

Decision 00-03-056

March 16, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Alisal Water Corporation (U-206-W) for Authority to (1) Include the Area Known as Rosehart Industrial Park in its Service Area, (2) Establish Rates for Service, and (3) Issue an Evidence of Indebtedness.

Application 99-05-013
(Filed May 11, 1999)

ORDER DENYING REHEARING OF DECISION NO. 99-11-043

SUMMARY

In Application (A.) 99-05-013, Alisal sought permission to include Rosehart Industrial Park (RIP) in its service area, establish rates for service, and issue an evidence of indebtedness for the acquisition. D.99-11-043 dismissed the application without prejudice pending the outcome of a related lawsuit underway in Monterey County Superior Court.

Robert and Patricia Adcock, acting as joint tenants, have acquired from Rosehart Company, a partnership separate from RIP, the existing water system serving RIP. The Adcocks are also principals in Alisal. Alisal now desires to purchase the Rosehart system from the Adcocks, annex it to Alisal's non-contiguous service area, apply its current Salinas Division rates to Rosehart customers and issue a promissory note to finance the purchase.

The Commission's Ratepayer Representation Branch (RRB) of the Water Division filed a timely protest to the Application and the Rosehart Ag-Industrial Park Owners' Association (Association) appeared at the Prehearing Conference held on June 25, 1999. The Association's membership consists of the owners of eleven lots sold to date from RIP. They contend that the Rosehart

System is an unincorporated mutual water company, not a private company that the Adcocks could purchase from the Rosehart Company, the industrial park's developer.

Upon learning of this application, the Association filed a civil suit in Monterey County Superior Court requesting, among other things, that the Court declare the Rosehart system an unincorporated mutual water company previously managed and/or operated by certain of the defendants in that proceeding, including Rosehart Company and its principals; declare the system and well lot sale to the Adcocks invalid on the basis that the owners lacked the legal capacity to sell; and enjoin defendants in that proceeding, including the Adcocks and Alisal, from proceeding with any Commission application to transfer the system and well lot and/or annex the Rosehart system to Alisal's service area. (D.99-11-043, page 2.).

The Association sought a stay in this proceeding until the Superior Court determined the ownership issues and also questioned Alisal's ability to manage the system if it were annexed. In its brief, the Association further argued that Alisal had not met its burden of proof on the threshold issue of title and that the application should be denied rather than granted or stayed.

Assigned Commissioner Duque issued his scoping ruling on July 22, 1999, identifying as one of the issues to be considered:

“(1) Should Alisal be authorized to extend its public utility service area to include the Rosehart System?

(b) Will the transactions outlined in the application convey to Alisal clear legal title to the facilities proposed to provide service? (This does not include adjudicating the specific issues set forth in the pending civil case.)”

On August 23, 1999, an evidentiary hearing was held on the threshold question of whether Alisal would be obtaining clear legal title from the Adcocks. (D.99-11-043, page 4.) Alisal presented documentary and other evidence that it had taken possession of the subdivision lot on which the system well is located

and that it had sufficient access to the distribution facilities and easements to deliver water to each parcel. The Association relied heavily on the testimony of many current and former owners and their representatives who have purchased lots and operated businesses in the area over the years. Their argument was that they had commitments from developer Rosehart's principals and agents to shares in the water system and that the system had been operated accordingly from its earliest days until recent times. (D.99-11-043, page 4.) At the Association's request, the ALJ took official notice of their civil action in the matter, Rosehart Ag-Industrial Owners Association, et.al. v Rosehart Company, et.al., Case No. 44287, now pending in Monterey County Superior Court.

At the heart of the Association's position before the Commission and the Monterey County Superior Court is its contention that, beginning with the industrial park's opening in 1979, Rosehart Company and its principals entered into oral agreements under which the purchase of a lot carried with it an interest in the water system, and a mutual water company would be formally incorporated once all lots in the subdivision were sold. The water system existed to provide water service to lot owners, and those owners, the Association's members, have performed in accordance with the terms and conditions of their contract. Their civil suit charges breach of contract and asks the Court to declare that Rosehart, *et al.*, lacked the legal capacity to sell the well lot, to invalidate Rosehart's sale to the Adcocks on that basis, and to order specific performance under the contract.

On September 2, 1999, the Superior Court stayed its entire proceeding to await the Commission's determination in this proceeding. (D.99-11-043, page 6.)

In D.99-11-043, the Commission dismissed the application without prejudice, holding that Alisal may reapply for the authority sought in the application following a final determination by the Superior Court of Monterey County on the validity of the Rosehart Company's purported sale of the Rosehart

Ag-Industrial Park water system. Alisal applied for rehearing. The Association filed a response to the application for rehearing.

DISCUSSION

Alisal first argues that the Decision is in error because Issue 1(b), supra, contained in the Assigned Commissioner's scoping memorandum, required the "wrong standard of proof" regarding the future legal title to the facilities proposed to provide water service. Applicant interprets the language in section 1(b) to require that Applicant demonstrate that the transactions outlined in its application will result in Alisal's having fee simple title to the property in question. Applicant points out that the majority of electric, gas and water utilities' lines and pipes are placed in easements, and that utility assets can be controlled through various legal agreements, including leases, franchises, patents, etc. Applicant's argument would be well-taken if we had, in fact, conditioned our order on a fee simple transfer of the property in question. However, this is not what transpired. In fact, the words "fee simple" appear nowhere in the decision. Rather, the scoping memorandum and the Decision itself make it clear that the Commission was concerned that Alisal have "clear legal title to the facilities proposed to provide service." This does not require "fee simple" title, as Applicants argue, but simply means that the Commission wanted to be sure that Alisal would have the requisite title to the property to insure that adequate service would be provided to the ratepayers. The present civil suit casts a cloud on that title and the ability to provide future service and it is this fact that needs to be settled before the application can be granted. In fact, the present state of the record indicates that it is uncertain that Applicant will eventually take title to the property necessary to service the proposed new service area. Applicant has therefore misinterpreted the Decision, and the argument is without merit.

Alisal next argues that it met the Commission's allegedly erroneous burden of proof because the company submitted evidence in the record that it had taken title to the subdivision lot on which the water system is located and that it

had sufficient access to the distribution facilities and easements to deliver water to the individual parcels affected. (Application, page 4.) Applicant further alleges that the individual lot owners protesting the application were relying on oral representations that a mutual water system had been created, and that such are inadequate to create or transfer any interest in real property under the laws of California. (Application, page 7.) Applicant made this same argument during the hearing and briefing phase of this proceeding. As pointed out in the Decision, at page 4, "Alisal's direct evidentiary presentation was sharply focused on establishing that it had taken title to the subdivision lot on which the system well is located, and that Alisal had sufficient access to the distribution facilities and easements to deliver water to each individual parcel."

The Commission's jurisdiction to determine matters of water system status is set forth in Public Utilities Code §2707:

"For the purpose of determining the status of any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating, or managing any water system or water supply within this state, the commission may hold hearings and issue process and orders in the manner and to the same extent as provided in Part 1 (commencing with Section 201), and the findings and conclusions of the commission on questions of fact arising under this chapter are final and not subject to review, except as provided in Part 1 (commencing with Section 201)."

Pursuant to the above statute, the Commission may, but is not required to determine whether the Rosehart system is indeed a mutual, as the Association maintains. However, the Courts retain jurisdiction where the Commission chooses not to act under section 2707. (Ventura County Waterworks Dist.#12 v. Susana Knolls Mutual Water Co. (1970) 7Cal. App. 3d. 672) Further, the Commission has previously held that, although it is charged with determining whether or not the transfer of a public utility is adverse to the public interest, it is not the forum in which questions of title to real property should be litigated.

(Petition of Golconda Utilities Co. (1968) 68 Cal. P.U.C. 296, citing Hanlon v. Eshelman (1915) 169 Cal. 200.)

In the present proceeding, the Commission again determined to defer the question of the title to the water system to the pending Court action, and dismiss the application without prejudice pending the outcome of that litigation. The Commission specifically invited Applicant to return should it receive a favorable Court decision for complete determination by the Commission of the remaining scoping issues. (D.99-11-043, page 6.) As such, the Decision is consistent with Commission precedent. As we stated in Southern California Freight Lines (1939) 42 C.R.C. 41, 44:

“Because of the questions which have been raised concerning the validity of the sale and the apparent cloud thus cast upon applicant’s title, we do not deem it advisable in this proceeding, particularly in the face of threatened and impending attacks upon this transaction, to authorize the transfer at this time. Rather, we believe the public interest will best be served by awaiting the final determination of these matters by the proper tribunals. Accordingly, the application will be denied without prejudice.”

The remainder of Applicant’s allegations relates, one way or another, to its claim that it does, in fact, have clear legal title to the property in question. Thus, Alisal complains that the Decision deprives it of the benefits that bona fide purchasers are entitled to by law, and that such rights cannot be defeated through oral agreements. (Application, pages 8, 9.) Applicant also urges that the Commission should not set a precedent that public utilities cannot rely on grant deeds and bills of sale for conveyance of real property. (Application, page 13.).

The arguments are without merit. The Decision makes no conclusion on the title to the real property in question, but merely defers this issue to the Superior Court. Applicant is therefore not deprived of any rights or benefits accruing to it as a result of the transactions in question. Nor does the Decision

result in a precedent affecting grant deeds or bills of sale. In fact, the Commission has specifically determined not to rule on these issues in this proceeding.

Alisal has requested oral argument on its application for rehearing. However, the request does not comply with the Commission's Rules of Practice and Procedure, Rule 86.3 (a), which requires that such a request will be considered if the application raises issues of major significance, such as the adoption of a new precedent, or presents issues of exceptional complexity or first impression. The present application presents no such issues.

CONCLUSION

For the foregoing reasons, we conclude that sufficient grounds for Rehearing have not been shown.

THEREFORE, IT IS ORDERED that:

Rehearing of D.99-11-043 is denied.

This order is effective today.

Dated March 16, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners