BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lennar Corporation, LNR Property Corporation, LNR NWHL Holdings, Inc., NWHL Investment LLC, NWHL GP LLC, NWHL Acquisition, L.P., the Newhall Land and Farming Co., and Valencia Water Company (U342-W) for authorization of Lennar Corporation, LNR Property Corporation, LNR NWHL Holdings, Inc., NWHL Investment LLC, NWHL GP LLC to acquire control over Valencia Water Company.	Application 03-08-014 (Filed August 18, 2003)

JOINT ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING RETAINING DETERMINATION THAT HEARINGS ARE NOT NECESSARY AND SETTING BRIEFING SCHEDULE

Introduction

This application has been protested and hearings requested. For the reasons stated below, however, the issues raised in the protests do not require hearings for resolution. Consequently, we will retain the Commission's initial determination declining to set hearings. We will, however, set a briefing schedule to receive the parties' legal and policy arguments, as well as any proposed conditions of approval.

Background

On August 18, 2003, Lennar Corporation, LNR Property Corporation, LNR NWHL Holdings, Inc., NWHL Investment LLC, NWHL GP LLC, NWHL Acquisition, L.P., The Newhall Land and Farming Company (Newhall), and

Valencia Water Company (Valencia) filed this application seeking Commission authorization to transfer ownership and control of Newhall to Lennar Corporation and LNR Property Corporation. Newhall owns all outstanding capital stock of Valencia. The other entities are corporate and transactional intermediaries.

On September 4, 2003, the Commission categorized the proceeding as ratesetting, and determined that hearings were not necessary.

The Santa Clarita Organization for Planning the Environment (SCOPE) and the Friends of the Santa Clarita River filed protests of the application. Both organizations requested hearings to be held in Los Angeles and asked that they be allowed to participate by telephone in any prehearing conference (PHC). The protests raised issues regarding: (1) the acquiring firms' technical and financial abilities, (2) local control of Valencia, (3) preferential service extensions for the affiliated land development companies, (4) spread of existing perchlorate pollution in groundwater due to increased pumping, and (5) disclosure of all merger documents and inter-company loan status.

The applicants submitted a response to the protests and contended that the protests did not show a sufficient basis for public or evidentiary hearings. The applicants pointed out that the proposed transaction would result in a change in ownership of Newhall, the owner of all capital stock in Valencia, but would have no effect on Valencia's management team, revenue requirement, rate base, capital structure, or the Commission's authority over any future Valencia expansion.

Applicable Standards for Holding a Hearing

The Commission requires that parties requesting a hearing demonstrate that disputed issues of material fact exist between the parties. See D.00-03-020,

mimeo. at 6-11. Here, the applicants seek Commission authorization pursuant to §§ 851 and 854[1] to assume indirect control of Valencia. The Commission has previously determined that such approval will only be granted where the proposed transaction is in the public interest. The Commission may use the standards set out in § 854(b) and (c) to "inform" its public interest determination. D.02-12-068, *mimeo.* at 9. Here, as set out below, the facts underlying the effects on ratepayers of the proposed transaction do not appear subject to dispute in the record. The basic facts of Valencia's operation and water supply were recently addressed in docket A.02-05-013, Valencia's recent general rate case, and in the Commission's review of Valencia's Water Program, D.01-11-048. The basic facts regarding the acquiring firms – history, business lines, financial resources – are not disputed. Consequently, there are no disputed issues of material fact to resolve in evidentiary hearings. Policy and legal issues can be addressed with written argument.

1. Technical Capability

Pursuant to the proposed transaction, Lennar and its affiliates will acquire Newhall, the company that owns all capital stock in Valencia. The applicants state that Valencia's entire management team will remain in place, as well as most of Newhall's. The Commission recently conducted a general rate case for Valencia and found no issues of management incompetence or service quality. See D.03-05-030. Because this management team will remain in place after Newhall is acquired, there is no dispute that after the proposed transaction Valencia will possess the technical competence to own and operate a

[1] All citations are to the Public Utilities Code unless otherwise indicated.

Commission-regulated water utility. Also in the rate case proceeding, Valencia showed that Newhall had no substantive role in Valencia's day-to-day operations, and only minimal management-level oversight. Newhall's management team will remain largely in place, and the application does not indicate that the parties intend to change this practice.

2. Financial Resources

The record in Valencia's recent general rate case shows that Valencia is capable of raising sufficient capital to meet the needs of its customers. In addition, Lennar Corporation had net earnings of over $500 million in 2002. These facts are not disputed.

The applicants have represented that "this change of control at the parent company level will have no negative effects on the financial standing, costs of operation, or revenue requirements of Valencia." The Commission could include this assurance as condition of approval for the proposed transaction. The Commission could also include a requirement that Valencia will be provided with adequate capital to fulfill its water utility service obligations.

3. Service Extensions Favoring Real Estate Development Affiliate

Protestants expressed concern that Valencia would be required by Newhall to make service area extensions favoring future Newhall or Lennar developments. The Commission considered similar allegations in the recent rate case and found insufficient evidence to support the allegations. The Commission, however, has and will retain complete authority over any and all Valencia service territory expansions. The protestants have participated in these

proceedings in the past, and could raise any issues of favoritism in future proceedings. See, e.g., D.01-11-048.[2] These facts are not disputed.

The Commission has previously adopted a set of affiliate transactions rules to govern the relationship between a Commission-regulated water utility and its corporate affiliates. These rules ensure that the utility and its ratepayers are not subsidizing the affiliated operations. See D.02-12-068 (Appendix A to Settlement Agreement, which is Appendix B to the decision.) One means to regulate that the relationship between Valencia and all the Lennar affiliates would be to adopt a similar set of rules for Valencia.

4. Out-of-State Ownership

The protests also expressed concern about out-of-state ownership of Valencia leading to "financial or ethical decisions that are not in the best interests of the ratepayers or the community." The Commission, however, retains complete authority over Valencia's public utility operations, including its rates, as well as substantial power to "do all things . . . which are necessary and convenient in the exercise of [its] jurisdiction." See § 701. Thus, while the owners may be out-of-state, the Commission has final authority over any public utility effects in California.

In addition, the Commission could impose conditions of approval that require Valencia to: (1) maintain and store its books and records in California, (2) maintain offices in its service territory, and (3) retain Valencia's high level of customer service and community involvement. The Commission could also state that any future requests to include expenses associated with the acquiring firms

[2] The Commission also addressed the percholorate pollution issue in that decision.

in Valencia's revenue requirement will require a compelling rationale, and will receive strict scrutiny from the Commission and its staff.

5. Documents and Loans

The applicants attached to the response to the protests the Newhall proxy statement for the proposed transaction with Lennar, and stated that there is only one merger document and that a fully executed copy was attached to the application. The applicants also stated that there are no outstanding loans between Newhall and Valencia, and that the loan between Newhall and Valencia discussed in the recent rate case has been repaid in full. Thus, all required documents are in the record, and no loans exist.

Opportunity to Present Briefs and Proposed Conditions

Based on the above analysis, we conclude that no disputed issues of material fact have been shown and that, consequently, we should retain the Commission's initial determination that no hearing is necessary.

The parties may file and serve briefs and proposed conditions no later than Wednesday, October 22, 2003. Reply briefs may be filed and served no later than October 29, 2003.[3]

Therefore, **IT IS RULED** that the parties shall file and serve briefs as set out above.

Dated October 3, 2003, at San Francisco, California.

---

[3] The parties should also send electronic courtesy copies of all filings to the service list.

/s/ SUSAN B. KENNEDY
Susan B. Kennedy
Assigned Commissioner

/s/ MARIBETH A. BUSHEY
Maribeth A. Bushey
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Joint Assigned Commissioner and Administrative Law Judge's Ruling Retaining Determination that Hearings are not Necessary and Setting Briefing Schedule on all parties of record in this proceeding or their attorneys of record.

Dated October 3, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.