

**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)

**ADMINISTRATIVE LAW JUDGE'S RULING MODIFYING SCHEDULE  
AND SEEKING COMMENT ON PROPOSED CONDITIONS**

**1. Request to Modify Schedule**

On October 3, 2003, the assigned Commissioner and I issued a ruling setting a briefing schedule for this proceeding. Representatives of the Santa Clarita Organization for Planning the Environment (SCOPE) have requested that the filing date for SCOPE's opening brief be delayed to October 27, 2003, and reply briefs for all parties<sup>1</sup> rescheduled to October 31, 2003.

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<sup>1</sup> After the joint ruling was issued, the Commission accepted for filing a protest from the Los Angeles Chapter of the Sierra Club, bringing the total number of protestants to three.

SCOPE stated that the organization unexpectedly required the additional time to confer with an attorney.

Good cause having been shown, SCOPE shall file and serve its opening brief no later than October 27, 2003. SCOPE shall also transmit courtesy copies to all parties by email no later than 5:00 p.m. that day. Reply briefs shall be due for all parties on October 31, 2003.

**2. Draft Conditions for Comment**

Attached to this ruling is a draft set of conditions that the Commission might impose, should it approve the proposed transaction. The parties may include any comments on these draft conditions in their reply briefs.

Therefore, **IT IS SO RULED.**

Dated October 23, 2003, at San Francisco, California.

/s/ Mariberth A. Bushey  
Maribeth A. Bushey  
Administrative Law Judge

## CONDITIONS

1. The transaction shall have no effect on the Commission's authority over Valencia's provision of public utility service to the public.

2. Valencia will comply with all applicable California and federal laws and administrative regulations.

3. Lennar and Newhall shall ensure that Valencia has adequate capital to fulfill all of its public utility service obligations.<sup>2</sup>

4. Valencia shall continue to maintain its books and records in accordance with all Commission rules. Valencia's books and records will be maintained and housed in California.

5. The transaction will not result in any adverse changes in Valencia policies with respect to service to customers, employees, operations, financing, accounting, capitalization, rates, depreciation, maintenance, or other matters affecting the public interest or utility operations.

6. There shall be no adverse impact on customer service as a result of the transaction. Lennar shall maintain Valencia's commitment to high quality public utility water service and community involvement.

7. Valencia shall maintain its business headquarters in California together with fully operational field offices as appropriate to maintain the high quality of

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<sup>2</sup> We find the definition of the term "capital" in this provision is the same definition of "capital" used by the Commission in D.02-01-039, *Investigation into Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company and their respective holding companies*, Findings of Fact 5 and 6, 2002 Cal. PUC LEXIS 5 \*57. This means that the term "capital" encompasses "money and property with which a company carries on its corporate business; a company's assets, regardless of source, utilized for the conduct of the corporate business and for the purpose of deriving gains and profits; and a company's working capital," and is not limited to mean only "equity capital, infrastructure investment, or any other term that does not include, simply, money or working cash." (*Id.*)

customer service and community involvement. Valencia shall not close any of its local offices as a result of this transaction.

8. Valencia shall maintain or improve its practices and policies for addressing the ammonium perchlorate pollution plume in Valencia's groundwater source.

9. The transaction shall not result in changes to the existing management and officers of Valencia.

10. Operational control of Valencia shall not change as a result of the transaction.

11. There shall be no changes in any existing union agreement as a result of the transaction. All collective bargaining agreements will be honored.

12. There shall not be an additional layer of management overhead allocated to Valencia as a result of the transaction. Lennar and Newhall costs shall not be included in Valencia's revenue requirement absent a compelling demonstration of benefit to Valencia and its customers.

13. None of the outstanding debt, owed and recorded as liabilities on the books of Valencia, will be adversely affected by the proposed transaction. There shall be no changes in the income statement, balance sheet or financial position of Valencia as a result of the transaction.

14. The ratepayers of Valencia shall not incur, directly or indirectly, any transaction costs or other liabilities or obligations arising from Lennar's acquisition of Newhall. Lennar shall bear all costs of the transaction with no attempt to seek recovery from Valencia ratepayers at any time. Valencia shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of the purchase price paid by Lennar for Newhall stock.

15. The premium Lennar pays for Newhall stock, as well as all transaction-related costs, including external advisors, early termination costs, change in control payments, or retention bonuses paid to Valencia employees as a result of the proposed transaction, shall not be “pushed down” to Valencia, and there shall be no attempt to recover such costs in any future rate proceeding.

16. Lennar and its affiliates shall take no actions that would impair Valencia’s ability to fulfill its public utility obligation to serve or to operate in a prudent and efficient manner.

17. Valencia shall not grant Lennar affiliate real estate developments preferences when evaluating whether Valencia can or will extend water service to the development.

18. Valencia shall comply with the Affiliated Interest Transaction Rules set out in the attachment to these conditions.

## **AFFILIATED INTEREST TRANSACTION RULES**

These Affiliated Transaction Rules set forth the practices to be observed by Valencia Water Company (Valencia).

Definitions:

Affiliated company or companies: all entities that are under direct or indirect common ownership or control with Valencia, including any holding companies.

Cost: all fully allocated capital and expense amounts including all management, administration, overhead, and indirect allocations.

Property: any right or thing to which an entity has legal or equitable title.

Real Property: any interest in real estate including leases, easements, and water rights.

1. *Access to Officers and Employees.* The officers and employees of Valencia and its affiliated companies shall be available to appear and testify in any proceeding before the Commission involving Valencia. If in the proper exercise of Commission staff's duties, Valencia cannot supply appropriate personnel to address staff's reasonable concerns, then the appropriate staff of the relevant Valencia affiliated companies shall be made available to staff.
2. *Access To Books and Records.* Valencia and its affiliated companies will provide the Commission, its staff, and its agents with access to the relevant books and records of such entities in connection with the exercise by the Commission of its regulatory responsibilities.
3. *Annual Report.* Valencia shall file with the Commission each year, and include in all general rate case filings, a report that includes a summary of all transactions between Valencia and its affiliated companies for the previous calendar year. Valencia shall maintain such information on a monthly basis and make such information available to the Commission's staff upon request. To the extent not covered by an existing affiliated transaction agreement, the summary shall include a complete description of each transaction and an accounting of all costs associated with each transaction although each transaction need not be separately identified where multiple transactions occur in the same account. These transactions shall include (a) services provided by Valencia to any affiliated company; (b) services provided by any affiliated company to Valencia; (c) assets transferred from Valencia to any affiliated company; (d) assets transferred from any affiliated company, to Valencia; (e) employees transferred from Valencia to any affiliated company; (f) employees transferred from any affiliated company to Valencia; and (g) financing arrangements and transactions between Valencia and any affiliated company.
4. *Issuance of Debt for Affiliated Companies.* Debt of Valencia's affiliated companies shall not be issued or guaranteed by Valencia without prior approval by the Commission.
5. *Accounting.* Valencia shall maintain its accounting records in accordance with Generally Accepted Accounting Principles and, where appropriate, the Commission's Uniform System of Accounts.

6. *Allocation of Common Costs.* Valencia and each of its affiliated companies shall allocate costs between them in such a manner that ratepayers of Valencia will not subsidize any affiliate of Valencia. Valencia shall include and explain its methodology in its general rate case filings.
7. *Unregulated Operations and Transfer of Employees.*
  - a. An affiliated company, not Valencia, shall perform unregulated operations.
  - b. Valencia shall not use its employees or officers to provide services to affiliates if such use would adversely affect Valencia or its ratepayers.
  - c. Valencia shall endeavor to transfer to its affiliated companies any employee whose primary responsibility is to conduct unregulated operations, taking into consideration Valencia's obligations to its customers, to any such employee, and its obligations under any contract with its unions or others.
8. *Transfer Of Property Other Than Real Property From Valencia.* All transfers of property other than real property from Valencia to any affiliated company shall be in writing and priced at the higher of cost or fair market value. Valencia shall record any revenue resulting from the transfer of any such property in a memorandum account for further disposition by the Commission.
9. Valencia shall develop a verifiable and independent appraisal of fair market value for any property that is transferred to any affiliate under Paragraph 9 above. The Commission's staff will have access to all supporting documents used in the development of the fair market value.
10. *Transfers Of Property Other than Real Property to Valencia.* All transfers of any property other than real property to Valencia from any affiliated company shall be in writing and priced at the lower of cost or fair market value. Valencia shall obtain and retain sufficient cost data from the affiliate to support the price charged. Valencia shall obtain explicit Commission authorization prior to including the costs or expenses of any such property in its revenue requirement or rate base.
11. *Pricing Of Services From Valencia To Affiliated Companies.* All services provided by Valencia to an affiliated company shall either be pursuant to a Commission-approved tariff or be in writing and priced to recover all costs associated with such service that have been included in Valencia's revenue requirement for its last general rate case.
12. *Pricing Of Services From Affiliated Companies To Valencia.* Except for common costs allocated in the manner described in Paragraph 6, all services provided by an affiliate to Valencia shall be pursuant to a written services agreement. All services provided by the affiliate shall be priced at the lower of the affiliate's incremental cost to provide the service or the fair market value of the service. Copies of all such service agreements shall be included in all general rate case filings and shall also include a full accounting of all services forecasted for the test year including the affiliated company's cost analysis and supporting documentation.

13. *Transfers of Real Property from Valencia to an Affiliate.* Valencia shall not transfer to an affiliate any real property necessary or useful in its provision of public utility service to the public. Valencia shall obtain Commission authorization prior to transferring to an affiliate any real property that was at any time included in Valencia's rate base.
14. *Transfers of Real Property from an Affiliate to Valencia.* Valencia shall not include in its rate base or revenue requirement the costs or expenses associated with any real property obtained from an affiliate, absent a Commission decision specifically approving the acquisition and adopting specific ratemaking treatment.
15. *Confidentiality.* Any records or other information of a confidential nature furnished to the Commission pursuant to these Rules that are individually marked confidential are not to be treated as public records and shall be treated in accordance with Public Utilities Code section 583 and the Commission's General Order 66-C.
16. *Physical Separation of Valencia from Affiliated Companies.* To the greatest extent feasible, Valencia shall maintain its offices, facilities, and employees in locations physically separate from affiliated companies. Where such separation is not feasible, Valencia shall create and implement stringent management and accounting policies to ensure that Valencia's public utility functions are not affected by the proximity of the affiliates, and that all affiliate costs are paid by the affiliate.

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Modifying Schedule and Seeking Comment on Proposed Conditions on all parties of record in this proceeding or their attorneys of record.

Dated October 23, 2003 at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

**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.

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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, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.