

Decision 82 02 128 FEB 17 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Jean C. Adams, Joyce Ann Dorsey)
 Halverson, Donnellan Lawler, Harvey)
 Metcalf, Thomas A. Oman, Claire)
 Scheffer, Maxine Sears, Thomas C.)
 Thatcher, David L. Spurgeon, and)
 Barbara A. Spurgeon, sellers, for)
 authority to sell stock to Neil L.)
 Burckart and Patricia A. Burckart,)
 buyers.)

Application 60850
(Filed August 26, 1981)

ORDER OF DISMISSAL

Statement of Facts

In 1967, the partners of Crystal Falls Ranch, a limited partnership consisting of David L. and Barbara A. Spurgeon, general partners, and 12 other individuals, limited partners, who had developed the Crystal Falls Ranch Subdivision located approximately two miles south of Twain Harte in Tuolumne County, formed a California corporation known as Crystal Falls Water Company (Crystal Falls).

By Decision (D.) 72987 issued August 29, 1967 in Application (A.) 49236, Crystal Falls was issued a certificate of public convenience and necessity to construct and operate a public utility water system to serve the subdivision. Crystal Falls was also authorized to issue up to 100 shares of its common stock (without par value) at a stated value of \$500 per share for an aggregate amount of \$50,000. The \$50,000 proceeds of this sale of stock plus \$68,886 from the partnership in the form of a contribution in aid of construction were to be used to defray anticipated construction costs of \$114,500 for the system and to provide working cash for the utility.

By D.75866 dated July 1, 1969 in A.50480, Crystal Falls was authorized to acquire and operate the nearby Willow Springs Ranch Mutual Water Company (Mutual). The Mutual serves Willow Springs Ranch Subdivision, another real estate development of David and Barbara Spurgeon. Although the Mutual, constructed at a cost of \$160,704, was donated to Crystal Falls, Crystal Falls had to make an equity capital infusion of \$23,925 in plant improvements to bring the Mutual system up to Commission requirements.

Leisure Investment Company (Leisure), owned by the Crystal Falls Ranch partners, constructed the water systems as well as most of the Subdivision's homes. Leisure's project superintendent is Neil L. Burckart (Burckart), a licensed contractor who also owns and operates Cedar Ridge Water Company serving the Cedar Ridge Ranch and Twain Harte areas. Burckart currently is under contract to operate and maintain Crystal Falls.

By D.93048 dated May 19, 1981 in A.60151, Crystal Falls was authorized to borrow \$726,000 under a California Safe Drinking Water Bond Act (SDWBA) (Water Code §§ 13850 et seq.) loan and to add a surcharge to its water rates to repay the SDWBA principal and interest, making use of a balancing account system to exclude surcharge revenues, payments, and SDWBA financial plant from the ratemaking accounts.

Over the years Crystal Falls has incurred net earnings losses. Without prior approval from this Commission, as required under PU Code §§ 818 and 825, additional funds (over the \$50,000 received from sale of common stock in 1968) required to operate were provided by the stockholders in the form of demand notes bearing interest. In 1972 eight of these notes totaling \$28,210.15

were noted during a rate proceeding; and by Finding 8 in D.80769 dated December 5, 1972 in A.53158 the Commission stated:

"Applicant's notes are null and void." Nonetheless it appears that this practice has continued and that as of July 11, 1980 these null and void notes totaled \$92,049.69.

By the instant application authority was sought for transfer of 32-1/2 shares (out of 100 outstanding) of Crystal Falls' common stock, and a portion of these company notes to Burckart. In exchange Burckart was to execute and deposit in escrow 10 noninterest-bearing notes, one made payable to each seller. These notes would provide, in 10 equal annual installments commencing two years after the closing date and continuing until the full amount was paid, for a total payment of \$65,000.05 (representing consideration in the amount of \$34,473.40 for the 32-1/2 shares (at \$1,060.72 per share), and consideration of \$30,526.65 for the company notes). The resulting shareholder and noteholder picture would be:

	<u>Shares of Stock</u>	<u>Shareholder Notes</u>
David and Barbara Spurgeon	62-1/2	\$58,705.19
Neil Burckart	34-1/2	30,526.65
Jean Adams	3	2,817.85
Total	<u>92,049.69</u>

Pending consideration of the application by the Commission, applicants' attorney was informed by a member of the Revenue Requirements Division of the Commission staff that an application to transfer stock would not be appropriate unless the transfer involved 50% or more of the stock, and that a transfer of less than 50% of the stock could be made without authorization from the

Commission.^{1/} Based upon this information, applicants by a letter dated September 17, 1981 requested that the application be dismissed. ✓

Discussion

It is customary for the Commission, in general accord with the provisions of the Code of Civil Procedure § 581, as amended, to grant an applicant or a complainant dismissal without prejudice of his filed application or complaint, upon written request by the applicant or complainant before the actual commencement of hearing. We will adhere to our usual procedure and do so in this instance.

However, under the circumstances attending this application, we would be remiss were we not to add a comment to our dismissal. It appears that applicants have requested dismissal on the assumption that Commission approval under PU Code § 854 is not required to transfer the 32½ shares of stock at issue in the application. Section 854 prohibits any person or corporation from acquiring or controlling any public utility doing business in this State without first securing authorization to do so from the Commission. Although effective control can be transferred through acquisition and ownership of less than 50% of the outstanding stock of a corporation, it does not appear that the contemplated sale in this instance will affect a transfer of control.

But the application as filed also reflected applicants' intent to transfer as part of the consideration certain company notes: notes in part that were first identified by this Commission in D.80769, supra, as being "null and void" back in 1972. It should

^{1/} PU Code § 854 requires approval by the Commission of the transfer of control of a public utility. Usually, transfer of control involves the sale and transfer of 50% or more of the voting stock of the corporation, but under some circumstances "control" may be less than 50%. The transactions for which approval are sought in A.60850 do not appear to involve transfer of control of Crystal Falls.

be well understood by all the dozen applicants in the filed application that these so-called company notes, or subsequent notes similarly issued by Crystal Falls without prior authorization by this Commission (as required under PU Code §§ 818 and 825), acquire no patina of legitimacy through further transfer or aging, nor can this dismissal in any way be construed as Commission sanction of their existence.

Conclusion of Law

The application should be dismissed without prejudice.

Upon written request of applicants,

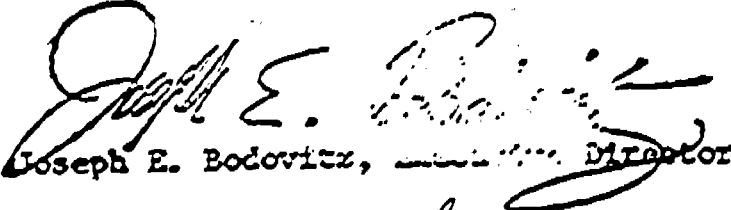
IT IS ORDERED that Application 60850 is dismissed without prejudice.

This order is effective today.

Dated February 17, 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE
COMMISSIONERS


Joseph E. Bodovitz, Director