

ORIGINAL

Decision No. 91037 NOV 20 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Lawrence T. Solomon, A. L. Leyva
Trust, Lawrence Solomon and Stanley
Solomon, Greenville Development
Company, Syd Carnine and Stanley
Solomon to modify D.87929.

Application No. 59140
(Filed September 13, 1979)

ORDER REOPENING PROCEEDING

By the instant application Lawrence T. Solomon, A. L. Leyva Trust, Lawrence Solomon and Stanley Solomon, Greenville Development Company, Syd Carnine and Stanley Solomon (applicants) ask, in essence, that Application No. 57548 be reopened for review and examination of the reasonableness of Decision No. 87929, issued October 4, 1977 therein. Decision No. 87929 authorized Rossmoor Corporation to transfer, and Laguna Hills Utility Company (LHUC) to acquire, all of the outstanding common stock of Rossmoor Water Company and all of the outstanding common stock of Rossmoor Sanitation, Inc.

That authority for LHUC to acquire and control the utility companies was not requested as a result of arm's-length dealings between Rossmoor Corporation and LHUC. It was requested as part of an extensive corporate reorganization plan. Rossmoor Water Company and Rossmoor Sanitation, Inc's changing their corporate names to Laguna Hills Water Company (LHWC) and Laguna Hills Sanitation, Inc. was also part of the reorganization plan.

Applicants allege that Decision No. 87929 did not adequately address the financial ability of LHUC, the transferee, and LHWC to provide public utility water service and request Application No. 57548 be reopened and consolidated with pending Application No. 58440 and consolidated matters. Applicants contend:

- "c. The capital of Laguna Hills Water at the time of Application No. 57548, on August 31, 1977, and at the time of the order pursuant thereto on October 4, 1977, was and at all relevant times since remains inadequate to permit Laguna Hills Water Company to fulfill its obligations as a public utility subject to the jurisdiction of this Commission.
- "d. Before the Application of Rossmoor Corporation to transfer the ownership of Rossmoor Water Company was granted, Rossmoor Corporation, as a condition of such order should have been required to provide or make available to the Water Company adequate capital to meet the reasonable capital requirements of the Water Company and to provide or make available to the Water Company, the reasonably anticipated working capital requirements of the Water Company. If such condition had not been met, the order permitting the requested transfer should have been ineffective leaving the ownership of the Water Company in Rossmoor Corporation which had available to it a financial capability to satisfy the capital requirements and the working capital requirements of the Water Company.
- "e. The Commission has jurisdiction and the right and power to reopen Application No. 57548, and to modify or otherwise amend Decision No. 87929, so as to impose, among others, a condition that Rossmoor Corporation provide or make available to the Water Company necessary capital and necessary additional working capital.

"IV

"No public hearing was held on Application No. 57548 prior to the rendering of Decision No. 87929. The record developed in the instant proceeding /Application No. 58440 et al/ has produced facts which will prove relevant to the Commission's consideration of this motion and the Applications as consolidated, and further testimony will be adduced at the public hearing sought by complainants in this motion, with respect to the propriety of now requiring Rossmoor Corporation to provide or make available the capital and the necessary working capital of Laguna Hills Water Company and what orders by this Commission would be appropriate if such capital and working capital is not provided or made available to Laguna Hills Water Company.

"V

"Laguna Hills Water Company has alleged in a verified application to this Commission that 'since mid-1977 /Laguna Hills Water Company/ has not been able to meet its refund' obligations pursuant to the /Commission's Main Extension Rule7.

"VI

"The consolidation of the record in the instant proceeding, with the limited record in Application No. 57548 and a public hearing on the consolidated proceedings will result in the most efficient employment of the time and resources of the Applicant, the Commission, the Commission's staff, complainants and all interested parties."

LHWC filed a motion to dismiss the instant application. The contentions raised by LHWC are as follows:

1. The stock transfer authorized between Rossmoor and LHUC has occurred and the Commission has no jurisdiction to reopen the matter (and compel a different result or add conditions).
2. Since Rossmoor is no longer a public utility, it could not be the subject of any order modifying Decision No. 87929.
3. Orders that transfer control of utilities should not be subject to modification because finality is assumed by the transferor and transferee when stock is transferred.

Discussion

The evidentiary record in pending proceedings involving LHWC^{1/} indicates, as applicants allege, serious cash flow and financial problems cloud LHWC's operations.

We are extremely reluctant to reopen proceedings that have resulted in decisions parties have relied on. However, we believe applicants have in this instance raised valid concerns that were not addressed when Decision No. 87929 was issued. It is important to note that decision was issued ex parte, or without hearings; further, a review of the application and the file in Application No. 57548 shows no notice was provided to the public of the proposed transfer of control from Rossmoor Corporation to LHUC. Given those circumstances, there was no way for affected customers or main extension contract holders (such as applicants herein) to know of or analyze the ramifications of the proposed transaction, and Decision No. 87929, as

^{1/} Application No. 58440 and Cases Nos. 10578, 10595, 10604, 10605, 10606, 10607, and 10610.

issued, is clouded by a due process problem. In accordance with basic fairness and the requirements of due process, Application No. 57548 should be reopened for reconsideration and consolidated for hearing with other pending matters involving LHWC. The contentions of LHWC in its motion to dismiss assume Decision No. 87929 was lawfully issued; we have grave reservations on that assumption, as explained above.

Findings of Fact

1. Decision No. 87929 was issued without a public hearing.
2. There is no indication that any form of public notice was provided when Application No. 57548 was filed with this Commission (other than listing on the Commission's Daily Calendar).
3. There is a strong indication that LHWC is experiencing serious cash flow and financing problems.
4. There is a need to expeditiously reconsider Application No. 57548 in view of the pending consolidated LHWC proceedings, and the following order should be effective the date of signature.

Conclusions of Law

Application No. 57548 should be reopened for reconsideration, and LHWC should notify customers of this reconsideration of Application No. 57548.

IT IS ORDERED that:

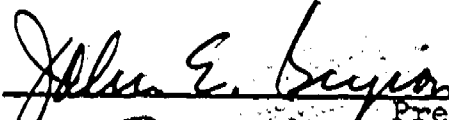
1. Application No. 57548 is hereby reopened for the reconsideration of Decision No. 87929 and consolidated for hearing with Application No. 58440, Cases Nos. 10578, 10595, 10604, 10605, 10606, 10607, 10610, 10737, 10764, Applications Nos. 59023, 59032, 59051, and 59140.
2. A prehearing conference in the consolidated matters is to be held before Administrative Law Judge Main at 9:30 a.m., Tuesday, December 18, 1979, in the Commission Courtroom, State Office Building, 107 South Broadway, Los Angeles, California. This initial conference will focus primarily on Applications Nos. 57548 and 59140.

A.59140 SW/ja

3. Laguna Hills Water Company shall, within thirty days from the effective date of this order, provide direct notice to customers and main extension contract holders of the reconsideration of Decision No. 87929.

The Executive Director shall cause service of this order to be made upon the applicants in Applications Nos. 57548, 59023, 59032, 59051, and 59140; upon the complainants in Cases Nos. 10757 and 10764; and upon the parties of record in Application No. 58440 and Cases Nos. 10578, 10595, 10604, 10605, 10606, 10607, and 10610.

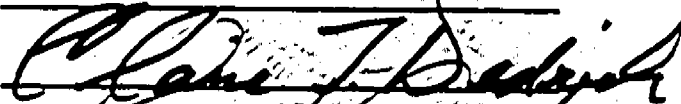
The effective date of this order is the date hereof.
Dated NOV 20 1979, at San Francisco, California.

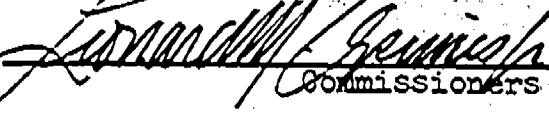


President

I abstain

Vernon L. Sturgeon




Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.