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Decision No. 70861

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of the Southern California Water Company for an order granting a certificate of public convenience and necessity to render water service in certain unincorporated territory in Ventura County	Application No. 47745 (Filed July 14, 1965)

O'Melveny & Myers, by Donn B. Miller, for Applicant.
Paul L. McKaskle, for the County of Ventura and Ventura County Waterworks Districts Nos. 1 and 11; W. Frank Horscroft, for the Citizens of Moorpark District; Everett C. Braun, for Moorpark Memorial Union High School; Douglas O. Meyer, for Moorpark Chamber of Commerce; and George E. Nuckols, for Camarillo County Water District, Protestants.
Arno E. Myers, for Moorpark Elementary School District, interested party.
Jerry J. Levander and Raymond E. Heytens, for the Commission staff.

O P I N I O N

Southern California Water Company (hereinafter referred to as Applicant) seeks a certificate of public convenience and necessity to construct and operate a public utility water system in an area comprising 870 acres[1/] of unincorporated territory in Ventura County, south of the community of Moorpark in Simi Valley. The proposed area (hereinafter referred to as New Area) is being developed by Millgee Investment Co., Inc. and will eventually include 3,500 to 4,000 residential lots in addition to school sites, commercial developments, multiple dwelling units and parks.

1/ The evidence shows that it actually contains only 840 acres.

Public hearings were held before Examiner Warner on August 6, 1965 at Ventura, September 15, 1965 at Moorpark, and September 16, 17, 29 and 30, 1965 at Ventura. The matter was thereupon submitted subject to the filing of briefs, which were received on November 30, 1965.

Applicant furnishes water service to approximately 140,000 customers in Los Angeles, Orange, San Bernardino, Ventura, Imperial, Kern, and Sacramento Counties, and operates an electric system at Bear Valley in San Bernardino County. Applicant now has approximately 3,700 customers in its Simi District in Simi Valley, about seven miles east of New Area.

The principal protestant is Ventura County Waterworks District No. 1 (hereinafter referred to as District).[2/] District has been furnishing water service for some time in and surrounding the townsite of Moorpark and is now furnishing water service to more than 1,000 customers. It is under the direct management of Ventura County Board of Supervisors, which appoints its manager and sets its water rates.[3/]

New Area is about to be developed and there is no question that water service will be needed. Applicant has the financial resources and ability to install and operate a satisfactory water system, and it has been invited to do so by the developer. Approval of the application clearly would be indicated were it not for the fact that District stands ready to construct and operate a similar system. If we were satisfied that District's plan would provide a better and more economical service, then Applicant's proposal might not meet the test of public convenience

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2/ Ventura County Waterworks District No. 11 was also among the protestants.

3/ The Board of Supervisors exercises similar control over all other waterworks districts in Ventura County (Ventura County Waterworks Districts Nos. 2 through 11) except No. 5, which is now owned and operated by the City of Camarillo, and No. 6, which is managed and operated by an autonomous Board of Directors appointed by the Board of Supervisors.

and necessity. (Ventura County Waterworks Dist. No. 5 v. Pub. Util. Comm., 61 Cal. 2d 462, 465-466.) A comparison of the two competing proposals is therefore appropriate, even though we have no direct certificating jurisdiction over District.

Before proceeding to such a comparison, certain preliminary observations are in order. The law itself makes no choice between public and private ownership of water utility facilities. We are not called upon to decide, nor do we decide, that either public ownership or private ownership is, in the abstract, superior. Both types of water service exist in California, both are lawful, and both serve the public interest. We attach no weight to arguments which are directed toward demonstrating that either is intrinsically to be preferred.

We also reject the argument that the claimed tax advantage of a publicly owned utility, standing alone, is determinative of public convenience and necessity. While it is true that a publicly owned system may not be subject to certain taxes and that, all other things being equal, its total expenses may therefore be lower than those of a privately owned utility, this should not control a choice between the two. For one thing, it is not certain that lower taxes or even absence of taxes would result in lower rates. Thus, some publicly owned utilities are operated at a profit to obtain revenues which would otherwise have to be raised by taxation; on the other hand, if a publicly owned utility is deficient in operating revenues, then, in lieu of increasing rates, it can draw upon tax income. We leave all such questions to the appropriate taxing authorities. In passing, however, it may be noted that, notwithstanding its claimed tax advantage, District proposes substantially the same rates as Applicant.

The parties have debated at some length the relative merits of their prospective plans for financing construction of the new facilities, but here again we do not believe that the issue is determinative of public convenience and necessity. Pursuant to the Commission's water main extension rule,[4/] a subdivider who advances the cost of construction of a water distribution system is entitled, under certain circumstances, to refunds from the utility; in contrast, many publicly owned water systems require an outright contribution of such facilities by the subdivider. As a result, subdividers often prefer to be served by a utility under the Commission's jurisdiction. (See Ventura County Waterworks Dist. No. 5 v. Pub. Util. Comm., supra, 61 Cal.2d 462, 466.) The requirement that a utility make such refunds might militate against its being certificated for a particular area if there were a competing public agency which planned no such refunds; all other things being equal, the private utility would ordinarily be allowed a return on the additional investment occasioned by its refund payments to the subdivider, and any such extra burden would ultimately be borne by the ratepaying public. In this proceeding, however, there does not appear to be a critical distinction in the results of the two methods of financing the proposed construction. District points out that it has available an improvement zone procedure whereby the subdivider would not be required to donate the cost of the system; construction costs may instead be financed by bonds, which would become a lien upon the property of the landowners in the area and would ultimately be redeemed through taxes or water rates. Although it is not certain that this alternative to subdivider contributions would be used for New Area,

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4/ Technically each water utility has its own main extension rule and in Applicant's case it is Rule 15. However, the terms of such rules have been prescribed by Commission order. (Decision No. 64536, dated November 8, 1962, in Case No. 5501, 60 Cal.P.U.C. 318.)

District represents in its brief that it is likely that it would be. Accordingly, we do not find that Applicant's financing under our water main extension rule would be intrinsically more burdensome to the public than District's financing. It might even be less burdensome.

We turn now to a specific comparison of the two proposed systems. Physically the two systems would be much alike; the distribution facilities would be similar, and both Applicant and District propose to serve Colorado River water purchased from Calleguas Municipal Water District. District has some local wells which might be useful as an emergency water supply in the event of a shutdown of the Calleguas pipeline, but it is conceded that such a shutdown is not likely; this minor advantage is not significant when related to the overall showing of Applicant. No precise finding is possible with respect to cost of construction (among other things, District follows a different accounting system from that prescribed for water utilities by this Commission), but we do find that District has not established that Applicant's system would cost more. Moreover, Applicant's evidence in this respect was more detailed; its plans and cost estimates were prepared by registered engineers and were better formulated. By comparison, District's plans appeared hastily and incompletely assembled. Applicant also demonstrated that it has superior operations experience and management resources.

District has placed major emphasis upon benefits which it claims will result from "the economy of scale," pointing out that it presently conducts water utility operations in contiguous territory. But the record itself leaves such benefits largely to speculation. Thus the evidence does not establish that there would be any material duplication in facilities or service forces if the application were granted; rather we find that the distribution system will be substantially the same whoever ultimately builds it and that, for the present

at least, both operators propose to service the area from existing headquarters at Simi. Both parties plan to have local collection systems and radio-equipped service cars available on a 24-hour emergency basis. In addition, Applicant plans to use its electronic data processing billing equipment in New Area, and District plans to coordinate its water and sewage system billings. Whichever entity provides the service, both present and future customers will benefit from economies inherent in large scale operations.

The incorporation of Moorpark, as predicted by District, is speculative; certainly District has failed to prove the "major problems" which it claims a granting of the application would pose for the future city. If such incorporation should occur and if the city were then to take over the water system of District, the public would not necessarily be disadvantaged by the fact that a portion of the city might be served by Applicant. District's only specific argument on this point (that the future city would be faced with an expensive condemnation) presupposes the desirability of public ownership and therefore begs the very question presented here.

District's protest is supported by the County Board of Supervisors (which is the managing board of District) and by various public and civic entities in the area, such as Moorpark Chamber of Commerce, Moorpark Memorial Union High School and Camarillo County Water District. Also filed was a petition protesting the application and containing the signatures of 340 or more residents of Moorpark and Home Acres I. These protestants did not have before them, however, the record that has been made here, and the testimony of their representatives evidenced, in many cases, a lack of knowledge or understanding of the facts. For example, some of them were under the impression that District had already expended funds in anticipation of serving New Area, whereas

District's witness denied that it had built beyond the requirements of its existing operations.

The record shows that the developer of New Area (who has had wide experience in home building, has developed tracts where Applicant now furnishes water service, and has in the past contracted with Applicant for water system installations) has requested water service by Applicant for New Area because of satisfactory past relations and confidence in Applicant's experience, reliability, and flexibility. It is suggested that issuance of the requested certificate in effect delegates the Commission's responsibility inasmuch as the subdivider has already expressed a preference for Applicant. We do not agree. Granting of the application is no more an abdication in favor of the subdivider than a contrary decision would be an abdication in favor of the Board of Supervisors. The record confirms the subdivider's determination that Applicant would construct a satisfactory system and would provide superior service at reasonable cost.

Nothing herein should be taken as suggesting that District would not provide satisfactory water service in New Area if Applicant were denied the certificate; on the contrary, District's system would be adequate. Being of the opinion, however, that Applicant has made a more persuasive showing on this record, we believe that Applicant should not be denied the right to offer water service in New Area.

The Commission finds that:

1. There is a public demand for water service in New Area, which will eventually be subdivided into 3,500 to 4,000 residential lots and other developments.

2. New Area is seven miles from Applicant's Simi District in Simi Valley, and it is contiguous to, but not now within, Ventura County Waterworks District No. 1. District is willing to annex New Area, and in the event of such annexation would be willing and able to provide water service therein.

3. Applicant has the financial resources and ability to install and operate a satisfactory water system in New Area and would provide service at reasonable rates.

4. Applicant and District have proposed comparable rates and distribution facilities for New Area.

5. Applicant has greater water service experience than District and would provide better and more efficient service in New Area.

6. Public convenience and necessity require construction by Applicant of a water system in New Area.

The Commission concludes that the application should be granted.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to Southern California Water Company to construct a public utility water system to serve an area of approximately 840 acres south of Los Angeles Avenue near Gabbert Road in the vicinity of Moorpark, Ventura County, as more fully described in Exhibits A and B attached to the application.

2. Within one year after the effective date of this order, and not less than five days before service is first furnished to the public under the authority granted herein, Applicant may file revised tariff sheets, including a revised tariff service area map, to provide for the application of Schedules SI-1, SI-S and rules to the area certificated herein. Such filing shall be in conformity with General Order No. 96-A and the revised tariff sheets shall become effective on the fourth day after the date of filing.

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

Dated at San Francisco, California, this 14th day of JUNE, 1966.

Frederick B. Holoboff
President

George G. Grover

Augustus

Commissioners

I concur:
Peter E. Mitchell