

Decision No. 91355 FEB 13 1980

ORIGINAL

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 Carmine )  
and Stanley Solomon to Modify )  
D. 87929. )

Application No. 59140  
(Filed September 13, 1979)

ORDER RESCINDING DECISION NO. 91037  
AND DISMISSING APPLICATION NO. 59140.

Petitions for rehearing of Decision No. 91037 have been filed by Rossmoor Corporation (Rossmoor) and Laguna Hills Water Company (LEWC). A response to the petitions was filed by Lawrence T. Solomon, A.L. Leyva Trust, Lawrence Solomon and Stanley Solomon, Greenville Development Company, Syd Carmine and Stanley Solomon (applicants). We have carefully considered each and every allegation of error in the petition and are of the opinion that the Commission erred in reopening Application No. 57548. Decision No. 87929 in Application No. 57548 is a final Commission order which, absent an allegation of extrinsic fraud or extraordinary circumstances, cannot be rescinded or modified. (Pub. Util. Code §1708; Golconda Utilities Co., 68 CPUC 296 (1968).) Applicants have failed to allege the existence of any such circumstances with respect to Decision No. 87929. A review of the record also indicates that Application No. 57548 met all necessary procedural and substantive requirements of an application for acquisition or control of a public utility pursuant to Public Utilities Code Section 854. Application No. 59140 is therefore a collateral proceeding in which Decision No. 87929, a final Commission order, shall be given conclusive effect. (Pub. Util. Code, §1709.) We should note that applicants are not without a remedy; an action for breach of contract, not barred by the statute

of limitations, can always be brought in the appropriate civil court. The instant application, however, should be dismissed for failure to state a cause of action. Therefore,

IT IS ORDERED that Decision No. 91037 is hereby rescinded and Application No. 59140 is dismissed.

The effective date of this decision is the date hereof.

Dated FEB 13 1980, at San Francisco, California.

  
John E. Bryan  
President

Vernon L. Sturgeon

Robert J. Hood

Clair J. DeWitt

Commissioners

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.