

ORIGINAL

Decision No. 68060

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of VALLECITO WATER COMPANY, to sell its water system and assets (other than cash and accounts receivable), to SUBURBAN WATER SYSTEMS, and

In the Matter of the Application of SUBURBAN WATER SYSTEMS, to purchase Vallecito Water Company's water system and assets, and to render water service under the Vallecito Water Company rate schedules in the area served and presently certificated to Vallecito Water Company.

Application No. 45688

Joint Petition of Suburban Water Systems and Vallecito Water Company re Modification of Decision No. 67261.

(Filed August 17, 1964)

OPINION AND ORDER

Petitioners Suburban Water Systems (Suburban) and Vallecito Water Company (Vallecito) seek modification of Decision No. 67251, dated May 26, 1964, which denied the application and directed Suburban and Calfin, Suburban's alter ego, to report, within ten days after the effective date of said decision, to the Commission in writing their action regarding Suburban and Calfin's unlawful acquisition or their causing of the unlawful acquisition of Vallecito stock, and also directed Vallecito to report, within ten days after the effective date of said decision, to the Commission in writing regarding its unlawful transfer of its stock to Calfin or to Security First National Bank, Whittier Branch, as holder. Petitions for rehearing of the application were filed by Suburban and Vallecito on June 4, 1964, and by Calfin on June 12, 1964, staying the order in said decision, and said petitions for rehearing were denied by Decision No. 67638, dated August 4, 1964.

By Application No. 46841, dated July 24, 1964, Suburban seeks authority, pursuant to Section 852 of the Public Utilities Code, to acquire by direct purchase 18,003 shares of Vallecito stock equitably held by Calfin and registered in the name of Toll & Co. for a consideration not to exceed \$16.10 per share. Said application is pending.

The instant petition was answered by San Gabriel Valley Water Company on August 21, 1964.

Petitioners assert that, except for 980 shares of Vallecito stock acquired by Calfin Co. in 1961, 17,023 shares of Vallecito were transferred by its agent, Bank of America, directly from independent shareholders to Toll & Co., an agent of Security First National Bank, and such transactions occurred shortly before hearings on the application; the issue of purchase and sale of Vallecito's assets and the transfer of the obligation to serve Vallecito customers was the sole issue in the application; while Calfin was acquiring Vallecito's stock, San Gabriel's Chairman was also acquiring large blocks of Vallecito stock, and Calfin's purpose was solely to prevent San Gabriel from gaining control of Vallecito and to render moot Application No. 45688; as noted heretofore, Suburban has filed Application No. 46841, and in light of the characterization that the transfer of Vallecito shares was void, the instant petition is essential; Application No. 46841 is urged to be considered in conjunction and in relationship with this petition; the lending of funds by Suburban to Calfin to purchase Vallecito stock was necessary in view of Suburban's bond indenture and, subsequent to Decision No. 67261, Calfin has on its own credit borrowed funds

sufficient to purchase Vallecito stock and the Suburban loan has been retired; and Vallecito lawfully and with full authorization of the Commission issued its 38,332 shares, and it seeks herein to alleviate what is very likely to be a chaotic management structure in view of the possibility that a quorum of its shareholders could not be mustered to carry on its ordinary affairs.

Suburban declares that its responsible management was of the sincere belief, and in full reliance on prior Commission actions and interpretations of Section 852, that the acquisition of equitable interest in shares of Vallecito by Calfin was entirely permissible; its good faith is substantially evidenced by the fact that during the course of hearings on its most recent rate case, Application No. 43241, it was disclosed that its wholly owned subsidiary, Calfin, was, at the time, the owner of 980 shares of Vallecito; the position taken by the Commission in connection with Decision No. 64305 relating to the application of San Gabriel's Board Chairman to compel Vallecito to record stock transfers on Vallecito's share register was relied upon as evidence of the propriety of Calfin's acquisition of equitable interest in Vallecito's shares; said Decision No. 64305, rendered pursuant to Case No. 7422, specifically stated that after authorization and issuance (of stock) later sales by stockholders do not come within the jurisdiction of the Commission (San Diego Elec. Rwy. Co., 48 Cal.P.U.C. 105, 107); and said decision recognized the close relationship of the complainant and San Gabriel, a public utility.

Finally, petitioners contend that irreparable financial damage would be inflicted upon both Calfin and Suburban and, in

all likelihood, Vallecito as well, if the blight now fixed upon those shares is not cured; most, if not all, of the well over 200 shareholders from whom Calfin acquired Vallecito stock have no intent, ability, nor desire whatever to repurchase said shares; and the status of the shares in the posture created by Decision No. 67261 could, therefore, render ineffective a very large segment of the Vallecito outstanding capital stock.

Petitioners seek deletion from Decision No. 67261 the Commission's finding which relates to the characterization of the Vallecito stock equitably owned by Calfin.

By Decision No. 66140, dated October 15, 1963, San Gabriel was authorized to purchase from others than R. H. Nicholson not more than 27,214 shares of Vallecito's capital stock at a price not to exceed \$16.10 per share. By its letter to Vallecito, dated July 20, 1964, San Gabriel offered to purchase 12,000 shares of Vallecito's common stock at a price of \$16.10, and by its letter to Suburban, dated August 17, 1964, San Gabriel offered to purchase the 18,003 shares of Vallecito stock, which the Commission found to be unlawfully transferred, and to pay therefor the sum of \$16.10 per share. Copies of said letters are attached to San Gabriel's reply hereto.

Upon consideration of this petition, the Commission finds that it is a reiteration of the petition for rehearing already

denied; a public hearing hereon is not necessary; and this petition should be denied, therefore,

IT IS ORDERED that the petition for modification of Decision No. 67261 is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th day of October, 1964.

Frederick B. Hallock
President
John E. Mitchell
Everett R. [unclear]

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.