

**ORIGINAL**

Decision No. 70295

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of FIRST WESTERN BANK AND TRUST COMPANY, a California corporation, as duly appointed Trustee, to foreclose under a Deed of Trust between GOLCONDA UTILITIES COMPANY, a corporation as Trustor and ROBERT J. ERWIN AND CHARLOTTE R. ERWIN as Beneficiaries.

Application No. 47908  
(Filed September 21, 1965;  
Amended October 25, 1965)

Application of ROBERT J. ERWIN AND CHARLOTTE R. ERWIN, d.b.a. ERSUL WATER COMPANY, for a certificate of public convenience and necessity to operate a water system in Tract No. 3309 and adjacent areas of San Bernardino County.

(AMENDED TITLE)

Robert J. Erwin, for himself and Charlotte R. Erwin; George C. Halverson, for First Western Bank and Trust Company; applicants.  
W. Paul Payne, for Golconda Utilities Company, protestant.  
B. A. Peeters and Chester Newman, for the Commission staff.

O P I N I O N

Robert J. Erwin and Charlotte R. Erwin (the Erwins), husband and wife, doing business as Ersul Water Company, seek authority to operate a water system which they intend to acquire by foreclosure of a trust deed. First Western Bank and Trust Company (First Western), trustee for the Erwins, seeks authority to proceed with the sale of the water system.

Public hearing on this application was held before Examiner Catey in San Bernardino on December 8, 1965. Copies of the application had been served and notice of hearing published in accordance with this Commission's rules of procedure. Testimony on behalf of the Erwins was presented by Mr. Erwin.

First Western's witness is an employee in its Loan Adjustment Department. Golconda Utilities Company's (GUC) president was called as an adverse witness by the Erwins and also made a statement in opposition to the application. The Commission staff questioned the various witnesses to assist in clarifying the record.

### History

In about 1949, the Erwins constructed a water system to serve Tract No. 3309, San Bernardino County. Mr. Erwin and another party were the subdividers of the tract.

The Erwins owned and operated the water system until 1963. They had not sought authority from this Commission to construct the system nor did they ever file tariffs or otherwise bring their operation to the attention of the Commission. They were apparently under the mistaken impression that the small size of the system, serving only about 90 of a potential 110 customers, excluded it from Commission jurisdiction.

On February 1, 1963, the Erwins sold to GUC Lot 54 of Tract No. 3309 (upon which is located the wells, pumps, tank, and incidental utility plant, and a small house not used for utility purposes) and the water distribution system. The Erwins deeded the real property, Lot 54, to GUC and gave GUC a bill of sale covering the water system.

The undivided price for all of the assets transferred to GUC by the Erwins was set at \$20,000. Of this amount, \$3,500 was paid in cash. The remaining \$16,500 is represented by an installment note. The note is secured only by a deed of trust on Lot 54, with First Western named as trustee. Except for the production, transmission and pressure facilities which are improvements to

Lot 54, the water system is not used as collateral for the note.

Decision No. 67347, dated June 10, 1964, in Application No. 45772 authorized, among other things, the filing of tariffs by GUC which established rates and rules applicable to the area served by the water system acquired from the Erwins. We find that the construction of the system, its transfer to GUC, the encumbrance of Lot 54 and the related evidence of indebtedness were all accomplished facts prior to the time GUC filed Application No. 45772. We express no opinion as to whether or not the purported acquisition of the system by GUC from the Erwins was void under Section 851 of the Public Utilities Code.

Early in 1964 GUC became delinquent in its payments to the Erwins of installments due under the terms of the note. On April 26, 1965, the Erwins delivered to First Western a written Declaration of Default, requesting First Western to sell the property covered by the deed of trust. First Western then filed with the San Bernardino County Recorder a Notice of Default and Election to Sell Under Deed of Trust, served a copy thereof upon GUC and, after the statutory lapse of three months, gave notice of Trustee's Sale. First Western has twice postponed the sale so that proper authorization of the transfer of utility property could first be approved as requested in this application.

Although it is not certain that the Erwins will be the successful bidders at the Trustee's Sale, they appear to be the only parties interested in acquiring the system. Only Lot 54 and the improvements thereon are covered by the deed of trust,

but the Erwins are of the opinion that they can reacquire the distribution system by appropriate legal action. Until such time as the Erwins acquire the distribution system, they are willing to own and operate the utility plant on Lot 54 as a public utility supplying water for GUC for resale.

Qualifications of the Erwins

The Erwins and another party, doing business as Hinkley Valley Water Co., own and operate as a public utility the water system serving Tract No. 5714, San Bernardino County. They are also quite familiar with the water system in Tract No. 3309, having installed most of it and having owned and operated it for many years until it was sold to GUC. The Erwins' financial statement, Exhibit No. 4, shows that they are in a position to make necessary improvements to both the sources of supply and the distribution system. They state they will immediately deepen the older of the two wells to increase the available supply of water.

Tariffs

The Erwins request authority to adopt GUC's present tariffs for the area if they acquire the distribution system. If they or any other parties acquire only Lot 54, it will be necessary for the new owners to file appropriate rates and rules applicable to the resale service they will be obligated to provide. The order which follows is so written that if the Erwins acquire both Lot 54 and the distribution system, or if GUC purchases Lot 54 at the Trustee's Sale and retains the distribution system, GUC's then existing rates will remain in effect without need for resale rates.

Motion to Dismiss

A motion for dismissal of this application has been made by GUC. The alleged grounds presented are:

1. Lack of showing that water service by the Erwins is needed.
2. The application is incomplete.
3. No showing as to the Erwins' financial responsibility.
4. No rates proposed.
5. The assistance provided by the Commission staff in developing a complete record through questioning the Erwins' witness is unfair and inequitable to the other parties involved.

In regard to GUC's alleged grounds for dismissal:

1. GUC's defaulting on payments due under a note, and the resulting imminent trustee's sale of utility property, will require that the successful bidder become a public utility.
2. Although the Erwins' filed pleading is not complete, testimony by the Erwins' witness provides a complete showing.
3. Exhibit No. 4 is the Erwins' financial statement.
4. The Erwins propose no rate changes if they reacquire the entire system; a further showing can be made if only resale service is to be provided.
5. The development of a complete record in proceedings involving service to the public is an important function of the Commission staff. Whether the facts are developed by direct staff presentation or by questioning of others' witnesses is of no importance.

Findings and Conclusions

The Commission finds that:

1. Under the conditions prescribed in the order which follows, the transfer of Lot 54, Tract No. 3309, San Bernardino County, will not be adverse to the public interest.

2. If the Erwins can obtain title to the distribution system serving Tract No. 3309, the transfer of that system to them will not be adverse to the public interest.

3. Any purchaser of the aforementioned Lot 54 who does not also own the related water distribution system will be a public utility obligated to provide resale water service to the owner of the distribution system.

4. Upon transfer of the distribution system as discussed herein, it is reasonable for the Erwins to adopt the tariffs then in effect for GUC's Ersul Tariff Area.

5. It is in the public interest that the Erwins be responsible for refund of all customers' deposits and advances for construction, if any, which have not yet become due and payable as of the date of transfer of the distribution system serving Tract No. 3309.

6. Upon transfer of the distribution system, the Erwins will need all records held by GUC relative to that system.

7. GUC has presented no valid grounds for dismissal of this application.

The Commission concludes that the application should be granted to the extent, and in the manner, set forth in the order which follows.

O R D E R

IT IS ORDERED that:

1. Within two years after the effective date of this order, First Western Bank and Trust Company (First Western) as trustee named in the deed of trust, a copy of which is Exhibit B-2 attached to the amended application herein, is authorized to proceed with the sale of certain property of Golconda Utilities Company (GUC) known as Lot 54, Tract No. 3309, San Bernardino County, in accordance with the terms of that deed of trust, provided that before completing the sale First Western obtains, and within ten days after the sale files in this proceeding, a stipulation by the purchaser that:

- (a) The purchaser has read this decision and recognizes that the property purchased includes utility plant dedicated to public use.
- (b) The purchaser will not take physical possession of the property until tariffs have been accepted and made effective by this Commission prescribing rates and rules to be applied by purchaser in the sale of water.

2. Within two years after the effective date of this order, Robert J. Erwin and Charlotte R. Erwin (the Erwins), husband and wife, are authorized to effect the transfer to them, by appropriate legal means, of the distribution system now owned by GUC and serving in and about Tract No. 3309, San Bernardino County.

3. Before taking physical possession of the utility property pursuant to the sale authorized in paragraph 1 of this order, any purchaser not also owning the water distribution system referred to in paragraph 2 of this order shall:

- a. File an application for authority to operate a water utility providing resale service. The application shall show the basis for whatever resale rates and rules are proposed.
- b. Obtain an order of this Commission establishing resale rates and rules.
- c. File and place in effect the resale rates and rules prescribed in such order.

4. After the effective date of this order, and not less than five days before the date of actual transfer of the distribution system pursuant to paragraph 2 of this order, the Erwins shall file a notice of adoption of GUC's tariffs applicable to its Ersul Tariff Area. Such filing shall comply with General Order No. 96-A. The effective date of the notice of adoption shall be the date of actual transfer of the distribution system.

5. On or before the date of actual transfer of the distribution system pursuant to paragraph 2 of this order, GUC shall refund all customers' deposits and advances for construction, if any, which are due and payable as of the date of transfer. All unrefunded deposits and advances shall be transferred to the Erwins, who shall be responsible for their refund when due.

6. Within ten days after the date of actual transfer of the distribution system pursuant to paragraph 2 of this order, GUC shall:

- (a) Deliver to the Erwins the originals or verified copies of all memoranda, records and papers held by GUC pertaining to the construction and operation of that distribution system.
- (b) File in this proceeding written notification of the date of its compliance with subparagraph (a) of this paragraph.



7. GUC's motion to dismiss is denied.

8. Within five days after the date of each transfer authorized herein, the transferor and the transferee each shall file in this proceeding a written statement showing the date of transfer. A true copy of the instrument of transfer shall be attached to the transferee's statement.

9. Upon compliance with all of the conditions of this order, if the entire water system is transferred as authorized herein, GUC shall stand relieved of its public utility obligations in the area served by the transferred system and may discontinue service concurrently with the commencement of service by the Erwins.

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

Dated at San Francisco, California, this 1<sup>st</sup> day of FEBRUARY, 1966.

Frederick B. Hallock  
President

John J. [unclear]

George H. [unclear]

[unclear]

[unclear]  
Commissioners