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**ORIGINAL**

Decision No. 68273

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SAN GABRIEL VALLEY WATER COMPANY for )  
a certificate of Public Convenience )  
and Necessity to furnish Water Serv- )  
ice in Territory near the City of )  
La Puente and City of Industry in )  
Los Angeles County, California, and )  
for Authority to Establish Rates )  
for Service therein. )

Application No. 44149

In the Matter of the Joint Appli- )  
cation of SUBURBAN WATER SYSTEMS )  
and VALLECITO WATER COMPANY for )  
Exchange of Portions of Service )  
Area and for Certificates of Public )  
Convenience and Necessity. )

Application No. 43578  
(Amended)

Brobeck, Phleger & Harrison, by Robert N. Lowry  
for applicant in Application No. 44149 and  
protestant in Application No. 43578.  
John E. Skelton, for San Gabriel Valley Water  
Company as applicant in Application No. 44149  
and protestant in Application No. 43578.  
Arthur Guy, for Suburban Water Systems, applicant  
in Application No. 43578 and protestant in  
Application No. 44149.  
William M. Lassleben, Jr., for Vallecito Water  
Company as applicant in Application No. 43578  
and protestant in Application No. 44149.  
Hugh N. Orr, C. O. Newman and A. L. Gielegem,  
for the Commission staff.

O P I N I O N

These consolidated matters are before the Commission after a rehearing. Applications Nos. 43578 and 44149, in part, seek authority to serve the same areas. Application No. 43578 was jointly filed by Suburban Water Systems (hereinafter called Suburban) and Vallecito Water Company (hereinafter called Vallecito). In Application No. 43578, Suburban and Vallecito sought authority

to do the following: (1) Vallecito sought authority to extend its service to a tract contiguous to its service area referred to as Area E; (2) Suburban sought authority to serve an area contiguous to its service area referred to as Area D; (3) Vallecito sought authority to serve an area, referred to as Area A, which was part of Suburban's service area, and Suburban sought authority to relinquish Area A to Vallecito; (4) Suburban sought to serve an area, referred to as Area B, which was part of Vallecito's service area, and Vallecito sought authority to relinquish Area B to Suburban; (5) Suburban sought authority to serve an area east of Vallecito's service area referred to as Area C; (6) Suburban sought authority to establish rates in the areas it might be authorized to serve; and (7) Suburban requested authority to deviate from its main extension rule by refunding advances according to the proportionate cost method<sup>1/</sup> with common stock instead of cash.

A public hearing on the Suburban-Vallecito application was held on December 7, and 8, 1961, and it was adjourned to December 28, 1961. On December 28, 1961, San Gabriel Valley Water Company (hereinafter called San Gabriel) appeared at the hearing as a protestant and claimed lack of notice of the prior hearings. In the circumstances, a continuance was granted and

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<sup>1/</sup> The Suburban-Vallecito application was filed before Decision No. 64536 (Consolidated Case No. 5501 and Application No. 40579) was entered by the Commission. Decision No. 64536 revised the main extension rule required to be in the rules of all public utility water companies subject to the jurisdiction of this Commission. Decision No. 64536 established a new main extension rule which eliminated the proportionate cost method of making refunds in subdivisions. All prior decisions in these consolidated matters were prior to the effective date of Decision No. 64536.

the hearing was adjourned to a later date in 1962. On January 16, 1962, the Commission entered an interim opinion and order in Application No. 43578 (Decision No. 63116). The Interim Opinion found that San Gabriel did not have notice of the prior dates of hearing. It also found that two of the requests by Suburban and Vallecito related to serving contiguous territories where there were tracts under construction, and that no good reason existed for withholding action on these areas. The Interim Order authorized Vallecito to serve Area E and Suburban to serve Area D.

On January 29, 1962, San Gabriel filed Application No. 44149 wherein it sought authority to serve Areas A, B, and C, and requested that the Commission cancel any certificates of public convenience and necessity previously granted to Vallecito or Suburban insofar as those certificates related to Areas A and B.

Application No. 43578 (Suburban-Vallecito) was consolidated for further hearing with Application No. 44149 (San Gabriel). A hearing was held on the consolidated applications on February 8, and 9, and March 19, and 20, 1962. These matters were submitted on April 2, 1962. On July 31, 1962 this Commission entered Decision No. 64047, which, in part, found that there was no material difference in the service proposed by Suburban-Vallecito and San Gabriel with respect to Areas A, B, and C; that Suburban and Vallecito could serve these areas with plant costing less than that required by San Gabriel; that the service areas of Suburban and Vallecito were contiguous to the areas which they proposed to serve and that Suburban and Vallecito should be allowed to serve the areas. By Decision No. 64047 San Gabriel's application

was denied, and Vallecito was authorized to transfer Area B to Suburban and Suburban to transfer Area A to Vallecito. Suburban was granted authority to serve Areas B and C. Vallecito was granted authority to serve Area A.

On March 8, 1963, San Gabriel filed a Petition For Rehearing which sought to reopen these consolidated proceedings. The petition alleged that subsequent to the entry of Decision No. 64047, Suburban entered into an agreement with a Nevada corporation called Sunset Hills Service Company (hereinafter called Sunset Hills) whereby Suburban agreed to deliver to Sunset Hills, on demand, one and one-half million gallons of water in any 24-hour period to the water distribution system of Sunset Hills; that the distribution system of Sunset Hills was in the area certificated to Suburban in Decision No. 64047; that Sunset Hills represented to the California Corporation Commissioner that it was a duly qualified mutual water company and sought authority to reissue its stock; that Sunset Hills had represented to the Corporation Commissioner that a subdivider in the area, Sunset International Petroleum Company (hereinafter called Sunset International), had deposited with it \$118,100 to cover the cost of installing a water distribution system, and that Sunset Hills had tied in its *distribution system to one of Suburban's 16-inch mains.* The Petition for Rehearing alleged that San Gabriel believed that the foregoing acts constituted "an attempt by Suburban, in collaboration with Sunset International, to circumvent and thwart the regulation of the Public Utilities Commission in the delivery and sale of water in a substantial portion of . . . Areas B and C." San

Gabriel asked that Applications Nos. 43578 and 44149 be reopened, evidence taken, and that Decision No. 64047 be amended to revoke Suburban's certificate to serve Areas B and C and grant San Gabriel authority to serve those areas.

On March 26, 1963, the Commission entered an order granting a rehearing on Decision No. 64047. A duly noticed public hearing was held in these consolidated matters before Examiner Jarvis at Los Angeles on July 22, 23, 30, and 31, 1963.

It appears that Suburban and Sunset International were dissatisfied with Decision No. 64047, which became effective on August 20, 1962. As a result, there was set in motion the chain of events and machinations hereinafter detailed.

On November 28, 1962, Sunset International entered into an agreement with Sunset Hills whereby Sunset Hills agreed to construct a water system and to provide water service for 97 lots in Tract No. 27171, which are located within Areas B and C. Sunset International put up a \$46,500 deposit and agreed to reimburse Sunset Hills for the actual cost of constructing the water system involved. On February 8, 1963, a similar agreement with a \$72,580 deposit, was entered into between Sunset International and Sunset Hills with respect to 106 lots in Tract No. 27172, which are located within Area C. As indicated, Sunset Hills is a Nevada corporation. Roger Ellis is, and was at all times herein mentioned, a vice president of Sunset Hills. Mr. Ellis is a vice president of Valinda Engineering Company (hereinafter called Valinda) and was president and director of Victoria Mutual Water Company (hereinafter called Victoria) from January 1, 1962 to July 17, 1963. Camille Garnier is, and was at all times hereinafter mentioned,

the president of Valinda and owns 85 percent of its stock. Garnier is, and was at all times herein mentioned, the president of Suburban. He owns outright 3 percent of Suburban's stock and represents a voting trust which holds an additional 13 percent of that stock. Garnier also has an interest in Garnier Pipeline Company. At the hearing, Ellis testified that John Harper is, and was at all times mentioned, the secretary of Sunset Hills. Harper is an employee of Pacific Utilities Service which is a division of Valinda (hereinafter referred to as PACUS). At the hearing, Ellis was unable to recollect the names of any of the other officers of Sunset Hills.

The cost estimate for Tract No. 27171 was prepared by an employee of the PACUS Division of Valinda and the cost estimate for Tract No. 27172 was prepared by a Valinda employee. Sunset Hills engaged Valinda to do certain work in connection with the water systems provided for in the aforesaid agreements. Sunset Hills, however, had no source of water of its own. On February 19, 1963, Sunset Hills entered in an agreement with Suburban whereby Suburban agreed to furnish Sunset Hills, on demand, 1,500,000 gallons of water in any 24-hour period of time. Sunset Hills encountered difficulty with the California Corporation Commissioner respecting its request for authority to issue its shares in California, and thereby do business as a mutual water company, and Sunset Hills withdrew the application.

Sunset Hills arranged for the construction of the distribution systems in Tracts Nos. 27171 and 27172. Valinda and Garnier Pipeline Company did the actual construction. When Sunset Hills encountered difficulties with the Corporation Commissioner, it turned over the partially installed facilities

in Tracts Nos. 27171 and 27172 to Victoria. The record indicates that at the time of the present hearing legal title to these distribution systems had not yet been transferred from Sunset Hills to Victoria. At the time the facilities were transferred to Victoria, Suburban owned more than half of the outstanding shares of Victoria. Ellis was the president and a director of Victoria. Harper was a vice president and a director of Victoria. Carr Dietz, who at all times herein mentioned was and is the secretary of Valinda and the secretary-treasurer (with a 1.3 percent stock interest) of Suburban, was a director and secretary-treasurer of Victoria. Dwight Holcomb was a vice president and a director of Victoria, and Garnier was the remaining director. Victoria has no employees, and had none at all times herein mentioned. Victoria operates by having all its services performed by the PACUS Division of Valinda.

Victoria arranged to have the distribution system completed in Tracts Nos. 27171 and 27172. It advised the California Real Estate Commissioner that it would serve these tracts. Victoria possesses certain water supply sources. In addition, it entered into an agreement with Suburban, whereby Suburban agreed to deliver on demand up to 1,500 gallons per minute. Victoria commenced serving water in Tracts Nos. 27171 and 27172 upon completion of the distribution systems in the tracts. It continued to serve these tracts until the events hereinafter further detailed.

Victoria provided water service in Tracts Nos. 27171 and 27172 at rates higher than those which Suburban was authorized to charge. A comparison of these rates is as follows:

3/4-Inch Meters

<u>Quantity Per Month In Cu. Ft.</u>	<u>Suburban Water Systems</u>	<u>Victoria Mutual Water Co.</u>
800	\$ 2.70	\$ 5.50
1000	2.70	6.04
1200	2.70	6.58
1400	2.70	7.12
1600	3.00	7.66
1800	3.30	8.20
2000	3.60	8.74
3000	5.10	11.44
4000	6.40	14.14
5000	7.70	16.84
10000	14.20	30.34
20000	24.20	57.34

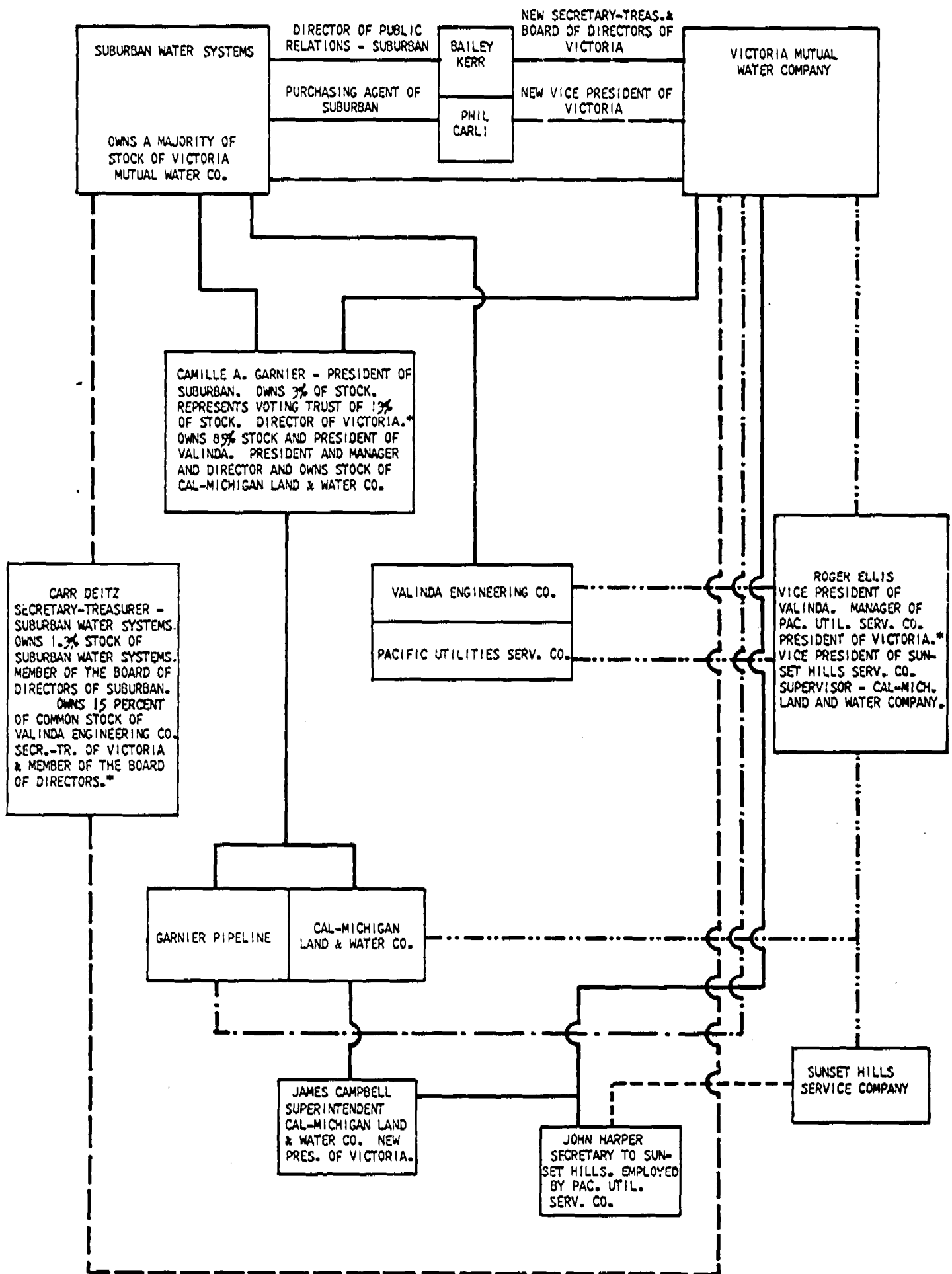
The notice setting the rehearing in these matters was mailed on June 25, 1963. The first day of rehearing was July 22, 1963. On July 17, 1963, new officers and directors of Victoria were elected. James Campbell was elected president and a director. Campbell is the superintendent of the California-Michigan Land and Water Company. Garnier is the president, manager, and a director of the California-Michigan Land and Water Company, and he owns all of its common stock. Phil Carli was elected a vice president and a director. Carli is the purchasing agent for Suburban. Bailey Kerr was elected secretary-treasurer and a director. Kerr is the director of public relations of Suburban. Dwight Holcomb was elected a vice president and a director.

On July 22, 1963, Deitz testified respecting the new officers and directors of Victoria. He did not mention Holcomb. Counsel for San Gabriel had subpoenas issued for all who were mentioned. Service of all the subpoenas was not effectuated. However, all the new officers, except Holcomb, were present and testified at the hearing on July 30, 1963. Exhibit No. 41, which was received in evidence on July 30, 1963, was the first indication of Holcomb's relationship with Victoria (although it appears he has



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been an officer and director since January 1, 1962). Since Holcomb did not appear as a witness in these consolidated proceedings, his connections, if any, with any of the entities and individuals here involved were not fully explored. A diagram of some of the various relationships discussed in this decision is set forth as Figure No. 1.



NOTES:  
\* FROM JANUARY 1, 1962 TO JULY 17, 1963.

MRS. WHITE, THE SISTER OF CAMILLE A. GARNIER, TOGETHER WITH HER HUSBAND OWNS AN UNSPECIFIED AMOUNT OF STOCK IN SUBURBAN WATER SYSTEMS.

FIGURE NO. 1

During the course of the rehearing, Suburban entered into an agreement with Victoria whereby the systems in Tracts Nos. 27171 and 27172 were transferred from Victoria to Suburban. The testimony of Suburban and Victoria directors or officers makes it clear that throughout all the events previously discussed Victoria was controlled and dominated by Suburban and was in fact the alter ego of Suburban. Pertinent portions of the testimony are as follows:

Walker Hannon, Suburban's vice president in charge of operations testified as follows:

- "Q. Are you familiar with the circumstances surrounding the ultimate agreement that has been entered into between Victoria Mutual Water Company and the Suburban Water Systems?
- A. Yes, I am.
- Q. Would you please narrate the circumstances leading up to the execution of this agreement, which I might ask, however, in the way of a preliminary question, whether or not it is your signature which is reflected on the last page of the agreement?
- A. That is correct.
- Q. Now, my question was: would you be kind enough to narrate for us the circumstances which led up to the execution of this agreement?
- A. Well, the circumstances which led to the execution of this particular agreement were the result of San Gabriel pressing the issue here before the Commission at this time.

It was my understanding that Victoria was to arrange for the installation for water facilities within the Sunset development and when such facilities were completely installed, they were to be turned over to Suburban.

Q. That was the Suburban Water Systems' management conclusion and understanding; is that correct?

A. My understanding.

MR. LOWRY: I object to the question because the witness had said that he did not know directly what the decision was, said that that was his understanding and followed, that understanding is followed by a point-blank question calling for a point-blank answer.

I think the question is improper.

MR. GUY: I will withdraw the question and ask it this way: did you have any discussions, and if so with whom, regarding the ultimate acquisition by Suburban Water Systems of the water service facilities installed by Victoria Mutual, answer yes or no?

THE WITNESS: Yes.

Q. Approximately when did those discussions -- when did a discussion take place and who else was present?

A. Well, I had a discussion with Mr. Garnier and Mr. Dietz at the very beginning of the time when Victoria started to prepare to serve the area, that it was my understanding from them at that time that after the facilities had been installed in the development and completed, they would be turned over to Suburban and Suburban would assume the refund agreement responsibility." (Reporter's Transcript, pp. 1097-99).

.....

"Q. What is the position of the developer in connection with this change in over-all plan?

A. He agreed that he would be satisfied with it.

Q. Did you have any conversation with him?

A. I did not personally. I was present in the room on one end of the conversation. I did not talk to him myself.

Q. You heard him speak; is that correct?

A. That is correct.

Q. What was the question put to him and what was his answer and who made the inquiry of him?

A. Mr. Garnier.

Q. And what was Mr. Garnier's inquiry as best you can recall?

A. He explained that the San Gabriel Water Company had brought the thing to the attention of the Commission a little sooner than he had anticipated and he expected that they could complete the entire development before changing over the agreements, Suburban assuming the agreements, and Mr. Walter said, 'Go right ahead, anything you have to do, because I don't want San Gabriel to serve it.'

Q. That was his response; is that correct?

A. That is correct." (Reporter's Transcript, pp.1100-01.)

.....

"Q. At the top of page 2, the second whereas paragraph refers to the fact that it was contemplated between Victoria and Suburban that certain facilities would be transferred from Victoria to Suburban. How long has that been in contemplation?

A. From the outset.

Q. What do you consider to be the outset?

A. The time Victoria began servicing the area.

Q. When did it begin servicing the area?

A. I mean when it started installation of facilities in the area.

Q. When did it start installation of facilities in the area?

A. When they signed the agreement with the developer and started making the installation, I don't have those dates.

- Q. Then this contemplation goes back to some time, the exact date of which you do not know?
- A. Goes back to the time that Victoria and Sunset International agreed that Victoria would make the installation.
- Q. Well, was Suburban a party to that? So it was a three-way arrangement between Sunset International and Suburban?
- A. I would say they would be.
- Q. My question --
- A. Mr. Garnier was the President of Suburban and he was cognizant of the agreement.
- Q. Do you have direct knowledge yourself, Mr. Hannon, as Vice-President of Suburban, of the correctness of the statement that it was contemplated between Victoria and Suburban that these water facilities would be transferred after installation by Victoria?
- A. That was Mr. Garnier's agreement with Mr. Deitz and myself, yes.
- Q. And in what capacity were each of the three of you acting, Mr. Deitz, as you appreciate, at times has been an officer of Victoria?
- A. Mr. Deitz was acting as Secretary of Suburban, Mr. Garnier was acting as President of Suburban and I was Vice-President of Suburban.
- Q. Now, how could the three of you representing only one party to the transaction reach agreements with respect to the transfer of facilities between Victoria and Suburban? You must have had agreements with somebody at Victoria, did you not?
- A. I think it would be relatively simple inasmuch as Suburban owned the majority of the control of stock in Victoria.
- Q. You were just agreeing among yourselves, were you not?
- A. That is correct." (Reporter's Transcript, pp. 1109-11.)

.....

"Q. From Suburban's point of view why is Suburban allowing Victoria to install these facilities and then transfer them to Suburban when Suburban could possibly install them directly itself?

A. There are a number of reasons.

Q. Would you give them to us?

A. No. 1, we asked for higher rates in the area at the time of the rate hearing, we made application for A and B rates and they were denied.

Q. Will you indicate what you mean by 'A and B rates'?

A. The A rate was the lower altitude and B was the higher altitude service area, but in the decision the Commission admonished Suburban not to burden the remainder of the consumers in the area by serving the higher elevations without proper rate.

We subsequently requested the Commission to allow us to use our Highland area tariff rates which were on file with the Commission, and the Commission refused that request.

So it was the consensus of management opinion that Victoria might go ahead with the installation and gain some experience of cost of service in the area, which could be presented to the Commission later on. --

Q. Would Victoria's costs --

A. -- as a request for definite rates to be assigned in the area.

Q. Would the cost to Victoria of installing the facilities for transfer to Suburban be any different than Suburban's costs of installing the facilities directly?

A. No, sir, I don't believe they would be.

- Q. In what way, then, would Suburban gain in its relationships with the Commission by having Victoria install the facilities and then transfer them to Suburban?
- A. Again in relation with the Commission?
- Q. Yes.
- A. I don't believe it would gain on its relationship with the Commission.
- Q. What significance, then, would it be to have Victoria develop cost information that would be presented to the Commission if after the facilities were installed Suburban would be the operator of them?
- A. We would have experiences that could be shown to the Commission as cost of service in the area.
- Q. Could you not get that information experience directly by installing the facilities yourself, namely, Suburban?
- A. Yes. In the meantime Suburban would be taking the loss.
- Q. Who is taking the loss in the meantime when Victoria is developing the cost experience?
- A. Suburban isn't.
- Q. Who is the logical man that would be doing that?
- A. I don't think there is any loss incurred because the rates being charged by Victoria are sufficient to cover their costs and they are higher than Suburban rates.
- Q. Who bears those rates?
- A. The customers in the service area."  
(Reporter's Transcript, pp. 1114-16.)

The minutes of the Victoria Board of Directors' meeting at which the agreement to transfer the facilities in Tracts Nos. 27171 and 27172 to Suburban was approved show that all of the directors were present. Three of the four directors testified in this proceeding. Kerr testified as follows:



"Q. Do you have any personal knowledge of the operations of Victoria Mutual Water Company and its facilities for serving water in the area?

A. I have a general knowledge.

Q. How do you acquire that knowledge?

A. Mostly through hearsay.

Q. Have you participated in the management of the operation of Victoria Mutual Water Company in the areas which we have been discussing, particularly Tracts 27171 and 27172?

A. No, sir, I have not.

Q. Have you discussed the ability of Victoria Mutual Water Company to provide water service to tracts numbered 27171 and 27172?

A. Yes, sir, I have discussed it briefly.

Q. With whom?

A. With Mr. Carr Deitz, who is the former Secretary of Victoria Mutual.

Q. With anyone else?

A. I don't believe so.

Q. Is your knowledge of the operation and the facilities of the Victoria Mutual Water Company obtained from the information which you derived from Mr. Deitz?

A. Yes, sir." (Reporter's Transcript, pp. 1061-62.)

.....

"Q. Do you know what in the absence of any written agreement the practice will continue to be for Sunset International to advance costs to Victoria with respect to facilities that Victoria will transfer to Suburban as a result of this agreement?

A. No, sir, except it is on an oral agreement, I presume.

Q. Who is installing these facilities which are to be turned over by Victoria to Suburban?

A. I don't know.

Q. Paragraph 8 of the agreement on page 4, you have indicated that a directors' resolution has been adopted authorizing the execution and the carrying out of the agreement. Can you show me that resolution in your minute book?

A. Yes, sir. (Indicating)

Q. You are showing me, are you not, the minutes of a special meeting of the board of directors of Victoria Mutual Water Company held on July 29, 1963?

A. Yes, sir.

Q. At 4:00 p.m.?

A. Yes, sir.

Q. Was a copy of the agreement in the form represented by Exhibit 44 before the directors at that time.

A. Yes, sir, it was.

Q. And all of the directors were present as the minutes indicate, were they not?

A. Yes, sir.

Q. Paragraph 8 of the agreement, Exhibit 44, states:

'Further, said Victoria does hereby warrant and represent that approval to said directors' resolution and to the terms and conditions of this agreement have been given by stockholders representing more than 50 percent of the voting power of Victoria.'

Do you have any evidence of that stockholders' consent?

A. No, sir, except an oral understanding.

Q. And as Secretary signing Exhibit 44 were you satisfied that you could make such a warranty on the basis of that oral understanding?

A. Yes, sir, I was.

- Q. What was the understanding -- nature of that oral understanding?
- A. It was assurance by Mr. Deitz, who is the Secretary of Suburban Water Systems, and by Mr. Hannon, who is the Vice-President of Suburban Water Systems, that Suburban Water Systems consented and they owned the majority of the shares of Victoria Mutual.
- Q. And were their representations as to these consents limited to the consent of Suburban Water Systems as a majority shareholder of Victoria?
- A. Yes, sir, as far as I know.
- Q. You indicated that Mr. Hannon was not at the meeting, was he?
- A. No, sir.
- Q. Only Mr. Deitz was?
- A. Mr. Deitz was not.
- Q. When did you get these representations as to shareholder approval?
- A. The afternoon prior to the meeting.
- Q. So the shareholders gave you approval of an agreement which at that time had not yet been voted by the board of directors; is that correct?
- A. I don't follow you, Mr. Lowry.
- Q. You indicated that before the meeting at 4:00 o'clock on July 29 you had received oral assurances from Mr. Deitz and Mr. Hannon that the stockholders approved the execution of the agreement, approval of the agreement by the directors?
- A. That they -- yes, that they gave, representing the majority of the voting power, that they gave their approval and consent to the execution.
- Q. And at the time you received that consent from the stockholders, majority stockholders, the meeting hadn't been held, had it?
- A. No.

MR. MADDOX: I move to strike, asked and answered.

MR. LOWRY: He said he didn't understand the question before.

EXAMINER JARVIS: The answer will stand.

MR. LOWRY: Do you know of any other stockholder that gave their assent to the actions of the directors?

THE WITNESS: No, sir.

Q. Other than Suburban?

A. No, sir." (Reporter's Transcript, pp. 1073-76.)

Campbell testified as follows:

"Q. Are you in effect in day-to-day managerial supervision of California-Michigan Land and Water Company?

A. In a sense, yes.

Q. Do you exercise a similar function with respect to Victoria as President?

A. I have had no duties so far, sir.

Q. You are an officeholder, then, of Victoria?

A. Yes, sir.

Q. And you have attended directors' meetings, I gather.

A. Yes.

Q. How many directors' meetings?

A. The one since the day I was elected.

Q. And that was yesterday?

A. Yes, sir.

Q. That was your first directors' meeting?

A. Yes.

Q. And I gather you voted in favor of the execution of the agreement on behalf of Victoria, which is Exhibit 44?

A. Yes, sir.

Q. Did you discuss that agreement with your fellow directors before voting on it?

A. Yes, sir.

Q. Did you discuss the agreement with Mr. Garnier?

A. No, sir.

Q. Did you discuss it with Mr. Hannon?

A. No, sir.

Q. With Mr. Deitz?

A. No, sir.

Q. As President of Victoria is it correct that the effect of this agreement will take Victoria out of the water business in Tracts 27171 and 27172?

A. That is my understanding.

Q. Why would Victoria want to get out of the water business in that area?

A. Well, this I would not know, sir, I haven't been there long enough to have a grasp of the problems.

As I said, I have had the one meeting and since the election I haven't been in their office, I haven't the slightest idea.

Q. How did you know whether or not to vote for or against the sale, transfer agreement?

A. Well, it was the consensus of the other directors that that was the proper thing to do.

Q. You were guided by their consensus?

A. Yes, sir." (Reporter's Transcript, pp. 1080-82.)

.....

Q. Do you have any knowledge of the operations and facilities of the Victoria Mutual Water Company?

A. Absolutely nothing.

Q. Have you discussed the import of this proposed agreement, Exhibit 44, with anyone other than your fellow directors?

A. No, sir.

Q. Have you received advise or information with respect to it from anyone other than your fellow directors?

A. No, sir." (Reporter's Transcript, p. 1084.)

Carli testified as follows:

"Q. My question is: what considerations prompted Victoria to enter into an agreement that would take it out of the retail water business in those two tracts?

MR. MADDOX: Mr. Examiner, I think the question is a little unfair when he says 'what considerations.'

I think it is ambiguous and vague and I think almost unintelligible.

It means this witness' consideration, their collective consideration of the board of directors or of the various members of the board.

I think the question is very difficult for the witness.

MR. LOWRY: Let me rephrase it.

EXAMINER JARVIS: All right.

MR. LOWRY: What considerations prompted you to vote in favor of the agreement?

THE WITNESS: The consensus of the board.

Q. Who was there besides yourself as director?

A. The board was, entire board was present, the new board, myself, Bailey Kerr, Jim Campbell and Dwight Holcomb.

Q. You have indicated that you were influenced by the consensus of the board and Mr. Campbell has so indicated. Does it follow, then, that you were influenced by the views of Mr. Kerr and of Mr. Holcomb?

A. It was the general consensus of the board after discussion, that was the decision.

Q. Did you discuss the transaction with anybody else other than the three members of the, other members of the board?

A. I did not." (Reporter's Transcript, pp. 1089-90.)

As a result of the transfer, the rates for water users in Tracts Nos. 27171 and 27172 were substantially reduced.

It is clear from the foregoing evidence that Suburban, certain of its officers and persons connected with the subsidiary or related corporations conspired to, and did, willfully, by means of a device, charge more than authorized by law for water service in Tracts Nos. 27171 and 27172. The immediate question presented is the action which should be taken by the Commission which would best serve the public interest. San Gabriel, Suburban's competitor and the moving party in this situation, asks that Suburban be "de-certificated" in Areas B and C and that San Gabriel be authorized to serve these areas. The record discloses that if San Gabriel were authorized to serve Areas B and C the rates for water service in these areas would be higher. A comparison of these rates is as follows:

3/4 - Inch Meters

<u>Quantity Per Month In Cu. Ft.</u>	<u>Suburban Water Systems</u>	<u>San Gabriel Valley Water Company</u>
800	\$ 2.70	\$ 2.80
1000	2.70	3.24
1200	2.70	3.68
1400	2.70	4.12
1600	3.00	4.56
1800	3.30	5.00
2000	3.60	5.44
3000	5.10	7.36
4000	6.40	9.16
5000	7.70	10.96
10000	14.20	16.96
20000	24.20	28.96

Furthermore, it appears that the distribution facilities have already been constructed in Tracts Nos. 27171 and 27172 and are connected to Suburban's system. Sunset International has made certain advances toward this construction. As indicated in Decision No. 64047, the cost of San Gabriel's proposal to serve Areas B and C is substantially higher than the advances given to Suburban's alter ego Victoria. Even if it be assumed, for the sake of argument only, that Sunset International collaborated with Suburban in the manipulations heretofore chronicled and that no regard should be given to the financial impact upon it of any action taken herein, a change in certification could result in adverse consequences for the customers living in the areas here involved. Authorizing San Gabriel to serve Areas B and C and preventing Suburban from so doing would not effectuate a transfer of the physical facilities. Unless an expeditious voluntary sale and transfer of these facilities was effected, the residents in the area might be left without water. Assuming a change in certification were ordered and that Suburban were permitted to serve existing customers until San Gabriel could serve, if a voluntary sale and transfer of facilities were not arranged, San Gabriel would have to parallel Suburban's lines with a new installation, and San Gabriel would not install these facilities without appropriate advances from Sunset International, which could not be compelled by this Commission to make such advances. In the circumstances, the Commission is of the opinion and finds that the interests of the customers living in Areas B and C would best be served by allowing Suburban to continue to serve these areas and by proceeding against Suburban, Victoria and the various individuals and other entities involved under applicable provisions of law.



The record also discloses that there are reasonable grounds to believe that Suburban, Victoria, Camille A. Garnier, C. H. Deitz, Phil J. Carli, Bailey Kerr, Roger Ellis, John Harper, James Campbell, and Dwight Holcomb are in contempt of this Commission for failing to comply with Decisions Nos. 64256 and 65210 in Application No. 43241 and Case No. 6323 in that they charged or assisted, aided or abetted in the charging of water rates in Tracts Nos. 27171 and 27172, located in Los Angeles County, greater than the rates authorized in said decisions. The Commission finds that Suburban, Victoria, Camille A. Garnier, C. H. Deitz, Phil J. Carli, Bailey Kerr, Roger Ellis, John Harper, James Campbell, and Dwight Holcomb should be ordered to show cause why they should not be held in contempt by this Commission for failing to comply with, or aiding, assisting and abetting the failure to comply with Decisions Nos. 64256 and 65210.

The Commission is of the opinion that Suburban has violated Sections 2107 and 2108 of the Public Utilities Code, and the Commission's Chief Counsel will be directed to file an action against Suburban for penalties under the applicable provisions of the Public Utilities Code.

The Commission makes the following findings and conclusions:

Findings of Fact

1. Decision No. 64047, issued on July 31, 1962, should be modified by the addition of the findings, conclusions and ordering paragraphs hereinafter set forth.

2. In Decision No. 64047 this Commission authorized Suburban to construct and operate a public utility water system in Areas B and C, which are more particularly described in Exhibit No. 13 in these consolidated proceedings. Suburban was required by law to apply the rates in its applicable filed tariffs to Areas B and C.

3. From January 1, 1962 to date Suburban has owned a majority of the shares of common stock in an entity known as Victoria Mutual Water Company, and at all times from January 1, 1962, Suburban has had and exercised full control over the affairs and operations of Victoria.

4. Victoria is, and has been since at least January 1, 1962, the alter ego of Suburban.

5. Suburban, operating through its alter ego Victoria, caused water distribution systems to be constructed in Tracts Nos. 27171 and 27172, which tracts are located within Areas B and C.

6. Suburban, operating through its alter ego Victoria caused to be charged to customers in Areas B and C rates higher than those which Suburban was authorized to charge in these areas.

7. The following individuals were among those who participated in some or all of the transactions by which Suburban utilized and operated as aforesaid through Victoria as an alter ego: Camille A. Garnier, Roger Ellis, C. H. Deitz, John Harper, James Campbell, Phil A. Carli, Bailey Kerr, and Dwight Holcomb.

8. Victoria has operated as a public utility water company without proper operating authority from this Commission from at least March 7, 1963 to date, and on or about said date of March 7, 1963 dedicated its property and service to the public use.

Conclusion of Law

Suburban should be required to cause its alter ego Victoria to acknowledge its public utility status and file with the Commission the tariffs required by law.

O R D E R

IT IS ORDERED that:

1. Within ninety days after the effective date of this order Suburban Water Systems shall cause its alter ego Victoria Mutual Water Company to file with this Commission: (1) a schedule of its rates and charges together with rules governing service to customers, a tariff service area map and sample copies of printed forms normally used in connection with customers' services, in accordance with the requirements of General Order No. 96-A; (2) 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 tracts of land and territory which it serves, the principal water production, storage and distribution facilities and the location of its various water system properties.

2. The Chief Counsel of the Commission is directed to institute proceedings before the Commission to determine whether Suburban Water Systems, Victoria Mutual Water Company, Camille A. Garnier, C. H. Deitz, Phil J. Carli, Bailey Kerr, Roger Ellis, John Harper, James Campbell, and Dwight Holcomb should be held in contempt for failing to comply with, or aiding, assisting or abetting the failure to comply with Decisions Nos. 64256 and 65210 in Application No. 43241 and Case No. 6323 in that they charged or assisted, aided or abetted in the charging of water rates, in Tracts Nos. 27171 and 27172, located in Los Angeles County, which water rates were greater than those authorized in the aforesaid decisions.

3. The Chief Counsel of the Commission is directed to file an action in the Superior Court against Suburban Water Systems for penalties for the violation of Sections 2107 and 2108 of the Public Utilities Code.

The Secretary of the Commission is directed to cause personal service of this order to be made upon each party to these consolidated proceedings. The effective date of this order shall be twenty days after the completion of such service. The Secretary is further directed to cause personal service of this order to be made upon Victoria Mutual Water Company, Camille A. Garnier, C.H. Deitz, Phil J. Carli, Bailey Kerr, Roger Ellis, James Campbell, and Dwight Holcomb.

Dated at San Francisco, California, this 25th day of November, 1964.

Frederick B. Holcomb  
President  
James E. Mitchell  
Everett G. Bege  
George G. Grover

Commissioners

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