

ORIGINAL

Decision No. 76321

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the joint applica- }
 tion of JOHN PESTANA and CORINNE U. }
 CHIRCO, doing business as the John }
 Pestana Water System, a partnership, }
 and the City of Santa Cruz, Cali- }
 fornia, a municipal corporation, for }
 an order authorizing Pestana to sell }
 to City the water system owned and }
 operated by Pestana. }

Application No. 51222
 (Filed July 3, 1969)

- Thomas A. Black, for John Pestana; Eugene J. Adams, for Corinne Chirco; Donald R. Haxle and Weston L. Webber, for City of Santa Cruz, applicants.
- Martin W. Thomas, for Santa Cruz Gardens Association Board, protestant.
- Chester L. Beltz, for John Pestana Water Company, interested party.
- William Figg-Hoblyn, Counsel, for the Commission staff.

O P I N I O N

Applicants, jointly, request authority to transfer the water system owned by John Pestana and Corinne Chirco to the City of Santa Cruz. The system, situated in the Santa Cruz Gardens subdivision located near the proposed ultimate northeasterly boundaries of the city, now has about 250 active services, and also serves an elementary school that adjoins the tract. The application, unopposed except for concern expressed by a customers' spokesman over the city's proposal to apply its higher outside (Area B) rates after acquisition of the system, was submitted at the conclusion of a public hearing held September 18, 1969, at Santa Cruz before Examiner Gregory.

The evidence discloses that the city, pursuant to an agreement with Pestana and Mrs. Chirco, dated June 4, 1969, which recites a basic cash consideration of \$36,615 plus payments for certain equipment, accounts receivable and reactivated service connections (Application, Exhibit B), proposes to improve the Pestana system and gradually to incorporate it in the city's system, under long-range plans to be financed by revenue bonds and designed to provide greater quantity and higher quality of water service within ultimate city limits. Present rates for outside Areas A and B are progressively higher than rates within city limits, and have been set at higher levels in order to recover the investment in water facilities made by city residents in affording water service to residents of the unincorporated territory within the city's extended water service area. Typical annual water bills, based on present city and Pestana system rates for 22,800 cubic feet of water, reveal the following differences:

(a) Within city limits	\$ 80.59
(b) Within outside Area A	107.97
(c) Within outside Area B	161.18
(d) Within Pestana system	99.40

Counsel for the city and for the Commission staff stipulated that the city, as acceptable conditions in authorizing the transfer to it of the Pestana Water System: (a) would be subject to all legal claims for water service which might have been enforced against the sellers, including such claims as may exist in territory outside corporate limits; and (b) would not make any distinction, as to rates, rules and conditions of service to be applied in the Pestana service area, between service rendered outside and inside corporate limits, except to adjust outside rates to offset tax and bond indebtedness sustained by water users within

the city in subsidizing the operation of the outside water system (Exhibit 1, late-filed pursuant to leave granted). The stipulation will be incorporated in the order herein.

There are no refundable water main extension contracts pertaining to the Pestana system. Pestana has agreed to repay all customer security deposits prior to transfer of ownership to the city, and has also agreed to pay all system obligations to the date of transfer.

Details of the Pestana and city systems are set forth in the application, the agreement and other exhibits attached to the application, all of which are in evidence.

The Commission, on this record, finds that the proposed transfer will not be adverse to the public interest.

The Commission, therefore, concludes that the application herein should be granted in accordance with the ensuing order, and that having been advised by applicants' counsel (Exhibit 2) that the closing date of the escrow for sale and purchase of said water system has been extended to November 3, 1969, the order herein should be made effective prior to that date. The action taken herein shall not be construed as a finding of the value of the properties herein authorized to be transferred.

O R D E R

IT IS HEREBY ORDERED that:

1. John Pestana and Corinne U. Chirco, after the effective date of this order, may carry out the terms of an agreement with the City of Santa Cruz (Exhibit B attached to the application) for the sale to and purchase by said City of the properties described therein.

2. John Pestana and Corinne U. Chirco, within thirty days after consummation of said agreement, shall transmit to the Commission two copies of the instrument or instruments of sale, as executed.

3. Upon completion of the sale and transfer authorized herein and upon compliance with all the terms and conditions of this order, the certificate, or certificates, of public convenience and necessity heretofore issued to or otherwise acquired by John Pestana and Corinne U. Chirco pursuant to Decisions Nos. 61714, 63203 (1st Supp.), 63767 (2nd Supp.) and 70196 (3rd Supp.), in Application No. 42652, and by Decision No. 73156 and supplemental orders in Application No. 49078, shall be revoked, and all tariff schedules of said John Pestana and Corinne U. Chirco shall concurrently be canceled. Thereafter said John Pestana and Corinne U. Chirco shall stand relieved of their public utility obligations in connection with the utility system herein authorized to be transferred.

4. Upon consummation of the transfer authorized herein and as conditions thereof, buyer, the City of Santa Cruz, shall be subject to all legal claims for water service which might have been enforced against sellers, including such claims as may exist in territory outside of buyer's corporate limits. As to the rates, rules and conditions of service which buyer will apply in the service area of the system herein authorized to be transferred, buyer shall not make any distinction between service rendered outside its corporate limits and service rendered inside said limits, except insofar as it may adjust such outside rates and charges to offset any reasonable tax burden sustained by water users within the city in subsidizing the operation of the water system, or in recognition

of the investment in water facilities benefitting outside customers, made by city residents through bonded indebtedness or with other city funds. Should any of the present water users, their heirs, successors, grantees or assigns, at any time have their lands annexed into the City of Santa Cruz, California, then these conditions shall be null and void, as to such water users, their heirs, successors, grantees or assigns.

The effective date of this order shall be the date hereof.

Dated at Los Angeles, California, this 21st day of OCTOBER, 1969.

William Lyons, Jr.
President

[Signature]

[Signature]

James L. Stewart
Commissioners