

ORIGINALDecision No. 71758

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
 on the Commission's own motion into
 the status, operations and practices
 of LA PUENTE CO-OPERATIVE WATER
 COMPANY.

Case No. 7263

Frederick R. Schumacher, for respondent.Elinore Morgan, nee Charles, and Chester
 O. Newman, for the Commission staff.O P I N I O N

This is an investigation on the Commission's own motion into the status, operations and practices of La Puente Co-Operative Water Company (hereinafter referred to as La Puente). The primary purpose of the investigation was to determine whether La Puente, which claims to be a mutual water company, is in fact a public utility water corporation subject to regulation by this Commission.

The investigation originally named five alleged mutual water companies as respondents. At a prehearing conference the respondents contended that each would be prejudiced by the joinder of the others in the same proceeding, and each requested a separate hearing. On May 28, 1962 the Commission entered an amended order of investigation discontinuing this investigation as to four respondents, thus leaving La Puente as the remaining respondent herein.^{1/}

^{1/} Victoria Mutual Water Company was one of the other four respondents. In Decision No. 68273 the Commission found that Victoria was the alter ego of Suburban Water Systems, a public utility water corporation and ordered Suburban to cause Victoria to file appropriate tariffs and maps with this Commission. A petition for a writ of review of Decision No. 68273 was denied by the California Supreme Court on June 16, 1965 and a petition for a writ of certiorari was denied by the United States Supreme Court on December 6, 1965.

Depositions were taken in this matter by the Commission staff in 1962, 1963 and 1964. The depositions were prolonged because of the refusal of a subpoenaed witness to testify in the proceeding. An order holding the witness guilty of contempt and punishing him therefor was upheld by the California Supreme Court on November 13, 1963. (Ellis v. Public Util. Comm., S.F. 21458.)

A duly noticed public hearing was held in the matter before Examiner Jarvis at West Covina on November 17 and 18, 1964 and at Los Angeles on January 5, 6 and 7, 1965. The matter was submitted subject to the filing of briefs which were filed by May 28, 1965. On July 6, 1965, while the matter was under submission, the president of La Puente sent a communication to the Commission stating that the company had sold its water operations to Suburban Water Systems, a public utility water corporation (hereinafter referred to as Suburban). On August 24, 1965, the Commission entered an order vacating the submission of the matter and reopened the proceeding for the limited purpose of taking evidence with respect to the alleged transfer of La Puente's water operations to Suburban and the present status of the La Puente water system. Further days of hearing were held before Examiner Jarvis in Los Angeles on September 29, 1965 and December 15, 1965, and the matter was submitted on the latter date.

The record discloses that La Puente was incorporated in 1905. From 1905 to 1955 La Puente provided only untreated irrigation water to its shareholders. During this period a few of the shareholders used some of their untreated water for domestic purposes. In 1955 Suburban began buying La Puente stock. By 1958 Suburban owned 841 shares of La Puente stock and by June 30,

1961 its officers owned or controlled 227.33 shares.^{2/} At least since 1958 Suburban owned sufficient shares of stock to control La Puente, and as of June 30, 1961 Suburban owned or controlled 62 percent of La Puente's stock. In 1961 three of La Puente's five directors (C. A. Garnier, Carr Deitz and John Bodger) were also directors of Suburban. Commencing in 1955 La Puente sold and delivered quantities of water to Suburban.

In 1958, La Puente commenced domestic water service to new subdivision tracts located in West Covina and unincorporated areas of Los Angeles County. In order to serve its domestic customers La Puente constructed or acquired two physically separate, noncontiguous water systems. These two systems were in addition to and physically separate from and noncontiguous to La Puente's irrigation system. All of La Puente's domestic customers are located within Suburban's certificated area. La Puente has no storage facilities which serve domestic customers but has three interconnections with Suburban so that service can be maintained in case of an outage. La Puente's domestic customers are sold and issued 1/50th of a share of its stock. In 1961 La Puente served 272 domestic customers with one system and 183 domestic customers with the other. These 455 customers held in the aggregate approximately 9.1 shares of La Puente's stock. La Puente's irrigation customers declined from 28 in 1957 to 7 in 1962. In 1963, La Puente's charge for 2,200 cubic feet of domestic water was \$7.56; Suburban's was \$3.90.

The staff first contends that La Puente should be held to be a public utility water corporation because it sold water to

^{2/} Some undisclosed number of the shares owned or controlled by Suburban's officers were acquired prior to 1955 to secure irrigation water for family lands. In March of 1964, Suburban paid an assessment on shares held in the names of some of its officers.

nonshareholders. Two groups of sales are relied upon to support this contention: (1) sales to homeowners prior to the issuance of their shares or to homeowners who have alleged defective shares and (2) irrigation sales to nonshareholder lessees of shareholders. We will consider these points separately.

The staff introduced evidence, based upon La Puente's records, indicating that domestic water service was furnished to residents of the subdivisions prior to the time shares of stock were issued to the customers. The periods of time involved ranged from one to twenty-five days, and, in one instance one month and twenty-three days. The staff also introduced evidence which it asserts establishes that nonshareholders received service because "certain transferors did not execute proper assignments, and these shares were issued to other persons" who received water service. The staff contends that under the provisions of Sections 2702 and 2705 of the Public Utilities Code, La Puente lost its status as a mutual by this conduct.

These sections provide in part as follows:

"Any corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost which delivers water to others than its stockholders or members, or the State or any department or agency thereof or any school district, or any other mutual water company, for compensation, becomes a public utility and is subject to Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission."

"Any corporation or association which is organized for the purposes of delivering water to its stockholders or members at cost, including use of works for conserving, treating and reclaiming water, and which delivers water to no one except its stockholders or members, or to the State or any agency or department thereof, to any city, county, school district, or other public district, or to any other mutual water company, at cost, is not a public utility, and is not subject to the jurisdiction, control or regulation of the commission; ..."

La Puente disputes the evidence produced by the staff on this point. It contends that the people who received the challenged water service were equitably entitled thereto; that the challenged transfers of stock were proper and, in any event, conferred shareholder status on the transferees and that these transactions were de minimis and should not affect La Puente's status as a mutual water company.

A mutual water company may serve or be organized to provide domestic water service to its members in a subdivision. (Public Utilities Code § 2705; Corporations Code § 300; see also California Administrative Code, Title 10, §§ 630, 633, 634.) The record discloses that three of the subdivisions served by La Puente received final subdivision reports from the Real Estate Commissioner indicating that La Puente was to be their source of water service. In practice, La Puente was a source of water for homeowners in each of these subdivisions. All of the alleged service to nonshareholders involved service within the subdivisions. In almost every instance relied on by the staff on this point, the homeowner became a shareholder within a relatively short period of time after water service was furnished. In the cases of the alleged defective shares, the shareholders paid for the shares and they and La Puente acted in accordance with a corporate-shareholder relationship. In a few instances, it appears that water service was furnished for a short period of time to a purchaser of a home in one of the subdivisions who moved in prior to the completion of the escrow and then failed to consummate the purchase. While the evidence cited by the staff on this point shows that La Puente engaged in careless practices, we do not believe that the Legislature intended that the exemption contained in Section 2705 was to be denied, and public utility status found, because an otherwise bona fide mutual water company

commenced service to a shareholder a few days prior to the issuance of his shares. The gravamen of La Puente's status relative to the subdivisions involves, among other things, how it came to serve them and the relationship of the subdivision shareholders to La Puente, including their participation and voice in the management thereof. These questions will be hereinafter considered.

The next point raised by the staff is that irrigation sales to nonshareholder lessees of shareholders made La Puente a public utility subject to the jurisdiction of the Commission. La Puente contends that, assuming such sales did occur, the Legislature, in 1961, amended Public Utilities Code Section 2705 to provide, in part, that a mutual water company is not a public utility and is not subject to the jurisdiction or control of the Commission when it delivers "water at cost to any land leased by a stockholder, shareholder or member of such mutual water company to a person not a stockholder, shareholder or member thereof, provided such lease is in writing signed by such stockholder, shareholder or member and such lessee of such land and approved by such mutual water company"; that the alleged irrigation sales occurred in 1957; that the present investigation commenced in 1962, after the enactment of the amendment to Section 2705; that the amendment was remedial and that, since the challenged practice is now permitted without loss of mutual company status, the Commission is barred from using such acts prior to 1961 in determining its status.

While the Commission does not agree with La Puente's construction of the amendments to Section 2705,^{3/} we are of the opinion that under these circumstances the Commission should not exercise its jurisdiction and attempt to regulate as a public utility an otherwise bona fide mutual water company if the only basis for exercising jurisdiction were prior unauthorized acts which are now authorized by the Legislature. We do not consider the irrigation sales to lessees in determining La Puente's status.

The staff next contends that La Puente is not a mutual water company but a public utility because it did not serve water to its shareholders at cost, as indicated in Sections 2705 and 2725 of the Public Utilities Code which provide as follows:

"2705. Any corporation or association which is organized for the purposes of delivering water to its stockholders or members at cost, including use of works for conserving, treating and reclaiming water, and which delivers water to no one except its stockholders or members, or to the State or any agency or department thereof, to any city, county, school district, or other public district, or to any other mutual water company, at cost, is not a public utility, and is not subject to the jurisdiction, control or regulation of the commission; ...

"The term 'cost' as used in this section shall be construed to mean without profit."

"2725. As used in this chapter, 'mutual water company' means any private corporation or association organized for the purposes of delivering water to its stockholders and members at cost, including use of works for conserving, treating and reclaiming water."

^{3/} See Bear Valley Mutual Water Co. v. County of San Bernardino, 242 Adv. Cal. App. 51, where the court stated at page 55 that "Moreover, section 71121 must be construed to operate prospectively and not retrospectively. Statutes are presumed to so operate unless the Legislature has clearly expressed a contrary intention. (Citations omitted.) The rule is applicable even though the Legislature could have constitutionally made the statute retrospective. (Citation omitted.) Nor does the principle that a remedial statute should be liberally construed override the rule against retrospective application. (Citation omitted.)"

The staff relies on two theories to substantiate its contention that La Puente operated at a profit: (1) The staff segregated the different types of service rendered by La Puente (domestic, irrigation and bulk sales), made allocations as to cost and then concluded that the domestic customers were paying more for water service than it cost La Puente to furnish it to them; and (2) La Puente's books show that it had "net income" in 1960 and 1961. La Puente contends that it furnishes water to its shareholders at cost.

The Commission rejects the staff's contention that a mutual water company can be said to be operating at a profit if it can be shown that the customers receiving one type of service pay more than it costs the company to render it. We believe that in applying Sections 2705 and 2725 to determine whether a mutual water company is furnishing water to its members at cost, its total operations must be considered; otherwise, it might illogically be found that a mutual which in fact had a net loss operated at a profit. Furthermore, a bona fide mutual should be able to establish a rate spread for different types of service without risking losing its nonregulable status. However, the factual information developed to support this theory is relevant, and hereafter considered, in determining the relationship of the domestic customer shareholders to La Puente.

The staff also contends that La Puente operated at a profit because its books showed net income of \$16,759 for 1960 and \$21,606 for 1961. The staff argues that net losses of \$8,062 for 1962 and \$8,868 for 1963 were caused by Suburban decreasing its bulk water purchases, after this investigation was instituted, to cause loss operations. If La Puente operated at a profit in

1960 and 1961, it lost its exemption under Section 2705 and became a public utility subject to regulation by the Commission. (Cal. Const. Art. XII, Sec. 23; Public Utilities Code §§ 216, 241, 2701.) The entries on La Puente's books showing net income are probative on the question of whether it operated at a profit. However, standing alone they do not support a finding that it did. It must be shown what happened to these monies. If, for example, these monies were used for needed system capital improvements or ratably refunded to the shareholders it could not be said that the company operated at a profit. The staff had the burden of proof on this issue. (Code Civ. Proc. §§ 1869, 1981; Shivell v. Hurd, 129 Cal. App.2d 320, 324; Ellenberger v. City of Oakland, 59 Cal.App.2d 337.) The Commission is of the opinion that there is not sufficient evidence in the record to sustain a finding that La Puente operated at a profit.

We turn now to one of the main questions posed in this proceeding: Is La Puente a bona fide mutual water company, or is it a public utility masquerading as one?

The California Supreme Court, in discussing when a mutual water company is entitled to an exemption from regulation as a public utility under Section 2705, stated:

"In Yucaipa Water Company No. 1 v. Public Utilities Com., ante, pp. 823, 830 [9 Cal.Rptr. 239, 357 P.2d 295], we pointed out that 'The exemption created by section 2705 indicates a legislative determination that when a mutual water corporation is substantially customer-controlled and delivers water at cost, the usual judicial contract remedies available to those who deal with it are an adequate substitute for public utility regulation.' The reasons underlying the exemption are obviously not present, however, when, as in this case, a major customer has no voice in the management and, as the creature of the mutual and its other stockholders, is in no position effectively to enforce its rights as a stockholder. To hold that such a captive stockholder is a stockholder within the meaning of section 2705 would violate the principles on which the statute is based. Accordingly, the word 'stockholder' in

that section must be interpreted to mean, not a mere conduit of voting power by which the independent stockholders echo their own votes, but a bona fide stockholder that is free independently to exercise its voice in management and to enforce its legal rights." (Corona City Water Co. v. Public Utilities Com., 54 Cal.2d 834, 838-39.)

By 1958 Suburban and its officers held a controlling interest in La Puente. At this time La Puente only furnished its shareholders nontreated irrigation water. Between 1958 and 1960 La Puente commenced water service to six new subdivisions in Los Angeles County: Tracts Nos. 21566, 21404, 16457, 17101, 21480 and 25592.^{4/} Each of these tracts is within Suburban's dedicated service area. In 1958 La Puente, as a prerequisite to the subdivider's obtaining a final subdivision report, represented to the Real Estate Commissioner that it would supply water to Tract No. 21566. (Exhibit 2.) The arrangements to construct the water system and provide water service were made with the subdivider prior to construction. However, the subdivider held no shares in La Puente. The domestic customers, who were later issued fractional shares, had no voice in the creation of the water system to serve them. A similar situation occurred with respect to Tracts Nos. 21404 and 16457 in 1959. (Exhibits 3 and 4.) In the case of Tracts Nos. 21480, 17101 and 25592, the record discloses that Suburban represented to the Real Estate Commissioner that it would furnish water service to these tracts but La Puente in fact did so. (Exhibits 5, 6 and 7.)

As a result of the dealings among the subdividers, who held no La Puente stock, and Suburban and La Puente, the customers in the subdivisions, while nominally shareholders, were relegated to a status where they could never effectively have a voice in the

^{4/} The record shows that Suburban served 26 customers in these tracts.

management or operation of La Puente. As indicated, La Puente's domestic customers paid for and were issued 1/50th of a share of stock in order to receive water service. Thus, the domestic subdivision customers have approximately 9.1 shares of approximately 1,723 outstanding shares. The prime shareholder, Suburban, the public utility water company authorized to serve the area and the only other practical source of water, together with its officers control 62 percent of La Puente's stock. The Commission holds that the 455 domestic shareholders of La Puente are captive stockholders in no position to effectively enforce any of their rights as stockholders and that La Puente is not entitled to an exemption from public utility regulation under Section 2705.

(Corona City Water Co. v. Public Utilities Com., supra, 54 Cal.2d 834, 839.)

The Commission not only holds that La Puente is not entitled to an exemption from regulation under Section 2705, but that at least as far back as 1958 La Puente was the alter ego of Suburban, not a bona fide mutual water company but a public utility subject to the jurisdiction of this Commission. The facts heretofore detailed show that, at all times herein pertinent, Suburban and its officers held a controlling stock interest in La Puente and that a majority of La Puente's directors were also directors of Suburban. They also indicate that Suburban dealt with the developers of Tracts Nos. 21480, 17101 and 25592, represented to the Real Estate Commissioner that it would serve these tracts, and then, by virtue of its control of La Puente, arranged for La Puente to serve these tracts. The record discloses that La Puente has no storage facilities in either of its domestic systems. There are three connections between La Puente's domestic

systems and Suburban's system so that La Puente can maintain water service in case of an outage at one of its plants. Suburban also takes delivery of water purchased from La Puente through these connections. La Puente's own evidence indicates that the wells serving each domestic system "are adequate for the domestic system only on an average annual basis", and that an additional source of supply is needed to insure adequate daily service and fire protection to the domestic customers. The additional source of supply is presently provided by the connections with Suburban. La Puente, at the hearing and in its brief, argues that the arrangement with Suburban was the most economical one and that it should not be compelled to put in costly storage facilities. This argument avoids the major point involved: that the La Puente domestic systems were designed to be integrated with Suburban's and operated in conjunction therewith. Further evidence of this is shown by the development of water service in Tracts Nos. 21566, 21480 and 17101. At the time of hearing, La Puente had a well in the area of each of the two separate systems serving its domestic customers. However, the record shows that one well, designated as Plant No. 151 serves tracts Nos. 21566, 21480 and 17101; that this well was not put into operation until the middle of 1961; that the final subdivision reports for these tracts were issued on December 22, 1958, July 2, 1959 and July 7, 1959, respectively, and that customers in these tracts were served by water from Suburban from 1958 to mid-1961, when La Puente returned an equivalent amount of water to Suburban. Since all of the tracts in La Puente's domestic systems are within Suburban's dedicated service area and Suburban was required to furnish them water service, in accordance with its tariff rules, it is strange indeed to find Suburban providing to another entity the ability to serve them.

The record also indicates that at least as far back as March 1, 1961, La Puente had no employees of its own and that its operations were handled by Pacific Utility Service Company, a division of Valinda Engineering Company. The Commission takes official notice that in Decision No. 68273 (Suburban Water Systems, et al., 63 Cal.P.U.C. 649) it found that Camille A. Garnier, who is president of Suburban and a director and shareholder of La Puente owns 85 percent of the stock of Valinda and that Carr Deitz, who is secretary-treasurer of Suburban, and secretary-treasurer, director and a shareholder of La Puente, owns the remaining 15 percent of the stock of Valinda. The evasive testimony of the assistant secretary of La Puente with respect to for whom she worked and who collected payments on La Puente's water bills; the testimony of La Puente's directors Bodger and Worthy indicating a paucity of knowledge about the affairs of La Puente and the testimony of Deitz that he worked out the alleged transfer of assets, hereinafter discussed, as the representative of both Suburban and La Puente, fortify the conclusion of an alter ego relationship.^{5/}

The inescapable conclusion, which we make from the record, is that Suburban which controlled and dominated La Puente used its alter ego to serve these tracts masked as a nonregulated mutual water company to avoid regulation by this Commission. Since La Puente is the alter ego of Suburban, both La Puente and Suburban

^{5/} The staff contends, in its reply brief, that Exhibit 15 is evidence of the relationship between Suburban and La Puente. - The exhibit is a form whereby a La Puente stockholder authorizes the company to serve a lessee. There appears on Exhibit 15 a typewritten approval in the name of Suburban Water Systems, dated March 5, 1956. Exhibit 15 was received in evidence for the purpose of showing its form only. We do not consider the written or typewritten matter thereon for any purpose in this proceeding.

are before the Commission in this proceeding. (Pratt v. Coast Trucking, Inc., 228 Cal.App.2d 139, 153; Thomson v. L. C. Roney & Co., 112 Cal.App.2d 420; McLoughlin v. L. Bloom Sons Company, Inc., 206 Cal.App.2d 848.)

The breakdown by the staff of La Puente's operations was as follows:

Summary of All Water Revenues Received

	Year	<u>1959</u>	<u>1960</u>	<u>1961</u>	<u>1962</u>
Sales to domestic customers		\$ 7,095	\$25,490	\$35,660	\$34,090
Public Fire Protection Service		170	615	660	660
Subtotal		7,265	26,105	36,320	34,750
Sales to Suburban		31,325	33,325	41,560	26,270
Sales to Other Irr. Customers		3,450	2,860	2,595	2,630
Other Revenue		210	1,080	490	180
Total		42,250	63,370	80,965	63,830

Water Production For and Revenue Received From Various Customer Groups
1961

	<u>Water Production</u> <u>Acre-Feet</u>	<u>% of</u> <u>Total</u>	<u>Revenue</u>	<u>% of</u> <u>Total</u>
Domestic	298	11.7	\$35,660	44.1
Fire Prot. Service	-	-	660	.8
Suburban	2,113	83.1	41,560	51.3
Other Irrigation	133	5.2	2,595	3.2
Other	-	-	490	.6
Total	2,544	100.0	80,965	100.0

Thus, in 1961, La Puente's domestic customers provided 44.1% of its revenue while receiving only 11.7% of the water it produced. The effect of Suburban's using its alter ego, La Puente,

to serve the six tracts here involved was to have the customers pay La Puente \$7.56 per month for 2,200 cubic feet of domestic water rather than Suburban's public utility rate of \$3.90. ✓

We turn now to the question of what effect, if any, the alleged transfer of facilities between La Puente and Suburban has upon this proceeding. There are two main aspects to this consideration: (1) The practical effect of the alleged transfer on Suburban, La Puente, La Puente's customers, La Puente's minority shareholders and the subdividers whose advances paid for constructing La Puente's domestic systems; and (2) The legal aspects of the alleged transfer.

As indicated, La Puente purported to sell most of its assets to Suburban on July 6, 1965. The assets which were allegedly sold consisted of substantially all of La Puente's distribution systems. La Puente retained ownership of the water rights, lands, casings and ground holes to its five wells. Testimony indicated that La Puente plans to lease the wells to Suburban. The contract between Suburban and La Puente for the alleged transfer provided for a purchase price of \$451,476, of which \$100,000 was to be paid at the time the contract was executed; Suburban was to make a promissory note for the balance of \$351,476 with interest at the rate of 5-1/2 percent per annum payable on April 1, 1966. La Puente was obligated under the contract to continue to make refunds to subdividers for the advances made for the construction of the two domestic water systems; however, Suburban was given the option of making such payments and deducting the amounts paid from the outstanding balance due on its promissory note.

One effect of the alleged transfer was that Suburban commenced direct service to the approximately 455 domestic customers at its rates rather than the higher rates of La Puente, its alter ego. As a result, the average domestic user's monthly bill was reduced from \$7.56 to \$3.90--approximately 48 percent.

However, if the alleged sale is examined as to its other effects, certain problems are presented. The record indicates that in 1964 La Puente's shareholders were assessed \$10 per share or approximately \$17,000. Suburban, which directly held about 841 La Puente shares paid approximately \$8,520 of that assessment. The record indicates that there were no assessments between 1960 and 1964. It is silent as to times prior to 1960. To the extent that La Puente's total revenues have exceeded its total expenses, such assessments represent additional investment in the company. Insofar as assessments levied by La Puente were charged to Suburban's operating expense accounts and were used to pay for La Puente's plant, they represent contributions to La Puente by Suburban's ratepayers. Such payments should be accounted for as contributions in aid of construction.

The record discloses that in 1963, La Puente's books reflected \$92,756 in advances for construction and \$146,187 in donations by subdividers and governmental agencies. Normal public utility rate making procedures preclude including in rate base donations and unrepaid advances. To the extent facilities paid for by donations and unrepaid advances are included in the purchase price, the alleged transfer is but a device between Suburban and its alter ego, La Puente, to insinuate these amounts into Suburban's rate base to the detriment of its ratepayers.^{6/}

^{6/} The Commission takes official notice that on May 23, 1966, Suburban filed Application No. 48489, seeking authority to issue 3,514 shares of its common stock to retire the note for \$351,476, which it gave La Puente in the alleged sale and transfer transaction.

Furthermore, if La Puente's contention, that it is a nonregulable mutual, were accepted (which, as indicated, the Commission finds to the contrary), La Puente could attempt to settle with the subdividers who made advances at less than the full value of their advances of main extension agreements thereby providing the opportunity for personal profit to the Suburban officers who hold shares in La Puente. The record also shows that at the La Puente shareholders' meeting where the alleged sale and transfer to Suburban was approved, a motion to distribute some of the proceeds was made but was defeated, with Suburban casting a majority of the votes. Intracorporate matters relating to the manner in which the interests of minority shareholders are dealt with must be resolved by the Superior Court in an appropriate action. However, the Commission does have jurisdiction to consider the reason Suburban desires to pay the purchase price in cash to its alter ego, La Puente, and have the alter ego retain approximately \$280,000, for which Suburban, in Application No. 48489 proposes to issue common stock.

Section 851 of the Public Utilities Code provides, in part, as follows:

"No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its...line, plant, system, or other property, or franchise or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void."

Since La Puente was a public utility water corporation at the time of the alleged sale and transfer of assets to Suburban, the purported transfer was void under Section 851 because no prior authorization was secured from this Commission. However, Section 853 of the Public Utilities Code provides, in part, that:

"The commission may from time to time by order or rule and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the provisions of Sections 851 and 852 if it finds that the application thereof with respect to such public utility or class of public utility is not necessary in the public interest."

The facts here presented call for the application of Section 853. Normally, the provisions of Section 851 which make void the sale or transfer of public utility operating property without prior Commission authorization work in the public interest. But we are not here faced with a normal situation. We do not have two independent public utilities dealing with each other. We find a public utility dealing with its alter ego, which is clothed with a corporate structure and is also a public utility. One of Suburban's transgressions shown by the record herein is that it did not directly serve the approximately 455 domestic customers in the six subdivisions, but it caused its alter ego to serve them at rates higher than it was authorized to charge. The La Puente domestic systems were designed to be and are in reality a part of Suburban's system. The domestic customers should be served by Suburban at its rates. If the Commission does not act herein pursuant to Section 853, since the transaction is void under Section 851, the domestic customers will revert to being served by La Puente. In such event, the Commission could order herein La Puente to continue to serve at Suburban rates. However, if the physical control of the water

systems were left in La Puente, innumerable problems would ensue and regulatory problems would be compounded. The public interest will be better served by permitting the transfer of assets from La Puente to Suburban under Section 853 with appropriate conditions to protect the public and Suburban's ratepayers. Furthermore, since La Puente is held herein to be a public utility any subsequent transactions between La Puente and Suburban will be subject to the Commission's jurisdiction and scrutiny.

No other points require discussion. The Commission makes the following findings and conclusions:

Findings of Fact

1. At all times herein mentioned Suburban has been a "water corporation" as defined in Section 241 of the Public Utilities Code, and a "public utility" within the meaning of Section 216 of that Code.
2. At all times herein mentioned La Puente had approximately 1,723 shares of capital stock outstanding.
3. By the year 1958, Suburban had acquired 841 shares of La Puente capital stock and Suburban has since that time held and continues to hold said shares.
4. By June 30, 1961, Suburban and its officers and directors owned or controlled 62 percent of the capital stock of La Puente.
5. Since 1958, Suburban has owned sufficient shares of La Puente stock to enable it to control, dominate and run La Puente.
6. Since 1958, La Puente has been the alter ego of Suburban.
7. Since 1958, La Puente has been a public utility water corporation as defined in Sections 241 and 216 of the Public Utilities Code.

8. La Puente has constructed a water system and operated a water corporation without having first secured from this Commission a certificate declaring that public convenience and necessity required the construction of said water system or operation of said water corporation.

9. La Puente has failed to file with this Commission schedules showing all of its rates, tolls, rentals, charges and classifications collected or enforced or to be collected or enforced, together with all rules, contracts, privileges and facilities which in any manner affect or relate to its rates, tolls, rentals, classifications or service.

10. La Puente has failed to file with this Commission from 1958 to date the annual reports required by law.

11. From 1958 until July 6, 1965, La Puente charged its customers who received domestic water service rates which were unjust and unreasonable.

12. Commencing in 1958, Suburban caused its alter ego, La Puente, to construct or acquire two water distribution systems which serve domestic water to customers in Tracts Nos. 21566, 21404, 16457, 17101, 21480 and 25592 in Los Angeles County. Each of said tracts is within Suburban's dedicated service area.

13. It was not economically practical for any public utility or entity other than Suburban or an entity controlled by Suburban to furnish water service to Tracts Nos. 21566, 21404, 16457, 17101, 21480 and 25592.

14. Since 1958, Suburban, through its alter ego La Puente, served water to customers in Tracts Nos. 21566, 21404, 16457, 17101, 21480 and 25592 in Los Angeles County at rates greater

than those set forth in Suburban's tariff and greater than rates authorized by this Commission.

15. On or about July 6, 1965, La Puente purported to sell most of its assets to Suburban for \$451,476. ✓

16. On or about July 6, 1965, Suburban itself directly commenced water service in Tracts Nos. 21566, 21404, 16457, 17101, 21480 and 25592 in Los Angeles County at its tariff rates authorized by this Commission. ✓

Conclusions of Law

1. La Puente is the alter ego of Suburban, and, therefore both La Puente and Suburban are before the Commission in this proceeding.

2. La Puente has operated as a public utility water company without proper operating authority from this Commission from at least the year 1958 to date, and during the year 1958 dedicated its property and service to the public use.

3. La Puente violated Section 1001 of the Public Utilities Code by constructing a water system, as defined in Section 240 of the Public Utilities Code, and by operating a water corporation, as defined in Section 241 of the Public Utilities Code, without having secured from this Commission a certificate declaring that public convenience and necessity required the construction of said water system or the operation of said water corporation.

4. La Puente violated Sections 489 and 702 of the Public Utilities Code and the Commission's General Order No. 96-A by failing to file with this Commission schedules showing all of its rates, tolls, rentals, charges and classifications collected or enforced, together with all rules, contracts, privileges and

facilities which in any manner affect or relate to its rates, tolls, rentals, classifications or service.

5. La Puente violated Sections 581, 584 and 702 of the Public Utilities Code and the Commission's General Order No. 104 by failing to file required annual reports with this Commission from 1959 to date.

6. La Puente violated Section 451 of the Public Utilities Code by demanding and receiving from its customers receiving domestic water service from 1958 until July 6, 1965, charges which were unjust and unreasonable.

7. Suburban, operating through its alter ego La Puente, caused to be charged to customers, in Tracts Nos. 21566, 21404, 16457, 17101, 21480 and 25592 in Los Angeles County, rates higher than those which Suburban was authorized in these areas. This constituted a violation of Sections 454, 2107 and 2108 of the Public Utilities Code.

8. The purported sale and transfer of La Puente assets to Suburban on or about July 6, 1965 was void under Section 851 of the Public Utilities Code.

9. The Commission may, in this proceeding, pursuant to Section 853 of the Public Utilities Code, authorize said sale and transfer subject to such terms and conditions as are required in the public interest.

10. The public interest requires that said sale and transfer be approved subject to the following terms and conditions:

- (a) Suburban shall record the acquisition of the properties and assets of La Puente in accordance with the requirements of the Uniform System of Accounts for Water Utilities (Class A, Class B and Class C) and in conformity with the instructions relating to utility plant purchased contained therein, and the provisions herein set forth, and shall submit to the Commission, for approval, the journal entries by which the acquisition is proposed to be recorded.
- (b) Suburban shall transfer from its earned surplus account to Account 265 - Contributions in Aid of Construction, an amount equal to the full amount of any assessments levied by La Puente against Suburban that were charged by Suburban to its operating expense accounts.
- (c) Suburban shall record in Account 241 - Advances for Construction, and in Account 265 - Contributions in Aid of Construction, the balances of refundable advances and nonrefundable contributions carried on the books of La Puente immediately prior to the purported sale and transfer of La Puente's assets to Suburban.
- (d) Neither La Puente nor Suburban shall, without prior authorization of this Commission, enter into any agreement which would vary the terms of repayment of the existing main extension agreements previously executed by La Puente.
- (e) Suburban shall not pay to La Puente in cash that percentage of the purchase price equal to the percentage of stock in La Puente owned by Suburban and that stock in La Puente owned by officers and directors of Suburban upon which Suburban has paid assessments. The amount represented by said percentage of purchase price shall be represented by a promissory note, without interest, and no payments shall be made on said note without prior order of this Commission.

O R D E R

IT IS ORDERED that:

1. Suburban Water Systems is directed to refund to each person who was a domestic service customer of its alter ego La Puente Co-operative Water Company for the period three years immediately preceding the effective date of this order the difference between the amount charged each customer by La Fuente and Suburban's authorized tariff rates during that period of time.

2. The purported sale and transfer of assets from La Puente Co-operative Water Company to Suburban Water Systems, entered into on July 6, 1965, is approved pursuant to Public Utilities Code Section 853 upon compliance with each and all of the following conditions:

- (a) Suburban shall record the acquisition of the properties and assets of La Puente in accordance with the requirements of the Uniform System of Accounts for Water Utilities (Class A, Class B and Class C) and in conformity with the instructions relating to utility plant purchased contained therein, and the provisions hereinafter set forth in this order, and shall submit to the Commission, for approval, the journal entries by which the acquisition is proposed to be recorded.
- (b) Suburban shall transfer from its earned surplus account to Account 265 - Contributions in Aid of Construction, an amount equal to the full amount of any assessments levied by La Puente against Suburban that were charged by Suburban to its operating expense accounts.
- (c) Suburban shall record in Account 241 - Advances for Construction, and in Account 265 - Contributions in Aid of Construction, the balances of refundable advances and nonrefundable contributions carried on the books of La Puente

immediately prior to the purported sale and transfer of La Puente's assets to Suburban.

- (d) Neither La Puente nor Suburban shall, without prior authorization of this Commission, enter into any agreement which would vary the terms of repayment of the existing main extension agreements previously executed by La Puente.
- (e) Suburban shall not pay to La Puente in cash that percentage of the purchase price equal to the percentage of stock in La Puente owned by Suburban and that stock in La Puente owned by officers and directors of Suburban upon which Suburban has paid assessments. The amount represented by said percentage of purchase price shall be represented by a promissory note, without interest, and no payments shall be made on said note without prior order of this Commission.

If each and all of said conditions are not complied with in full, said transaction shall remain void pursuant to Section 851 of the Public Utilities Code.

The Secretary of the Commission is directed to cause personal service of this order to be made on Suburban Water Systems and La Puente Co-operative Water Company. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 27th day of DECEMBER, 1966.

[Signature]
President

[Signature]

[Signature]

Commissioner George G. Grover 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.

Commissioners