

ORIGINAL

Decision No. 74156

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SUNSET BEACH-SURFSIDE WATER COMPANY )

and

THE CITY OF HUNTINGTON BEACH

Application No. 48505  
(Filed May 25, 1966)

For an Order authorizing Sunset  
Beach-Surfside Water Company (a)  
to sell and transfer certain  
properties and (b) to discontinue  
water service.

Nossaman, Waters, Scott, Krueger  
& Riordan, by Rodney C. Hill,  
for applicant Sunset Beach-Surf-  
side Water Company; Rutan &  
Tucker, by H. Rodger Howell and  
Milford W. Dahl; K. Dale Bush  
and George Shibata, for co-  
applicant, the City of Huntington  
Beach.

James W. O'Brien, for Surfside  
Colony Ltd.; George G. Logan and  
Gerald Jones, for Sunset Beach  
Chamber of Commerce; Richard L.  
Harrison, for Sunset Beach Sanitary  
District; Mrs. Gerald Jones, for  
Las Damas Women's Club; Mrs. George  
Chisler, for Sunset Beach Women's  
Club; and Michael J. Schoen, for  
Sunset Beach Volunteer Fire  
Department, protestants.

John C. Gilman, staff counsel and  
Jerry J. Levander, for the Commission  
staff.

O P I N I O N

By this application, Sunset Beach-Surfside Water Company, a public utility water corporation under the jurisdiction of this Commission, seeks authority under Section 851 of the Public Utilities Code to sell and transfer its public utility water system properties specifically described in Exhibit C, pursuant to the terms of the agreement Exhibit B, located in unincorporated territory of Orange County at Sunset Beach and Surfside Colony on the southwest side of the Pacific Coast Highway, immediately southeast of and contiguous to the City of Seal Beach, as shown on the plat Exhibit A, to the City of Huntington Beach, which said City joined in the application. Nonutility properties, together with accounts receivable and cash proposed to be retained by Sunset are listed in Exhibit D.

The purchase price to be paid by the applicant City is \$147,387.

The utility also seeks to be relieved of its public utility obligations.

The reasons for entering into the transaction for which authority is requested were alleged in the application as follows: Sunset's water system was in close proximity to that presently owned and operated by the City of Huntington Beach and might be efficiently operated and served by existing personnel of said city; such method of operation would be more efficient and economical than the present operation, especially in view of the fact that Sunset was faced with the immediate retirement of its

chief operating officer; there was no person in the employ of Sunset capable of assuming and performing said operator's duties; Sunset did not possess the working capital or means of financing that were possessed by and available to Huntington Beach; by reason of the expansion of the territorial bounds of said city through various annexations, some subscribers of Sunset were located within that city's limits and said city deemed it appropriate to furnish water service to such subscribers; both Sunset and Huntington Beach believed that by that city's acquisition of Sunset's properties, the duplication of service facilities which would occur as the Sunset Beach-Huntington Beach areas increased in population would be obviated; and Sunset and the applicant city believed that the acquisition of Sunset's water service system by said city was in the best interests of the public and Sunset's subscribers. Applicant City of Huntington Beach represented that it would not unlawfully discriminate against Sunset's subscribers in furnishing service to them, and that it did not intend to increase the rates at which water service was being supplied to Sunset's subscribers.

Public hearing was held before Examiner Warner on June 17, 1966.

All of the utility's customers protested the granting of the application on the grounds that they did not wish to receive water service from the City of Huntington Beach because the city might raise the utility's present water rates; might discriminate in the maintenance and installation of water system

facilities between city residents and residents in unincorporated territory of Orange County; might interfere with the formation and operation of a sanitary district; and might interfere with fire protection.

The protestants, through counsel for Sunset Beach Chamber of Commerce and counsel for Surfside Colony, requested that the matter be continued for a period of six months to provide them with an opportunity to investigate the possibility of annexing to the City of Seal Beach, or forming a local water district or purchasing and operating the utility water system themselves. The continuance was granted to December 14, 1966.

On June 28, 1966, the applicants obtained a summary judgment in condemnation of the utility properties in the Orange County Superior Court in the amount of \$147,387 (Action No. 147757), and the City of Huntington Beach has been operating the water system since that date. By its letter to the Commission dated June 29, 1966, the applicant Sunset sought to withdraw its application.

The People of the State of California, represented by this Commission, on October 11, 1966, in Orange County Superior Court, obtained an order overruling the demurrer of the applicants herein to the People's Action No. 148288 because no permission under Section 851 under the Public Utilities Code had been secured.

By his letter dated November 3, 1966, counsel for Sunset Beach Chamber of Commerce requested a six-months' continuance which was granted to June 14, 1967; later reset to August 2, 1967.

Upon the further request of Sunset Beach Chamber of Commerce and its assertion that the City of Seal Beach had instituted proceedings toward the annexation of the Surfside Colony area and, over the objection as to the Commission's jurisdiction contained in the City of Huntington Beach's special counsel's letter, dated July 17, 1967, the matter was continued to February 1, 1968.

During the interim the District Court of Appeals affirmed a judgment of condemnation of the Superior Court of Fresno County <sup>1/</sup> whereby the City of Fresno acquired the public utility water system of Bowen Land Company, Inc. The facts were similar to those in the Orange County Superior Court case involved in this proceeding. The court in the Fresno case held, among other things, that the customers of a public utility water company have no interest in the property being taken by eminent domain and are not entitled to intervene in the lawsuit. Their only right is to continue to receive water service at nondiscriminatory rates.

Adjourned public hearing was held before Examiner Warner on February 1, 1968. At said hearing, counsel for the applicants again moved that the application be dismissed, and they objected to the Commission's retaining jurisdiction. The motion was denied and the objection overruled by the presiding officer. Further evidence was taken, and the matter was continued to a date to be set pending a ruling by the Commission itself on the motion and objection.

The Commission finds as follows:

1. Sunset Beach-Surfside Water Company was a public utility water company under the jurisdiction of this Commission.

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<sup>1/</sup> People v. City of Fresno, 254 A.C.A. 84(1967) Hearing denied, California Supreme Court, November 22, 1967, 67 A.C. No. 15, minutes section, p. 3.

2. On June 28, 1966, Sunset Beach-Surfside was condemned by the City of Huntington Beach which has been operating the water system since that date. A summary judgment in Orange County Superior Court was obtained by the City on said date.

3. On September 1, 1967, in People vs. City of Fresno (Bowen Land Co.) (1967) 254 A.C.A. 84, the Fifth District Court of Appeals affirmed a judgment in condemnation by the Fresno County Superior Court similar to Action No. 147757 of the Orange County Superior Court by which the applicant Sunset Beach-Surfside herein was condemned. Hearing on Appeal was denied by the California Supreme Court.

4. The City of Huntington Beach represented to the Commission that it would not unlawfully discriminate against Sunset's subscribers in furnishing service to them and that it did not intend to increase the rates at which water service was being supplied to Sunset's subscribers.

5. The California Supreme Court in Henderson v. Oroville-Wyandotte Irrigation District, 213 C. 514, 530 held that the Commission had the authority and duty to impose a similar condition upon the transfer of utility property.

6. The City of Huntington Beach has moved for dismissal of its application.

7. The City is now operating the water system.

Conclusions:

1. In view of the foregoing representations of the City of Huntington Beach, it is unnecessary to invoke the Commission's jurisdiction as affirmed in the Henderson case, supra, to impose conditions upon the transfer.

2. Applicants' objections to the Commission's jurisdiction and motion to withdraw their application are overruled.

3. Applicants' motion to dismiss the proceeding should be granted.

O R D E R

IT IS ORDERED as follows:

1. The objection to the Commission's jurisdiction and withdrawal of the application are overruled.
2. The motion to dismiss the application is granted and the application is dismissed.
3. Hearings on the matter are discontinued.

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

Dated at San Francisco, California, this 21<sup>st</sup> day of MAY, 1968.

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President

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*William J. ...*  
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*Fred P. ...*  
Commissioners