

**ORIGINAL**Decision No. 73439

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation )  
 on the Commission's own motion into )  
 the status, operations and practices )  
 of LA PUENTE CO-OPERATIVE WATER )  
 COMPANY. )

Case No. 7263

In the Matter of the Application of )  
 SUBURBAN WATER SYSTEMS, a California )  
 corporation, for permission to issue )  
 3,514 shares of its Common Stock. )

Application No. 48489

Walker Hannon, for Suburban Water Systems, Applicant  
 in Application No. 48489 and Interested Party in  
 Case No. 7263.

Carr H. Deitz, for La Puente Co-Operative Water Company,  
 Respondent in Case No. 7263 and Interested Party in  
 Application No. 48489.

Raymond E. Heytens and Chester O. Newman, for the  
 Commission staff.

O P I N I O N

Suburban Water Systems (hereinafter referred to as Suburban) seeks authority, in Application No. 48489, to issue common stock to purchase the facilities of La Puente Co-Operative Water Company (hereinafter referred to as La Puente). In Decision No. 71758 in Case No. 7263 the Commission found, among other things, that since 1958 La Puente was a public utility water corporation and the alter ego of Suburban and that the purported sale and transfer of La Puente assets to Suburban on or about July 6, 1965 was void under Section 851 of the Public Utilities Code. However, in Decision No. 71758, the Commission acting pursuant to Section 853 of the Public Utilities Code authorized a sale and transfer of La Puente assets to Suburban on certain terms and conditions.

Application No. 48489 was set for hearing on June 28, 1967 before Examiner Jarvis at Los Angeles. On June 21, 1967, Suburban filed a Petition for Modification of Decision No. 71758 in Case No. 7263, which had become final. The Petition for Modification had been referred to Examiner Jarvis. At the hearing on June 28, 1967, Suburban requested that, because of interrelated subject matter, the Petition for Modification be consolidated for hearing with Application No. 48489. Suburban and La Puente waived notice and stipulated that the petition could be heard with Application No. 48489. Examiner Jarvis ordered the matters consolidated for hearing and forthwith proceeded with the hearing. The consolidated matters were submitted on June 28, 1967.

The Petition for Modification seeks (1) a change in ordering paragraph 1 of Decision No. 71758 to provide that La Puente rather than Suburban be required to make the required refunds and (2) modification of ordering paragraph 2(b) of Decision No. 71758 to provide for the recording of figures on Suburban's books so that those portions of the assessments, paid by Suburban to La Puente, which were used for operating expenses should not be included in Account 265 (Contributions in Aid of Construction).

We first consider the points raised in the Petition for Modification. We note that Decision No. 71758 became final prior to the filing of the petition. In the circumstances, Suburban has no legal right to compel consideration of the matters raised in the petition (Petitions of Desert Express, etc., 56 Cal. PUC 1), but these points may be considered by the Commission in its discretion (Public Util. Code §1708).

Suburban contends that La Puente rather than it should be required to make the refunds ordered in Decision No. 71758. It is argued that La Puente collected the excessive rates and that it

presently has sufficient monies to pay the refunds. In Decision No. 71758 the Commission stated:

"As a result of the dealings among the subdividers, who held no La Puente stock, and Suburban and La Puente, the customers in the subdivisions, while nominally shareholders, were relegated to a status where they could never effectively have a voice in the management or operation of La Puente. As indicated, La Puente's domestic customers paid for and were issued 1/50th of a share of stock in order to receive water service. Thus, the domestic subdivision customers have approximately 9.1 shares of approximately 1,723 outstanding shares. The prime shareholder, Suburban, the public utility water company authorized to serve the area and the only other practical source of water, together with its officers control 62 percent of La Puente's stock."

". . .Suburban dealt with the developers of Tracts Nos. 21480, 17101 and 25592, represented to the Real Estate Commissioner that it would serve these tracts, and then, by virtue of its control of La Puente, arranged for La Puente to serve these tracts."

". . .all of the tracts in La Puente's domestic systems are within Suburban's dedicated service area and Suburban was required to furnish them water service, in accordance with its tariff rules. . . ."

"The inescapable conclusion, which we make from the record, is that Suburban which controlled and dominated La Puente used its alter ego to serve these tracts masked as a nonregulated mutual water company to avoid regulation by this Commission."

The Commission then found that:

"Commencing in 1958, Suburban caused its alter ego, La Puente, to construct or acquire two water distribution systems which serve domestic water to customers in Tracts Nos. 21566, 21404, 16457, 17101, 21480 and 25592 in Los Angeles County. Each of said tracts is within Suburban's dedicated service area."

\* \* \*

"Since 1958, Suburban, through its alter ego La Puente, served water to customers in Tracts Nos. 21566, 21404, 16457, 17101, 21480 and 25592 in Los Angeles County at rates greater than those set forth in Suburban's tariff and greater than rates authorized by this Commission."

The Commission ordered that:

"Suburban Water Systems is directed to refund to each person who was a domestic service customer of its alter ego La Puente Co-Operative Water Company for the period three years immediately preceding the effective date of this order the difference between the amount charged each customer by La Puente and Suburban's authorized tariff rates during that period of time."

It is clear from the foregoing that it was Suburban which had the duty to render water service in the area in question and that it was Suburban which caused its alter ego, La Puente, to charge higher rates than it was authorized to charge in the area. The Commission is of the opinion that Decision No. 71758 properly ordered Suburban, the instigator and prime mover of the aforesaid situation, to make the refunds and that the decision should not be changed on this point.

Ordering paragraph 2(b) of Decision No. 71758 provides:

"Suburban shall transfer from its earned surplus account to Account 265 - Contributions in Aid of Construction, an amount equal to the full amount of any assessments levied by La Puente against Suburban that were charged by Suburban to its operating expense accounts."

Suburban points out that the opinion states that:

"Insofar as assessments levied by La Puente were charged to Suburban's operating expense accounts and were used to pay for La Puente's plant, they represent contributions to La Puente by Suburban's ratepayers. Such payments should be accounted for as contributions in aid of construction."

Suburban argues that the language in ordering paragraph 2(b) is broader than that in the body of the opinion and would, if followed, require it to include monies used for operating expenses in an account for contributions in aid of construction. This contention is well taken. At the hearing the parties, including the Commission staff, indicated that an acceptable way to handle this situation was to authorize Suburban to debit its investment account for those portions of assessments paid by Suburban to La Puente and used by La Puente for the construction of utility plant and for Suburban to credit its earned surplus with an amount equal to that portion of the assessments paid to La Puente which were utilized by it for construction of utility plant and which had been charged to Suburban's operating expense accounts. The Commission is of the opinion that the

carrying out of Decision No. 71758 will be best effectuated by modifying ordering paragraph 2(b) as originally requested by Suburban and Suburban's accounting for those portions of the assessments used by La Puente for construction of utility plant by charges to its investment account with concurrent credits to its earned surplus account.

We turn now to the consideration of Application No. 48489.

Decision No. 71758 found that the purported sale and transfer of La Puente assets to Suburban on or about July 6, 1965 was void. However, pursuant to its powers under Section 853 of the Public Utilities Code, the Commission authorized the sale and transfer under certain terms and conditions. Since this application relates to the implementing of portions of Decision No. 71758, we take official notice of the entire contents of that decision.

On July 6, 1965, Suburban agreed to purchase certain La Puente assets for \$451,476 of which \$100,000 was paid at the time the agreement was executed. Suburban then made a promissory note payable on April 1, 1966 for the balance of \$351,476 with interest at the rate of 5 1/2 percent per annum. Application No. 48489 was filed on May 23, 1966, prior to the entry of Decision No. 71758. As filed it sought authority to issue 3,514 shares of common stock to retire the note for \$351,476. However, one of the conditions imposed under Section 853 on the sale and transfer of assets from La Puente to Suburban was contained in ordering paragraph 2(e) which provides that:

"Suburban shall not pay to La Puente in cash that percentage of the purchase price equal to the percentage of stock in La Puente owned by Suburban and that stock in La Puente owned by officers and directors of Suburban upon which Suburban has paid assessments. The amount represented by said percentage of purchase price shall be represented by a promissory note, without interest, and no payments shall be made on said note without prior order of this Commission."

The purpose of ordering paragraph 2(e) was to enable La Puente to have the cash to pay minority shareholders in the event of a partial or complete liquidation and to make any liquidation payments by La Puente to Suburban book transactions against the promissory note.

Decision No. 71758 indicated that La Puente had sold to Suburban substantially all of its distribution systems and had retained ownership of the water rights, lands, casings and ground holes to its five wells. Testimony in the instant proceeding indicates that the reason La Puente did not sell the wells to Suburban was because there was no way to value the water rights involved since there is pending, in another forum, a proceeding which in part involves these water rights. Suburban presently leases these wells from La Puente at a flat rate plus an amount to compensate La Puente for a return of interest on its investment in plant. It is contemplated that the wells will be sold to Suburban when the water rights dispute is resolved.

At the hearing, Suburban, in the light of Decision No. 71758, restricted its request for authority to issue stock to 226 shares of its \$10 par value common stock. It is expected that the stock will be sold at \$100 per share and the proceeds applied to partially discharge the note as heretofore indicated or issued directly to La Puente in partial discharge of the note at the agreed upon price of \$100 per share.

As indicated, it is contemplated that La Puente will sell and transfer its remaining assets (the five wells) to Suburban when the water rights question has been adjudicated. We are still dealing with an alter ego situation where Suburban through its control of La Puente, also a public utility, will have control over the monies generated by the stock issue here involved if the stock is sold to

third persons for cash and the proceeds paid to La Puente. The record indicates that La Puente presently has approximately \$17,500 cash on hand, and that the rental payments made by Suburban for the use of the five wells cover La Puente's costs in connection therewith. Unless extraordinary expenses are encountered in connection with the five wells, the only apparent corporate use for the monies to be paid to La Puente would be for partial or complete liquidation of the company. Insofar as Suburban would share in any liquidation, no reason has been shown for Suburban to receive it in cash and the Commission has already indicated that this is to be handled as a book transaction applying Suburban's share of any distribution against the note. In the circumstances, the Commission is of the opinion that, if the stock is sold for cash, the proceeds of the sale of the stock hereinafter authorized should be held by La Puente for the purpose of paying the minority shareholders their pro rata share of any distribution on liquidation or partial liquidation. If other corporate purposes should require the use of said monies such use, if appropriate, can be authorized by further order of this Commission. If the stock is issued to La Puente in partial discharge of the note it should not be transferred or used for the purpose of obtaining credit without further order of this Commission.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. There is not sufficient evidence in this record to cause the Commission to exercise its discretion and modify ordering paragraph 1 of Decision No. 71758.



2. Ordering paragraph 2(b) of Decision No. 71758 is broader than intended by the Commission and the Commission should exercise its discretion and power under Section 1708 of the Public Utilities Code and modify that ordering paragraph to provide that the portion of assessments paid by Suburban and charged to its operating expense accounts which were used by La Puente for the construction of utility plant should be transferred by Suburban from earned surplus to Account 111 - Investments in Associated Companies. ✓

3. Suburban is a "water corporation" as defined in Section 241 of the Public Utilities Code and a "public utility" within the meaning of Section 216 of that code.

4. La Puente is a "water corporation" as defined in Section 241 of the Public Utilities Code, and a "public utility" within the meaning of Section 216 of that code.

5. La Puente is the alter ego of Suburban, and Suburban and its officers and directors control 62 percent of La Puente's capital stock.

6. In Decision No. 71758 the Commission found that the purported sale and transfer of certain assets on July 6, 1965 from La Puente to Suburban was void under Section 851 of the Public Utilities Code. However, the Commission acting pursuant to Section 853 of the Public Utilities Code authorized the sale and transfer on certain terms and conditions. Among these terms and conditions was ordering paragraph 2(e) which provides that:

"Suburban shall not pay to La Puente in cash that percentage of the purchase price equal to the percentage of stock in La Puente owned by Suburban and that stock in La Puente owned by officers and directors of Suburban upon which Suburban has paid assessments. The amount represented by said percentage of purchase price shall be represented by a promissory note, without interest, and no payments shall be made on said note without prior order of this Commission."

One of the purposes of ordering paragraph 2(e) was to provide that in the event of any liquidation or partial liquidation by La Puente, Suburban's share of the liquidation was to be handled as a book transaction by applying the proceeds of liquidation against the promissory note which Suburban had given La Puente for the balance of the purchase price. To protect La Puente's minority shareholders, the Commission authorized the percentage of the purchase price equal to the percentage of their interest to be paid in cash so that they could be paid in the event of liquidation or partial liquidation.

7. The purpose of Application No. 48489 is to refund the obligation evidenced by the promissory note which was given to pay the balance of the purchase price of the assets purchased from La Puente.

8. The only substantial assets owned by La Puente are five wells; including their water rights, lands, casings and ground holes. La Puente presently leases these wells to Suburban at a flat rate plus an amount to compensate La Puente for a return of interest on its investment in plant. These rental payments from Suburban to La Puente cover La Puente's ordinary costs and expenses in connection with said wells. La Puente presently has approximately \$17,500 of cash on hand.

9. It is necessary for Suburban to issue 226 shares of its \$10 par value common stock for an agreed upon value of \$22,600 or for cash for a total price of no less than \$22,600 to discharge or lawfully refund its obligations and such purpose is not wholly or in part reasonably chargeable to operating expenses or income. However, if the stock is sold for cash the funds generated by the sale of said stock will be paid to Suburban's alter ego, La Puente, and Suburban will have control over said funds, the Commission deems it reasonable

and necessary that the following terms and conditions be imposed upon the issuance of said shares in order to implement and prevent circumvention of Decision No. 71758:

- (a) The proceeds from the sale of said stock should be used only for the purpose of paying them to La Puente in order to discharge a portion of the aforesaid promissory note.
- (b) Suburban should cause La Puente to retain said funds and disburse them only to pay La Puente shareholders other than Suburban their pro rata share of any distribution upon liquidation or partial liquidation of La Puente. In the event of liquidation or partial liquidation of La Puente none of said monies shall be paid to Suburban but said distribution shall, as to Suburban, be adjusted as a book matter by applying Suburban's pro rata share of any such distribution against the aforesaid promissory note.
- (c) Suburban should cause La Puente to use the proceeds of the sale of its stock hereinafter authorized only for the purposes set forth in subparagraph (b) hereof unless authority to do otherwise has been obtained by order of this Commission.
- (d) Until said monies are disbursed in accordance with subparagraph (b) hereof or in accordance with a further order of this Commission, Suburban should cause La Puente to do one or more of the following:
  1. Deposit said monies in one or more banks within the State of California.
  2. Deposit said monies in one or more Federally insured savings and loan associations within the State of California.
  3. Invest said monies in securities of the United States or the State of California or direct obligations of the United States.

If the stock is issued to La Puente at an agreed upon price of \$100 per share, in partial discharge of the aforesaid promissory note, Suburban, by virtue of its control of La Puente, will have control of said stock. The Commission deems it reasonable and necessary that, in such event, the following terms and conditions be imposed in order to implement and prevent circumvention of Decision No. 71758:

- (a) Upon the issuance of said stock to La Puente, Suburban should cause La Puente to partially discharge said promissory note in the amount of \$22,600.
- (b) Suburban should cause La Puente to retain said stock and not sell, transfer or hypothecate it or use said stock for the purpose of obtaining credit without further order of this Commission. In the event of liquidation or partial liquidation of La Puente the 226 shares of Suburban stock may be used to pay or be given to La Puente shareholders other than Suburban their pro rata share of said distribution. None of said shares shall be distributed to Suburban, but in the event of a partial or complete liquidation of La Puente, the amount due to Suburban shall be adjusted as a book matter by applying Suburban's pro rata share of any such distribution against the aforesaid promissory note.

Conclusions of Law

1. Ordering paragraph 1 of Decision No. 71758 should not be modified or changed in any manner.
2. Ordering paragraph 2(b) of Decision No. 71758 should be modified to provide that Suburban shall credit its earned surplus account and charge Account 111 in an amount equal to only that portion of any assessments levied by La Puente against Suburban that were charged by Suburban to its operating expense accounts, and utilized by La Puente in the construction of utility plant.
3. Suburban should be authorized to issue 226 shares of its \$10 par value common stock as follows:
  - (a) Suburban should be authorized to issue 226 shares for cash in an amount of no less than \$22,600 subject to the following terms and conditions:
    1. The proceeds from the sale of said stock should be used only for the purpose of paying them to La Puente in order to discharge a portion of the promissory note given by Suburban to La Puente in connection with the purchase by Suburban of certain assets of La Puente, provided for in Decision No. 71758.

be distributed to Suburban, but in the event of a partial or complete liquidation of La Puente, the amount due to Suburban shall be adjusted as a book matter by applying Suburban's pro rata share of any such distribution against the aforesaid promissory note.

O R D E R

IT IS ORDERED that:

1. Ordering paragraph 2(b) of Decision No. 71758 is hereby modified to read as follows:

Suburban shall charge Account 111 - Investments in Associated Companies - and credit its earned surplus account with an amount equal to only that portion of any assessments levied by La Puente against Suburban attributable to construction of utility plant by La Puente, and charged by Suburban to its operating expense accounts.

2. Within one year of the effective date of this order Suburban Water Systems is authorized to issue 226 shares of its \$10 par value common stock as follows:

- (a) Suburban may issue said 226 shares for cash for a total amount of no less than \$22,600, subject to the following terms and conditions:
  1. Suburban Water Systems shall use the proceeds from the sale of the stock herein authorized only for the purpose of paying said monies to La Puente Co-Operative Water Company to partially discharge a portion of the promissory note given by Suburban to La Puente in connection with the purchase by Suburban of certain assets of La Puente, provided for in Decision No. 71758.
  2. Suburban Water Systems shall cause its alter ego La Puente Co-Operative Water Company to retain the funds received in partial discharge of said promissory note and to disburse said funds only to pay shareholders of La Puente other than Suburban their pro rata share of any distribution upon liquidation or partial liquidation of La Puente. In the event of the liquidation or partial liquidation of La Puente, none of said monies shall be paid to Suburban, but said distribution as to Suburban shall be adjusted as a book matter by applying Suburban's share of any such distribution against the aforesaid promissory note.

3. Suburban Water Systems shall cause its alter ego La Puente Co-Operative Water Company to use the proceeds of the sale of its stock herein authorized only for the purposes set forth in subparagraph (a)2 of this ordering paragraph 2 unless authority to do otherwise has been granted by order of this Commission. ✓
4. Unless the proceeds paid to La Puente Co-Operative Water Company from the sale of the stock herein authorized are disbursed in accordance with subparagraph (a)2 of this ordering paragraph 2, or in accordance with a further order of this Commission, Suburban Water Systems shall cause its alter ego La Puente to do one or more of the following: ✓
  - a. Deposit said monies in one or more banks within the State of California.
  - b. Deposit said monies in one or more Federally insured savings and loan associations within the State of California.
  - c. Invest said monies in securities of the United States or the State of California or direct obligations of the United States.

or, in the alternative,

- (b) Suburban may issue said 226 shares to La Puente at an agreed upon price of \$100 per share in partial discharge of the promissory note given by Suburban to La Puente in connection with the purchase by Suburban of certain assets of La Puente provided for in Decision No. 71758, subject to the following terms and conditions:
  1. Upon the issuance of said stock, Suburban shall cause La Puente to partially discharge the aforesaid promissory note in the amount of \$22,600.
  2. Suburban shall cause La Puente to retain said stock and not sell, transfer or hypothecate it or use said stock for obtaining credit without further order of this Commission. In the event of liquidation or partial liquidation of La Puente, said 226 shares of Suburban stock may be used to pay or be given to La Puente shareholders other than Suburban their pro rata share of such distribution. None of said 226

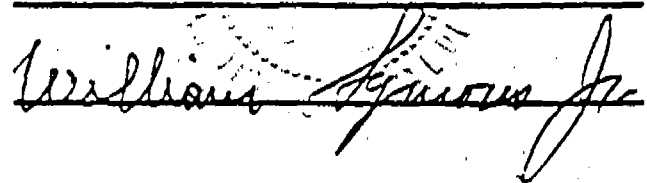
shares shall be distributed to Suburban, but in the event of a partial or complete liquidation of La Puente, the amount due to Suburban shall be adjusted as a book matter by applying Suburban's pro rata share of any such distribution against the aforesaid promissory note.

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

Dated at San Francisco, California, this 5th day of December, 1967.

  
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President

  
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Commissioners

Commissioner A. W. GATOV present but not participating.

Commissioner FRED P. MORRISSEY present but not participating.