

70483

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STATE OF CALIFORNIA,

Complainant,

v.

CALIFORNIA CITIES WATER COMPANY,
a California corporation,

Defendant.

Case No. 8344

In the matter of the application of
(1) CALIFORNIA CITIES WATER COMPANY
for authority (a) to merge with
Clinton County Water Company, San
Dimas Water Company, San Dimas-
Charter Oak Domestic Water Company
and The Columbia Land and Water
Company; and (b) to issue the shares
of common stock required to give
effect to such merger; and

Application

No. 47080

(2) SAN DIMAS-CHARTER OAK DOMESTIC
WATER COMPANY to merge with and into
California Cities Water Company.

[Decision No. 68242 issued November
24, 1964 (Application No. 47080,
filed October 30, 1964), and

Order Extending Time issued January
4, 1966 (Petition, filed December
21, 1965)]

ORDER REOPENING APPLICATION 47080
AND
DISMISSING COMPLAINT IN CASE 8344

The merger proceeding

On November 24, 1964 (by Decision No. 68242 in Application
No. 47080) the Commission authorized five corporations to merge
into California Cities Water Company. Only one of these

corporations (San Dimas-Charter Oak Domestic Water Company) was then regulated by the Commission as a public utility. It was a wholly owned subsidiary of San Dimas Water Company, an alleged mutual water corporation. Ordering paragraph 3 of Decision 68242 provided as follows:

"3. California Cities Water Company, as the surviving corporation under the merger, may enter into and engage in the public utility water business in the territory now served by San Dimas-Charter Oak Water Company. On and after consummation of such merger, all sales of water in California conducted by any of the merging corporations immediately prior thereto shall constitute sales by a public utility subject to the jurisdiction of this Commission."

The merger decision authorized the surviving corporation to issue stock for the purpose of consummating the merger. The merger was completed on December 1, 1964. By an order of January 4, 1966 the time within which the surviving corporation may issue and deliver the stock theretofore authorized was extended to June 30, 1966. This order was responsive to a petition alleging that 86,675 shares had been issued, but that there remained to be issued 1,932 shares to 11 minority shareholders of the former San Dimas Water Company. The surviving corporation alleged that it had been unable to complete the issuance of its shares "for various reasons beyond its control, including the inability or reluctance of certain minority shareholders to elect whether to receive petitioner's shares or the fair market value in cash in exchange for their shares in the merging corporations * * *."

The present complaint and petition

On January 31, 1966 the State of California, acting by the Attorney General on behalf of the Trustees of the California State Colleges, filed a document entitled "Complaint and Petition for Stay and for Reconsideration." The pleading alleges that in 1941 complainant purchased 77.5 shares of stock in San Dimas Water

Company, alleged to be a "mutual water company" within the meaning of Public Utilities Code secs. 2705 and 2725. It is alleged that complainant thereby acquired a "private" right to water, which could not be converted to a "public" right without complainant's consent, and complainant refused to sell its stock and voted against the merger.

Under procedure set forth in the Corporations Code a notice of approval of a merger by shareholders is mailed to a dissenting shareholder, and within 30 days thereafter he may make a written demand for the purchase of his shares by the corporation at their fair market value. Complainant alleges it needs a declaratory judgment determining its rights as a shareholder so that it may know whether to retain the stock and the claimed water right, or to sell the stock at fair market value because it would not retain the claimed water right. Complainant alleges it needs injunctive relief to prevent the surviving corporation from sending the notice contemplated by the Corporations Code until the declaratory relief sought has been determined on the merits, because only then would complainant know whether to retain the stock or ask for the money.

The pleading then sets forth the history of a Superior Court action seeking substantially identical relief (State v. Calif. Cities W. Co., Los Angeles County, No. 872431), filed November 12, 1965, in which demurrer was sustained for lack of jurisdiction on January 7, 1966. It is alleged that on the same day complainant sought mandate in the District Court of Appeals, that its petition was denied on January 26, 1966, and that complainant intends to appeal for review of that ruling.

Complainant seeks an order staying any authorization to send complainant any notice pursuant to the Corporations Code, or

preventing defendant from sending such notice, and that such order cancel any such notice that may have been sent. Also sought is an "order of either clarification or revision" that Decision No. 68242 does not determine the nature or extent (including applicable rates) of complainant's "right to water" under its San Dimas Water Company shareholdings.

The defects in the pleading

Pursuant to procedural Rule 12 a copy of the pleading was sent to defendant by way of information. Defendant submitted a statement of asserted defects, and urged dismissal of the complaint and denial of the petition. Thereafter complainant was advised that preliminary staff review of the complaint indicated failure to state a cause of action. Complainant was requested to advise whether it wished to request dismissal, amend the complaint, or rely on the present pleading.

Complainant has advised that the State relies on the present pleading. It urges that in the litigation heretofore mentioned the Superior Court appears to have agreed with defendant that the Commission (in Decision No. 68242) had exercised jurisdiction over the claimed "private" right, and that such action can only be reviewed by the Supreme Court. "We simply ask the Commission to make clear that it has not done so and could not do so (or to change its decision, if it did)."

Under Public Utilities Code section 1702 a complaint may be filed "setting forth any act or thing done or omitted to be done by any public utility, * * * in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." The pleading does not so allege or claim.

The complaint in Case No. 8344 is dismissed for failure to state a cause of action within the Commission's jurisdiction.

Application No. 47080 is reopened for further hearing for the purpose of determining whether Decision No. 68242 should be amended.

Such further hearing shall be held before such Commissioner or Examiner and at such time and place as may hereafter be designated.

Dated at San Francisco, California, this 22nd day of March, 1966.

Fredrick B. Holbeff
 President
Robert E. T. Hall
George H. Grover
Joseph
 Commissioners

A. 47080
C. 8344

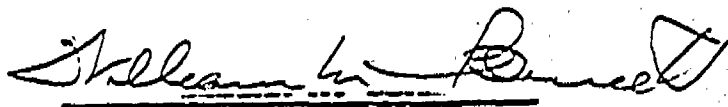
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DISSENT

BENNETT, William M., Dissenting Opinion.

I would amend the decision on its face -- a relatively simple task -- and let it go at that. This would satisfy the petition of the State of California.

Instead the Commission now reopens the entire proceeding on a matter which was long ago determined and where the parties thereto have changed positions in reliance thereon. As the order now reads the whole affair is now open once again without limit. Today's order is illustrative of the lack of finality which more and more marks the work of this Commission.


WILLIAM M. BENNETT

San Francisco, California

March 23, 1966