

ORIGINAL

Decision No. 72504

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GOLCONDA UTILITIES COMPANY, a California corporation, to operate a water system in the vicinity of LOMA LINDA, to establish rates, and to issue a \$19,286 note.

Application No. 47700
(Reopened March 22, 1966)

Investigation on the Commission's own motion into the operations of K. C. O'Bryan, M. E. O'Bryan, the partnership known as Curci-Turner Company, and Redlands Development Company, Inc., respondents.

Case No. 8376
(Filed March 22, 1966)

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
(Las Palmas Phase)

W. Paul Payne, for Golconda Utilities Company, applicant in Application No. 47700, interested party in Case No. 8376, and respondent in Case No. 8166.
Surr & Hellyer, by Robert J. Bierschbach, for K. C. O'Bryan, M. E. O'Bryan, and Curci-Turner Company, respondents in Case No. 8376 and interested parties in Application No. 47700 and Case No. 8166.
Chester O. Newman and Raymond E. Heytens, for the Commission staff.

O P I N I O N

In Application No. 47700, Golconda Utilities Company (GUC) seeks (1) a certificate of public convenience and necessity relating to the construction of a public utility water system, (2) authority to issue stock, and (3) authority to increase rates within the requested area. The original hearing on this application was held

A. 47700, et al. ds

and the matter submitted on December 7, 1965. In Decision No. 70466, dated March 22, 1966, the Commission found that additional evidence, including information as to possible dedication of facilities and utility status of the former operators of the water system, was necessary for final disposition of the application. The earlier submission was set aside by that interim decision so that further hearing could be held, consolidated with Case No. 8376, an investigation on the Commission's own motion into the possible public utility status of the water system's former operators, and Case No. 8166, a pending company-wide Commission investigation of operations of GUC.

Public hearing on the reopened application and the two related investigations was held on a consolidated^{1/} record before Examiner Catey in San Bernardino on January 23 and February 7, 1967. Application No. 47700, Case No. 8376 and the Las Palmas phase of Case No. 8166 were submitted on February 7, 1967.

Testimony on behalf of GUC was presented by its president. Testimony on behalf of respondents K. C. O'Bryan, M. E. O'Bryan and Curci-Turner Company was presented by K. C. O'Bryan. Respondent Redlands Development Company, Inc., is no longer in existence and hence made no appearance and presented no evidence. The Commission staff presentation was made by two engineers.

Service Area

GUC is a California corporation, owning and/or operating several small water systems in Southern California, including the system serving GUC's Las Palmas Tariff Area, the subject of these proceedings. That tariff area consists primarily of the 35-lot

^{1/} All exhibits presented at the consolidated hearings are filed in Case No. 8376 only, to avoid duplication.

A. 47700, et al. ds

Tract No. 3415, located in an unincorporated portion of San Bernardino County between Redlands and Loma Linda.

Utility Status of Former Operators

The record in the initial hearing on Application No. 47700 indicated that one or more of the respondents in Case No. 8376 might have operated as a public utility prior to the purported transfer of the system to GUC, thus making the transfer prima facie void. The uncontroverted testimony of one of the respondents shows that, although water service was provided by the system for about 13 years, no direct charge was ever made for water service by any of those respondents, and no indirect charge was collected, such as through guarantee of free water service to property owners as part of the consideration for the purchase price of lots. Interviews of residents by the Commission staff tend to confirm this testimony. The order which follows discontinues Case No. 8376.

Requested Certificate

The certificate of public convenience and necessity requested by GUC under Section 1001 of the Public Utilities Code is a certificate to construct a water system to serve the Las Palmas Tariff Area but the system was constructed years ago. Under these circumstances, no change will be made in the portion of the order in Decision No. 70466 which denies the request for a certificate.

The first public utility water service provided by the Las Palmas system was by GUC, which received payment for such service. Although the record is not at all convincing that GUC is capable of providing adequate service, whatever service can be provided by GUC is presumably better than no service, until some other entity is ready, willing and able to take over this responsibility. No change will be made at this time in the portion of the

A. 47700, et al. ds

order in Decision No. 70466 which requires GUC to continue to provide service to the present customers served by the Las Palmas system but, because of the inadequacy of the system, prohibits service to any additional customers.

Requested Stock Issue

GUC issued an interest-free demand note for \$19,286 to the respondents in Case No. 8376 in exchange for the water system land and for relinquishing whatever claim they might have had to title to the water distribution system. At the original hearing on Application No. 47700, GUC's president, who was also president of GUC's parent Nevada corporation, Golconda International Corporation (GIC), admitted that GIC had acquired the note from respondents but declined to disclose the amount paid for it. At the further hearing on February 7, 1967, one of the respondents testified that GIC did not pay any cash for the note but agreed that the water system would be extended to serve an additional 18 to 20 acres of land owned by respondents, at such time as the extension is needed.

The financial manipulations that have been engaged in by GUC and GIC,^{2/} as cited in the foregoing paragraph, are not in the public interest. There is no reasonable basis for granting GUC's request to issue \$19,000 (par value) of its common stock in exchange for the \$19,286 note.

Rates

Decision No. 70466 directed GUC to file the same rate as the flat rate in effect for GUC's nearby Ersul Tariff Area. GUC's

^{2/} Decision No. 69843, dated October 26, 1965, in Case No. 8166 and related proceeding shows that similar legerdemain was practiced by GUC and GIC in their attempted acquisition of a water system in San Diego County, wherein GUC issued a \$79,759 note which GIC then acquired for a cash outlay of only \$10.

A. 47700, et al. ds

petition to set aside that rate order was denied by Decision No. 70578.

Exhibit No. 5 in Case No. 8376 shows that, based upon reports of overcharges, a letter was sent to GUC from the Commission's Los Angeles office asking GUC (1) if it had billed any Las Palmas customers at other than the authorized rates, (2) if so, under what authority, and (3) what arrangements had been made for refunding or crediting customers for any overcharges. GUC replied that (1) it had billed at other than its filed rates because (2) "The Company is sick and tired of furnishing service at less than cost. If costs cannot be covered, service will be abandoned. The Commission has refused to grant the necessary relief.", and (3) "No arrangements have been made for credits or refunds. The company has no monies from which such refunds or credits could be made." GUC later relented, however, and credited the customers with the overcharges so we will not take punitive action against GUC for its willful tariff violations.

To avoid a new rate increase application and permit a reconsideration of rates in Application No. 47700, GUC was directed by letter to send notice of the further hearing to its approximately 35 customers in the Las Palmas Tariff Area. GUC failed to comply with this requirement of the Commission's rules of procedure and no customers appeared at the hearing. Under these circumstances, it was not appropriate to proceed further with the rate aspect of the application.

Findings of Fact

The Commission finds that:

1. During the period that respondents in Case No. 8376 performed the service of delivering water to the public in GUC's

A. 47700, et al. ds

present Las Palmas Tariff Area, they received no compensation or payment for such service.

2. After GUC acquired its Las Palmas water system, it performed the service of delivering water from that system to the public for compensation.

Conclusions

Based upon the foregoing findings of fact, the Commission concludes that:

1. The service performed and water delivered to the public by respondents in Case No. 8376 from the Las Palmas water system prior to GUC's acquisition of that system did not constitute public utility service subject to the jurisdiction, control and regulation of the Commission (Section 216(b), Public Utilities Code), and Case No. 8376 should be discontinued.

2. The service performed and water delivered to the public by GUC from the Las Palmas water system subsequent to GUC's acquisition of that system constituted the first public utility water service provided by that system subject to the jurisdiction, control and regulation of the Commission (Section 216(b), Public Utilities Code), and the provisions of Decision No. 70466 should remain in effect.

O R D E R

IT IS ORDERED that:

1. Case No. 8376 is discontinued.
2. Within ten days after the effective date of this order, Golconda Utilities Company shall file a revised tariff service area map delineating the territory served by its Las Palmas water system

A. 47700, et al. ds

as of April 1, 1966, the effective date of Decision No. 70466, and bearing the following inscription:

"Decision No. 70466, dated March 22, 1966, in Application No. 47700 and Case No. 8166 prohibits the extension of service to property not served by the Las Palmas system prior to April 1, 1966."

Such filing shall comply with General Order No. 96-A. The effective date of the revised tariff sheet shall be the date of filing.

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

Dated at San Francisco, California, this 31st day of MAY, 1967.

[Signature]
President

[Signature]

[Signature]

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Commissioners