

Decision No. 82874

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION OF )  
HESPERIA WATER COMPANY, a public )  
utility water company, and KAYEM )  
INVESTMENT CORP., a public utility. )

Application No. 54230  
(Filed August 6, 1973;  
amended September 4, 1973  
and October 19, 1973)

O P I N I O N

On August 6, 1973, Hesperia Water Company (Hesperia) filed an application requesting authority to discontinue public utility water service. Applicants Hesperia and Kayem Investment Corporation (Kayem) formerly rendered water service to portions of the unincorporated community of Hesperia in San Bernardino County. On or about October 4, 1972, Victorville County Water District (Water District) filed an action in condemnation against Hesperia and Kayem in the Superior Court, County of San Bernardino, Civil Action No. 156330. On October 24, 1972, final judgment of condemnation in said action was entered. A copy of the final judgment is attached to the application as Exhibit A.

By the terms of the final judgment all property of Hesperia and Kayem used or useful in the rendition of water service within Hesperia's and Kayem's service area has been taken by Water District, and the Water District is required to assume Hesperia's and Kayem's water service obligation to their water consumers. Hesperia and Kayem are no longer able to render water service.

By the amendments to the application filed September 4 and October 19, 1973, Kayem was made a party to the application and both Hesperia and Kayem requested authority to discontinue public utility water service.

A copy of a document entitled "Statement of Liabilities and Guarantee of Payment Thereof" is attached to the first amendment as Exhibit B. Said document lists all of the outstanding obligations

of the applicants as of the date of transfer and guarantees that if applicants have failed to extinguish the obligations, then said obligations shall constitute a set-off against payments to be made to applicants by the Water District pursuant to the terms of the condemnation judgment.

A copy of a document entitled "Waterworks System Acquisition Agreement" is attached to the first amendment as Exhibit C. Covenant 7 contained on page 24 of said agreement provides for nondiscrimination among various Water District customers.

A Report on the Application of Hesperia Water Company and Kayem Investment Corporation to Discontinue Water Services of a Public Utility dated March 25, 1974 prepared by the Commission staff has been made a part of the record in this proceeding as Exhibit 1.

Exhibit 1 states that the customer credit deposits which totaled \$3,400 as of October 31, 1972 are being refunded under the Water District's rule established in 1965 which provides for refund without interest after two years of prompt payment. Month-for-month credit is given for prompt payment during service by applicants. Interest at 5 percent per year is paid for the time the deposit was held prior to November 1, 1972, the date the Water District assumed the operation of applicants' water system. The customer temporary service deposits ranging from \$35 to \$180 per customer and totaling \$3,215, as of October 31, 1972, are being converted to credit deposits. The staff approves of this procedure for handling customer deposits and recommends that it should be continued.

Exhibit 1 lists advances for construction under main extension agreements of applicants totaling \$146,728.02, after the 1972 refunds were paid, as follows:

<u>Name</u>	<u>Type</u>	<u>Balance</u>	<u>1972 Refund</u>	<u>Closing Date</u>
a. Penn Phillips Dev. Co. (Tract 8109)	22% Rev.	\$77,385.87	\$1,317.83	4/28/89
	Prop. Cost	23,956.80	1,084.60	4/28/89
b. Krasne (Tract 5497)	22% Rev.	22,384.71	705.45	4/ 7/81
c. Shell and Gulf Oil	Indiv.	14,433.97	-	3/15/76
d. Older & Son (ARCO)	Indiv.	6,266.67	-	3/ 2/77
e. Hesperia County F.D.	Indiv.	2,300.00	-	10/ 4/76

The exhibit states that the applicants are negotiating to purchase the Penn Phillips contracts.

Exhibit 1 further states that applicants and the Water District plan to enter into an agreement by which the Water District will compute and make the payments pursuant to the main extension agreements. The refunds paid on the advances will be deducted from the payments to applicants. The earliest date for the Water District to make final payment for the purchase of the applicants' water utility properties is twelve years from the first day of the month after the closing date. All but the Penn Phillips contracts expire before that date.

The Commission staff recommends that the agreement to be negotiated between applicants and the Water District should contain (1) a provision that the Water District shall withhold from the final payment to be made to applicants an amount sufficient to enable the Water District, acting as trustee of the amounts so withheld, to pay the balances which become due under the Penn Phillips Dev. Co. main extension agreements, and (2) a provision that the Water District will submit annual statements showing the status of and balances due on the customer deposits and the advances for construction contracts until such time as no further refunds are required to be made. Applicants should be required to submit a copy of such agreement to this Commission.

Findings

1. The Water District under a Final Judgment of Condemnation filed October 24, 1972 in Civil Action No. 156330 in the Superior Court, State of California, County of San Bernardino, took possession of the water system of applicants on November 1, 1972.

2. The Water District has assumed the duties and obligations to provide water service to applicants' customers.

3. The outstanding credit deposits made by applicants' customers which totaled \$3,400 as of October 31, 1972 have been assumed by the Water District and are being refunded under the Water District's rule established in 1965 which provides for refund without interest after two years of prompt payment. Month-for-month credit is given by the Water District for prompt payment during service by applicants with interest at 5 percent per year for the time the deposit was held prior to November 1, 1972. The temporary service deposits made by applicants' customers and totaling \$3,215 as of October 31, 1972 have been assumed by the Water District and are being converted to credit deposits.

4. Advances for construction under main extension agreements of applicants after the 1972 refunds were paid by applicants totaled \$146,728.02.

5. The agreement to be negotiated between applicants and the Water District to provide that the Water District will compute and make refunds of advances for construction pursuant to the main extension agreements of applicants and deduct the amount of such refunds from payments which the Water District is obligated to make to applicants should also contain (1) a provision that the Water District shall withhold from the final payment to be made to applicants an amount sufficient to enable the Water District, acting as trustee of the amounts so withheld, to make the refunds which subsequently are to become due under the Penn Phillips main extension agreements of applicants and (2) a provision that the Water District will submit annual statements to applicants showing the status of and

balances due as refunds on customer deposits and on advances for construction under the main extension agreements of applicants until such time as no further refunds are required to be made.

6. The transfer of applicants' water system to the Water District on November 1, 1972, pursuant to a Final Judgment of Condemnation in Civil Action No. 156330 in the Superior Court, State of California, County of San Bernardino, is not adverse to the public interest and should be confirmed by the Commission.

7. The application shows with reasonable certainty that the transfer of the water system properties of applicants in the unincorporated community of Hesperia to the Water District on November 1, 1972 has not had and will not have a significant effect on the environment.

8. Applicants should be relieved of their obligation to provide public utility water service in the unincorporated community of Hesperia in San Bernardino County subject to the conditions set forth in the ensuing order.

9. A public hearing is not necessary.

Conclusion

The Commission concludes that the application should be granted subject to the conditions set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

1. Hesperia Water Company, a California corporation, and Kayem Investment Corporation, a California corporation, applicants, are authorized to transfer the facilities of their water system located in the unincorporated community of Hesperia in San Bernardino County to the Victorville County Water District pursuant to the Final Judgment of Condemnation filed October 24, 1972 in Civil Action No. 156330 in the Superior Court, State of California, County of San Bernardino, and the transfer of said facilities by Hesperia Water Company and Kayem Investment Corporation to the Victorville County

Water District pursuant to said Final Judgment of Condemnation on November 1, 1972, is hereby confirmed.

2. Applicants shall include in the agreement to be negotiated between applicants and the Victorville County Water District (a) a provision that the Water District shall withhold from the final payments to be made to applicants an amount sufficient to enable the Water District, acting as trustee of the amounts so withheld, to make the refunds which subsequently are to become due under the Penn Phillips Dev. Co. main extension agreements of applicants, and (b) a provision that the Water District will submit annual statements to applicants showing the status of and balances due as refunds on customer deposits and on advances for construction under main extension agreements of applicants, until such time as no further refunds are required to be made.

3. Within thirty days after the date of this order and on or before April 30 of each year thereafter, applicants shall file with the Commission a complete list of unrefunded customer deposits and unrefunded advances for construction under main extension agreements of applicants as of December 31, 1973, and December 31 of each year thereafter, together with the amounts actually due thereon and the amounts to be refunded in the future by applicants or their successors.

4. Applicants shall file with this Commission a copy of the agreement referred to in paragraph 2 of this order within 30 days after the date of the execution of such agreement by applicants and the Water District.

5. Upon compliance with paragraph 4 of this order, and except to the extent required to comply with paragraph 3 of this order, on the effective date of this order Hesperia Water Company and Kayem Investment Corp. shall stand relieved of their public utility obligations in connection with the public utility water system in the unincorporated community of Hesperia in San Bernardino County, the facilities of which were transferred to Victorville County Water

District on November 1, 1972, pursuant to the Final Judgment of  
Condemnation filed October 24, 1972 in Civil Action No. 156330 in  
the Superior Court, State of California, County of San Bernardino.

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

Dated at San Francisco, California, this 15th  
day of MAY, 1974.

William J. Sturgeon President  
Vernon L. Sturgeon  
Richard L. Sturgeon  
Richard L. Sturgeon Commissioners

Commissioner Vernon L. Sturgeon, being  
necessarily absent, did not participate  
in the disposition of this proceeding.