

**ORIGINAL**Decision No. 72567

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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  
 (Ersul, Calvert and  
 Hinkley Phases)

Investigation on the Commission's own motion )  
 into the operations of Robert J. Erwin, )  
 Charlotte R. Erwin, Forrest J. Wood, and )  
 Calvert Investment Company, respondents. )

Case No. 8377  
 (Filed March 22, 1966)

Robert J. Erwin and Charlotte R. Erwin, for themselves as respondents in Case No. 8377 and as interested parties in Case No. 8166, and for Hinkley Valley Water Company, interested party.  
J. B. Calvert, for Calvert Investment Company, respondent in Case No. 8377 and interested party in Case No. 8166.  
W. Paul Payne, for Golconda Utilities Company, respondent in Case No. 8166 and interested party in Case No. 8377.  
Chester O. Newman and Raymond E. Hevtens, for the Commission staff.

O P I N I O N

The Commission instituted the investigation, Case No. 8377, into the operations of Robert J. Erwin and his wife, Charlotte R. Erwin; Forrest J. Wood and Calvert Investment Company because the record in two earlier proceedings indicated that one or more of those respondents might have operated as public utility water companies prior to the purported transfers of their systems to Golconda Utilities Company (GUC). If the systems were public and transferred without Commission authority, the transfers are void under Section 851 of the Public Utilities Code unless subsequently approved by the Commission under Section 853. Case No. 8166 is a pending company-wide investigation of the operations of GUC.

Public hearing on the two investigations was held on a consolidated<sup>1/</sup> record before Examiner Catey in San Bernardino on January 24 and February 7, 1967. Case No. 8377 and the Ersul Calvert and Hinkley phases 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 Robert J. Erwin and Charlotte R. Erwin, his wife, was presented by Robert J. Erwin. Testimony on behalf of respondent Calvert Investment Company, a corporation which has been dissolved, was presented by its former secretary. Although respondent Forrest J. Wood was sent a hearing notice by mail on December 8, 1966, he made no appearance and presented no evidence. The Commission staff presentation was made by two engineers.

#### Ersul System

The largest of the three water systems concerned in these proceedings is the Ersul System. The territory served by that system consists primarily of the 110-lot Tract No. 3309, located in an unincorporated portion of San Bernardino County near San Bernardino.

The Ersul System facilities were installed by Robert J. Erwin in 1948 in connection with the subdivision of Tract No. 3309 by Ersul Builders, Inc., in which the Erwins and others were stockholders. Development of the tract was initially very slow. The Erwins acquired the water system facilities after the tract development was completed. There is no indication that Ersul Builders, Inc., itself had received compensation for water service.

The Erwins have never requested, nor were they ever granted, authority to operate the Ersul System as a public utility. A monthly

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<sup>1/</sup> All exhibits presented at the consolidated hearing are filed in Case No. 8377 only, to avoid duplication.

flat rate of \$2.35 was charged by the Erwins until increased to \$3.00 in 1954 and to \$4.00 in 1961. The Erwins apparently operated the system in a satisfactory manner, and their customers never brought the operation to the attention of the Commission.

The Ersul System was transferred to GUC, without Commission authorization, on February 1, 1963. The sale price of \$20,000 was covered by a down payment of \$3,500 cash and a \$16,500 note secured by a trust deed against the real property, including the well site. Although the agreement and the bill of sale covering the transaction included the mains, services and hydrants, i.e., the distribution system, the trust deed included only Lot 54 and the improvements thereon, which include the wells, pumps, tank, incidental utility plant and a small house not used for utility purposes. GUC operated the water system without authorization from the Commission until such authorization was granted by Decision No. 67347, dated June 10, 1964, in Application No. 45772. GUC filed its tariff sheets for the Ersul System on August 20, 1964.

GUC made 15 payments of \$150 each to the Erwins from March, 1963 through August, 1964. A notice of default and election to sell under deed of trust was recorded May 5, 1965 by the trustee. Decision No. 70295, dated February 1, 1966, in Application No. 47908, authorized the trustee to proceed with the foreclosure sale in accordance with the terms of the trust deed. This decision, which contemplated ultimate repossession by the Erwins of both Lot 54 (the water production system) and the distribution system, also authorized the Erwins to effect the transfer, by appropriate legal means, of the distribution system in and around Tract No. 3309. The trustee's sale was held on March 15, 1966, and the Erwins were the successful bidders. A condition of the sale under Decision No. 70295 was that the transferees accept the property subject to its public utility responsibility and to provide water for the distribution system by resale to GUC. On May 5, 1966, the Erwins filed a suit

to quiet title in the Superior Court, County of San Bernardino, to obtain possession and control of the distribution system still operated by GUC. Pending the outcome of this suit GUC has continued to operate the system, has failed to pay power bills in excess of \$700 accumulated over a 12-month period, has discontinued the use of the Erwins' wells as a source of supply due to failure of those wells in June, 1966 and is obtaining water from a temporary metered connection to the nearby water system of the City of San Bernardino. Although the water table has recovered to the point where, according to GUC's president, one of the Erwins' wells might again be used, GUC is reluctant to abandon the temporary source because the system would be out of water if the well pump failed or the water table again receded. Also, presumably, the delinquent power bill would have to be paid.

The Erwins have not filed any tariffs or other documents with this Commission indicating that they now are operating the Ersul System so we must assume that GUC is still in possession of the distribution system. The action to be taken herein is predicated upon that assumption.

It has now been shown conclusively that the previous operation of the Ersul System by the Erwins constituted public utility water service. The purported transfer of the system without prior Commission authorization is thus void. In such circumstances, Sections 851 and 853 of the Public Utilities Code leave it to the Commission's discretion to take whichever of the following approaches is in the public interest:

- (1) Under Section 851, let the transfer remain void.<sup>2/</sup>

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<sup>2/</sup> Decision No. 69054, dated May 11, 1965, in Application No. 46719, denied GUC's application to acquire the water system of Kentwood in the Pines Community Association. The acquisition had purportedly already taken place but the record did not justify exempting the transaction from the provision of Section 851. Without such exemption, the purported transfer was void.

- (2) Under Section 853, exempt the transfer from the provisions of Section 851, under appropriate terms and conditions.<sup>3/</sup>
- (3) Under Section 853, exempt the transfer from the provisions of Section 851, without restrictive terms and conditions.<sup>4/</sup>

The record is clear that the Erwins are better qualified to operate the water system than is GUC. It would therefore not be in the public interest to exempt the purported transfer of the system from the provisions of Section 851. The order herein requires that GUC and the Erwins arrange promptly for the resumption of operation of the system by the Erwins. Any claims and counterclaims resulting from the invalid transfer can later be negotiated by the parties or resolved in an appropriate proceeding. A copy of the ordering paragraphs of Decision No. 70295, dated February 1, 1966, is attached hereto as Appendix "A" for clarification.

#### Calvert System

The second water system concerned in these proceedings is the Calvert System. The territory served by that system consists of the 22-lot Tract No. 6089, located in an unincorporated portion of

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<sup>3/</sup> Decision No. 71758, dated December 27, 1966, in Case No. 7263, ordered that the purported transfer of assets of La Puente Cooperative Water Company (an alleged mutual water company which the Commission found in the decision to have been a public utility under Commission jurisdiction) to Suburban Water Systems was exempted from the provisions of Section 851 only if the parties complied with certain conditions set forth in the order.

<sup>4/</sup> Decision No. 72108, dated March 7, 1967, in Case No. 8356, ordered that various transfers of a water system, including the ultimate transfer of the system to The Summit Group, were exempted from the provisions of Section 851. The party who originally operated the system as a public utility was deceased and some of the scattered heirs owned as little as 1/32 interest in the water system before its transfer to The Summit Group.

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San Bernardino County, approximately ten miles west of Barstow and 1½ miles south of the area served by respondents Robert J. Erwin and Forrest J. Wood (Erwin & Wood), doing business as Hinkley Valley Water Company.

Tract No. 6089 was subdivided by respondent Calvert Investment Company (Calvert), a California corporation, in 1961 and 1962. Only three single-family residences were constructed within the subdivision. In 1961, Erwin & Wood advised the Real Estate Commission that financial arrangements for the installation of the water system had been made, that the tract was in their service area, and that water would be supplied to every lot in the tract. A water supply permit covering Tract No. 6089 was issued to Erwin & Wood by the San Bernardino Director of Public Health in 1961. A water supply questionnaire, prepared by Erwin & Wood and submitted to the Commission staff on January 8, 1962, was incomplete and additional information was requested in a staff letter, which suggested that an application be filed by Erwin & Wood to include the noncontiguous territory within their service area. Customer records of Erwin & Wood indicate that water users in Tract No. 6089 were not billed nor were revenues collected by that utility. The water system was never transferred to Erwin & Wood.

GUC acquired the Calvert System in January, 1963 without Commission authorization, and operated it without authorization until August, 1964, at which time tariff sheets for the area became effective, as authorized by Decision No. 67347.

During the period when Calvert Investment Company was operating the system, it charged a flat rate of \$5.00 per month for water service and became a public utility subject to this Commission's

jurisdiction. The corporation<sup>5/</sup> was dissolved, however, in November, 1964. Even if it were still in existence, the operation of a three-customer utility by it would not be economically feasible. In regard to the transfer of the water system from Calvert to GUC, it appears that there is no reasonable alternative to the exemption of the transaction from the provisions of Section 851 of the Public Utilities Code. The order which follows dismisses Case No. 8377, insofar as it relates to Calvert Investment Company.

When GUC, in Application No. 45772, requested authority to serve the Calvert area, it alleged that it would acquire the nearby Hinkley Valley System owned by respondents Erwin & Wood. As an adjunct to the Hinkley Valley operation, it would have been economically feasible to supply the three customers in the Calvert area. Although GUC operated the Hinkley Valley System for awhile, it never acquired it and no longer operates it.

As of May, 1966, GUC was seven months delinquent in payment of its power bills for the Calvert System pumping plant. The record does not disclose the present status of these bills, but it is apparent that it is only a matter of time before GUC will be unable to provide service to the three customers in that area.

It is unfortunate that Erwin & Wood did not follow the staff's suggestion at the outset and obtain authorization to serve the area. It is essential that GUC and Erwin & Wood negotiate the transfer of the system to Erwin & Wood at the earliest opportunity. To help achieve this objective, the order which follows will require the parties to negotiate for the transfer and to advise this Commission of the results and request approval of the transfer. To

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<sup>5/</sup> The corporate entity should not be confused with a former officer of the company, who uses the title of the defunct corporation as the fictitious name under which he does business.

further implement this transfer, the Commission will consider authorizing such transfer by supplemental order in these proceedings after the terms of the transfer are agreed upon by GUC and Erwin & Wood. In the event no agreement is reached, the Commission will consider granting Erwin & Wood, if they so request, by supplemental order in these proceedings, a certificate to construct a water system to serve Tract No. 6089 so that GUC can be relieved of the responsibility for service in that area.

Hinkley System

The third water system concerned in these proceedings is the Hinkley System. The territory served by that system consists of the SE  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  of Section 26, T10N, R3W, SBB & M, located in an unincorporated portion of San Bernardino County, approximately four miles east of the Hinkley Valley service area of Erwin & Wood. The approximately 40 acres of land was divided and sold to two parties in 1958. The well site and an agricultural well were conveyed to those parties who, in turn, conveyed them to respondent Forrest J. Wood (Wood). The land was subdivided into approximately 15 parcels in 1962 and an easement was granted to Wood for the construction, maintenance, repair and replacement of water mains. Wood installed a water system to serve the area, but only three customers are served by the system. GUC acquired the water system in October, 1963, without Commission authorization. This area, together with the Ersul and Calvert areas, was certificated to GUC by Decision No. 67347.

During the period when Wood was operating the system, he charged a flat rate of \$5 per month for water service and became a public utility subject to this Commission's jurisdiction. As a part owner of the nearby Erwin & Wood System in the Hinkley Valley area, it should be economically feasible for Wood to operate the three-customer system.



As in the case of the Calvert System, it would have been economically feasible for GUC to supply the three customers in the Hinkley area as an adjunct to the Hinkley Valley operation. The record is clear that Wood is in a better position to operate the water system than is GUC. It would therefore not be in the public interest to exempt the purported transfer of the system from the provisions of Section 851. The order herein requires that GUC and Wood arrange promptly for the resumption of possession and operation of the system by Wood. Any claims or counterclaims resulting from the invalid transfer can later be negotiated by the parties or resolved in an appropriate proceeding.

Rather than for Wood technically to be a separate utility from Erwin & Wood, it would be preferable for the partners to arrange for the transfer of the system to Erwin & Wood from Wood. To achieve this objective, we strongly urge the partners to negotiate such transfer and to ask for approval of this Commission thereof. To further implement the transfer, the Commission will authorize it by supplemental order in these proceedings upon petition and after the terms of the transfer are agreed upon by the partners. In the meantime, the order which follows requires Wood to file tariffs covering his operation of the system.

#### Findings of Fact

The Commission finds that:

1. During the period that respondents Robert J. Erwin and Charlotte R. Erwin (the Erwins) performed the service of delivering water to the public in GUC's present Ersul Tariff Area, such service was not to stockholders or members of a mutual water company nor was it surplus or accommodation service to neighbors, and the Erwins received payment for such service.

2. After having operated the Ersul System as a public utility, the Erwins did not obtain authorization of the Commission prior to the purported transfer of the system to GUC.

3.a. During the period that respondent Calvert Investment Company (Calvert), a corporation, performed the service of delivering water to the public in GUC's present Calvert Area, such service was not to stockholders or members of a mutual water company nor was it surplus or accommodation service to neighbors, and Calvert received payment for such service.

b. After having operated the Calvert System as a public utility, Calvert, the corporation, went out of existence; even if the corporation had not been dissolved, its operation of the three-customer system would not have been economically feasible; and the application of the "void" provisions of Section 851 of the Public Utilities Code in view of the provisions of Section 853 to the purported transfer to GUC is not necessary in the public interest.

4. The operation of the three-customer Calvert System by GUC is not economically feasible, but the system could reasonably be operated by Robert J. Erwin and Forrest J. Wood (Erwin & Wood), a partnership, doing business nearby as Hinkley Valley Water Company.

5. During the period that respondent Forrest J. Wood (Wood) performed the service of delivering water to the public in GUC's present Hinkley area such service was not to stockholders or members of a mutual water company nor was it surplus or accommodation service to neighbors, and Wood received payment for such service.

6. After having operated the Hinkley System as a public utility, Wood did not obtain authorization of the Commission prior to the purported transfer of the system to GUC. There appears no reason of public interest to not hold the purported transfer to GUC to be void; hence, it is Wood's System.

7. The Commission's investigation in Case No. 8166 has now covered all of GUC's present known utility operations.

Conclusions of Law

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

1. The service performed and water delivered to the public by the Erwins from the Ersul Water System prior to GUC's operation of that system constituted public utility service subjecting said public utility to the jurisdiction, control and regulation of the Commission. (Sects. 216(b), 2704 and 2705, Public Utilities Code.)

2. The purported transfer of the Ersul System from the Erwins to GUC is void. (Sect. 851, Public Utilities Code.)

3.a. The service performed and water delivered to the public by Calvert Investment Company, a corporation, from the Calvert water system prior to GUC's operation of that system constituted public utility service subjecting said public utility to the jurisdiction, control and regulation of the Commission. (Sects. 216(b), 2704 and 2705, Public Utilities Code.)

b. The transfer of the Calvert System from Calvert to GUC should be exempted from the provisions of Section 851 of the Public Utilities Code. (Sect. 853, Public Utilities Code.)

4. If mutually agreeable terms can be worked out by GUC and Erwin & Wood, the transfer of the Calvert System from GUC to Erwin & Wood should be approved by the Commission upon proper application.

5. The service performed and water delivered to the public by Wood from the Hinkley System prior to GUC's operation of that system constituted public utility service subjecting that public utility to the jurisdiction, control and regulation of the Commission. (Sects. 216(b), 2704 and 2705, Public Utilities Code.)

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6. The purported transfer of the Hinkley System from Wood to GUC is void. (Sect. 851, Public Utilities Code.)

7. The requirements of the order which follows and of previous orders in Case No. 8166 complete the Commission's investigation of GUC. (Sect. 702, Public Utilities Code.)

O R D E R

IT IS ORDERED that:

1. Within thirty days after the effective date of this order, Robert J. Erwin and Charlotte R. Erwin shall refile, in their names, such of the tariffs of Golconda Utilities Company (GUC) as now apply to water service within GUC's Ersul Tariff Area. Such filing shall comply with General Order No. 96-A. The tariff schedules shall become effective on the fourth day after the date of filing. The Secretary of the Commission is empowered to vacate GUC's Ersul tariffs at an appropriate time and to exclude GUC from the Ersul Tariff Area.

2. Within thirty days after the effective date of this order, the Erwins and GUC shall effect the return of operation of the Ersul System to the Erwins in such manner as to preclude any lapse in water service during the transfer and the Erwins and GUC shall file, preferably jointly, in this proceeding notification of the date of transfer. The Erwins promptly thereafter shall advise their customers in writing of the change in responsibility for the operation and shall file in this proceeding a copy of the customer notice.

3.a. The transfer of the Calvert Water System from Calvert Investment Company, a corporation, to GUC, as discussed herein, is exempted from the provisions of Section 851 of the Public Utilities Code under the authority of Section 853 because it is in the public interest and thus is not void.

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b. Case No. 8377, insofar as it relates to Calvert, is dismissed.

4. Within thirty days after the effective date of this order, Robert J. Erwin and Forrest J. Wood (Erwin & Wood) and GUC shall enter into negotiations for the transfer of the Calvert System to Erwin & Wood, and each shall file in this proceeding notification of the results of their negotiations and a request for authorization.

5. Within thirty days after the effective date of this order, Forrest J. Wood (Wood) shall refile, in his name, such of the tariffs of GUC as now apply to water service within "GUC's Hinkley area". Such filing shall comply with General Order No. 96-A. The tariff schedules shall become effective on the fourth day after the date of filing. The Secretary of the Commission is empowered to vacate GUC's Hinkley tariffs at an appropriate time, to exclude the Hinkley area.

6. Within thirty days after the effective date of this order Wood and GUC shall effect the return of operation of the Hinkley System to Wood in such manner as to preclude any lapse in water service during the transfer and each shall file in this proceeding notification of the date of the return. Wood promptly thereafter shall advise his customers in writing of the resumption of responsibility for the operation and shall file in this proceeding a copy of the customer notice.

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7. Except for the actions taken in this and earlier decisions, Case No. 8166, in total, is discontinued.

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

Dated at San Francisco, California, this 6<sup>th</sup>  
day of JUNE, 1967.

[Signature]  
President

[Signature]

William Ferguson

Fred P. Monsey  
Commissioners

APPENDIX "A"

Ordering Paragraphs of Decision No. 70295, Dated  
February 1, 1966, of Application No. 47903

Application of ROBERT J. ERWIN and CHARLOTTE )  
R. ERWIN, dba, 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. ) Application No. 47908

X X X

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

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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:



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- (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 1st day of February, 1966.

FREDERICK B. HOLOBOFF  
President  
PETER E. MITCHELL  
GEORGE G. GROVER  
WILLIAM M. BENNETT  
A. W. GATOV  
Commissioners