

Decision 99-11-043 November 18, 1999

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)

S. Gary Varga, Attorney at Law, for Alisal Water
Corporation, applicant

Vanessa Vallarta, Attorney at Law, and Lenard G.
Weiss, Attorney at Law, for Rosehart Ag-Industrial
Park Owners Association, protestant.

Peter Fairchild, Attorney at Law, and Donald McCrea,
for Ratepayer Representation Branch of the
Commission's Water Division, protestant.

OPINION

Summary

Alisal Water Corporation's application to include Rosehart Ag-Industrial Park in its service area, establish rates for service, and issue an evidence of indebtedness is dismissed without prejudice pending the outcome of a related civil suit underway in Monterey Superior Court.

Background

Robert T. Adcock and Patricia Adcock (Adcocks), individuals acting as joint tenants, have acquired from Rosehart Company, a partnership, the existing water system serving Rosehart Ag-Industrial Park in Monterey County. Adcocks are also principals in Alisal Water Corporation (Alisal). Alisal now desires to purchase the Rosehart system from Adcocks, annex it to Alisal's non-contiguous

service area, apply its current Salinas Division water rates to Rosehart customers, and issue a promissory note to finance the purchase.

Ratepayer Representation Branch of the Commission's Water Division (RRB) filed a timely protest. Alisal, RRB, and Rosehart Ag-Industrial Park Owners Association (Association) appeared at the June 25, 1999, prehearing conference. Adcocks and Rosehart Company, both of whom also signed the application, did not file appearances. Robert T. Adcock and Patricia Adcock were present at the evidentiary hearing and Robert T. Adcock testified on behalf of Alisal.

RRB's protest indicated it would investigate whether the Rosehart system meets the Commission's General Order 103 requirements, whether Alisal is the proper entity to serve Rosehart, whether the proposed rates are just and reasonable, and whether the proposed loan should be approved.

Association's members are the owners of the 11 lots sold to date from the park's 14 saleable lots. Association contends that the Rosehart system is and has been since its inception in 1979 an unincorporated mutual water company, not a private system that Adcocks could purchase from Rosehart Company, the industrial park's developer. Upon learning of this application, Association filed a civil suit in Monterey 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, including Rosehart Company and its principals; declare the system and well lot sale to Adcocks invalid on the basis that those defendants lacked the legal capacity to sell; and enjoin defendants, including 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. Through its participation in Alisal's application, Association initially sought to have the Commission stay the

proceeding until the Court determines the ownership issues, and questioned in any case Alisal's ability to manage the Rosehart system if it were annexed. On brief, Association now argues that Alisal has not met its burden of proof on the threshold issue of title and the application should be denied rather than granted or stayed.

The assigned Commissioner issued his scoping ruling on July 22, 1999, confirming that this is a ratesetting proceeding and changing the preliminary determination on need for hearing to "hearing needed." The Commission approved that change in D.99-09-019 on September 2, 1999. The scoping ruling designated assigned Administrative Law Judge (ALJ) McVicar as the principal hearing officer and thus the presiding officer, and defined the following issues:

- (1) Should Alisal be authorized to extend its public utility service area to include the Rosehart system?
 - (a) Do the present or future public convenience and necessity require the proposed acquisition and annexation?
 - (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).
 - (c) Will the facilities and service arrangements Alisal proposes in the application meet all applicable standards, including those established by the Commission in General Order 103?
 - (d) What terms or conditions should the Commission attach to a grant of authority, if any?
- (2) If authorized to serve, what rates and conditions of service should Alisal implement for customers of the Rosehart system?
- (3) Should Alisal be authorized to enter into a long term debt agreement to finance its acquisition of the Rosehart system, as proposed in the application?

As directed in the scoping ruling, an evidentiary hearing was held on August 23, 1999 on the threshold question of whether Alisal would be obtaining from Adcocks clear legal title, Issue (1)(b).

Discussion

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 developed parcel. This it attempted to do through presenting executed purchase agreements between Rosehart Company and Adcocks and between Adcocks and Alisal; copies of recorded grant deeds and preliminary title report materials for the well lot; and subdivision parcel maps, improvement plans, protective covenants and the like. Alisal had obviously spent considerable effort in researching Monterey County records, and a good part of its showing consisted of official documentation duly recorded and/or certified by county officers.

Association, in contrast, relied heavily on the testimony of many current and former owners and their representatives who have purchased lots and operated businesses in the industrial park over the years. They attempted to show 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. At Association's request, the ALJ took official notice of their civil complaint, *Rosehart Ag-Industrial Owners Association, et al. v Rosehart Company, et al.*, Case No. 44287, now pending in Monterey Superior Court, and the Reporter's Transcript of Proceedings from the Court's July 30, 1999 hearing concerning Alisal's demurrer to complaint. The Court's recent Order re: Demurrer and Stay of Action in the proceeding was admitted without objection.

At the heart of Association's position before the Commission and in Monterey 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, 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 Adcocks on that basis, and to order specific performance under the contract.

The Commission's jurisdiction to determine matters of water system status is set forth in Pub. Util. 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).

Thus the Commission may, but need not, determine whether the Rosehart system was indeed a mutual as Association maintains. The courts retain jurisdiction where the Commission has not chosen to act under § 2707 (*Ventura County Waterworks Dist. #12 v Susana Knolls Mutual Water Co.* (1970) 7 CA3d 672; 87 Cal Rptr.1).

The Court's Order re: Demurrer and Stay of Action filed September 2, 1999, stayed the entire Superior Court case to await the Commission's

determination in this proceeding. The Court's Order, taken with the associated Reporter's Transcript, shows that the Court recognizes the Commission's jurisdiction but is unclear on the degree to which the Commission intends to assert it, given the wording of Issue (1)(b).

Notwithstanding the Commission's jurisdiction to determine status of water systems, it is also the case that the courts are better equipped to adjudicate matters of title and contract such as those raised by Association against Rosehart and Adcocks:

[T]he Commission is charged with determining whether or not the transfer of a public utility is adverse to the public interest and 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 *Rosehart Ag-Industrial Owners Association, et al. v Rosehart Company, et al.*, Association asks the Superior Court to adjudicate, among others, just such claims as were cited in *Golconda* and *Hanlon*. In those matters we are inclined to defer to the Court.

Should the Court decide in favor of Association, Alisal (and Adcocks) would be at risk of losing the water source and other facilities necessary to provide service. Should Alisal receive a favorable court decision, it would properly return to the Commission for a complete determination based on all of the remaining scoping ruling issues. The Commission would either grant or deny it the certificate required under Pub. Util. Code § 1001 and financing authority under § 817.

What, then, should be the disposition of Alisal's application while the matter remains with the Court? Faced with similar circumstances in the past, we also cited *Hanlon* and others, also concluded that questions of title are to be presented to the civil courts for determination, and went on to conclude:

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. (*Southern California Freight Lines* (1939) 42 C.R.C. 41, 44).

Those words apply equally here, and this proceeding will be concluded similarly. It serves little purpose to maintain it indefinitely while the Court considers. Alisal will not be unduly disadvantaged if we dismiss the application without prejudice. Such an outcome is particularly warranted today in light of the requirement that the Commission resolve its cases in 18 months or less.

Comments on Proposed Decision

The principal hearing officer's proposed decision in this matter was filed with the Commission and served on all parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure.

Alisal filed comments urging the Commission to reject Association's claims rather than allowing the civil courts to take up the matter of title and contract, and if not, to direct the Adcocks in their responsibilities with respect to the Rosehart system. Alisal's comments largely reargue positions taken in its brief, and the Adcocks have neither presented themselves as parties to this proceeding nor been found by the Commission to be a public utility.

Association did not comment on the proposed decision, but did submit late reply comments. Association opposes Alisal's requested modifications, and "defers to the ALJ's preference that matters of title and contract be adjudicated before the civil courts."

No changes to the proposed decision are necessary.

Findings of Fact

1. Association's civil suit, *Rosehart Ag-Industrial Owners Association, et al. v Rosehart Company, et al.*, Case No. 44287 now pending in Monterey Superior Court, has the potential to invalidate Rosehart's water system and real property sale to Adcocks.

2. Alisal has not established that the transactions outlined in the application would convey to it clear legal title to the facilities proposed to provide service.

Conclusions of Law

1. Matters of title and contract raised by Association against Rosehart and Adcocks are properly before the civil courts.

2. The Commission may, but need not, determine whether the Rosehart system was indeed a mutual as Association maintains. The courts retain jurisdiction where the Commission has not chosen to act under § 2707

3. The Commission has jurisdiction to determine whether Alisal should be authorized to extend its public utility service area to include the Rosehart Ag-Industrial Park water system; if so, what rates and conditions should be imposed; and whether Alisal should be authorized to enter into a long term debt agreement to finance any such acquisition. That jurisdiction should be retained with respect to Alisal and the Rosehart system pending the courts' final determination on matters of title and contract.

4. The Commission having found that Alisal has not established that the transactions outlined in the application would convey to it clear legal title to the facilities proposed to provide service, it is not necessary to determine at this time the remaining issues set forth in the assigned Commissioner's scoping ruling.

5. Alisal's application should be dismissed without prejudice.

6. This decision should be made effective immediately to enable the parties to proceed in the courts without delay.

O R D E R

IT IS ORDERED that:

1. Application 99-05-013 is dismissed without prejudice. Alisal Water Corporation (Alisal) may reapply for the authority sought in the application following a final determination by any court of competent jurisdiction on the validity of Rosehart Company's purported sale of the Rosehart Ag-Industrial Park water system.

2. The Commission expressly reserves jurisdiction to determine whether Alisal should be authorized to extend its public utility service area to include the Rosehart Ag-Industrial Park water system; if so, what rates and conditions should be imposed; and whether Alisal should be authorized to enter into a long term debt agreement to finance any such acquisition.

3. Application 99-05-013 is closed.

This order is effective today.

Dated November 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners