

Decision 99-01-006 January 7, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Guerdon L. Churchill for a Certificate of Public Convenience and Necessity to Construct a Public Utility Sewer System near Valley Springs in Calaveras County and to Establish Rates for Service and to Issue Stock.

Application 98-07-034
(Filed July 23, 1998)

O P I N I O N

Summary

This decision determines that Guerdon L. Churchill's proposed wastewater collection and treatment facilities for Toyon Business Park do not constitute a public utility and he does not require a certificate of public convenience and necessity to construct and operate them. The application is dismissed for lack of jurisdiction.

Discussion

Guerdon L. Churchill and Norma Churchill (the Churchills) are developing Toyon Business Park in Calaveras County. Toyon Business Park, a proprietorship owned by the Churchills, will be constructed on approximately 25.9 acres consisting of contiguous real parcels owned by the Churchills. Tenants will be served without charge by on-site wastewater collection and treatment facilities likewise constructed and owned by the Churchills. The Churchills have filed with the application a series of planning and permitting documents required by the County of Calaveras, including County of Calaveras Planning Commission Resolution No. 98-28 approving a conditional use permit to build a

domestic wastewater treatment plant. One of the findings for the conditional use permit is that the applicant "...must either comply with the Public Utilities Commission's (PUC) rules and regulations or supply a written notice from the PUC that the PUC is not exercising any jurisdiction over the project." The conditional use permit also notes the following condition imposed by the Calaveras Environmental Health Department:

Prior to issuance of a building permit or grading permit, the applicant shall provide a statement from the Public Utilities Commission that the applicant's proposed waste water treatment plant is not subject to the Public Utilities Commission's jurisdiction. Alternatively, if the Public Utilities Commission deems that the proposed wastewater treatment plan is subject to the Public Utilities Commission's jurisdiction, the applicant shall obtain a certificate of convenience and necessity [sic] from the Public Utilities Commission prior to operation of the wastewater treatment plant. The applicant shall also comply with any other applicable rules and regulations of the Public Utilities Commission during operation of the waste water treatment plant.

Accordingly, the Churchills seek an order stating that Toyon Business Park's proposed wastewater treatment plant is not subject to Commission jurisdiction, or, in the alternative, an order granting a certificate of public convenience and necessity.

Ratepayer Representation Branch (RRB) of the Commission's Water Division filed a timely protest and appeared at the July 23, 1998 prehearing conference. RRB's representative withdrew the protest at the prehearing conference after earlier having discussed Churchill's application with counsel for Calaveras County and reviewed correspondence on the topic in Water Division's files.

The following sections from the Public Utilities (PU) Code serve to define Toyon Business Park's status:

§ 216(a) "Public utility" includes every ... sewer system corporation ... where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

§ 216(b) Whenever any ... sewer system corporation ... performs a service for ... the public or any portion thereof for which any compensation or payment whatsoever is received, that ... sewer system corporation ... is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

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§ 230.5. "Sewer system" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including any and all lateral and connecting sewers, interceptors, trunk and outfall lines and sanitary sewage treatment or disposal plants or works, and any and all drains, conduits, and outlets for surface or storm waters, and any and all other works, property or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters. "Sewer system" shall not include a sewer system which merely collects sewage on the property of a single owner.

§ 230.6. "Sewer system corporation" includes every corporation or person owning, controlling, operating, or managing any sewer system for compensation within this state.

Toyon Business Park's wastewater collection and treatment facilities will serve only tenants of Toyon Business Park, all of which is located on the property of a single owner, the Churchills. The Churchills will not charge tenants for sewer service. Thus the wastewater collection and treatment facilities do not constitute a "sewer system" within the meaning of § 230.5, Toyon Business Park

is not a "sewer system corporation" within the meaning of § 230.6, and Toyon Business Park is not a "public utility" within the meaning of § 216(a). Likewise, it does not meet the § 216(b) requirements that would make it subject to the jurisdiction, control, and regulation of the Commission and the provisions of Division 1, Part 1, of the Public Utilities Act.

Since Toyon Business Park is not a sewer system corporation, it is similarly not subject to the requirement in PU Code § 1001:

1001. No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation, water corporation, or sewer system corporation shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

Although not at issue here, the question arose at the prehearing conference as to whether Toyon Business Park's water collection and treatment facilities might come under Commission jurisdiction in the future through subdivision and/or sale. Our conclusion is based on the particulars presented in the application. Were Toyon Business Park's circumstances to change, the status of its wastewater collection and treatment system might have to be re-examined.

SB 960 Matters

By Resolution ALJ 176-2998, the Commission preliminarily determined pursuant to Rule 6.1 that this is a ratesetting proceeding expected to go to hearing. On October 6, 1998, the assigned commissioner issued his SB 960 Scoping Ruling, noting that the protest had been withdrawn and all present at the prehearing conference agreed that there are no material facts in dispute and thus, no need to hold an evidentiary hearing. We confirm the assigned Commissioner's Scoping Ruling. There is no known opposition to granting the relief requested in the application, and no need to hold a hearing.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Toyon Business Park's wastewater collection and treatment facilities will serve only the property of a single owner.
2. Toyon Business Park will provide sewer service to its tenants without charge.
3. There is no known opposition to granting the relief requested in the application, and no need to hold a hearing.

Conclusions of Law

1. Toyon Business Park's wastewater collection and treatment facilities do not constitute a sewer system within the meaning of PU Code § 230.5.
2. Toyon Business Park is not a sewer system corporation within the meaning of PU Code § 230.6.
3. Toyon Business Park is not a public utility within the meaning of PU Code § 216(a).

4. Under PU Code § 216(b), Toyon Business Park is not subject to the jurisdiction, control, and regulation of the Commission and the provisions of the PU Code, Division 1, Part 1, the Public Utilities Act with respect to its wastewater collection and treatment facilities.

5. The order that follows should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The assigned Commissioner's Senate Bill (SB) 960 Scoping Ruling determination that no hearing is required is confirmed. Under Rule 6.6, the Commission's SB 960 Rules and Procedures shall cease to apply to this proceeding.

2. Application 98-07-034 is dismissed for lack of jurisdiction.

3. This proceeding is closed.

This order is effective today.

Dated January 7, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners