

ORIGINAL

Decision No. 70113

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION of GOLCONDA UTILITIES COMPANY, a California corporation, for ORDER to VOID SALE and APPROVE LEASE of PROPERTY.

Application No. 47364
(Filed February 26, 1965)

W. Paul Payne, for Golconda Utilities Company, applicant.
John Deviney, for himself, interested party.
James E. Henehan, for Paige Electric Company, protestant.

O P I N I O N

Applicant Golconda Utilities Company (GUC), a corporation, seeks an order of this Commission (1) declaring void the sale of a portion of its property, and (2) authorizing the lease of a portion of its property.

Public hearing on this application was held before Examiner Catey in San Bernardino on September 15 and 16, 1965, on a consolidated record with the San Bernardino area portion of two other company-wide proceedings involving GUC: Application No. 47259, a rate proceeding, and Case No. 8166, an investigation on the Commission's own motion. Application No. 47364 was submitted at the conclusion of the September 16 hearing.

Testimony pertinent to this proceeding was presented by GUC's president and by the president of Paige Electric Company (Paige).

Applicant and Protestant

GUC is a California corporation, owning and/or operating several small water systems in Southern California, including the

system serving the Ersul Subdivision and vicinity, in San Bernardino County near the City of San Bernardino. Paige is an electrical contractor in San Bernardino.

Sheriff's Sale

Paige alleges, and GUC admits, that Paige performed work on GUC's pumping plant supplying the Ersul area, and that GUC owes Paige about \$1,900 for such work. When Paige was unable to collect the amount due, it filed a lien against the property (Lot 54, Tract No. 3309, Ersul Subdivision) upon which GUC's sole wells for the Ersul area are located. Exhibit No. 20 in Application No. 47259, a part of the consolidated record in these proceedings, is a copy of the "Sheriff's Certificate of Sale on Foreclosure of Real Property." That exhibit shows that at the Sheriff's Sale on August 6, 1964, Paige was the highest bidder and paid \$1,985.99 for Lot 54, an amount approximately equal to its judgment against GUC. Paige has not attempted, however, to take possession of the property.

The question before the Commission is whether a Sheriff's Sale resulting from foreclosure on a mechanic's lien must first be authorized by this Commission to make it valid. Section 851 of the Public Utilities Code of the State of California provides, among other things:

"No public utility . . . shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its . . . line, plant, system, or other property necessary or useful in the performance of its duties to the public . . . without first having secured from the Commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance . . . made other than in accordance with the order of the Commission authorizing it is void." (Emphasis added.)

It is clear from the foregoing quotation that the transfer, voluntary or otherwise, of a well site, wells and pumps which have

been dedicated to public use and are the sole source of water supply for a public utility water system is void without prior Commission authorization. Although such prior authorization might possibly have been obtained by the transferee upon a showing that the transfer would not impair water service to the public, no such showing has been made.

Lease of Non-Utility Property

Exhibit No. 1 attached to the application is a copy of a 30-year lease, dated February 2, 1963, whereby GUC leased a portion of Lot 54, Tract No. 3309, San Bernardino County, the well site hereinbefore discussed, to the wife of GUC's president. GUC alleges, and such allegation has not been controverted, that the leased portion of Lot 54 is not useful or necessary in the utility operation.

If the leased property were useful or necessary in the utility's operation, GUC would have had to obtain prior authorization, not subsequent ratification, of the lease. Inasmuch as the leased property appears not to be dedicated to public use, neither prior authorization nor subsequent ratification of the lease is required.

Findings and Conclusions

The Commission finds that:

1.a. The water production, storage, pressure, transmission and related facilities on Lot 54, Tract No. 3309, San Bernardino, together with the portion of Lot 54 used for these facilities and for ingress and egress, as of August 6, 1964 were necessary and useful in the performance of GUC's public utility duties.

b. This Commission has not authorized the transfer of the aforementioned utility property to Paige Electric Company.

2. The portion of Lot 54, Tract No. 3309, San Bernardino County, leased by GUC to the wife of GUC's president on February 2, 1963, as of that date was not necessary nor useful in the performance of GUC's duties to the public.

The Commission concludes that the application should be granted insofar as it relates to declaring void the sale of GUC's property to Paige Electric Company but that there is no need for approval of the lease of non-utility property.

O R D E R

IT IS ORDERED that:

1. The sale of Lot 54, Tract No. 3309, San Bernardino County, to Paige Electric Company on August 6, 1964, is void insofar as it relates to the pumps, wells, tanks, mains and related water facilities on Lot 54, the buildings housing those facilities, and the portion of Lot 54 used for those facilities and ingress and egress thereto.

2. The request of Golconda Utilities Company for approval of a lease entered into on February 2, 1963 is dismissed.

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

Dated at San Francisco, California, this 21st day of DECEMBER, 1965.

Fredrick B. Hill President
George B. Crow
William B. ... Commissioners