

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



Draft Resolution W-4682
Agenda ID 7496

March 25, 2008

TO: Parties to California Water Service Company's Advice Letter No. 1843:

Enclosed is draft Resolution W-4682 of the Division of Water and Audits. It will be on the Commission's April 24, 2008 agenda. The Commission may act on the resolution at the regular meeting, or it may postpone action until later.

When the Commission acts on a draft resolution, it may adopt all or part of it as written, amend, modify, or set aside, and prepare a different resolution. Only when the Commission acts does the resolution become binding on the parties.

Parties to this matter may file comments on this draft resolution. Original and 2 copies of the comments, with a certificate of service, should be submitted to:

Division of Water and Audits, Third Floor
Attention: Martin Bragen
California Public Utilities Commission
505 Van Ness Avenue
San Francisco CA 94102

Parties may submit comments on or before April 14, 2008. The date of submission is the date the comments are received by the Division of Water and Audits. Parties must serve a copy of their comments on all persons on the service list attached to the draft Resolution, on the same date that the comments are submitted to the Division of Water and Audits.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft resolution, a table of authorities and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal, or technical errors in the draft Resolution. Comments that merely reargue positions taken in the advice or protests will be accorded no weight and are not to be submitted. Late submitted comments will not be considered.

/s/ RAMI S. KAHLON
Rami S. Kahlon, Director
Division of Water and Audits

Enclosures: Draft Resolution W-4682
Certificate of Service
Service List

DRAFT

AGENDA ITEM 7496

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER & AUDITS DIVISION
Water and Sewer Advisory Branch

RESOLUTION W-4682
April 24, 2008

R E S O L U T I O N

(RES. W-4682), CALIFORNIA WATER SERVICE COMPANY (CWS). ORDER DENYING AUTHORIZATION TO REQUIRE PAYMENT OF \$40,000 FROM THE OWNER OF TREND HOMES PROPERTIES, BY ADVICE LETTER 1843 ACCEPTED ON DECEMBER 14, 2007.

SUMMARY

This Resolution denies CWS authorization to require the current owner of "Trend Homes Properties" (Trend Homes) to pay a \$40,000 developer contribution. The Commission finds no basis to require such a contribution.

BACKGROUND

Application 85-04-029 requested approval of the sale of Wesmilton Water Company (Wesmilton) to CWS, and also requested a requirement for the payment of \$40,000 from the developer of property known as "Trend Homes," then owned by John Bonadelle, to California Water Service, which payment was to be immediately passed on to Dwight C. Nelson (Nelson). The sale would include Nelson, a developer, making a \$65,000 contribution to seller to encourage the sale, because Nelson wanted a better water supplier for his development.

Ex Parte D.85-06-132 approved the sale of Wesmilton, but said the Commission had no basis to adjudicate the proposed transfer of \$40,000 from one developer to another. Specifically, D.85-06-132 noted that neither Trend Homes nor Bonadelle was a party to the application, neither Trend Homes nor Bonadelle joined with CWS and Nelson in the Agreement of Purchase and Sale, there was no showing that \$40,000 was an equitable share of the \$65,000 payment to be reimbursed to Nelson, and the Agreement of Purchase and Sale did not actually bind CWS to reimburse the \$40,000 to Nelson. However, Ordering Paragraph 8 of the decision

says, "Within 30 days of an application to CWS for service by the developers of the properties now owned by Trend Homes, CWS shall make an advice letter filing, to be reviewed by our Evaluation and Compliance Division, in accordance with the terms of this order." The Evaluation and Compliance Division (now the Division of Water and Audits) was to review this filing and make an appropriate recommendation.

On December 14, 2007, CWS accepted Advice Letter 1843 requesting authority to collect \$40,000 from the current owners of Trend Homes, John and Lucretia Emmett, and give it to Dwight Nelson. The Emmetts filed an objection stating that there is no provision in the sales agreement for "reimbursement" of \$40,000; that there is no factual support for the conclusion that two developers would share in the contribution of \$65,000; that the original owner of Trend Home Properties did not indicate a willingness to participate; that there was no lien on the property requiring such future payment; that the Emmetts are not the original owners of Trend; and that it would be unjust to bind non-parties to a contract to an agreement.

CWS responded to the Emmetts' objections, citing to D.93-03-038, which states that "Nelson will get his \$40,000 when the Trend Homes development takes place" as authority to require the contribution and reimbursement. (D.93-03-038, p. 4.)

DISCUSSION

The Commission denies the requested authority to collect \$40,000 from the Emmetts and to reimburse Nelson with that amount. D.85-06-132 did not authorize such collection and reimbursement. On the contrary, D.85-06-132 clearly says the Commission has no basis for adjudicating such a transfer of contributions. Although D.85-06-132 authorized CWS to seek this authority by advice letter at such time as the developers of Trend Homes apply for water service from CWS, the same barriers to our grant of the requested authority in D.85-06-132 continue to apply now. Specifically, there is no showing that Trend Homes or the Emmetts are contractually obligated to pay any amount to CWS, or that CWS is contractually obligated to reimburse such amount to Nelson.

The statement in D.93-03-038 that “Nelson will get his \$40,000 when the Trend Homes development takes place ...” does not change matters. That statement is not controlling because it addressed facts and issues that were not before the Commission in D.93-03-038. D.93-03-038 concerned a petition to modify D.85-06-132, and denied that petition. That statement characterizing D.85-06-132 does not modify the original decision. In addition, in full, the sentence reads “Nelson will get his \$40,000 when the Trend Homes development takes place, **but should not be allowed to receive compensation from persons not considered in the original transaction**”.[emphasis added] Likewise, the Emmetts were not considered in the original transaction.

At this time, almost 23 years after the transfer of the water company, there is still no showing of willingness by the present or prior owner of Trend Homes to share in the transfer cost; neither the prior owner nor the current owner was a party to the original application for sale and transfer; and there is still no evidence on the record upon which to base a \$40,000 reimbursement to Nelson.

The Water and Audits Division has evaluated the advice letter and has recommended that the Advice Letter be denied. We agree.

COMMENTS

Public Utilities Code Section 311(g) (1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g) (2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this Resolution was neither waived or reduced. Accordingly, this draft Resolution was mailed to all parties for comments. The comments were received on _____.

FINDINGS

1. Application 85-04-029 requested approval of the sale of Wesmilton Water Company to California Water Service, and requested a requirement for the payment of \$40,000 from the developer of property then owned by Trend Homes, Inc. to California Water Service, which payment was to be immediately passed on to Dwight C. Nelson.

2. Decision 85-06-132 approved the sale of the water company.

3. Decision 85-06-132 said the Commission had no basis on which to adjudicate the requested requirement for the collection and transfer of contributions.

4. Neither the original owner of the Trend Homes, Inc. property, nor the Emmetts, current owners of the property was a party to the Application for transfer or the Agreement of Sale.

5. Advice Letter No. 1843 did not include any showing that the previous or present owner of Trend is contractually or equitably obligated to contribute to the 1985 sale of the water company.

THEREFORE IT IS ORDERED THAT:

1. Authority to require the current or future owners of the parcels known as the "Trend Homes Properties" to pay a \$40,000 developer contribution, and to reimburse Mr. Dwight Nelson with that payment is denied.

2. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on April 24, 2008; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a copy of Draft Resolution W-4682 on all parties in this filing or their attorneys as shown on the attached list.

Dated March 25, 2008, at San Francisco, California.

 /s/ JOSIE L. JONES
 Josie L. Jones

NOTICE

Parties should notify the Division of Water and Audits, Public Utilities Commission, 505 Van Ness Avenue, Room 3106, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents.

SERVICE LIST
DRAFT RESOLUTION W-4682

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