

ORIGINAL

Decision No. 79635

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Park Water Company, for an order authorizing it to transfer and assign a portion of its water system to City of Montebello, a municipal corporation, pursuant to Section 851 of the Public Utilities Code.

Application No. 52803
(Filed August 10, 1971;
Amended December 9, 1971)

O P I N I O N

Park Water Company (Park) is engaged in the operation of public utility water systems in the southeastern section of Los Angeles County and in the Chino area of San Bernardino County. In this proceeding it requests an order of the Commission authorizing it to sell its public utility water system located in and contiguous to the city limits of Montebello to the city of Montebello for the sum of \$521,842.

The City of Montebello (Montebello) is a municipal corporation organized and existing under and by virtue of the laws of the State of California.

According to the application, on or about May 26, 1969, Montebello, by a resolution unanimously adopted by its City Council, authorized and directed the filing and prosecution of a certain action in eminent domain against Park. Thereafter, on or about July 25, 1969, Montebello, as plaintiff, filed its action in eminent domain against Park, being Case No. 957-987 in the Superior Court of Los Angeles County, for the purpose of condemning the fee simple title and all lesser titles to the real and personal property described and set forth in Exhibit B attached to the application.

It is the intention of Montebello and Park to stipulate to judgment in the aforesaid action; that said stipulation shall provide for the payment by Montebello to Park, in cash, the total condemnation price which shall be the sum of \$521,842, which constitutes reasonable compensation for the water system, the subject of said action.

It is to the best interest of Park and its customers that the assignment and transfer be authorized in that no useful purpose would be served to litigate and prosecute the action in eminent domain filed against Park. The costs and charges in litigating and prosecuting such action would be prohibitive. Both Park and Montebello, after obtaining an appraisal of the properties sought to be condemned and after extensive negotiations, have agreed that the total condemnation price to be paid constitutes total just compensation within the meaning of Article I, Section 1A, California Constitution.

The water system is encumbered by a mortgage in favor of Pacific Mutual Life Insurance Company, a corporation, and Lincoln National Life Insurance Company, a corporation, as mortgagees. Under the terms of said mortgage, each of said mortgagees agrees to release any property the subject of a lien which is condemned or sold upon the condition that the proceeds of the sale of such property are used by the mortgagor (Park) to pay for the cost of permanent additions or applied to prepayment on the loan. It is the intention of Park to require that said mortgagees release their lien in and to the property the subject of this application, and to apply the proceeds of such sale to permanent additions.

On August 10, 1971 Park filed its original application herein. In paragraph VIII of the original application it is set forth as follows:

"Said water system, the subject of the Application, is free and clear of consumers' advances for construction."

Park thereafter determined that this is an incorrect statement in that there are outstanding two main extension contracts affecting the water system. One contract is dated October 9, 1964 and provides for refunds over a 10-year period at a rate of 35 percent, and has a balance as of November 30, 1971 of \$2,552.64. The other contract is dated June 1, 1964 and provides for refunds over a 20-year period at a rate of 22 percent, and has a balance as of November 30, 1971 of \$25,684.29.

Park has agreed with Montebello to continue to pay the refunds under said contracts as refunds fall due and to hold Montebello harmless from any liability thereunder.

Montebello has agreed to notify Park of the amount of revenue received from customers as provided in said main extension contracts so that Park may continue to make refunds until said contracts are terminated under and pursuant to the terms of the main extension rule.

It is Park's intention to pay said refunds as they become due from Park's treasury, and Park requests such authorization for the reason that if payment of the refunds is made from any portion of the sale or condemnation proceeds received from Montebello, Park will be obligated to pay a capital-gains tax upon such portion. To avoid such a tax Park requests authorization to pay such refunds from its treasury.

The application is silent as to what is to be done regarding any deposits made by its customers to establish credit.

In 1970 Park Water Company was authorized to issue \$3,000,000 of 30-year notes with interest rates of 9-1/2 percent per annum with respect to \$1,100,000 and 9-3/4 percent for the remainder (D. 77828 dated October 14, 1970 in Application No. 52111). Proceeds were used to refinance \$1,100,000 of 3-3/8 percent notes due March 1, 1976, to finance a new office building and other plant additions, and to refinance \$1,180,000 in short-term notes. The 9-3/4 percent notes have a prepayment penalty ranging from 9-3/4 percent initially down to 1/4 percent in the twentieth year. Ordinarily it would appear to be desirable for Park to use the proceeds from the condemnation of its Montebello properties to reduce the balance of 9-3/4 percent notes outstanding. Under the circumstances outlined above, however, with the substantial prepayment penalty that the company will incur and the capital gain tax to which it will subject itself, only about 60 to 70 percent of the net proceeds would be available for this purpose.

The Commission finds that:

1. The proposed sale is not adverse to the public interest.
2. Park should repay all deposits including accrued interest, if any, made by its customers to establish credit at or substantially concurrent with the consummation of the transaction to which this application relates.
3. Park's request to pay existing refund obligations from its treasury is reasonable and is in the public interest.

The Commission concludes that the proposed transfer should be authorized subject to the conditions set forth in the following order.

A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. Park Water Company (Park) may sell and transfer to the City of Montebello the property referred to in this proceeding.
2. If, for income tax purposes, applicant elects to defer recognition of any gain resulting from the sale of this property, it shall establish and permanently maintain memorandum accounts in its books of account identifying the property acquisitions to which the capital gains are applied, and the depreciation that would otherwise be accrued thereon.
3. On or before the date of actual transfer, Park Water Company shall refund all customers' deposits for the establishment of credit, if any, which are subject to refund.
4. Park may continue to make refunds under its existing main extension contracts from its treasury until such contracts are terminated under and pursuant to its filed tariff.
5. Within ten days after the date of actual transfer, Park shall submit written notification to this Commission of the refunding of deposits, the date of transfer, and the date upon which purchaser shall have assumed operation of the water system authorized

herein to be transferred. A true copy of the instrument or instruments of transfer shall be attached to the written notification.

6. Upon compliance with the above conditions of this order, Park shall stand relieved of all its public utility obligations in the area served by the transferred system and may discontinue services with the commencement of service by Montebello.

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

Dated at San Francisco, California, this 25th day of JANUARY, 1972.

Chairman

Commissioners