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Decision No. 83692

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOLEMINT WATER COMPANY to the Public Utilities Commission for an order that applicant may not construct plant to comply with local ordinance or future needs of developer.	Application No. 54172 (Filed July 11, 1973)

Thomas A. Doran, Attorney at Law, for Solemint Water Company, applicant.
Fulop, Rolston, Burns & McKittrick, by Robert J. DeMarco, Attorney at Law, for Princess Park Estates, protestant.
R. M. Mann, for the Commission staff.

RULING ON MOTION CHALLENGING COMMISSION'S JURISDICTION

Solemint Water Company (SWC), now known as Santa Clarita Water Company, seeks an order that it does not have to construct plant to comply with a local ordinance or future needs of developer.

Hearing was held before Examiner Bernard A. Peeters in Los Angeles on March 28, 1974. Before the taking of evidence, protestant, Princess Parks Estates (PPE), presented a written motion challenging the jurisdiction of the Commission and requested a ruling on its motion before any evidentiary hearing be conducted. SWC requested time to study the motion and submit a reply. The motion was taken under submission subject to the filing of briefs by the parties, whereupon the hearing was adjourned to a time and place to be set. SWC's reply to the motion was filed on April 29, 1974. PPE filed its rebuttal on May 10, 1974. The motion is ready for a ruling.

Background

The jurisdictional issue arises out of the following factual situation:

During the mid-1960s PPE subdivided land and constructed homes in the Saugus-Newhall area, within the service area of SWC. As each tract in the subdivision was developed, PPE entered into main extension contracts with SWC in accordance with SWC's Tariff Rule 15. The two tracts involved in this application are numbered 30395 and 30396.

In April of 1966 PPE and SWC entered into a main extension contract with regard to Tract No. 30395. It is alleged by PPE that, in a separate and contemporaneous agreement, SWC agreed to build a water tank at the 1,850-foot elevation to serve the needs of Tract No. 30395 if PPE provided a graded tank site. PPE offered the site, but to date the tank has not been installed. However, in a subsequent main extension contract and agreement, SWC agreed to, and did, construct a tank at the 2,000-foot level in Tract No. 30396.

On or about July 24, 1969, PPE filed Civil Action No. 957,839 entitled Princess Park Estates, Inc. v Solemint Water Company in the Superior Court of the county of Los Angeles. The action was filed for the recovery of costs advanced to pay for main extension facilities constructed to serve Tracts Nos. 30394, 30395, and 30396. On or about August 22, 1969, SWC filed a verified cross-complaint against PPE. The cross-complaint sought payment for water services furnished to PPE over a four-year period and for increased costs to operate the system which was constructed by PPE. On or about May 8, 1973 judgment was entered in favor of PPE and against SWC on the cross-complaint. The court found, among other findings, that PPE had offered to furnish SWC with a tank site in accordance with the agreement of the parties, but that SWC had failed and refused to accept the tank site and failed and refused to construct and bear the cost of a water reservoir

tank, even though SWC's pleadings showed that it was a public utility as defined in the Public Utilities Code and was required to furnish water service under tariffs lawfully on file with and approved by the Public Utilities Commission, and that PPE agreed and promised to pay for said water service at the tariff rates and charges on file with and approved by the Public Utilities Commission.[1/]

PPE, in support of its contention that the agreement to construct a water storage tank at the 1,850-foot level was separate and distinct from the main extension contract, cites a portion of the testimony of SWC's former president given in a Commission proceeding on May 26, 1970, as follows:

> "A. When we entered into the main extension contract on Tract 30395, Mr. Feller and I discussed it and he was told that the tank and the site would have to be included as special facilities under the main extension contract and the contract go to the Commission for approval or, in lieu of that, if he [sic] would provide the site at any place within his tract at the proper elevation, that we [sic] would construct the pumps and tanks." (Reporter's Transcript, Vol. 1, page 53, lines 5-12 in Case No. 9064, Princess Park Estates, Inc. v Solemint Water Company.)

To put the above quotation in proper perspective with regard to SWC's request for authority not to construct the tank, we quote from the transcript questions and answers of SWC's president leading up to the quotation:

> "EXAMINER WARNER: Why haven't you installed the tank at the 1,850-foot level?
>
> "THE WITNESS: Well, we are back into the matter of this lawsuit.
>
> "The design called for the installation of storage at the 1,850-foot level.
>
> "Q. By whom?

1/ Cross-complaint, Fourth Cause of Action, II.

"A. On construction of the tank by this company at the 1,850-foot level on, I believe, Lots 85 and 86 of Tract 30396, which site was to be provided by Princess Park Estates. And we have a certificate from Princess Park Estates to the effect that that will be made available to us.

"Q. Was there a dollar compensation?

"A. No compensation.

"Q. And had those lots been made available?

"A. No, they constructed houses on them.

"Q. They did construct houses on them?

"A. Yes.

"Q. Is there any site that they have offered?

"A. They have discussed another site with me repeatedly.

"Q. Well, would that site and the construction of the tank at that site relieve the low pressures in the system at the 1,850-foot level?

"A. The other sites that they have discussed can't be used because they are across a freeway under construction to the south of this tract.

"Q. What has that got to do with it, the freeway?

"A. There is no way to get across to the site that they have offered in lieu of this.

"Q. You can't go under the freeway?

"A. No, sir, the freeway is presently under construction now. There is a cut being made at the point where any pipeline would cross.

"Q. Well, is there any other available site that you know about, aside from the fact that they might not be willing to provide it, that would be satisfactory for the construction of the tank?

"A. There are other properties of that elevation or higher within possibly a mile or two miles of the tract.

"Q. Now, are these--is that tank considered an off-site or on-site facility under your Main Extension Rule?

"A. This tank is not arranged for under the Main Extension Rule.

"Q. Then it would be off-site.

"A. Well, it is on-site.

"Q. But it happens to be on-site but it is backup? In other words, it has other uses besides for the Princess Park Estates?

"A. No, it does not.

"Q. Does not?

"A. No.

"Q. You are proposing to finance it yourselves?"

(Transcript pages 51-53, Case No. 9064.) PPE's quote picks up here.

The complaint in Case No. 9064 sought the restoration of water service which had been terminated for failure to pay for water delivered to PPE. By Decision No. 77479 dated July 7, 1970, the Commission dismissed the complaint after finding that PPE should comply with SWC's tariff rules for reconnection; that PPE's refusal to pay past-due water bills constitutes a burden on SWC's customers, and that the resolution of the dispute over refunds of advances by subdividers for water main extension is provided for in SWC's Main Extension Rule 15.

On or about May 18, 1973, PPE filed Civil Action No. C-57,698 entitled Princess Park Estates, Inc. v Solemint Water Company in the Superior Court for the county of Los Angeles. By this complaint PPE seeks declaratory relief and damages in the amount of $1,000,000 arising from SWC's failure to construct the tank at the 1,850-foot level. No trial date has been set. At the hearing on Application No. 54172, counsel for PPE agreed to take no further action toward advancing the case to trial pending the Commission's ruling on his motion.

Arguments of the Parties

PPE contends that (1) SWC is collaterally estopped from denying the existence of a valid and enforceable agreement whereby SWC agreed to construct the tank at the 1,850-foot level, (2) the agreement was not a part of the main extension contract, and (3) the Public Utilities Commission does not have jurisdiction of this matter. PPE argues that the law is settled that any issue necessarily decided in the litigation of a cause of action finally determined by a court of competent jurisdiction is conclusively determined as to the parties if it is involved in a subsequent action between the parties, citing People v Seltzer (1972) 25 CA 3d Supp 52, and that the plea of collateral estoppel is valid in the matter now before the Commission (Ford Motor Company v the Superior Court of Los Angeles County (1971) 16 CA 3d 442). PPE also argues that SWC could have raised the issue that the agreement is of no force and effect because it deviates from its main extension rule in the prior court proceeding, but having failed to do so it is estopped from doing so now.

PPE's further argument proceeds on the theory that the contract to build the tank at the 1,850-foot level is a third party contract with an investor-owned public utility and is therefore outside the jurisdiction of the Commission, citing Pacific Tel & Tel Co. v Public Utilities Commission (1950) 34 Cal 2d 822. The Commission

is not a body charged with the enforcement of private contracts, nor can it modify a public utility's contract or order a public utility to perform a contract (Cal. Water & Tel. Co. v Public Utilities Commission (1959) 51 Cal 2d 478).

SWC contends that its application is not to adjudicate rights under the agreement, but rather it concerns the questions of obligations of applicant to its public utility customers; that in any event the line of cases referred to by PPE are limited to contracts between the utility and suppliers of materials, labor, etc., whereas the relationship between PPE and SWC is that of customer and utility; that the Commission is very much involved and that it has itself raised questions in other proceedings about the ability of any utility to voluntarily assume the burdens of ownership of facilities sufficient to comply with county fire ordinances or excess capacity for future growth; whether a utility can or should be required to construct facilities not needed for public utility water service to its customers; and that under Rule 15, Main Extension, Paragraph A-8, the utility may apply to the Commission for determination of any controversy involving a main extension agreement. The issues posed by SWC are: (1) Whether or not an investor-owned public utility water company can voluntarily assume the ownership burdens and other costs of complying with the Los Angeles County Water Ordinance.[2/] (2) Can an investor-owned public utility water company assume the ownership burdens of excess plant capacity on the anticipation of future development? (3) Can a public utility be permitted, on its own volition, or ordered by the Superior Court to construct, own, and maintain water storage facilities that no longer have relevance or use to the water distribution system as it is now constituted? (4) Whether the agreement to construct a storage tank at the 1,850-foot level was separate and apart from the main extension contract, and if so, was it a valid agreement?

2/ Ordinance No. 7834, adopted August 2, 1960, setting forth certain fire flow requirements. This ordinance was declared unconstitutional insofar as it applied to investor-owned public utilities (Calif. Water & Tel. Co., et al. v County of Los Angeles (1967) 253 CA 2d 16). (Domingues Water Corp. (1970) 71 CPUC 257, 262.)

Material Issues

The material issues are:

1. Is the agreement to construct a water storage tank at the 1,850-foot level separate and apart from the main extension contract?

2. If so, does such agreement constitute a deviation from SWC's tariff rules requiring prior authorization from the Commission?

3. If the agreement is a deviation from the tariff, is it enforceable?

4. Does the Commission, as a matter of law, have jurisdiction over the agreement?

Discussion

The answer to the first issue is yes. We have examined the record in Case No. 9064 and find that in addition to the cited quotation from the record, SWC's former president emphatically stated at page 52 of the transcript: "A. This tank is not arranged for under the Main Extension Rule." It is therefore clear that it was the parties' intent that the disputed agreement was to be separate and apart from the tariff rule. However, regardless of the intent of the parties, it is necessary to determine whether they could lawfully enter into such an agreement. In determining this issue we must look to the statutes and the utility's tariff.

Section 489 of the Public Utilities Code[3/] requires every public utility to file its schedules (tariffs) with the Commission.

3/ All references are to the Public Utilities Code, unless otherwise stated.

"489. Under such rules as the commission prescribes, every public utility other than a common carrier shall file with the commission within such time and in such form as the commission designates, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together will all rules, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service. Nothing in this section shall prevent the commission from approving or fixing rates, tolls, rentals, or charges, from time to time, in excess of or less than those shown by such schedules."

Section 491 provides that a public utility shall not make any changes in its tariff without prior authorization from the Commission, except upon 30 days' notice, and Section 532 provides that no public utility shall deviate from its tariff provisions without prior authority from the Commission.[4/] In accordance with the statutory

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4/ "491. Unless the commission otherwise orders, no change shall be made by any public utility in any rate or classification, or in any rule or contract relating to or affecting any rate, classification, or service, or in any privilege or facility, except after 30 days' notice to the commission and to the public. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the changes to be made in the schedule or schedules then in force, and the time when the changes will go into effect. The commission, for good cause shown, may allow changes without requiring the 30 days' notice, by an order specifying the changes so to be made, the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate or classification, or in any form of contract or agreement or in any rule or contract relating to or affecting any rate, classification, or service, or in any privilege or facility, attention shall be directed to such change on the schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item."

"532. Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time, nor shall any public utility engaged in furnishing or rendering more than one product, commodity, or service, charge, demand, collect, or receive a different compensation for the collective, combined, or contemporaneous furnishing or rendition of two or more of such products, commodities, or services, than the aggregate of the rates, tolls, rentals, or charges specified in its schedules on file and in effect at the time, applicable to each such product, commodity, or service when separately furnished or rendered, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons. The commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

provisions in Section 532 the Commission promulgated General Order No. 96-A. The pertinent provision applicable here prohibits a public utility from making effective any contract, arrangement, or deviation from its tariff rules without first obtaining authorization from the Commission.5/

5/ "X. Contracts and Services at Other Than Filed Tariff Schedules.

"A. General Requirements and Procedure. Except as expressly permitted by the succeeding subsection B of this Section X, no utility of a class specified herein shall hereafter make effective any contract, arrangement or deviation for the furnishing of any public utility service at rates or under conditions other than the rates and conditions contained in its tariff schedules on file and in effect at the time, unless it first obtain the authorization of the Commission to carry out the terms of such contract, arrangement or deviation. Request for such authorization should be made by formal application in accordance with the Commission's Rules of Procedure, except that where the service is of minor importance or temporary in nature, the Commission may accept an application and showing of necessity by Advice Letter; four copies of the Advice Letter and contract or agreement shall be furnished. Any subsequent amendment to the agreement or contract also shall be filed with the Commission in the same manner.

"Each such contract shall contain a provision indicating the understanding of the parties that:

> 'This contract shall not become effective until authorization of the Public Utilities Commission of the State of California is first obtained.'

Such contract shall also contain substantially the following provision:

> 'This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction.'

"All service shall be furnished under filed tariff schedules, but where exceptions have been permitted an up-to-date public listing, as provided in Section II hereof, shall be maintained in the tariff schedules following the rate schedule sheets and before the rule sheets."

SWC's Tariff Rule 15 governs the water utility's manner in which it can extend its distribution mains to serve new customers. It is a detailed and lengthy rule; pertinent portions which were in effect at the time of the disputed agreement are as follows:

"MAIN EXTENSIONS

"A. General Provisions and Definitions

1. Applicability

a. All extensions of distribution mains, from the utility's basic production and transmission system or existing distribution system, to serve new customers, except for those specifically excluded below, shall be made under the provisions of this rule unless specific authority is first obtained from the Commission to deviate therefrom. A main extension contract shall be executed by the utility and the applicant or applicants for the main extension before the utility commences construction work on said extensions or, if constructed by applicant or applicants, before the facilities comprising the main extension are transferred to the utility.

* * *

4. Ownership, Design and Construction of Facilities

a. Any facilities installed hereunder shall be the sole property of the utility. In those instances in which title to certain portions of the installation, such as fire hydrants, will be held by a political subdivision, such facilities shall not be included as a part of the main extension under this rule.

b. The size, type, quality of materials, and their location shall be specified by the utility; and the actual construction shall be done by the utility or by a constructing agency acceptable to it.

* * *

d. When an extension must comply with an ordinance, regulation, or specification of a public authority, the estimated and adjusted construction costs of said extension shall be based upon the facilities required to comply.

* * *

8. Interpretations and Deviations

In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears unreasonable to either party, the utility, applicant or applicants may refer the matter to the Commission for determination."

From the foregoing it can be seen that if the agreement to construct a water storage tank at the 1,850-foot level was separate and apart from the main extension contract, it would have required prior authorization from the Commission before it could become effective. Furthermore, if it were a separate contract, SWC was required to list it in its tariffs. An examination of SWC's tariff files reveals no such listing nor a copy of such contract.

Was the said agreement a deviation from SWC's tariff requiring prior authorization from the Commission?

Section 532 (Footnote 4, supra) prohibits a public utility from extending to any corporation or person any form of contract or agreement except such as are regularly and uniformly extended to all corporations or persons. Section X of General Order No. 96-A (Footnote 5, supra) which was promulgated pursuant to Section 532, provides in part:

"Except as expressly permitted by the succeeding subsection B of this Section X, no utility of a class specified herein shall hereafter make effective any contract, arrangement or deviation for the furnishing of any public utility service at rates or under conditions other than the rates and conditions contained in its tariff schedules on file and in effect at the time, unless it first obtain the authorization of the Commission to carry out the terms of such contract, arrangement or deviation." (Emphasis added.)

Subsection B referred to in Section X of General Order No. 96-A relates to the furnishing of service at free or reduced rates to the federal and state governments, and is therefore not applicable here.

Thus, when a water utility undertakes to extend its mains or other service, it may do so only on the terms and conditions stated in its main extension rule on file with the Commission, and must obtain Commission authority for any arrangements which deviate therefrom. (Cal. Water & Tel. Co. v PUC (1959) 51 C 2d 478, 501.)

Here we have a main extension contract entered into in April 1966 and a separate and contemporaneous agreement to build a water tank at the 1,850-foot level in conjunction with the extension of service. As testified to by SWC's president, supra, he stated that the tank and site would have to be included as special facilities under the main extension contract and the contract approved by the Commission. However, the parties followed the alternative offered by SWC's president, and no Commission authority was sought or given.

The fact that an agreement to implement a service extension in the form of a storage tank was separate from the main extension contract provided for in the utility's tariff is, on its face, a deviation. The only provision in the tariff pertaining to such an agreement requires that Commission authority first be obtained before entering into the agreement. (Rule 15, A.1.a., supra.)

PPE's argument that the agreement is not one for service, but is a third party contract for materials or supplies, begs the issue. First, it is apparent that the agreement for the construction of a tank at the 1,850-foot level was contemporaneous with the main extension contract to extend service. Second, SWC's testimony through its president, supra, shows that the tank was part of the design of the system to provide water service to PPE and its development. Lastly, the fact that PPE filed its complaint with the Commission in Case No. 9064 for the restoration of water service refutes its argument. PPE filed in its status as a customer of SWC.

Therefore, until agreements, which deviate from the utility's filed and effective tariff, involving service are approved by the Commission, they are of no force or effect. (Cal. Water & Tel. Co., supra, at p. 501.)

PPE's argument that SWC is collaterally estopped from denying the existence of a valid and enforceable agreement is without merit. The cases cited for this argument dealt with a personal injury action and an obscene movie, both subject being with the proper jurisdiction of the courts. Here we have subject matter that is cognate and germane to regulation. It involves the Commission's power to regulate utilities and the rules and conditions under which they provide service to the public. It also involves an order of the Commission (General Order No. 96-A) which prescribes certain conditions for the furnishing of service by utilities.

Whether or not SWC raised the primary jurisdictional issue in the court action, as PPE claims it should have, is not clear from the record. The pleadings, however, indicated that SWC did point out the Commission's jurisdiction. (Footnote 1, supra.) In any event, the Commission had acted with respect to the subject matter here long before the court action when it promulgated General Order No. 96-A, which order has long since become final. Having become a final order, it was conclusive on the parties at the time of the court action.[6/] In this connection, the court, in the Miller case stated:

> "...for the purpose of administering the law applicable to the activities of the utility the Commission has exclusive jurisdiction over the regulation and control of said utility and may take any action necessary to the proper and complete exercise of this jurisdiction. In the exercise of this jurisdiction the commission may set aside any prior order or determination of the courts in matters coming under the exclusive jurisdiction of the commission." (Miller v Railroad Commission (1937) 9 Cal 2d 190, 195.)

6/ "Section 1709. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive."

and at page 197 the court went on to state:

> "...any order or judgment of the superior court in conflict with the orders of the commission is to that extent ineffective and of no binding effect upon the parties thereto." (Miller, supra.)

Where the issues in a matter are mainly within the ambit of the Commission's regulatory jurisdiction, the Commission has exclusive jurisdiction to proceed with the determination of these issues. (Orange County Air Pollution Dist. v Public Utilities Com. (1971) 4 Cal 3d 945, 950-51; Northwestern Pac. R.R. Co. v Superior Court (1949) 34 Cal 2d 454, 458; Miller, supra.)

Presiding Justice Conley, in Pratt v Coast Trucking, Inc. (1974) 228 CA 2d 139, reviewed the Miller and subsequent cases dealing with the Commission's jurisdiction and that of the courts. He stated:

> "This case tests the relationship and the relative jurisdiction of the Public Utilities Commission of the State of California and the courts of this state other than the Supreme Court." (Pratt at page 140.)

and at pages 148-149 he stated:

> "The mandate of the Legislature is to place the commission, insofar as the state courts are concerned, in a position where it may not be hampered in the performance of any official act by any court, except to the extent and in the manner specified in the code itself."

Applying the above law to the matter at hand, it is clear that the doctrine of collateral estoppel is not applicable here. The Commission had promulgated its General Order No. 96-A long before the court action commenced. Thus, the requirement for prior Commission authorization of the agreement was conclusive upon the parties. The primary forum to determine whether the agreement could become effective is the Commission. Therefore, since the matter was not authorized in the forum of exclusive jurisdiction, the doctrine of collateral estoppel is not applicable.

It is also clear from the law quoted above that, in matters cognate and germane to the regulation of public utilities, the Commission has exclusive jurisdiction. Furthermore, whether a given controversy falls within the Commission's statutory grant or jurisdiction is clearly a matter that the Commission has the authority to determine in the first instance. (In re Frederick R. Schumacher (1966) 66 CPUC 54, 58, citing U.S. v Superior Court (1941) 19 Cal 2d 189, 195 and Ligda v PG&E (1963) 61 CPUC 1, 2.) A justiciable issue is presented where there is a controversy over the legal rights of the parties to an agreement which is germane to the regulation of public utilities. (Cf. Packard v PT&T (1970) 71 CPUC 469, 472-73.) We wish to point out that we are not here determining whether or not a justiciable issue is present. Rather, it is our purpose to draw a distinction for consideration of the parties when this matter is heard on its merits. Where there is a clear and unequivocal case or controversy presented in matters cognate and germane to regulation of public utilities, a justiciable issue is presented for the Commission to determine. On the other hand, if the matter presented seeks declaratory relief, there is no statutory basis for the Commission to grant such relief. Thus, the policy of the Commission is to avoid issuing declaratory decisions. (Decision No. 83613 dated October 22, 1974 in Case No. 9643, PSA v Air Cal.)

From the record thus far developed, it appears that SWC is seeking declaratory relief from a contract it voluntarily entered into at the outset in that it did not seek prior authorization from the Commission. (General Order No. 96-A.) Now, after the passage of several years, a lawsuit, and changed conditions, it presumably seeks relief from the obligation.

This decision is therefore limited to the legal conclusions set forth below.

In view of the conclusions reached herein, it is not necessary to discuss the other issues raised by the parties.

Findings

1. It was the intention of the parties to enter into an agreement for the construction of a water storage tank at the 1,850-foot level separate and apart from the main extension contract.

2. The agreement constitutes a deviation from SWC's tariff Rule 15 which requires prior authorization of the agreement from the Commission before it could become effective.

Conclusions of Law

1. The agreement to construct a water storage tank at the 1,850-foot level constituted a deviation from SWC's tariff rules and, as such, required prior authorization from the Commission.

2. The doctrine of collateral estoppel is not applicable.

3. The agreement is of no force or effect.

4. The Commission has exclusive jurisdiction over the subject matter.

O R D E R

IT IS ORDERED that:

1. Princess Park Estates' motion is denied.
2. Hearing on the matter will be held on a date to be set.

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

Dated at San Francisco, California, this 6th day of NOVEMBER, 1974.

President

Commissioners

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