

Decision No. 83478**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of LOMPOC UTILITY SERVICES, a)
 California corporation, for)
 authority to increase its rates)
 charged for sewer service. }

Application No. 53990
 (Filed April 23, 1973)

Clayson, Stark, Rothrock & Mann, by George G. Grover, Attorney at Law, for applicant.
Murray E. Garrison, for himself, protestant.
Cass Strelinski, for Park Water Co., interested party.
James T. Quinn, Attorney at Law, John E. Brown, and John Gibbons, for the Commission staff.

INTERIM OPINION

Lompoc Utility Services is a corporation engaged in supplying sewer service as a public utility within the State of California. Its principal office is located at 1443 Valinda Avenue, Valinda, California.

According to the application, applicant provides sewer service to approximately 765 residential customers (not including vacancies), two churches, and one state park. The service area is located in Santa Barbara County near the city of Lompoc.

Applicant seeks an order authorizing it to increase by 44 percent its presently effective charge for residential sewer service, that is, from \$4.00 per month to \$5.75 per month; to increase its charge for sewer service to churches by approximately 46 percent, that is, from \$24.00 to \$35.00 per month; and to increase its charge for sewer service to the Purisima State Park by 40 percent, that is, from \$25.00 to \$35.00 per month. The overall increase in annual gross revenues would be approximately 44 percent and would amount to \$16,377.

Applicant proposes to require a deposit from each customer in an amount equal to two months' charges, to establish a penalty charge for nonpayment of bills in the amount of 6 percent after 15 days, and to establish a rule providing for disconnection of water service for nonpayment of sewer and water bills. (Mission Hills Water Co., an affiliate of applicant, serves this area.) The water company's reconnection fee would also be applicable.

According to applicant, present sewer service charges are not sufficient to meet expenses of operation, exclusive of charges for depreciation and without regard to return on capital invested in plant, equipment, and other property devoted to public use. This application is an emergency application designed to enable applicant to meet expenses of operation, exclusive of depreciation. At a later date, an amendment to the application will be filed requesting an increase in rates in order to enable applicant more fully to meet expenses, including depreciation charges, and to earn a reasonable return on its investment in property devoted to public use.

Public hearing was held before Examiner Gillanders at Lompoc on January 23 and 24, 1974. Applicant had published, mailed, and posted notice of the hearings in accordance with this Commission's Rules of Practice and Procedure. The matter of interim relief was submitted on January 24, 1974.

Fourteen members of the public attended the hearing, of whom three testified regarding the proposed increase.

Testimony on behalf of applicant was presented by its president and a consulting engineer. Testimony on behalf of the Commission staff was presented by a registered professional engineer and by two certified public accountants.

Regulatory Jurisdiction

Applicant, along with the other privately owned California sewer system utilities, was placed under the effective jurisdiction of the Commission, July 1, 1972, by amendment of Sections 216, 230.5, 230.6, and 1001 of the Public Utilities Code. Prior to that time applicant was subject to the regulatory jurisdiction of the Board of Supervisors of the county of Santa Barbara.

Intercompany Relationships

Applicant is managed in common with three other sewer utilities and one water company. The headquarters for all of these utilities is at Valinda, Los Angeles County. The other sewer utilities are Ontario Utility Services (Ontario), Salinas Utility Services (Salinas), and Ventura Utility Services (Ventura). The water company is Mission Hills Water Company (Mission Hills). Mission Hills has two water systems, one located near Salinas and the other near Lompoc, which latter system includes a small system at Santa Ynez.

The existing corporate structure has been in effect since April 9, 1971. Prior to that time Salinas, Ontario, and applicant were operating districts of Western Pacific Sanitation, a Nevada corporation, and its successor Western Pacific Services. A single set of books was kept for Western Pacific Sanitation and Western Pacific Services until April 1971. Ventura's system has always been a separate corporate entity. Prior to April 1971, Ventura's system was owned and operated by Simi Valley Sanitation Company (Simi Valley), a Nevada corporation; in April 1971 the system was transferred to a new California corporation, Ventura Utility Services, in contemplation of legislation establishing regulation of California sewer utilities by this Commission. Mission Hills is operated as a

mutual water company and, at the time of submission of this application, was not under the jurisdiction of the Commission.^{1/}

Ontario, Salinas, and applicant are affiliated through ownership of their stock by Western Pacific Services. Applicant's president, Mrs. Diana Williams, testified that, although accounting entries had been made, there had been no formal transfer of real or personal property from Western Pacific Services to applicant. Western Pacific Services, Ventura, and Mission Hills are controlled by Anton C. Garnier, the son of the late Camille A. Garnier, who founded the operations. Western Pacific Services was suspended as a corporation in 1973.

The Garnier interests also control two large water utilities, Suburban Water System (Suburban) and Southwest Water Company (Southwest), which operate in Los Angeles, Riverside, and San Bernardino Counties. Suburban and Southwest have always been operated separately from the sewer companies and from Mission Hills.

MONY Loan

On December 15, 1964 Western Pacific Sanitation, together with its subsidiaries as of that time, Paradise Services Corporation and Simi Valley (and also Susana Knolls Properties, Inc., a subsidiary of Simi Valley) sold \$2,000,000 of Collateral Trust Notes, 5-1/2 percent Series due in 1984, to the Mutual Life Insurance Company of New York (MONY). The staff has not been able to ascertain whether the \$2,000,000 was invested in water or sewer properties or whether it was used for other purposes. As of October 12, 1973, Western Pacific's outstanding indebtedness to MONY amounted to \$1,750,000,

^{1/} On May 8, 1973 Mission Hills Utility Co., a newly formed corporation, filed Application No. 54023 requesting authority to issue stock and a promissory note, and to acquire certain assets of Mission Hills Water Co., and for a certificate of public convenience and necessity. This application has not been heard as the Finance and Accounts Division staff has not yet completed its investigation.

of which \$200,000 was overdue, thus placing the loan in default. Interest in arrears as of October 12, 1973 amounted to \$433,125. Penalties on the outstanding arrearages of principal and interest are accruing at 6 percent per annum. In addition, as of October 12, 1973, MONY had supplied \$224,989.81 to pay property taxes for Salinas, Simi, Ontario, and applicant.

Mrs. Williams has informed the staff that under the Collateral Trust Indenture all of the properties now being operated by Salinas, Ontario, and applicant are subjected to the lien of the indenture. In addition, all of the outstanding stock of the subsidiaries is said to be held in trust for MONY.^{2/}

Summary of Revenues and Expenses

The following tabulation shows applicant's and the staff engineer's estimated revenues and expenses for estimated test year 1973:

Item	Applicant		Staff		Applicant:
	Present	Co. Proposed	Present	Co. Proposed	Exceeds
	Rates	Rates	Rates	Rates	Staff 1/
Operating Revenues	\$37,468	\$53,845	\$39,070	\$55,640	\$(1,602)
<u>Operating Expenses</u>					
Oper. & Maint.	17,835	17,835	18,600	18,700	(765)
Admin. & Gen.	9,813	9,813	6,700	6,700	3,113
Taxes Other Than Inc.	16,124	16,124	16,140	16,470	(16)
Allocated Expenses	9,811	9,811	7,660	7,660	2,151
Income Taxes	200	200	200	200	-
Total Expenses ^{2/}	53,783	53,783	49,300	49,730	4,483
Net Operating Revenue Before Depreciation	(16,315)	62	(10,230)	5,910	6,085
Avg. No. of Customers	765	765	775	775	-

(Red Figure)

1/ At present rates.

2/ Excludes depreciation expense.

2/ Decision No. 83193 dated July 27, 1974, in Application No. 54252.

The following tabulation shows a comparison of revenues and expenses from the application with amounts recorded in applicant's books as adjusted by the staff accountant and as estimated by the staff engineer for year ended September 30, 1973:

Item	Applicant		Staff	Staff
	Per	As	Accountant	Engineer
	Application	Recorded	Adjusted	Estimated
Operating Revenues	\$37,468	\$37,800	\$37,800	\$39,070
<u>Operating Revenue Deductions</u>				
Operating Expenses	37,088	25,322	29,729	32,960
Additional Expenses	-	-	9,317 3/	-
Subtotal Expenses	37,088	25,322	39,046	32,960
Property Taxes	14,961	10,895	10,895	14,940
Additional Prop. Taxes	-	-	(4)	-
Subtotal - Prop. Taxes	14,961	10,895	10,891 1/	14,940
Other Taxes	1,734	750	958	1,400
Total Oper. Rev. Deductions	53,783	36,967	50,895	49,300
Net Income Before Dep'n. and Int.	(16,315)	833	(13,095)	(10,230)
Nonoperating Revenue	-	90	90	-
Interest Expense 2/	-	488	488	-
Net Income Before Dep'n.	-	435	(13,493)	-
Average Number of Connections	765	732	732	775

(Red Figure)

- 1/ Property taxes 1973-74 FY.
- 2/ Interest expense as computed and allocated by utility without confirmation.
- 3/ Includes \$7,547 charge for Regional Waste Water Project (abnormal exp.).

The staff accountant's adjusted figures show that applicant operated at an out-of-pocket loss of \$13,095 during the 1972-73 fiscal year. About \$7,500 of this amount represented an unusual expenditure in connection with a regional waste water project. The requested residential rate of \$5.75 per month would produce an annual increase in revenues of about \$16,100. The tabulation below shows the increase in annual revenues that would be produced at other rate levels:

<u>Increased Annual Revenues</u>				
<u>732 Residential Services</u>			<u>Estimated School or Church</u>	<u>Total Increase</u>
\$4.75 monthly rate		\$ 6,612	\$300	\$ 6,912
5.00 " "		8,808	400	9,208
5.25 " "		11,004	500	11,504
5.50 " "		13,200	600	13,800
5.75 " "		15,396	700	16,096

Originally, after considering the nature and amount of the regional waste water project expense and the general level of recorded expenses, the staff accountant recommended that residential revenues be increased by \$1.25 monthly, to \$5.25, an increase of 33 percent, and that appropriate increases be authorized for nonresidential customers.

According to the staff engineer, applicant's proposed special conditions appear to be proposed rules of company operating procedures relating to customer service. Such proposed rules should, after staff review, be filed by advice letter filing, reflecting the requirements of General Order No. 96-A. He recommended that applicant be directed to file a set of rules pertaining to customer relationship, comparable to the standard rules on file for water utilities.

Special Condition No. 5 of applicant's proposed tariff schedule for general sewer service would authorize discontinuance

of water service from Mission Hills Water Company if the customer fails for two consecutive months to make monthly payments for sewer service. According to the staff engineer, this should not be authorized, since it has long been Commission policy to limit discontinuance of a utility service to only the type of service and location for which the unpaid bill was issued.

According to the staff engineer, the \$430 inclusion fee requested by applicant does not reflect practices currently approved for utilities under this Commission's jurisdiction. Therefore, he recommended that such inclusion fees not be approved at this time.

A principal accountant expressed the policy of the Finance and Accounts Division regarding inclusion fees in the following statement:

"Connection Charges and Inclusion Fees

"31. Included in the rate applications of each of the sewer companies, Salinas, Lompoc, and Ventura, is a report prepared by Thomas M. Stetson, Civil and Consulting Engineers. These reports contain proposed rate schedules with Special Conditions, under which the utilities propose to offer service. The Finance and Accounts Division is particularly concerned about the financial impact of the proposed Special Condition relating to new connections, which reads as follows:

'Connection of new services to the sewer system will be billed at the rate of \$430 for the right of inclusion. The actual connection and its cost must also be provided by the owner in addition to the inclusion fee.'

"32. Charges of the type referred to above would impose a substantial burden on a new customer. The alternative, however, if such charges are not imposed is to shift the cost of the new connection to the present customers of the utility. If the connection charge, i.e., the cost of a physical connection, is set at the amount required to cover actual construction costs and is accounted for as contributed plant, the new customer would be 'paying his way' but the cost of such plant would be excluded

from the investment base used in setting rates for the utility. The customer should have a choice either of having his sewer lateral installed by a contractor of his own choosing, subject to utility standards and inspection, or of having it installed by the utility, at his cost.

"33. The assessment of inclusion fees for new connections, to pay for treatment plant additions and betterments, is a common practice of sewer districts. The justification is that this appears to be the most practical way of having new developers share in the cost of the treatment plant, and of providing for improvements or enlargement of sewer treatment plant facilities without imposing an added financial burden on existing users.

"34. Raising capital is particularly critical for the applicant utilities in which neither the owners nor the principal creditor show any desire to invest additional funds. We understand that Ventura has been restricted from further expansion, so inclusion fees and connection charges are not a pressing issue there, but Lompoc will have a need to raise \$200,000 or more to tie its system into a regional treatment plant. Inclusion fees will not eliminate this problem, but they will reduce the burden on existing customers.

"35. Inclusion fees should be assessed on a consistent and uniform basis, without discrimination, and the amount should bear a relationship to the estimated cost of future treatment plant construction requirements and anticipated customer growth.

"36. In referring to a 'consistent and uniform basis' for assessing inclusion fees, the staff accountant recognizes that it may be appropriate to distinguish between individual connections and new subdivisions.

"37. Applicant should develop a definite plan for the assessment and use of inclusion fees, including justification for the amount that it proposes to collect for each new connection. All inclusion fees collected should be impounded in a separate trust account in a California bank or savings and loan association, to be expended only for treatment plant additions and betterments, and only after specific Commission authorization

has been obtained. Provision should be made, in the event of the acquisition of the sewer system by a public agency, for transfer of impounded trust funds to the public agency, for the benefit of customers of the sewer company. All inclusion fees invested in plant should be offset by a contra credit to contributed plant."

A public witness protested the \$7,500 charge for the Regional Waste Water Project study.

Another public witness testified that she had paid an inclusion fee to the developer of Mesa Oaks of approximately \$300. She did not know (nor did any of the parties) if applicant received any portion of the inclusion fee. She also testified that in her area water service was supplied by the Mesa Oaks Mutual Water Company and that the sewer company had little or no knowledge of how many customers it served in the Mesa Oaks area.

Another public witness testified that he did not believe the sewer company should have unlimited use of his money which the company held as a deposit. He further testified that the company should not be allowed to determine who would be charged 6 percent penalty for late payment of bills.

As a result of the testimony received from the public witnesses and because of the different estimates of average number of connections presented by applicant and staff witnesses, the examiner directed applicant to make a count of actual connections.

Exhibit 9 presented by applicant's district manager of operations and maintenance for the Lompoc area shows:

	<u>Connections</u>
Occupied and billed residences	743
Unoccupied and billed residences	12
Small commercial billed	8
Large commercial and public authority	4
Unbilled residences	27
Unbilled small commercial	<u>1</u>
Mission Hills-Mesa Oaks Total	795

Discussion

Although the record indicates that a complete results of operations study cannot be produced at this time because of insufficient information concerning sources of capital, contributions, and donations, studies by the Commission staff engineer and staff accountant show that applicant incurred a substantial loss, before depreciation, at present rates.

Applicant is billed over \$10,000 per year in property taxes by the county of Santa Barbara. This record reveals that MONY, unbeknownst to applicant, finally paid four years of applicant's back taxes in order to avoid a tax sale of the properties. The record also reveals that applicant has made no attempt, since it became a public utility subject to valuation by the State Board of Equalization, to have Santa Barbara County reduce the taxes it charges applicant. Table A of Exhibit 3 under the heading "Lompoc" shows a net utility plant of \$416,884. Of this, \$367,836 is advances for construction. (The remaining \$49,048, plus a nominal amount for materials and supplies and working cash, comprises the rate base of applicant.) However, in view of the record developed that no repayment of the advances is required for a period of 20 years, these advances could be considered as donated property or Contributions in Aid of Construction. Under the criteria established by the State Board of Equalization, donated property is not considered for valuation purposes.

We believe it is probable that if applicant would apply to the Santa Barbara County Board of Supervisors for a reduction of the value of its taxable property in the amount of Contributions in Aid of Construction, applicant's property taxes would be reduced by a substantial (approximately 85 percent) amount. This probable property tax saving is so significant a proportion of the total expenses of operation which applicant is seeking to meet by this application, that applicant should first try to obtain it before being granted permanent rate relief.

The record further reveals that applicant, by billing all of its customers, could realize approximately \$1,200 additional annual revenue.

The order which follows limits applicant's residential rate increase to \$1.25 per month and partially grants the other rate increases requested, for an expected increase in gross annual revenue of approximately \$12,000. Any amount by which the authorized increase exceeds applicant's net operating loss at present rates will not result in an excessive rate of return.

Findings

1. For the year ended September 30, 1973, applicant's present monthly rates for sewer service result in a net loss, before depreciation, of approximately \$10,230.
2. Exclusion of Contributions in Aid of Construction from applicant's Santa Barbara County taxable property would reduce applicant's property tax by approximately 85 percent or \$8,500.
3. Applicant requires interim rate relief designed to raise its gross annual revenues by approximately \$12,000, pending resolution of the question whether its Contributions in Aid of Construction are excludable from its Santa Barbara County taxable property.
4. Within one year following the effective date of this order, applicant should file a verified, written application with the Santa Barbara County Board of Supervisors requesting the exclusion from taxable property of all Contributions in Aid of Construction.

5. If the Santa Barbara County Board of Supervisors denies the application, the interim rate increase which applicant presently requires should be made permanent.

6. If the Santa Barbara County Board of Supervisors grants the application, applicant's rates should be reduced by amounts which fully reflect the reduction in applicant's property tax effected by such grant of the application.

7. An inclusion fee of \$430, as authorized herein, is reasonable.

8. No payment of refunds should be made from inclusions fees, except as heretofore provided by contract.

9. Inclusion fees should be impounded in a separate interest-bearing account in a California bank or insured savings and loan association. These fees, and interest accrued thereon, should be expended only for treatment plant additions and betterments and only after specific authorization has been obtained by means of a letter signed by the Secretary of the Commission.

10. Applicant should file a schedule of its authorized inclusion fees as part of its filed tariffs.

Conclusion

The application should be granted, to the extent described in the preceding findings, upon the conditions set forth in the following order.

INTERIM ORDER

IT IS ORDERED that:

1. After the effective date of this order, applicant is authorized to file, on an interim basis, the revised tariff sheet set forth in Appendix A. Such filing shall comply with General Order No. 96-A. The effective date of the revised schedule shall be four days after the date of filing. The revised schedule shall apply only to service rendered on and after the effective date thereof.

2. Within one year after the effective date of this order, applicant shall file a verified, written application with the Santa Barbara County Board of Supervisors requesting that the value of its taxable property be reduced by excluding therefrom all Contributions in Aid of Construction.

3. Applicant shall diligently prosecute its application before the Santa Barbara County Board of Supervisors by complying with all requests for information, attendance at hearings, etc., that may be required of applicant by the County Board.

4. Applicant, within thirty days of filing its application with the Santa Barbara County Board of Supervisors, shall transmit to the Commission a copy of the application, and, within thirty days of its receipt of a decision on the application by the Santa Barbara County Board of Supervisors, shall transmit to the Commission a copy of said decision.

5. If the Santa Barbara County Board of Supervisors denies the application, the tariff sheet set forth in Appendix A shall, by supplemental order, be made permanent.

6. If the Santa Barbara County Board of Supervisors grants the application, the rates set forth in Appendix A shall, by subsequent order, be reduced by amounts which fully reflect the reduction in applicant's property tax effected by such grant of application.

7. Applicant is authorized to collect inclusion fees of \$430 per connection. These fees shall be impounded in a separate interest-bearing account in a California bank or insured savings and loan association. The fees and accrued interest are to be expended only for treatment plant additions and betterments, and only after specific authorization has been obtained by means of a letter signed by the Secretary of the Commission. Applicant shall provide the Commission,

attention of the Finance and Accounts Division, two copies of an annual statement no later than March 31 of each year, detailing the proper distribution and amount of all additions, interest earned, and withdrawals from the fund during the prior calendar year, together with the balances in the fund at the close of the year.

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

Dated at San Francisco, California, this 24th day of SEPTEMBER, 1974.

Vernon L. Sturgeon
President
William J. Syngma, Jr.
J. M. Wilson, Jr.
Edward J. Moran
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

Schedule No. 1

GENERAL SEWER SERVICE

(T)

APPLICABILITY

Applicable to all sewer service.

(T)

TERRITORY

Mission Hills subdivision (Tracts Nos. 10024, 10129, 10207, and 10571) east of City of Lompoc, Santa Barbara County.

RATES

	Per Service Connection <u>Per Month</u>	
Residence	\$ 5.25	(I)
Church	32.00	(I)
Los Barros School	96.00	(N)