

Decision **PROPOSED DECISION OF ALJ WALWYN** (Mailed 7/19/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Ostrom Family Trust dba R R Lewis Small Water Company (U83W) for a Certificate of Public Convenience and Necessity to Continue to Construct a Public Utility Water System near Sierra City in Sierra and to Continue to Establish Rates for Service.

Application 08-12-013
(Filed December 19, 2008)

**DECISION ISSUING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

1. Summary

This decision grants a Certificate of Public Convenience and Necessity (CPCN) to the Ostrom Family Trust doing business as (d/b/a) R R Lewis Small Water Company.

R R Lewis Small Water Company is an investor-owned company that has provided water service to customers in the Sierra City area since 1974. The Commission classifies it as a Class D water utility since it serves less than 500 service connections. For unexplained reasons, the company never complied with the Commission's requirement to obtain a CPCN. The Commission staff only recently discovered this omission, and R R Lewis Small Water Company promptly filed this application when notified. In all other matters, the company has complied with the rules and regulations of the Commission, including filing tariffs and general rate cases.

In granting this CPCN, we recognize that ownership of R R Lewis Small Water Company is currently being litigated in Sierra County Superior Court. Therefore, we direct that when the court issues a final decision regarding the disposition of the Ostrom Family Trust, the current trustee should immediately notify the Commission of the court's determination and the new owner of R R Lewis Small Water Company should, within 90 days of the court's final decision, file an application with the Commission under Sections 851-854 of the Public Utilities Code in order to continue as a public utility and/or to sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of the water system.

2. Procedural Background

This application was filed on December 19, 2008 by Mr. W.L. Ostrom (Larry Ostrom), manager and trustee of the water company, in response to notification by the Commission's Division of Water and Audits (DWA) that the water company did not have a Certificate of Public Convenience and Necessity (CPCN).¹

The water company was unofficially begun by Richard Lewis in the 1950s in order to provide water to land he was developing with a partner. In 1974, when contacted by the Commission, Lewis obtained a Commission identification number, U83W, and began to operate as a public utility under the name of

¹ The lack of a CPCN was discovered when applicant was working with Commission staff in preparing its application to the California Department of Health Services (CDHS) for a Proposition 50 grant to fund construction of a permanent chlorination facility.

R R Lewis Small Water Company.² The service territory is defined as Highway 49 on the north, United States Forest Service land on the east, the Yuba River on the south, and the culvert crossing on Wild Plum Road on the west.

Larry Ostrom has been the manager of the water company since 1985 and asserts that with the death of Mrs. Richard (Nevada) Lewis in October, 2008, the assets of the Ostrom Family Trust passed to him and his wife. Their ownership is currently being litigated in Sierra County Superior Court, Case 2024.

Concurrent with submitting this application, Ostrom also submitted Application (A.) 08-12-012, requesting Commission authority to transfer ownership of the water company to himself. By Administrative Law Judge (ALJ) ruling on February 3, 2009, Ms. Sandra Stanley, who is representing plaintiffs Nordis and Sigurd Ostrom in Case 2024, was added as a party to this proceeding and also to the service list of A.08-12-012.

There have been two prehearing conferences (PHCs) held and several status reports on Case 2024. At the last PHC on February 26, 2010, Ostrom offered to withdraw A.08-12-012 pending final resolution of the court case. Stanley requested that the Commission dismiss both applications. On April 15, 2010, the assigned Commissioner and ALJ issued a ruling and scoping memo for this proceeding, finding that the Commission must proceed to address all issues related to granting a CPCN to the R R Lewis Small Water Company but can

² The application further states that on January 25, 1984, a trust was created by Richard and Nevada Lewis named the "Lewis Family Trust" of which the R R Lewis Small Water Company was an asset. Lewis died in December 24, 1984 leaving Nevada Lewis the sole survivor and the trustee of the trust. By terms of the trust, the name of the trust was changed by Amendment 1 in 1996 to the Ostrom Family Trust and Larry Ostrom was made the trustee and sole beneficiary of the trust, and by Amendment 2 in 2000 the trust was made irrevocable. (See Exhibit E of the application.)

delay considering a transfer of ownership until the Sierra County Superior Court issues a final decision in Case 2024.³

Since no party requested evidentiary hearings, the scoping memo deemed the record complete and projected a proposed decision would be issued for comment in July 2010.

3. Discussion

For unexplained reasons, R R Lewis Small Water Company has been operating without a CPCN for approximately 35 years. Public Utilities Code Section 2701⁴ defines a Commission-regulated water utility as a person or entity that “sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise...” Judicial decisions have also required that the entity “dedicate” or hold out its property to public use. *Thayer v. California Development*, 164 Cal. 117 (1912). The applicant meets the definition in Section 2701 of a Commission-regulated water utility and is therefore, under Section 1001, required to obtain a CPCN before it can begin the construction of a line, plant, or system, or any extension thereof.

The record indicates that applicant has complied with the Commission’s tariff and reporting requirements and its current rates have been approved

³ On May 21, 2010, in Decision (D.) 10-05-030, the Commission dismissed A.08-12-012 and directed that within 90 days of the Sierra Superior Court issuing a final order in Case 2024, the owner of the R R Lewis Small Water Company shall file an application to transfer ownership of the water utility pursuant to Public Utilities Code Sections 851-854.

⁴ All statutory Section references are to the Public Utilities Code.

through the advice letter process; it is being regulated by the Commission as a Class D small water utility as it has less than 500 service connections.

As discussed in the application, R R Lewis Small Water Company has an application pending with CDHS for Proposition 50 grant funding to build a permanent chlorination facility. This construction is necessary in order to comply with a CDHS compliance order. Applicant has included all necessary building permits here, as well as a certificate from the Sierra County Planning Department, the lead agency for environmental review of the proposed chlorination project, that the project is exempt from the California Environmental Quality Act (CEQA) due to the project being “minor new construction with no significant impacts on the environment.”⁵ Applicant is not requesting a change in rates in this proceeding and states that an advice letter will be submitted when details of the project financing are final.⁶

In summary, in considering applicant’s request for a CPCN, we will not change customer rates or terms of service; our primary focus will be on assessing the financial viability of the utility, its ability to render adequate service, its compliance with all environmental requirements, and the qualifications of the management and operational personnel.

In order to be granted a CPCN, the applicant must meet the requirements and criteria set forth in Sections 1002(a) and 1004, Rule 3.1 of the Commission’s *Rules of Practice and Procedure*, and Resolution M-4708 (August 28, 1979).

Pursuant to Rule 3.1, the application contains a detailed description of the water system, including maps of the fire system and the domestic system, copies

⁵ See November 19, 2009 filing, Attachment B.

⁶ See January 28, 2010 post PHC statement at 1-2.

of the water company's state health permit, U.S. Forest Service use permit, and State Water Resources Control Board water rights permit, current financial statements and estimated operating revenues. The company also included a copy of the trust deed and, in its November 19, 2009 submission, the 2008 annual financial report.⁷

Section 1002(a) requires the Commission to give consideration to the potential impact of utility operations on:

- Community values;
- Recreational and park areas;
- Historical and aesthetic values; and
- Influence on the environment.

R R Lewis Small Water Company is an existing water system that has been operational since 1974. Since that time it has provided an essential utility service to its customers and anticipates growing at only about two new connections per year for the next 10 years. The only planned construction project, the permanent chlorination facility, has been determined by the Sierra County Planning Department, the lead agency for environmental review of this project, to have no significant environmental impact. Therefore, we find that issuing a CPCN will not have an impact on the criteria listed in Section 1002(a).

⁷ The November 19, 2009 submission also includes the building permits for a chlorinator building and tank foundations and Sierra County's notice of exemption of the chlorinator shed from environmental impact report (EIR) requirements due to determination that the construction will have no significant impacts on the environment. The chlorinator project will bring the system into compliance with a California Department of Public Health order for the installation of a permanent chlorination facility.

Further, we find that applicant has met the relevant criteria of Section 1004 by including its CDHS water permit, its State Water Resources Control Board water appropriation permit, its land use permit, its chlorination facility building permit and related CEQA waiver, and a statement of compliance with all county and local fire protection district requirements.

In Resolution M-4708, the Commission sets forth criteria to use in evaluating the applications of small water companies (Class D utilities). As pertinent to this application, the resolution requires the Commission find that the water company will be economically viable and capable of providing adequate service. Applicant has included operating and balance sheet statements to establish it is an economically viable utility and has addressed the issue of adequate service by a showing of (1) experienced operating and management personnel and (2) plans to build a permanent chlorination facility. Based on these findings, applicant has met the requirements of Resolution M-4708.

In conclusion, we find that applicant has met our requirements for a CPCN and its request should be granted. We further find that evidentiary hearings are not necessary. Since the ownership of the water company is currently being litigated in Sierra County Superior Court, Case 2024, we direct that when the court issues a final decision regarding the disposition of the Ostrom Family Trust, the current trustee should immediately notify the Commission of the court's determination and the new owner of R R Lewis Small Water Company should within 90 days of a final court order, file an application with the Commission under Sections 851-854 in order to continue as a public utility or to sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of the water system.

4. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Public Utilities Code Section 311(g). Pursuant to Rule 14.3 of the Commission's *Rules of Practice and Procedure*. No party filed comments.

5. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

Findings of Fact

1. The R R Lewis Small Water Company has been operating as a water utility since 1974, providing water service to less than 500 service connections.

2. For unexplained reasons, the company never received a CPCN. When notified of this by the Commission's DWA, the applicant promptly filed this application.

3. The record indicates that the company has complied with all other rules and regulations of the Commission, including filing tariffs and general rate cases. The company is assigned a Commission identification number (U83W) .

4. R R Lewis Small Water Company is owned 100% by the Ostrom Family Trust and the sole trustee, Larry Ostrom, states that with the death of Mrs. Richard Lewis in October 2008, the assets of the Ostrom Family Trust passed to him and his wife. Larry Ostrom's asserted ownership of the trust's assets is currently being challenged by Sandra Stanley, representing Nordis and Sigurd Ostrom in Sierra County Superior Court, Case 2024.

5. The application contains a detailed description of the water system, including maps of the fire system and the domestic system, copies of the water company's state health permit, U.S. Forest Service use permit, and State Water Resources Control Board water rights permit, current financial statements and estimated operating revenues.

6. In response to a directive from the CDHS to provide a permanent chlorination facility, Applicant has secured the necessary building permits and has a pending application with the CDHS for a Proposition 50 grant to fund the project. The lead agency for environmental review of the project, the Sierra County Planning Department, has issued a CEQA exemption certificate.

7. Based on the record, there is no possibility that the granting of a CPCN in this proceeding will have a significant impact on the environment.

8. Resolution ALJ 176-3220 made an initial determination that evidentiary hearings were necessary. We find that evidentiary hearings are not necessary.

9. The issuance of a CPCN will not affect community values, recreational and park areas, or historical and aesthetic values.

10. Applicant has experienced operational and management personnel and is a financially viable water utility.

Conclusions of Law

1. Applicant R R Lewis Small Water Company has satisfied all the applicable requirements of Public Utilities Code Sections 1002(a) and 1004.

2. Applicant has satisfied the applicable requirements of Commission Resolution M-4708 concerning Class D small water utilities.

3. Applicant should be issued a CPCN authorizing it to operate as a public utility within the state of California with all the rights and obligations thereof.

4. When the Sierra County Superior Court issues a final decision in Case 2024 regarding the disposition of the Ostrom Family Trust, the current trustee, Larry Ostrom, should immediately notify the Commission of the court's determination and the new owner of the R R Lewis Small Water Company should within 90 days of a final order, file an application with the Commission under Sections 851-854 of the Public Utilities Code in order to continue as a public

utility and/or to sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of the water system.

5. No evidentiary hearings are necessary.
6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The application of the Ostrom Family Trust doing business as R R Lewis Small Water Company for a Certificate of Public Convenience and Necessity is granted.
2. When the Sierra County Superior Court issues a final decision in Case 2024 regarding the disposition of the Ostrom Family Trust, the current trustee, Larry Ostrom, shall immediately notify the Director of the Commission's Division of Water and Audits of the court's determination and the new owner of the R R Lewis Small Water Company shall within 90 days of a final order, file an application with the Commission under Sections 851-854 of the Public Utilities Code in order to continue as a public utility and/or to sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of the water system.
3. Application 08-12-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.