

Decision No. 90596 JUL 31 1979**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Mission Hills
Utility Co., a corporation, for
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.

Application No. 54023
(Filed May 8, 1973; amended
June 4, 1973)

Additional Appearances at Prehearing Conference of March 21, 1978

Diane E. Bradford, Attorney at Law, for applicant.
T. G. Kuchel, Attorney at Law, for Mission Hills
Community Council; Supervisor Robert L. Hedlund
and George P. Kading, County Counsel, for Santa
Barbara County; John E. Sherman, president, for
Vandenberg Village Association; and Donald Lewis,
for himself; interested parties.
William Jennings, Attorney at Law, for the Commission
staff.

Additional Appearances - Hearing Held August 31, 1978

Roy P. Jaeger and Tim Eichenberg, Attorney at Law,
for Mission Hills Community Council, protestant
in A.57608 and petitioner in A.54023.

Additional Appearances - Hearing Held September 1, 1978

Lloyd Nocker, Attorney at Law, and Robert W. Harvey,
for Mission Hills Community Council, interested party.

Additional Appearances - Hearing Held July 12, 13, 1979

None.

INTERIM OPINION

History of Proceeding

On May 8, 1973, Mission Hills Utility Co. (MHUC), a California Corporation, filed Application No. 54023 requesting authority to acquire certain assets of Mission Hills Water Co. (MHWC), to issue stock and a promissory note, and for a certificate of public convenience and necessity. MHUC was incorporated for the sole purpose of purchasing and operating the water system held by MHWC. By Decision No. 86147 dated July 19, 1976 the transfer was authorized. The order required compliance with specified terms and conditions before seller would be relieved of its public utility obligations.

On October 17, 1977 the Mission Hills Community Council (MHCC) filed a petition with the Commission pursuant to Section 1708 of the Public Utilities Code requesting the Commission to reopen and modify Decision No. 86147 in Application No. 54023. The petition stated that Decision No. 86147 recognized the issue of equitable ownership but did not resolve it. MHCC asked the Commission to find that equitable ownership is vested in the purchasers of property served by MHUC pursuant to agreements between the purchasers and sub-dividers of the property.

Administrative Law Judge John R. Gillanders on March 3, 1978 granted the petition of the MHCC to reopen Decision No. 86147. A prehearing conference was held on March 21, 1978 in Lompoc on the petition and related matters (Applications Nos. 57607, 57608, 57609).^{1/}

On August 2, 1978 the ALJ sent the following letter to all parties:

"On March 21, 1978 a prehearing conference was held in Lompoc on Applications Nos. 54023, 57607, 57608, and 57609. As a result of this conference, applicant Mission Hills Water Co. was afforded 60 days to amend its certification applications and submit

^{1/} Individual decisions were issued denying each application.

them together with its prepared testimony and exhibits. (Transcript page 46.) This has not been done. Petitioner, Mission Hills Community Council, also indicated it could produce additional evidence relating to its petition to reopen. (Transcript page 39.) This has not been done.

"Approximately 4 months have elapsed since the prehearing conference. The Commission has not received the amended applications and the testimony which the parties are sponsoring. The purpose of a prehearing conference is to assist the parties and expedite the proceedings. Submission of prepared testimony prior to the actual hearing eliminates costly and time-consuming delays.

"Accordingly, a further hearing in Applications Nos. 54023, 57607, 57608 and 57609 will be scheduled for Thursday, August 31, 1978, and Friday, September 1, 1978, to be held in Lompoc Public Library, 501 E. North Avenue, Lompoc, CA 93436, commencing at 9:30 a.m. The direct testimony and exhibits of applicant Mission Hills Utility Co. together with its amended applications will be presented at that time. Mission Hills Community Council will also present whatever additional evidence it desires on its petition.

"If the applicant does not file and distribute prepared testimony and exhibits, (subsequent to amending its application) 10 days in advance of these hearing dates, I will recommend to the Commission that its applications be dismissed for lack of prosecution. I will also make the same recommendation (regarding Application No. 54023) if Mission Hills Community Council does not file and distribute its prepared testimony and exhibits 10 days prior to the first day of hearing.

"Any interested party may also present relevant information at this time. The parties will also be expected to commence cross-examination. In view of the circumstances, staff testimony and recommendations will be presented at a later date."

Hearing was held as scheduled. Testimony on August 31 was received from the president and vice president of applicant, an unhappy user, and the president of Mesa Oaks Mutual Water Company.

At the suggestion of the ALJ the parties agreed to discuss their problems overnight to see if they could resolve their differences. On September 1, at the beginning of the hearing an unsigned draft of an agreement was given to the ALJ and it was agreed that the parties would continue to negotiate after the completion of testimony regarding extensions of service. The parties did reach agreement and the signed document was received as Exhibit No. 47. The ALJ handed it back to applicant's counsel in order for her to make copies. The Commission has not yet received the original back from counsel.

In early October 1978, there began a series of telephone calls and letters between the parties and the Commission staff directed at obtaining signed copies of the agreement.

On January 29, 1979 a signed copy of an agreement was received from MHWC.

On March 15, 1979 a copy of an agreement signed by both parties was received from MECC together with its argument to who should pay the past due property taxes on the system.

On March 23, 1979 a letter was received from MHUC's attorney protesting the lateness of MECC's filing of the agreement on responsibility for unpaid taxes.

On May 30, 1979, the Commission issued Decision No. 90358⁹ ss authorizing Park Water Company to manage and operate MHUC and Lompoc Utility Services until further order because we had been informed by the office of a Santa Barbara County supervisor and others that: (1) the water utility's main well (Well No. 3) which had been out of commission since May 12, 1979 had not been repaired or replaced; (2) the owner of the water company was not in the state; (3) the utility employees were not working because of a pay dispute; and (4) the standby water source was not operating efficiently, causing some customers to experience water outages. It was feared that this smaller standby water well would fail, which would necessitate importing water from another source.

Since Friday, May 25, 1979, the system has been operated and is still being operated by Park Water Company. Park Water Company has volunteered to continue this arrangement until normalcy returns.

In the regular course of business, a proposed decision in this matter appeared on the Commission's regular agenda for its June 5, 1979 conference.

On June 4, 1979 the Commission received a letter which said:

"We, as property owners in Mission Hills and Mesa Oaks area would appreciate an opportunity to express our desires concerning the operation of the Mission Hills Utility Service.

"Contingent on the decision of the Public Utilities Commission, if the water and sewage responsibilities are turned over to the Mission Hills Community Council, we as property owners desire that Park Water Company remain for maintenance of the systems. This should continue until evidence has been provided that those assuming operation have the capabilities and expertise to provide the people of Mission Hills and Mesa Oaks with service in a timely and judicious manner.

"We believe that at this time, the Mission Hills Community Council has not demonstrated the knowledge or experience to offer the people of Mission Hills or Mesa Oaks any relief in our situation in a timely manner.

"We would also object to the ownership remaining with the Mission Hills Utility Company under the guidance of Mr. Anton Garnier, due to past performance.

"Signatures attached."

Also on June 4, 1979 we received a petition containing 20 signatures which said:

"We the undersigned, homeowners and residents in the Mission Hills area, do not wish to form a mutual water company nor to assume ownership of the Mission Hills Water Company. Furthermore, we do not recognize the Mission Hills Community Council as representative of us nor do we authorize such organization to act on our behalf in this matter.2/

2/ Subsequently, letters were received from four persons, requesting that their names be deleted from the petition.

Because of the statements in the letter and the fact that apparently the proposed mutual could not obtain 100 percent membership of the owners of the properties receiving water service from the utility, the proposed decision was withdrawn from the agenda.

On June 27, 1979, the assigned Administrative Law Judge issued the following ruling:

"IT IS RULED that Application No. 54023 is reopened for further hearing before Administrative Law Judge Gillanders on Thursday, July 12, and July 13, 1979 at 9:30 a.m., Lompoc Public Library, 501 East North Avenue, Lompoc, California, for the purpose of receiving evidence on the following issues:

- "1. The current physical state of the water company, the cause of failure of one of the company's wells, and the extent of needed improvements.
- "2. The financial status of the owners of the water company.
- "3. The attitudes of the utility customers about future ownership of the water company.

"The president of the Mission Hills Community Council or his representative shall be present at the hearing. Mr. Anton Garnier of the Mission Hills Utility Co. shall also be present. Both parties should be prepared to present testimony to the Commission on the above issues."

On June 28, 1979, the Commission received a memorandum from the State Controller's Office, (Exhibit 48 in this proceeding). Exhibit 48 states:

"Property owned and operated by the Mission Hills Water Company and Lompoc Sewer Services is scheduled to be tax deeded to the state on July 2, 1979. (Please see the enclosed copy of letter to Mr. J. Newton Blanchard, Santa Barbara County Tax Collector, regarding this subject.)

"When property becomes tax deeded to the state, the State Controller or his authorized delegate has the authority under Chapter 6 of Part 5 of Division 1 of the Revenue and Taxation Code (commencing with Section 3651) to rent or otherwise manage the property. However, we believe that our authority is not sufficient to resolve the problems existing with regard to the subject properties.

"We understand that the utility services on the property are currently being operated by the Park Water Company as a result of an emergency order by the Public Utilities Commission.

"In our opinion, it would be in the best interest of the persons served by the Utilities for the Public Utilities Commission to continue to exercise its jurisdiction and powers even though the property may become tax deeded.

"If the property is deeded to the state and a sale is authorized by the board of supervisors and the State Controller, special sale procedures may be required to ensure that potential purchasers are approved by the Commission.

"In the event that a sale is scheduled, we would be happy to meet with you or your staff to work out the details for obtaining the Commission's consent to a transfer of the possession and control of the property to a tax sale purchaser.

"We are concerned about the problems encountered by the persons served by the utility systems and want to be certain that the tax enforcement proceedings do not interfere with resolution of the problem."

Hearing was held at Lompoc on July 12 and 13, 1979.

MHCC appeared and presented testimony and cross-examined witnesses.

Mr. Garnier did not appear nor was he represented by anyone.

Twenty-seven members of the public were present during the hearing. By a show of hands, seven persons indicated they opposed the formation of a mutual. Three testified giving their reasons for opposing the mutual and one presented a letter wherein he stated his objections.

A resident of the area presented a petition to the Board of Supervisors of Santa Barbara County requesting that a Community Services District be formed to supply water and sewer service to Mission Hills and Mesa Oaks. The petition contained 600 signatures; 415 of the persons who signed, indicated they were registered voters; 375 homes were represented.

Supervisor Hedlund, who represents the district in which the water system lies, testified that his recommendation was that the agreement be approved.

The president of MHCC testified it was the council's desire that the agreement be approved. It is the ultimate goal of the council that, upon formation of a Community Services District, the mutual be given to the district.

Three residents presented their testimony in favor of the agreement.

The vice president for Revenue Requirements of Park Water Company testified that Well No. 3 has been returned to service and it is meeting the system needs. It is pumping clear water. Sand in the system is being flushed out. It was his estimate that the system requires about \$100,000 in new capital. Most of the money would be required for a new back-up well as Well No. 2 can no longer be used. Numerous fire hydrants need replacement and 25 percent of the meters have proven to be inoperative after having the sand removed. He testified that Park Water's out-of-pocket costs to date are \$35,000. It was his testimony that if Park Water had been running the system there would have been no problem with Well No. 3. He attributed the problem with Well No. 3 to lack of maintenance.

The matter was resubmitted on July 13, 1979.

Discussion

The "Agreement to Transfer Ownership of Mission Hills Utility Company" provides in paragraph 8 that:

"8. Each of the parties hereto acknowledges the fact that approximately \$55,000.00 in delinquent real estate taxes is due and owing by MHUC for the water system. The parties agree that in conjunction with the submission of this contract to the PUC for their approval, MHUC and MHCC shall also submit to the PUC written argument as to who should be responsible for the delinquent property taxes. The parties hereto mutually agree to allow the PUC to assign responsibility for the delinquent property taxes to any one of the parties hereto and that said determination by the PUC shall be binding upon each of the parties hereto and said determination shall not be the subject of an appeal, either to the PUC or through a court of law. The party designated by the PUC as liable for the delinquent property taxes hereby agrees to hold harmless the other party to this contract. For purposes of clarification, the PUC shall assign responsibility for the delinquent property taxes to one of the following parties:

- a. The new corporation to be formed; or
- b. MHWC; or
- c. MHUC."

Decision No. 86147 contained, inter alia, the following:

Finding

"8. All liabilities will remain with Water Co., except for advances and contributions for construction, property taxes, and customer deposits. Sufficient cash should be transferred to Utility Co. to cover customer deposits and property taxes."

Conclusion

"5. The responsibility for debts and liabilities of Water Co. will be assumed as provided in Finding 8."

Order

"7. Upon compliance with all of the terms and conditions of this order, seller shall be relieved of its public utility obligations in connection with the water system transferred."

* * *

- "12. Except as provided in Finding 8, purchaser will not assume the debts or liabilities of seller.
- "13. Sufficient cash shall be transferred to purchaser to cover customer deposits and property taxes."

Counsel for MHUC argues as follows:

"Under the terms and conditions of the Agreement to Transfer, the Mission Hills Community Council, in exchange for a payment of \$1.00, is receiving the water system known as Mission Hills Utility Company, which includes the Mission Hills and Santa Ynez Service Areas. The total assets of Mission Hills Utility Company's plant and service and system amount to \$615,524.00. Applying depreciation factor of \$269,648 leaves a historical cost for the system of \$345,870.

"As can be seen by the Agreement previously submitted, the liabilities being picked up by the Mission Hills Community Council do not nearly approach the historical cost of the system, even including the \$55,000 tax lien which is levied against the system and its real property.

"Presently, Mission Hills Utility Company has no real operating capital with which to pay the \$55,000 tax lien, and has no method of raising the dollars necessary to pay said lien. This is due, primarily to the fact that the rates being paid by the customers of Mission Hills Utility Company are so low as to not afford the ability to foster reserves for such things as the property tax lien. Presently, as the Commission knows, there is a request for a rate increase pending which will help to resolve the problem if it is approved.

"During the course of the past few years, the citizens who are being serviced by Mission Hills Utility Company have had the benefit of the system, but have not had to pay the rates which would be high enough to cover the subject taxes.

"Generally speaking, in the sale of a business or a business stock, the purchaser or successor must withhold sufficient funds from the purchase price to cover taxes. (Revenue Code §6811-6812) Although those particular successor liabilities statutes relate to sales and use tax, they are analogous to the particular situation at hand.

"In the matter of Lee (Radio Paging Company) In Re (1966), 65 PUC 635, the Commission stated:

THERE ARE INSTANCES WHERE A SALE WHICH YIELDS HIGHEST NET AMOUNT TO SELLER IS NOT IN THE PUBLIC INTEREST; AND IN SUCH CIRCUMSTANCES, PUBLIC INTEREST MUST PREVAIL AND ANOTHER PURCHASER, WHO MIGHT PAY LESS, FOUND.

"The situation we have here, it seems, is converse to that. We have a situation where the business is being sold for \$1.00 and the purchasers are receiving a system worth many times that amount.

"As stated in Walnut Creek Water Company, In re (1926), 28 CRC 686, the Commission cannot authorize the sale of public utility properties without having before it definite information as to the terms of sale or the price which purchaser proposes to pay for properties is a vital factor to be considered by Commission in determining whether or not purchaser, if permitted to acquire the properties, will be financially able to continue successfully their operation. [Sic.]

"It is this writer's firm belief that the information, previously submitted to the Commission by way of the Agreement to Transfer Ownership, shows that in law and in equity, the \$55,000 tax lien should be borne by the Mission Hills Community Council."

Counsel for MHCC argues as follows:

1. The Public Utilities Commission in its order number 86147 approving the transferring of assets from Mission Hills Water Company to Mission Hills Utility Company ordered that money for back real property taxes be transferred to Mission Hills Utility Company. This was never done and to our knowledge was never enforced by the Public Utilities Commission. The payment of these taxes was a condition imposed by the Public Utilities Commission on Mission Hills Water Company in granting its application to become a public utility. The Public Utilities Commission now stands in a position to enforce its previous order by requiring Mission Hills Water Company and Mission Hills Utility Company to deposit

in escrow an amount of money sufficient to pay all delinquent property taxes owed the County of Santa Barbara by Mission Hills Utility Company.

- "2. The residents of Mission Hills have paid the property taxes to Mission Hills Water Company and later to Mission Hills Utility Company through their monthly payment for water usage and because of the mismanagement or profiteering or whatever reason Mr. Anton Garnier wishes to give or use, the money was diverted for other uses. To now require the new company to assume these delinquent taxes would in effect amount to a double taxation situation of the residents of Mission Hills and create a situation totally inequitable to the residents of Mission Hills.
- "3. The water system was first developed by Mission Hills Water Company in the community of Mission Hills and later, without permission of the residents of Mission Hills or the Public Utilities Commission, management of Mission Hills Water Company unilaterally decided to develop the Salinas water system. The tax dollars paid Mission Hills Water Company by the residents of the community located in Santa Barbara County were diverted to develop the water system in Salinas. The residents of the community of Mission Hills and the original founders of Mission Hills Water Company never benefited from the development of the Salinas system, only Mr. Anton Garnier and his family benefited. Again, a gross inequity against the residents of Mission Hills in favor of the Garnier family.
- "4. In addition to the development of the Salinas system referred to in paragraph 3, tax dollars were diverted for less important reasons such as fences and so forth. It is our belief that responsible management would have used the tax monies collected for the payment of property taxes; however, under the tutorship of Mr. Anton Garnier, said taxes were not paid.
- "5. Current management of Mission Hills Water Company and Mission Hills Utility Company under the direction of Mr. Anton C. Garnier diverted money from Mission Hills Water Company to pay an

indebtedness created by the former owner and control of the Garnier family interests, Mr. Camille Garnier, deceased, with First Western Bank and Trust Company in the amount of almost \$60,000.00. That amount almost identically equals the amount of delinquent property taxes now due and owing the County of Santa Barbara. To allow this inequity to exist and continue equals a gross unfairness and inequity to the residents of Mission Hills.

- "6. An argument will be made by Mission Hills Utility Company that the rate for water charged the residents of Mission Hills was insufficient to keep the property taxes current. First of all, this is not true. Secondly, even if it were true, the management of Mission Hills Utility Company and before that Mission Hills Water Company is responsible and has the authority to seek rate increases as a utility or impose one while a mutual water company if not enough money is being collected to pay the taxes. The lack of budgeting on the part of Mr. Anton C. Garnier and the mismanagement or profiteering which has taken place now places the residents of Mission Hills in a position of double jeopardy.
- "7. Mr. Anton C. Garnier recently authorized the sale of the Mission Hills Water Company house located at 3440 Rucker Road, Mission Hills. Rather than apply the entire proceeds of the sale of this house to the reduction of the tax liability on the water system created by Garnier, he used the proceeds for non-company reasons such as loans to other companies under the Garnier control which are also in financial difficulty because of the mismanagement of Mr. Garnier. These monies could have applied to the reduction of taxes thereby reducing or eliminating the majority of the liability for delinquent taxes.
- "8. The total of the tax arrearages due the County of Santa Barbara all accrued during the period of time when Mr. Anton C. Garnier was President of Mission Hills Water Company and/or Mission Hills Utility Company. During this period of time, he and the other directors never escrowed the money for taxes as they were collected as reasonable and prudent businessmen in other businesses

would do, but instead diverted the monies as they saw fit. Because of this reason alone, equity compels that he and the companies he controls be assessed the tax liability now owing on the system.

"9. It is obvious to all who have been involved in this long struggle by the residents of Mission Hills that the problem that exists, namely one that Mission Hills residents have paid extremely high water rates; that the water service they have received has been of low quality throughout the past many years and that the maintenance of the system has been in a continuous state of disrepair, coupled with the fact that the monies have been diverted, by Mr. Garnier or those under his employ and control, for the purposes other than the development and maintenance of the Mission Hills system; plus the development and sale of the Salinas system to the personal benefit and profit of Mr. Anton C. Garnier all lead to the conclusion that he, and those companies under his control and presidency, should be held jointly and severally liable for the delinquent property taxes.

"10. To order that the new company to be formed by the residents of Mission Hills pay for the delinquent property taxes would, in effect, be placing the new company in an financial position which may very likely cause a complete and total collapse of the new company."

The Commission's formal file on Application No. 54023 shows that on December 31, 1976 the Commission received a letter from MHUC which said:

Referring to Paragraph No. 4^{3/} contained in the Order, contained in Decision No. 86147, enclosed is documentation showing date of completion and of the assumption of the obligations set forth in Paragraph 2^{4/} of the Order.

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- 3/ "4. Within ten days after completion of the transfer purchaser shall notify the Commission, in writing, of the date of completion and of the assumption of the obligations set forth in paragraph 2 of this order."
- 4/ "2. On or before November 1, 1976, Mission Hills Water Co. may sell and transfer the water system referred to in the application to Mission Hills Utility Co."

No other communications from MEUC regarding compliance with other ordering paragraphs are in the formal file.

On April 20, 1978 the staff filed a "Memorandum of Points and Authorities" which included the following:

"5. Compliance with Decision No. 86147

"Our review of Utility Co's 1976 annual report filed with the Commission establishes that the company has not complied with the provisions of Decision No. 86147. Finding No. 7 of the said decision states:

'Upon compliance with all the terms and conditions of this order, seller shall be relieved of its public utility obligations in connection with the water system transferred.'

"In its 1976 report (filed in 1977) Utility Co. lists 40,000 shares of stock instead of the 6,000 shares authorized by Finding 8. Finding 9, which required Utility Co. to file (ownership) reports under General Order No. 24-Series, has not been observed to this date. Additional failures by Utility Co. to comply with Decision No. 86147 are of record. The Commission must decide if these requirements are ministerial or obligatory. And if the latter whether Utility Co. has now forfeited its opportunity for compliance.

"6. Conclusion

"A public utility devotes its property to the public use. It is charged with the administering of a public trust delegated to it by government. It is expected to adhere to the orders and decisions of this Commission. Has Utility Co. properly administered its public trust? The Commission should satisfy itself and the public interest on this cardinal issue."

The record clearly indicates that MHWC did not comply with all the terms and conditions of the order in Decision No. 86147. Thus, MHWC and MHUC are subject to the jurisdiction of the Commission. However, the operating property of the utility hereunder consideration has been deeded to the State of California for nonpayment of taxes. Neither MHWC nor MHUC is in a position to transfer or deal with the utility property at this time.

There will be a tax sale of the utility property. However, the Commission has exclusive jurisdiction to determine the circumstances under which a certificate of public convenience and necessity and utility property may be transferred. (Public Utilities Code §§ 852, 854, 1001, 1005; Crum v Mt. Shasta Power Co (1934) 220 C 295, 310; Transport Clearings v Simmons (1 64) 226 CA 2d 405, 419; Martin E. Wilson (1977) 82 CPUC 483, 484; Benjamin and Lourdes Nepomuceno (1977) 82 CPUC 504, 505-06.) MHUC has indicated that it does not have the capital or ability to discharge the tax lien. We need not dwell on whether this assertion is correct. In no event will we allow MHUC, MHWC, or any entity controlled in whole or in part by Anton Garnier to operate the utility after the tax sale.

The record indicates that there are at least three potential bidders for the utility property at the tax sale: Park Water Company, which is operating the system in accordance with Decision No. 9035⁴; 55 MHCC; and a Community Services District which may be formed in the area. In the circumstances, it would be inappropriate to pass upon the agreement between MHCC and MHWC at this time. The Commission is of the opinion that the best interests of the customers would be served by permitting the tax sale to take place. The successful bidder can then come before the Commission for appropriate action. If it

is a public district or mutual water company the Commission can approve the transfer of assets to an entity not subject to our jurisdiction. If the successful bidder is a public utility or an entity subject to the jurisdiction of the Commission, we can approve the transfer of assets and provide appropriate operating authority.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. MHUC is a public utility water company subject to the jurisdiction of the Commission.
2. MHUC is a wholly owned subsidiary of MHWC.
3. Anton Garnier is the president of MHUC and has control in whole or in part of MHUC and MHWC.
4. MHWC is a public utility water company subject to the jurisdiction *OF THIS COMMISSION.* *km*
5. MHCC is an association of residents of Mission Hills - a real estate development near Lompoc.
6. MHCC and MHWC have entered into an agreement whereby MHWC will transfer its wholly owned subsidiary, MHUC, to an entity formed by MHCC.
7. MHCC intends, if the agreement between it and MHWC is approved, to form a mutual water company to own and operate the water system transferred, and upon formation of a Community Services District to give the mutual to the district.
8. On July 2, 1979 the utility property owned by MHWC was deeded to the State of California for failure of MHWC and/or MHUC to pay approximately \$55,000 in delinquent taxes.
9. MHCC and MHWC cannot now consummate the transfer agreement.

10. In Decision No. 9035⁹~~3~~, entered on May 30, 1979, the Commission ~~SS~~ authorized Park Water Company to operate the public utility water system hereunder consideration pending further order of the Commission.

11. MHWC has failed to comply with all the terms and conditions of the order in Decision No. 86147.

12. MHUC operated the water system here involved at a loss in 1977. MHUC's rate base for the water system in 1977 was less than \$10,000.

13. Twenty-five percent of the water system's meters are presently inoperative because of damage from sand. This is the result of lack of proper action by MHUC.

14. Some of the fire hydrants within the water system are presently in disrepair and MHUC has failed to repair them.

15. MHWC, MHUC, and Anton Garnier and each of them have not properly conducted the operations of the public utility water corporation, as defined in Section 241 of the Public Utilities Code, here involved.

16. MHWC, MHUC, and Anton Garnier and each of them lack the fitness to conduct the operations of the public utility water corporation hereunder consideration.

17. It would be in the public interest for the public utility water system hereunder consideration to be sold at the tax sale to a responsible entity.

Conclusions of Law

1. The Commission should not act on the agreement to transfer the water system, made between MHCC and MHWC at this time.

2. An order should be entered providing that the Commission will not, following the tax sale, authorize the transfer of the utility property and operating rights to MHWC, MHUC, or any entity controlled in whole or in part by Anton Garnier, and the State Controller should be advised of this order.

3. Park Water Company should be authorized to continue to operate and manage the water system in accordance with the provisions of Decision No. 9035⁹, until further order. 23

4. Because this matter involves the maintenance of adequate water service to approximately 3,000 persons, it is in the public interest that the effective date of the ensuing order should be the date of issuance.

O R D E R

IT IS ORDERED that:

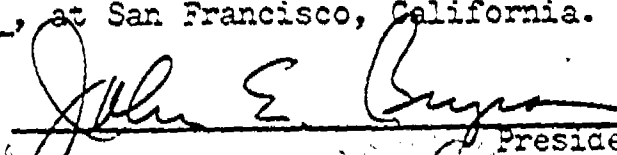
1. Upon public sale by the Controller of the State of California of the assets of Mission Hills Water Company, the Commission will not approve the assets and operating rights of that water corporation and water system to Mission Hills Water Company, Mission Hills Utility Company or any entity which is controlled in whole or in part by Anton Garnier. If necessary, following the tax sale the Commission will enter further orders revoking any vestiges of operating authority which may not have been transferred by the tax sale.

2. Until further order of the Commission, Park Water Company is authorized to continue to operate and manage the water system in accordance with the provisions of Decision No. 9035⁷. 23


3. In addition to the parties of record, the Executive Director shall cause a copy of this decision to be served upon the State Controller.

The effective date of this order is the date hereof.


Dated JUL 31 1979, at San Francisco, California.




President



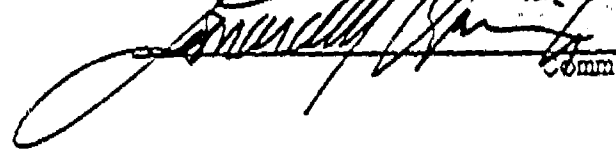
Commissioner



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