personal Property" issued by the Superior Court, County of Sacramento, on November 14, 1960. This order, in effect, authorizes Corinne Livingstone, as guardian of the said incompetent E. E. Gardiner, to convey to James W. Gardiner the life estate of said E. E. Gardiner in and to certain real and personal property comprising the business known as the Isleton City Water Works, for the sum of \$6,732.

Miscellaneous

The application states that currently the utility has neither any refundable customers' deposits nor advances for construction.

In the application, in the agreement (Exhibit A) and in the amendment thereto (Exhibit B), and in the decree of final distribution (Exhibit No. 1), reference is made to a certain lien and deed of trust dated October 31, 1957, in which Bank of America National Trust and Savings Association, as executor of the estate of John W. Gardiner, deceased, is the trustor and Capital Federal Savings and Loan Association is beneficiary. It is understood that said deed of trust was executed during the administration of the estate of J. W. Gardiner for the purpose of securing funds with which to pay certain State Inheritance and Federal Estate Taxes, at the request of and with the consent of James W. Gardiner. The Commission can find no record of its ever having authorized the incurrence of any lien or the execution of any such deed of trust affecting the utility involved herein. Therefore, for the purposes of this proceeding, the Commission considers such encumbrance, so far as the utility property herein is concerned, to be null and void and of no effect.

For the time being, Fremont proposes to continue in effect the rates, charges, rules and regulations of the utility now on file with the Commission. No service area map is included in the utility's presently filed tariffs and no service and facilities map has been filed. In addition to requiring the filing of such maps and also sample copies of printed forms normally used in connection with customers' services, the order herein will require Fremont to file up-to-date rules governing customer relations. Any increase in charges or restrictive conditions which may result from the filing of such revised rules are hereby found to be justified.

Applicants request that the Commission issue its order ex parte, effective immediately. The Commission is further requested

to authorize Corinne Livingstone, in her representative capacity, and James W. Gardiner to cease furnishing and supplying public utility water service and to relieve them of the duties and functions of a public utility.

Findings and Conclusions

The Commission has considered the above-entitled application and is of the opinion, and so finds, that the proposed transfers, under the terms set forth in the order herein, will not be adverse to the public interest and that the application should be granted.

We find and conclude that the money, property or labor to be procured or paid for by the issuance of the stock hereinafter authorized is reasonably required for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

The authorization herein granted to issue stock is not to be construed as a finding of value of applicant's stock or of the properties herein authorized to be transferred, nor as indicative of amounts to be included in any future rate base for determination of just and reasonable rates.

O R D E R

The Commission having considered the above-entitled application and being of the opinion that a public hearing is not necessary, therefore,

IT IS HEREBY ORDERED that:

1. The transfer of the public utility water system described herein and known as the Isleton Water Works to Ethel Elizabeth Gardiner is hereby authorized.

2. On or after the effective date hereof and on or before October 31, 1961, Corinne Livingstone in her representative capacity as guardian of the person and estate of Ethel Elizabeth Gardiner, an

incompetent person, may sell and transfer the said public utility water system to James W. Gardiner, pursuant to the document entitled "Order Confirming Sale of Real and Personal Property", filed as Exhibit No. 4 herein; and said James W. Gardiner, in turn, may sell and transfer the said public utility water system to Fremont Valley Water Company, a corporation, pursuant to the agreement and the amendment thereto attached to the application herein as Exhibits A and B, respectively.

3. On or before the respective dates of the actual transfers authorized by paragraph 2 herein, said Corinne Livingstone and said James W. Gardiner shall have refunded all customers' deposits and all advances for construction, if any, which are subject to refund as of the date of transfer. Any such unrefunded deposits and advances shall be transferred to and become the obligation for refund of the said Fremont Valley Water Company.

4. On or before the respective dates of the actual transfers authorized by paragraph 2 herein, Corinne Livingstone shall transfer and deliver to James W. Gardiner and, in turn, James W. Gardiner shall transfer and deliver to Fremont Valley Water Company, and the latter shall receive and preserve all records, memoranda and papers pertaining to the construction and operation of the water system herein authorized to be transferred.

5. If the authority granted by paragraph 2 herein is exercised, within thirty days after the consummation of each transfer thereby authorized, Corinne Livingstone and James W. Gardiner shall each notify the Commission, in writing, of that fact and of her and his compliance with paragraphs 3 and 4 herein, and within said period each shall cause to be filed with the Commission a certified copy of each deed and bill of sale or other instrument of conveyance as executed to effect the transfers of the property hereinabove authorized to be transferred.

6. Upon due compliance with all of the conditions of paragraphs 2, 3, 4 and 5 of this order, Corinne Livingstone and James W. Gardiner shall each stand relieved of all further public utility obligations and liabilities in connection with the operation of the public utility water system known as Isleton Water Works.

If the authority granted by paragraph 2 herein is exercised, IT IS FURTHER ORDERED that:

7. Within thirty days after the actual date of the transfer of the said water system to it, Fremont Valley Water Company shall re-file under its own name the schedules of rates and charges presently on file under the name of Isleton Water Works, together with up-to-date rules governing service to customers, a tariff service area map and sample copies of all printed forms normally used during the course of business with customers, all in a form acceptable to this Commission, and in accordance with the requirements of General Order No. 96. Such rates, rules, tariff service area map and forms shall become effective upon five days' notice to this Commission and to the public after filing as hereinabove provided. No increases in the presently filed rates and charges shall be made unless properly authorized by this Commission; provided, however, that any increase in charges which may result from the filing of such up-to-date rules is hereby authorized.

8. Within sixty days after the actual date of the transfer of the said water system to it, Fremont Valley Water Company shall file with the Commission four copies of a comprehensive map, drawn to an indicated scale not smaller than 600 feet to the inch, delineating by appropriate markings the tract of land and territory served; the principal water production, storage and distribution facilities; and the location of the various water system properties of said applicant.

9. Applicant Fremont Valley Water Company shall determine the accruals for depreciation by dividing the original cost of the

utility plant less estimated future net salvage less depreciation reserve by the estimated remaining life of the plant. Applicant shall review the accruals as of January 1 of the year following the date of transfer and thereafter when major changes in utility plant composition occur and at intervals of not more than five years. Results of these reviews shall be submitted to this Commission.

10. On and after the effective date hereof and on or before December 31, 1961, Fremont Valley Water Company may issue not to exceed 350 shares of its capital stock at par value of \$100 per share, and at an aggregate par value of \$35,000 for the purposes specified in the foregoing opinion.

11. Fremont Valley Water Company shall file with the Commission a report or reports as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

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

Dated at San Francisco, California, this 14th day of APRIL, 1961.

[Handwritten Signature]
President

[Handwritten Signature]

Commissioners