

Decision S3 03 036

MAR 16 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CLIFFORD D. HALL,)
 doing business as LITTLE BEAR)
 WATER COMPANY, a California)
 Corporation, to sell and SIERRA)
 VISTA PROPERTIES, INC., a)
 California Corporation, to buy)
 the water and sewer system in)
 Pine Canyon Area, near King City,)
 Monterey County.)

Application 60866
(Filed August 31, 1981)

ORDER OF DISMISSAL

Statement of Facts

Pine Canyon lies about three miles southwest across the Salinas River from King City in Monterey County. In 1962 Clifford Hall and his wife, local Pine Canyon area ranch property owners, formed a California corporation named Little Bear Water Company, Inc. (Little Bear) to provide public utility water service within the 1,400-acre Pine Canyon area. By Decision (D.) 66402 dated December 3, 1963 in Application (A.) 44350 Little Bear was granted a certificate of public convenience and necessity to construct and operate a water system in the area, and to issue up to 81 shares of its no par value common stock.

By 1974 Little Bear was serving approximately 135 water customers. In that year, by D.83902 dated December 30, 1974 in A.54142, Little Bear was granted a certificate of public convenience and necessity to construct and operate a public utility sewer system to serve the 40 lots of a residential real estate subdivision (known as Unit No. 3 of the Royal Estates Subdivision) being developed by the Halls out of part of their ranch property

in the area. The grant of the certificate was conditioned upon the Halls contributing the sewer system plant to Little Bear without refund, and expansion beyond the initial 40 lots of Unit No. 3 was conditioned upon future advice letter proceedings to be initiated after a showing of adequate sewer plant capacity to handle expansion.

In 1979 Little Bear filed A.59128 to dispose of its sewer system by selling it to Sierra Vista Properties, Inc. (Sierra Vista), a California corporation, which desired to acquire the sewer system for use in development of a mobile home park. Subsequently on May 27, 1980 by Hall, its president, Little Bear wrote the Commission to request that as an unexplained consequence of "unexpected complications" it wanted its application to be dismissed. By D.91903 dated June 17, 1980 the application was dismissed.

Today Little Bear serves approximately 252 water customers and 76 sewer customers.

By this application (A.60866 filed August 31, 1981) Hall again seeks authorization to sell and transfer both the water and the sewer systems to Sierra Vista pursuant to Public Utilities (PU) Code § 851. Staff made a preliminary review of the application and that review raises a substantial number of questions and inconsistencies between the contents of the supporting exhibits of the application and Commission records. These questions range through main extension advances, unauthorized sewer connection fees, exchanges of property owned by and useful to the utility, income tax returns for Sierra Vista showing losses for the most recent four years, Regional Water Quality Control Board requirements, and other matters.

In view of these questions and inconsistencies, on December 3, 1981 staff wrote Sierra Vista's attorney asking for answers to these matters and suggesting a meeting.^{1/} On April 16, 1982 applicant's attorney wrote, answering a number of questions and providing some backup materials. However, his responses served to point up still additional loose ends and omissions. A subsequent May 26, 1982 telephone conference opened still more areas for clarification. Therefore on May 28, 1982 staff sent another letter to applicant's attorney pointing out some of these areas and the fact that staff still did not have the information it considered would be necessary to process the application. A meeting was suggested to assist in drafting a revised application. No response has been received and phone calls were unanswered. On October 20, 1982 staff again wrote, inferring a dismissal if no response was received. There has been no response since.

In August 1982 at least two Little Bear customers received copies of a "Notice to Customers" dated September 10, 1981. This notice informed them that an application for the sale of the water and sewer systems to Sierra Vista had been filed with this Commission, stating that objections must be filed with the Commission within 15 days. Both customers wrote the Commission to object to the proposed transfer, asserting that one of the principals behind Sierra Vista, Robert Harless,^{2/} had demonstrated in certain other

^{1/} Sierra Vista's attorney was designated in the application as being the individual to whom all communications were to be addressed.

^{2/} A financial statement for Sierra Vista, attached to the application as Exhibit D, undated, sets forth that Robert Harless, owning 1/6 of the common stock, is the corporate treasurer.

related endeavors an inability and lack of knowledge which indicate that he would be unable to run Little Bear with any degree of reliability. Both strongly protested the application.

Discussion

The right to operate as a public utility is transferable; however, PU Code § 854 provides that no person or corporation shall acquire or control either directly or indirectly any public utility without first securing authority to do so from this Commission. Any such acquisition or control without such prior authority is void and of no effect. The obvious purpose of these provisions is to enable the Commission, before the transfer is consummated, to review the situation and ascertain that it is in the public interest (Radio Paging Co. (1966) 65 CPUC 635). While the rights of the parties to the transfer are important, the Commission must keep in mind as its primary consideration, the impact on the general public. To this end it is long settled that both parties to a proposed sale and transfer of a public utility must submit their utility business affairs to the scrutiny of the Commission (Southern Cal. Mountain Water Co. (1912) 1 CRRC 520). The burden of proving that a transfer would not harm the public interest rests with the applicants who propose the transfer, and the Commission will not authorize a transfer when the applicants refuse to provide or are not reasonably diligent in providing underlying necessary information or facts to our staff (In Re Ingalls (1931) 36 CRRC 534).

In the application before us there are many questions which require answers and investigation before we could proceed. Applicants have not responded to staff's requests. Accordingly, we will dismiss the application because of applicants' failure to pursue the matter.

Findings of Fact

1. Applicants filed this application on August 31, 1981.
2. Since the filing staff has repeatedly by letter and telephone requested applicants to furnish additional necessary information or to clarify various matters.
3. Since May 26, 1982 applicants have not responded and phone calls are unanswered.

Conclusion of Law

The application should be dismissed without prejudice. ✓

IT IS ORDERED that the application of Little Bear Water Company, Inc. to sell and Sierra Vista Properties, Inc. to buy the Little Bear Water Company water and sewer systems in Pine Canyon near King City is dismissed without prejudice for failure to pursue. ✓

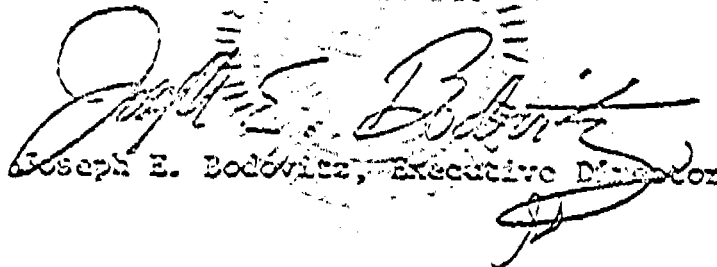
This order becomes effective 30 days from today.

Dated March 16, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

Findings of Fact

1. Applicants filed this application on August 31, 1981.
2. Since the filing staff has repeatedly by letter and telephone requested applicants to furnish additional necessary information or to clarify various matters.
3. Since May 26, 1982 applicants have not responded and phone calls are unanswered.

Conclusion of Law

The application should be dismissed.

SS
IT IS ORDERED that the application of *Little Bear Water Company, Inc.* ~~Clifford D. Ball~~ to sell and Sierra Vista Properties, Inc. to buy the Little Bear Water Company water and sewer systems in Pine Canyon near King City is dismissed *without prejudice* for failure to pursue. *R*

This order becomes effective 30 days from today.

Dated MAR 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners