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ORIGINAL

Decision No. 66212

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CAMINO WATER COMPANY to extend service to contiguous territory, to expand its water system, for authority to issue stock, and request for ex parte proceeding.	Application No. 45117 (Filed January 15, 1963)

Robert B. Maxwell, for applicant.
Robert J. North, for Ventura County Water Works District No. 5, protestant.
Donald B. Steger, for the Commission staff.

O P I N I O N

Camino Water Company (applicant) seeks authority to extend its public utility water system to and to construct and operate a public utility water system in, two areas contiguous to its presently certificated areas, north and south of Las Posas Road and north of the unincorporated community of Camarillo, in Ventura County, as delineated in yellow on the map, Exhibit "A", attached to the application. The areas are designated on the record as Area No. 1, along Arneill Road south of Las Posas Road, and as Area No. 2, north of Las Posas Road. Authority to apply its presently filed tariffs to the proposed areas and authority to issue stock to finance backup facilities are also sought.

Public hearing was held before Examiner Warner on July 26, 1963, at Los Angeles.

Ventura County Water Works District No. 5 (District) on January 23, 1963, filed an application for a hearing under

Section 1005 of the Public Utilities Code and appeared at the hearing as a protestant. However, applicant objected to such appearance on the grounds that any evidence of District's readiness, willingness, or ability to serve the proposed areas would be irrelevant. Stipulations were entered into between the parties that none of the proposed areas lie within District's boundaries and that no applications for annexation of any of the proposed areas to District are pending before District. The record shows, also, that no requests for water service from any owner or owners of property within the proposed areas are pending before the District and that the sole area outside District's boundaries, within the proposed area, to which water service (surplus) has been and is being furnished by District, the Arnoill Ranch located in the southwesterly corner of Area No. 1, is being purchased by Somis Investment Company; that such purchase is in escrow; and that said company has requested in writing water service from applicant. Based upon the record as developed, we find that the interest of the District and the position it intended to take would not have been pertinent to the issues raised by this application. Therefore, applicant's objection to District's appearance as a protestant is sustained.

District was permitted to appear for the limited purpose of submitting Exhibits Nos. 1, 2 and 3. In Exhibits Nos. 1 and 2 District was named by Ventura County Planning Commission in Resolutions Nos. 3543 and 3757, respectively. By said resolutions, the developers of Tentative Tracts Nos. 1430 and 1512 were directed to commence proceedings leading to annexation to District prior to the recording of final maps of the respective subdivisions. The record shows, however, that it has not been in the past, nor is it at present, the practice of the Planning Commission to indicate a preference for a water purveyor to a

prospective subdivision, but the Planning Commission practice is rather, merely to be assured of a legitimate and adequate water supply for the subdivisions the plans for which it approves or disapproves.

By Decision No. 62219, dated June 27, 1961, in Application No. 42685, covering 36 acres, and Decision No. 62706, dated October 20, 1961, in Application No. 43679, covering 404 acres, applicant was granted certificates of public convenience and necessity to extend, construct and operate a public utility water system therein, but was restricted from extending service outside its certificated area without authority from this Commission. By the instant application, authority is sought to extend into areas comprising approximately 227 acres, which are expected to develop into 863 single-family residences. As of May 1, 1963, water was being furnished to 476 residential and to one irrigation customer. The water system is interconnected.

A report by a staff engineer on his investigation of the application, Exhibit No. 9, shows that total saturation of the present and requested areas would be 2,535 customers based on 3.8 services per acre. He showed that applicant's total peak water production capacity from its Wells A and B and its boosters was 1,660 gallons per minute; that minimum water requirements prescribed by General Order No. 103 for 2,535 customers would be 2,738 gallons per minute; and that the present maximum supply of 1,660 gallons per minute would serve approximately 700 residential customers according to Ventura County standards which include 500 gallons per minute of fire flow requirements in residential areas.

The staff engineer concluded in Exhibit No. 9 that applicant has sufficient production and booster capacity to meet projected demands and General Order No. 103 minimum requirements through 1965; that applicant would probably be required by Ventura County Department of Public Works to install additional peaking capacity early in 1964; that applicant does not now have an adequate supply of suitable quality water to meet the requirements of all potential customers in its presently certificated area in addition to the requirements of all potential customers in the area to which service is now proposed to be extended; and that applicant's proposed additional sources of water supply for future development may not be adequate to meet the requirements of customers in other areas to which service could normally be extended contiguously; that even the proposed supply from Calleguas is indeterminate as to quantities of water to be made available. He recommended that on or before January 1, 1966, or when the number of active customers reaches 700, whichever occurs first, applicant should either have installed additional gravity storage facilities of at least 200,000 gallons capacity or an additional well, and/or booster capacity so controlled as to reduce pressure fluctuations, and report to the Commission thereof. He further recommended that applicant should be restricted from extending its water system or furnishing water service outside its certificated areas pending further order of the Commission.

Applicant's general manager testified that requests for water service to all the tentative tracts in Areas Nos. 1 and 2 and all other area therein, except a 10-acre parcel surrounded by

proposed Area No. 1, whose owner indicated that he had no objection to being included within the proposed certificated area, had been received; that a main water transmission line of Calleguas Municipal Water District, an agency of the Metropolitan Water District of Southern California, would be installed in Las Posas Road, traversing applicant's present and proposed certificated areas from east to west, by the fall of 1964, and that applicant would then make a connection therewith; and that applicant would apply its present tariffs, including its presently filed main extension rule, to Areas Nos. 1 and 2.

A staff accounting witness concluded, in his portion of Exhibit No. 9, that applicant's proposals with respect to financing appeared to be reasonable for the following reasons:

a. The issuance of common stock as requested would help maintain a relatively well-balanced capital structure, add materially to borrowing capacity, and improve prospects for future sales of equity securities. A sound and well-balanced capital structure usually results in lower capital costs.

b. In view of the large demand for houses and the rapid growth of the area, full use of refundable advances for both intract and backup facilities might cause an excessive level of main extension contracts and cause excessive drain of the company's cash resources. If permitted equity financing for backup plant, however, the company would have sufficient cash to pay refunds when due, with some surplus funds for other capital purposes.

District introduced Exhibit No. 3, a copy of a franchise granted to applicant by Ventura County on September 13, 1960, purporting to show that such franchise covered a limited

area, only. However, paragraph (b) of such franchise states that it applies to any pipelines, mains or other facilities of the grantee in any street, road or place at the time said street, road or place is accepted for public use by the Board of Supervisors or is otherwise acquired by the County of Ventura.

The Commission finds that:

1. Areas Nos. 1 and 2 are proposed to be developed for subdivision purposes, except a 10-acre parcel in Area No. 1 surrounded by the proposed areas as to which no objection was made to the inclusion thereof in the proposed service area.

2. No other public utility or municipal water purveyor is ready, willing, and able to serve the proposed areas.

3. Applicant's Ventura County franchise is county-wide.

4. Public convenience and necessity require that the proposed construction be authorized.

5. Staff engineering recommendations are reasonable, in the public interest, and should be adopted.

6. Applicant should be authorized to apply its presently filed tariffs to Areas Nos. 1 and 2, and should be directed to revise its tariffs to provide for their application thereto.

7. The money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purposes specified herein, and such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission concludes from the foregoing findings that authority should be granted to applicant as specified in the order which follows.

The certificate hereinafter granted shall be subject to the following provision of law:

> The Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

The action taken herein is for the issuance of a certificate of public convenience and necessity and of stock and is not a finding of value of applicant's stocks or properties and is not to be considered as indicative of amounts to be included in a future rate base for the purpose of determining just and reasonable rates.

O R D E R

IT IS ORDERED that:

1a. Camino Water Company is granted a certificate of public convenience and necessity to extend its public utility water system to and to construct and operate a public utility water system in Areas Nos. 1 and 2, as delineated in yellow on the map, Exhibit "A", attached to the application.

b. Applicant shall not extend its water system nor furnish water service outside its certificated area boundaries without further order of the Commission.

2. Applicant is authorized and directed to revise, within thirty days after the effective date of this order and in conformity with General Order No. 96-A, such of its tariff schedules, including tariff service area maps acceptable to this Commission, as are necessary to provide for the application of its tariff schedules to the areas certificated herein. Such tariff sheets shall become effective upon five days' notice to the Commission and to the public after filing as hereinabove provided.

3. Within sixty days after the effective date of this order, applicant shall file with the Commission four copies of a comprehensive map, drawn to an indicated scale of not more than 400 feet to the inch, delineating by appropriate markings the various tracts of land and territory served; the principal water production, storage and distribution facilities; and the location of the various water system properties of applicant.

4. On or before January 1, 1966, or when the number of active customers reaches 700, whichever occurs first, applicant shall have installed additional gravity storage facilities of at least 200,000 gallons capacity or additional booster or production capacity, so controlled as to reduce pressure fluctuations in the higher elevations of the service area, and shall report to the Commission in writing, within ten days thereafter, the details of such installation, including a general description, date placed in service, installed cost, and any other pertinent information.

5a. Applicant is authorized to issue 2,611 shares of its common stock of a par value of $50 per share for an aggregate par value of $130,550 for the purposes set forth above.

b. The authorization herein granted for issuance of stock shall expire if not exercised before December 31, 1964.

c. Applicant shall file with this Commission a report or reports as required by General Order No. 24-A, which order, insofar as applicable, is made a part hereof.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 22nd day of OCTOBER, 1963.

President

Commissioners

DISSENTING OPINION OF COMMISSIONER GROVER

I

One of the neatest tricks in the utility business is to build a system with somebody else's money and then sell it to the public at a profit. Especially in the case of water utilities, this happens more often than I find it comfortable to admit.

For example: A water utility, in accordance with our Main Extension Rule, requires a prospective land developer to "advance" the cost of constructing a distribution system in his subdivision; the utility repays the advance, without interest, at the rate of 22% of the water revenues received from the subdivision during the next twenty years. The interest-free feature alone is a tidy windfall to the utility, and in fact the commission has recognized that the present worth of the payback contracts is substantially less than the amount advanced. In addition, if the sale of homes in the subdivision is relatively slow or delayed, so is the payback; any portion of the advance not refunded at the end of twenty years becomes a "contribution" by the subdivider to the utility. In no event does the utility refund more than the principal advanced. To the extent, therefore, that the money is interest-free and that paybacks total less than the original amount, the utility obtains a distribution system paid for by the subdivider.

So much for Step 1: acquiring property paid for by someone else. To reap the full harvest, the utility will usually find it advantageous to proceed to Step 2: sale to a public agency. Underlying the need for this second step are two rate-fixing policies of the commission. First, the utility is not allowed to earn a profit on the subdivider's money (unrefunded advances and contributions are excluded from the utility's rate base when the commission fixes rates); to make the most of the windfall, the utility must sell. Second, if the system is sold to another utility under commission jurisdiction, the purchaser (being bound by the same rule regarding rate base) cannot earn any more on the system than the selling utility; naturally, such a purchaser is unlikely to pay more than the rate base amount. The only other

market for a water distribution system is a public agency; fortunately for the seller, a public agency is not bound by the rate-fixing rules of the commission and is therefore in a position to pay more than rate base. By selling the system to a public agency for original cost less depreciation, [1/] the utility will have turned the trick; the subsidy from the subdivider will have been converted into cash - something for nothing, at public expense.

Even without a sale, the public loses money on these arrangements. In the first place, to the extent the subdivider's construction advance is refunded by the utility, the refund is included in rate base and the ratepayers start paying the bill. Of course, such a procedure is only fair to the utility (which is entitled to a profit on money it is thus required to expend on the system), but it bears emphasis that the ratepayers in reality make the refund. The corresponding rules of most publicly owned water agencies allow no refund to the subdivider, who is required to donate the system to the public. In the second place, the commission, while not allowing the utility a "profit" on the unrefunded portion of the advance, does allow the utility to charge depreciation on the entire amount from the beginning. The theory is that the utility may ultimately pay the subdivider back and therefore should collect for depreciation as the property is used up, but in fact the utility often does not refund all of the advance.[2/] Moreover, allowing depreciation before the payback (like the interest-free provision) ignores the time value of money and constitutes a windfall to the utility at the ratepayers' expense.

The solution to many of these problems may lie in a revision of our Main Extension Rule. Pending the formal examination that would have to precede such revision,[3/] the best we can do is to keep in mind the consequences

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1/ In fact, the public agency usually pays more. But that is another story for another day.

2/ The Internal Revenue Service disallows depreciation where full refund is not guaranteed.

3/ The last investigation of the rule (Case No. 5501) was limited to procedural and other secondary revisions. In my opinion, a fundamental reexamination is in order. In a state in which 80% of the water service is by public agencies, the perpetuation of a different rule for the 20% under our jurisdiction is open to question - especially where our rule is more costly to the public.

of the existing rule. Under it, when a public agency is able and willing to provide service, or may do so in the future, it is obvious that certification of a privately owned utility can have a major adverse effect upon the rates which customers will ultimately pay. And rate levels are vital to any consideration of "public convenience and necessity."

II

In the light of this background, it was imperative in the present case that the commission inquire into the possibilities of present or future service by public agencies and into the position and interest of the land developers. This was not adequately done. On the contrary, by refusing to hear the district's protest, the commission has excluded the one party in a position to help in developing a worthwhile record. The district is a water purveyor in the general area and familiar with local problems of supply, quality and distribution; the district already serves a portion of the territory to be certificated; the district's self-interest would naturally prompt it to explore vigorously the public advantages of district service; the district is the agency most likely to be interested in future purchase or condemnation of the system which applicant seeks to build; the district was represented by legal counsel; and the governing board of the district is the Ventura County Board of Supervisors, which is vitally interested in all aspects of water development in the region. For these and other reasons, the active and constructive assistance of the district at the hearing was assured.

Two principal reasons have been suggested for the refusal to hear the district's protest. First, it is said that no landowner has applied for service from the district. Of course the present owners prefer to develop their land through a privately owned utility; they would be foolish to pass up the refunds which they will thereby receive. But these land developers are not the real customers of either the utility or the district; it is the future residents of the territory who will ultimately pay the bill. Is the commission not interested in ratepayers simply because they will not apply for service until next year? These future ratepayers are the true "applicants for service" whom we should seek to protect. The interest of the subdivider directly competes with their interest, and the failure of the subdivider to request district service is therefore not decisive.

Second, it is said that the district has no "interest" in the proceedings because the territory in question is outside the district's boundaries. Aside from the fact that the district lawfully may, and actually does, serve water outside its boundaries and in the territory in question, the commission's approach ignores the real purpose of the hearing and the real nature of the district. The commission is not refereeing a dispute between private parties and therefore is not governed by legal niceties of "standing" to sue. Rather we are inquiring into public convenience and necessity. We need the help of all responsible persons concerned because the public interest demands an intelligent and comprehensive inquiry. The district should be heard not only where it has a "right" to speak, but also whenever it has something important and helpful to say. By erroneously equating the scope of our jurisdiction (utility water companies) with the scope of our hearing (all facts bearing on public convenience and necessity), the commission has silenced the most helpful voice of all.

In any event, the district does have a legitimate interest in this inquiry. In the nature of things the district's boundaries usually grow only as water service is to be provided; landowners are unwilling to be annexed until the land is ready for development. The decision of the commission, although only the utility company is under our jurisdiction, is in reality a decision directly "affecting" the district. By reason of the decision and the landowner's resulting power to deal with the water company, the district as a practical matter will lose the opportunity to serve this territory.

I do not wish to be understood as deciding this case against the applicant or suggesting that its service is not fully in the public interest. In addition to the issue of rates and subdivider subsidy, many other considerations are involved in any certification case; these include conservation, water supply, financial resources, quality of construction and integration with other operations. In similar cases in the past, I have sometimes concluded that the utility should be permitted to serve the area in question and have sometimes favored the public agency. My difficulty in this case is

that I do not have the facts on this record to make an intelligent decision.

George G. Brower
Commissioner

I dissent.

I cannot concur in the opinion, findings and order herein for the reason that the District was denied an opportunity to make a showing as to its readiness, willingness, or ability to serve the proposed areas. The opinion recites as reasons for foreclosing the District the fact that none of the proposed areas lie within District's boundaries; that no applications for annexation to District of any of the proposed areas are pending; that no requests for water service from any of the owners of property within the proposed areas are pending before the District; and that the only customer now served by District seeks service from applicant. In my opinion none of these facts perforce preclude consideration of the issue which District sought to inject, i.e., its readiness, willingness, or ability to serve the areas. Though not raised by the application itself, the issue is ~~entirely~~ certainly (FOR) pertinent to the inquiry and should have been considered. It may be that District would have shown that it could and would provide service on more advantageous terms.

In the absence of such a showing I am unable to make a meaningful appraisal of applicant's proposal. The need for a resolution of this important issue overrides the narrow procedural grounds upon which the District has been foreclosed. This is not to say, however, that given an opportunity to make such a comparative appraisal, ultimately I would not favor the result reached herein. I would set aside submission and permit the District to be heard.

Frederick B. Holoboff

Frederick B. Holoboff
Commissioner