

ORIGINAL

Decision No. 70396

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GOLCONDA UTILITIES COMPANY, a California corporation, for approval of the acquisition of the assets of Kentwood in the Pines Community Association; and to issue securities.

Application No. 46719

Investigation on the Commission's own motion into the operations, rates, rules, tariffs, contracts, practices, equipment, facilities and service of GOLCONDA UTILITIES COMPANY, a corporation.

Case No. 8166

Investigation on the Commission's own motion into the operations, rates, rules, tariffs, contracts, practices, equipment, facilities and service of KENTWOOD IN THE PINES COMMUNITY ASSOCIATION, a corporation.

Case No. 8177

W. Paul Payne, for Golconda Utilities Company, applicant in Application No. 46719, respondent in Case No. 8166 and interested party in Case No. 8177.

James M. Gattey and Irwin Gostin, for Kentwood in the Pines Community Association, protestant in Application No. 46719, interested party in Case No. 8166 and respondent in Case No. 8177.

Richard A. Peterson, Receiver in Bankruptcy of Kentwood in the Pines Community Association; Leland Featherman, for County of San Diego; Harry Hargreaves, for Whispering Pines Municipal Water District; Wilson W. Weid, for creditors of Kentwood in the Pines Community Association; and Curtis M. Brown, for himself, interested parties.

B. A. Peeters and Raymond E. Heytens, for the Commission staff.

O P I N I O N

On January 12, 1966, Application No. 46719 was reopened and set for hearing, consolidated with Case No. 8166 and Case

No. 8177, to determine the current status of the management agreement whereunder Golconda Utilities Company (GUC) had been responsible for operation of the water systems near Julian, San Diego County, owned by Kentwood in the Pines Community Association (KPCA), and to fix the responsibilities of GUC and KPCA in regard to those systems.

Public hearing on the three proceedings was held before Examiner Catey at San Diego on January 26, 1966. Copies of the order reopening proceeding and setting hearing had been served upon all appearances in Application No. 46719 and upon GUC and KPCA. Testimony was presented by KPCA's receiver in bankruptcy, by the attorney representing certain of KPCA's alleged creditors, by the KPCA water systems' local operator, by KPCA's attorney, by the credit manager of San Diego Gas & Electric Company, by a subdivider, by a deputy county counsel, and by GUC's president. The proceedings were then adjourned to a time and place to be set.

Bankruptcy Proceeding

On December 22, 1965, GUC¹ and other alleged creditors of KPCA filed a petition in the United States District Court for the Southern District of California, Southern Division, asking that KPCA be adjudged bankrupt. Exhibits Nos. 49 and 50 in Application No. 46719 show that Mr. Richard A. Peterson was appointed by the court as temporary receiver in bankruptcy.

A pretrial conference in the bankruptcy case was held on January 20, 1966. KPCA exercised its right to demand a jury trial, which trial was scheduled to commence February 21, 1966. The duration of the trial cannot, of course, be determined at this time.

¹ Erroneously designated in the petition as "Golconda Utility Company, Inc." and "Golconda Utility Company, Inc.," rather than Golconda Utilities Company.

In the meantime, the court-appointed receiver has retained the water system operator who has been in charge of the water systems for the past 4-1/2 years.

Termination of Management Agreement

The agreement under which GUC has operated and managed KPCA's water systems includes provision for its termination. That provision (in which GUC is referred to as "Company" and KPCA is referred to as "Association") is as follows:

"10. TERMINATION OF AGREEMENT. This agreement may be terminated by Association at any time; provided, however, if such termination is for any reason other than the negligence, incompetence, misfeasance of Company or other similar cause, Association shall pay to Company all moneys and fees then due to Company by reason of this agreement or advanced by Company on Association's behalf. If Association terminates this agreement upon order of the Commission, or if this agreement is terminated by Association for cause as aforesaid, payment of such moneys, fees and advances to Company shall be in the same manner as if Company had terminated the agreement.

"Company may terminate this agreement upon 60 days notice to Association. In the event Company cancels this agreement, all moneys or fees advanced or incurred on Association's behalf pursuant to this agreement shall be paid to Company from funds controlled by Company from Association's utility operations; provided, however, that such payments shall not jeopardize the operation of the water systems by Association and shall leave Association with sufficient funds to operate the water systems from the date of such termination to the next following June 30. Any funds thereafter remaining shall be paid over to Association within 15 days from such termination. In the event such funds are not sufficient to pay in full such moneys and fees advanced or incurred by Company on Association's behalf, Company shall become a general creditor of Association for any remaining unpaid balance thereof."

The agreement thus is terminable by KPCA either for or without cause. There are significant differences, however, in the rights of the parties, depending upon whether the proposed termination is actually for cause or not. In fact, although the wording of the agreement is not precise, it might well be construed that KPCA's right to termination without cause is conditioned upon its

payment to GUC of all moneys and fees then due by reason of the agreement or advanced by GUC on KPCA's behalf. KPCA's right to termination with cause is not so conditioned.

In view of the possible conditional aspect of KPCA's right to termination without cause, it would not have been appropriate for this Commission to find that the termination served upon GUC by KPCA on or about November 3, 1965 is effective without first having given GUC an opportunity to show that there was no cause for termination. Recognition of the termination essentially is the relief requested in KPCA's petition filed December 7, 1965, in Application No. 46719.

At the hearing herein on January 26, 1966, KPCA again alleged that the termination was for cause. Several alleged acts of negligence, incompetence, misfeasance or other similar cause were cited by KPCA; however findings on two causes will be adequate for the purposes of these proceedings.

The resignation of all of KPCA's directors and officers in May 1964 made it impossible for GUC to perform certain acts required by the agreement, such as (1) rendering the KPCA quarterly detailed statements of receipts, expenses and charges, with vouchers for disbursements; (2) obtaining prior written approval from KPCA for advances by GUC in excess of \$500; (3) rendering a statement to KPCA showing the purpose of the advance, the amount thereof, to whom paid, and other pertinent data. When members held a meeting to reactivate KPCA, however, and this Commission found² "that the directors elected at the meeting and the officers appointed by said directors are the duly constituted board of directors and officers of KPCA", it became possible for, and incumbent upon, GUC

² Decision No. 69843, dated October 26, 1965, herein.

to perform the aforementioned acts required by the agreement. We find that GUC's continued failure and refusal to submit to KPCA detailed statements of receipts, expenses and charges, with vouchers for disbursements, constitutes ample cause for termination of the agreement.

We also find that GUC's failure to pay power bills and ad valorem taxes chargeable to KPCA water system operations constitutes a separate valid cause for termination of the agreement. As a courtesy to the water users, San Diego Gas & Electric Company has not yet discontinued electric service to KPCA's pumping plants, but power bills aggregating \$1,381 for service since October 1964 remain unpaid. Ironically, it was GUC's failure to pay ad valorem taxes that caused San Diego County to attach KPCA's bank account. This made it impossible for KPCA to turn over to GUC the funds collected from water system customers, as ordered by this Commission. As a further incongruity, the evidence of insolvency cited in the petition filed by GUC and others in the bankruptcy proceeding is the County's attachment of KPCA's bank account.

Tariffs

It is apparent that the receiver in bankruptcy will have to exercise maximum economies of operation to carry the system through to June 1, 1966, when the next annual payments are due from the water users. The refinement of reading meters to closer than the nearest 100 cubic feet can well be eliminated. This will permit billing by hand, utilizing a simple chart covering the range of usage experienced in the area. At the time of the hearing, machine billing was being contracted out to GUC for a charge of 50 cents per bill, which charge is in excess of the amount payable on many of the individual monthly bills.

KPCA's present tariffs permit bimonthly billing, which would reduce the time required for reading meters and make that time available for preparing bills. Quarterly billing would result in additional economies and will be authorized by the order herein.

Amendment to Application

On February 1, 1966, GUC filed an amendment to Application No. 46719. It now proposes to issue debenture bonds in the aggregate amount of \$80,000. An indeterminate amount would be issued to creditors and holders of void bonds of KPCA, with the remainder to be issued to GUC's parent corporation, Golconda International Corporation (GIC), in exchange for GUC's notes in the amount of \$79,759.29, which notes GIC acquired from KPCA for \$10. Apparently GUC assumes that the previous alleged transfer of the utility property to it from KPCA (which transfer is void under Section 851 of the Public Utilities Code) can in some manner be validated.

Even if this amended proposal, with its inherent windfall to GIC, were reasonable, we find that KPCA still owns the water systems, and therefore either KPCA or the receiver in bankruptcy must join in any application to transfer the systems before consideration can be given to authorization for transfer.

Findings and Conclusions

The Commission finds that:

1. On or about November 3, 1965, KPCA terminated for cause its management agreement with GUC.
2. Responsibility for operation and management of KPCA's water systems rests temporarily with KPCA's receiver in bankruptcy.
3. KPCA or its receiver in bankruptcy will now need all records held by GUC relative to KPCA's water systems, an accounting of funds by GUC, and a statement of any claims alleged by GUC.

4. Attachment of KPCA's bank account by the County of San Diego has made it impossible, and termination of the management agreement makes it no longer appropriate, for KPCA to refund payments made to it by its customers during GUC's period of operation of KPCA's water systems.

5. Economies of operation can be effected by quarterly billing of KPCA's customers, which billing period is a reasonable alternative to the optional monthly and bimonthly periods now permitted by KPCA's tariffs.

The Commission concludes that the relief requested in KPCA's petition, filed December 7, 1965, in Application No. 46719, should be granted to the extent, and in the manner set forth in the order which follows. Inasmuch as this decision disposes of all pending issues in Application No. 46719, that matter is hereby submitted.

O R D E R

IT IS ORDERED that:

1. Golconda Utilities Company (GUC) is relieved of the right and responsibility to operate and manage the water systems owned by Kentwood in the Pines Community Association (KPCA) in and about Whispering Pines and Kentwood in the Pines, near Julian, San Diego County.

2. Effective immediately, GUC shall do nothing to interfere with the operation and management of KPCA's water systems by KPCA or its receiver or trustee in bankruptcy, and shall no longer represent to any party that GUC is still operating or managing the systems.

3. Within ten days after the effective date of this order GUC shall:

- (a) Deliver to KPCA or to KPCA's receiver in bankruptcy, Mr. Richard A. Peterson, 510 San Diego Trust & Savings Building, San Diego, California, KPCA's tariff file and the originals or verified copies of all memoranda, records and papers held by GUC pertaining to the construction and operation of KPCA's water systems, including an accounting of all funds handled by GUC's relative to KPCA's systems during GUC's period of responsibility therefor, together with an itemized statement of any claims GUC may allege against KPCA.
- (b) File in this proceeding written notification of the date of its compliance with subdivision (a) of this paragraph.

4. KPCA is hereby relieved of the requirements of paragraph 3 of the order in Decision No. 69843, dated October 26, 1965, relative to refund of customers' payments.

5. After the effective date of this order, KPCA (or its receiver in bankruptcy on its behalf) may file revised tariff sheets providing for billing at present rates on a monthly, bimonthly or quarterly basis, at the option of the utility. Such filing shall comply with General Order No. 96-A. The effective date of the revised schedules shall be April 1, 1966 or the date of filing, whichever is later. The revised schedules shall apply only to service rendered on and after the effective date thereof.

6. Other than the relief and authorities granted herein and in earlier decisions, those requested in the various pleadings

in Application No. 46719 are hereby denied and that proceeding is hereby terminated.

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

Dated at San Francisco, California, this 15 day of MARCH, 1966.

Fredrick B. Halchoff
 President

John D. Triskill

George J. Hoover

Augustin

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.