

ORIGINAL

Decision 82 05 075 MAY 18 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of GONSALVES & SANTUCCI, INC.,)
dba CONCO CEMENT COMPANY, to)
acquire the assets and common)
stock of BAY POINT LIGHT AND)
POWER CO., INC., a public)
utility.)

Application 60678
(Filed June 22, 1981)

William L. Knecht, Attorney at Law, for
Gonsalves & Santucci, Inc., applicant.
Daniel E. Gibson and Bernard J. Della Santa,
by Bernard J. Della Santa, Attorney at Law,
for Pacific Gas and Electric Company; and
Thomas J. Vargo, for Western Division,
Naval Facilities Engineering Command;
interested parties.
Alberto Guerrero, Attorney at Law, and
Vladislav Bevc, P.E., for the Commission
staff.

O P I N I O N

By motion filed March 8, 1982, all of the beneficiaries^{1/}
of the estate of Eunice N. Van Winkle, deceased, seek approval
under Public Utilities Code § 854 to transfer to them
the common stock of Bay Point Light and Power Co., Inc., (Bay Point),
a public utility operating within a small area of Contra Costa
County.

^{1/} Gonsalves and Santucci, Inc. (Conco), doing business as Conco Cement
Company, applicant in Application (A.) 60678, with a 26%
interest in the Van Winkle estate, and Walter T. Sherrill and
Kathleen R. Sherrill with 74% interest.

Background

Bay Point furnished electric public utility service to 367 customers in and around the communities of Clyde and Port Chicago as of August 31, 1981. It purchases all of its electric power requirements from Pacific Gas and Electric Company. Bay Point's unaudited total assets and total liabilities and capital were \$826,000 as of September 30, 1981. A \$300,000 advance from the estate was included in the capital account. Revenues from sales for the first nine months of 1981 were \$419,000.

Van Winkle, owner of all of the stock of Bay Point, died testate on April 15, 1978. Wells Fargo Bank (Wells Fargo) was duly appointed executor of the Van Winkle estate on May 10, 1978 and has been acting in that capacity ever since. All of the 750 shares of common stock are registered in the name of the executor. The estate is presently pending in the Superior Court of Contra Costa County in probate proceeding No. 51553.

Wells Fargo advertised for bids to purchase Bay Point. After bids were submitted, Wells Fargo entered into a contract of sale with the successful bidder, Conco.

Conco and Wells Fargo filed the contract of sale dated May 22, 1981 with the probate court for Conco to purchase the assets of Bay Point for \$850,000 plus payment for additions and betterments made subsequent to February 17, 1981. The sale was confirmed by the probate court on June 18, 1981, subject to approval by the Commission.

Conco filed A.60678 on June 22, 1981 to acquire the assets and common stock of Bay Point.

Hearing

A duly noticed prehearing conference was held on October 19, 1981 in San Francisco and public hearings held on November 23 and 24, 1981 in San Francisco before Administrative Law Judge (ALJ) J. J. Doran.

Testimony was presented by four witnesses for Conco and by two witnesses for the Commission staff. The staff had no objection to the transfer but did have some accounting concerns.

December 15, 1981 was set for Conco to submit its late-filed exhibit and the hearing was adjourned to January 11, 1982 to have testimony on the late-filed exhibit. The section of the late-filed exhibit on the pro forma representation of the capital of Bay Point was not filed. Subsequently, at the request of Conco's attorney, the matter was taken off calendar pending resolution of matters before the probate court.

Pending Motion

By order dated January 18, 1982, the probate court, in response to a petition to vacate filed by Conco, set aside its June 18, 1981 order confirming the sale of Bay Point and rescinded the contract of sale to Conco.

On March 8, 1982 the beneficiaries of the estate of Van Winkle filed a motion with the Commission seeking an ex parte order authorizing the transfer of all of the common stock of Bay Point to the beneficiaries.

In their motion, the beneficiaries aver that:

1. "The beneficiaries are actively seeking purchasers for Bay Point..., and distribution of the common stock will facilitate such sale."
2. "Conco...has and will continue to honor its management contract for Bay Point and upon distribution of the common stock would be

better able to effect economies in the operation of the utility recommended during the hearings previously held."

3. "The assets of Bay Point will remain devoted to the public utility service of Bay Point in the future, assuming approval of the transfer, exactly as they have been in the past."
4. "Distribution of the common stock will have no adverse impact upon the customers of Bay Point and offers the potential for economies of operation described above."

The beneficiaries are active in the affairs of Bay Point. Conco's president is president of Bay Point. Walter Sherrill is a vice president and was formerly president of Bay Point. There is no indication that the proposed transfer to the beneficiaries would be inconsistent with or adverse to the public interest.

Absent evidence that the proposed transfer is inconsistent with or adverse to the public interest, our role should be ministerial in passing to and affording the beneficiaries substantially the same rights and privileges as were held by the predecessor.^{2/}

By letter to all parties dated March 23, 1982, the assigned ALJ stated that an order would be proposed without further proceedings, (1) granting the motion to authorize the transfer of common stock to the beneficiaries of Bay Point and (2) denying the original request of Conco to acquire all of the assets and common stock of Bay Point. Further, parties were informed that any protest to the proposed order should be filed within 15 days. No response has been received.

^{2/} Conclusion of Law 6 in Decision 93673 dated November 3, 1981 in A.60462.

We are granting the transfer of Bay Point's stock to the beneficiaries in this proceeding, originally instituted by Conco, because to require a new application filed by the beneficiaries would only add to their expense and further delay in resolving this matter.

Findings of Fact

1. The proposed transfer of the common stock from the Van Winkle estate to the beneficiaries of the estate, Conco and Walter T. Sherrill and Kathleen R. Sherrill, would not be adverse to the public interest.

2. In response to Conco's petition to vacate, the probate court set aside its order confirming the sale of Bay Point and rescinded the contract of sale to Conco.

3. No protest has been received to the motion to transfer the stock to the beneficiaries and to the proposal to deny Conco's request to acquire all the assets and stock.

Conclusions of Law

1. The motion to transfer stock to the beneficiaries should be granted.

2. Since the probate court has rescinded the sale to Conco, the original request of Conco should be denied without prejudice.

3. The beneficiaries should be required to file the probate court's order of distribution relating to the common stock of Bay Point prior to exercising the authority being granted.

4. This authorization is not a finding of the value of the assets or capital stock to be transferred.

5. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. The motion by the beneficiaries, Walter T. Sherrill, Kathleen R. Sherrill, and Gonsalves and Santucci, Inc., of the Eunice N. Van Winkle estate to acquire all of the common stock of Bay Point Light and Power Co., Inc. (Bay Point) is granted.

2. The application of Gonsalves & Santucci, Inc. to acquire all the assets and common stock of Bay Point is denied without prejudice.

3. Within 10 days after issuance of the probate court's order of distribution of the common stock of Bay Point to the beneficiaries, the beneficiaries shall file the order with the Commission.

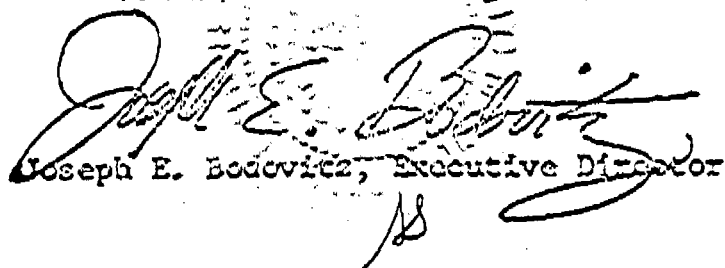
4. The authorization granted in this decision shall expire if not exercised within one year from today.

This order becomes effective 30 days from today.

Dated May 18, 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 ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovick, Executive Director

We are granting the transfer of Bay Point's stock to the beneficiaries in this proceeding, originally instituted by Conco, because to require a new application filed by the beneficiaries would only add to their expense and further delay in resolving this matter.

Findings of Fact

1. The proposed transfer of the common stock from the Van Winkle estate to the beneficiaries of the estate, Conco and Walter T. Sherrill and Kathleen R. Sherrill, would not be adverse to the public interest.

2. In response to Conco's petition to vacate, the probate court set aside its order confirming the sale of Bay Point and rescinded the contract of sale to Conco.

3. No protest has been received to the motion to transfer the stock to the beneficiaries and to the proposal to deny Conco's request to acquire all the assets and stock.

Conclusions of Law

1. The motion to transfer stock to the beneficiaries should be granted.

2. Since the probate court has rescinded the sale to Conco, the original request of Conco should be denied without prejudice.

3. The beneficiaries should be required to file the probate court's order of distribution relating to the common stock of Bay Point prior to exercising the authority being granted.

4. This authorization is not a finding of the value of the assets or capital stock to be transferred.

5. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. The beneficiaries of the Eunice N. Van Winkle estate (beneficiaries) are authorized to acquire all of the common stock of Bay Point Light and Power Co., Inc. (Bay Point).

2. The original request of Gonsalves & Santucci, Inc. to acquire the assets and common stock of Bay Point is denied without prejudice.

3. Within 10 days after issuance of the probate court's order of distribution of the common stock of Bay Point to the beneficiaries, the beneficiaries shall file the order with the Commission.

4. The authorization granted in this decision shall expire if not exercised within one year from today.

This order becomes effective 30 days from today.

Dated MAY 18 1982 , at San Francisco,
California.

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