

Decision No. 79576

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of VALLECITO WATER COMPANY, a corporation for a Certificate of Public Convenience and Necessity to furnish water service to Tracts 29803 and 29942, adjacent to its present service area.

Application No. 50485
(A Petition for Supplemental Order on Decision No. 75014-Petition Filed November 5, 1970)

J. E. Skelton, Attorney at Law, for Vallecito Water Company, petitioner.
Lev, Remington & Jackman, by Michael Remington, Attorney at Law, for Bodinus Homes; Martin E. Whelan, Jr., Inc., by Martin E. Whelan, Jr., Attorney at Law; and Clinton O. Harris, for Clinton and Flora Harris; Donnelly, Clark, Chase and Haakh, by Ernest M. Clark, Attorney at Law; and Hillis S. Israel and Ralph E. Patterson, for United California Bank, protestants.
Gibson, Dunn & Crutcher, by Raymond L. Curran, Attorney at Law, for Affiliated Properties, Inc., and Prudential Savings and Loan, interested parties.
Elinore C. Morgan, Attorney at Law, for the Commission staff.

OPINION ON PETITION FOR SUPPLEMENTAL ORDER

By the application herein, as amended, Vallecito Water Company (applicant) requested authority to extend service to Tracts Nos. 29803 and 29942 in Los Angeles County. These tracts contain a total of approximately 94 acres of land. In the original application, it is alleged that:

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"The off-site and special facilities for the two tracts totaling \$335,900 and as detailed at Exhibit C, being special facilities benefiting only the two tracts, will be contributed to Applicant and paid for by Prudential in their entirety.

"The in-tract facilities for the two tracts totaling the sum of \$128,900, likewise detailed at Exhibit C, will be paid for by Prudential on its advance made to Applicant, and to be repaid by Applicant under the terms and conditions of Applicant's main extension agreement on file with the Commission. This mode of financing has been discussed with Prudential and is entirely agreeable and satisfactory with it and Applicant is informed and believes and thereon alleges that Prudential is able, willing and ready to deposit with Applicant the amount of the required advance."

By Decision No. 75014, dated November 26, 1968, the Commission granted applicant authority as requested. The decision was issued ex parte and was based almost entirely on a staff hydraulic engineer's report filed in said proceeding as Exhibit No. 1. In said exhibit, there is the following language:

"Applicant states that Prudential will advance to applicant the costs of in-tract facilities estimated at \$128,900, such costs to be subject to refund under the terms of applicant's filed main extension Rule No. 15. Applicant further states that Prudential will contribute the estimated costs of \$335,900 for off-site and special facilities required for serving the tracts. By letter dated August 30, 1968, from Prudential to the Commission, Prudential states that:

'Prudential is able and willing to advance all funds necessary to complete all water mains and special facilities required for water service to the land. Prudential asks only that it be given the customary rebate contract for that portion of the funds used for water mains, and that any future developers obtaining clear benefits from the special facilities paid for by Prudential be required, reasonably, to reimburse Prudential for their pro rata share of those special facilities.'

The engineer's report further states:

"Applicant would be required to pay for all of the back-up plant required for the requested area in a short time if it followed the main extension rule in this instance. Due to the unusually high back-up plant expenditures required, which would be of limited utility to applicant's existing customers, the staff concludes that the requested deviation requiring contributions in aid of construction rather than advances for construction for the back-up plant should be authorized. However, if the off-site plant installed for this development is to be utilized for further extensions of service into adjacent areas, it would be equitable to have the future subdividers make a contribution on a pro rata basis which would revert to Prudential."

On this recommendation, the Commission included in Decision No. 75014, supra, Finding No. 4, as follows:

"Applicant would be required to pay for all of the back-up plant required for the requested area in a short time if it followed the main extension rule in this instance. Due to the unusually high back-up plant expenditures required, which would be of limited utility to applicant's existing customers, the requested deviation requiring contributions in aid of construction rather than advances for construction for the back-up plant should be authorized. However, if the off-site plant installed for this development is to be utilized for further extensions of service into adjacent areas, it would be equitable to have the future subdividers make a contribution on a pro rata basis which would revert to Prudential."

In Decision No. 75014, supra, the Commission included Ordering Paragraphs Nos. 3 and 6, as follows:

"3. Applicant is authorized to deviate from its filed main extension Rule No. 15 to accept contributions in aid of construction for the installation of special facilities set forth in Exhibit C attached to the application plus the land with its improvements for the reservoir sites.

"6. Within one hundred eighty days^{1/} after the effective date of this order, applicant shall submit a study to determine what benefits would be realized by developers in adjacent areas because of the special facilities to be constructed and the land with its improvements to be utilized for the reservoir sites in connection with this development. Applicant shall also submit a plan showing an equitable assignment of the cost of these special

^{1/} This 180 days expired on June 14, 1969. No extension of time was requested or granted.

facilities and related improved land to developers of the adjacent areas. Upon acceptance or modification of this plan, the Commission will, by supplemental order, authorize and direct its implementation. Any assignment of costs to future developers shall be collected by Vallecito Water Company and paid to Prudential Savings and Loan Association or its successors in interest in accordance with such supplemental order."

On November 5, 1970, applicant filed the "Petition for Supplemental Order" herein considered. Therein it sets out various areas which it alleges would be benefited by the facilities installed to serve Tracts 29803 and 29942 and requests a supplemental order in accordance with Ordering Paragraph 6 of Decision No. 75014.

Hearings on the petition were held before Examiner Rogers in Los Angeles on June 2, 8 and August 10, 1971. On August 10, 1971, the hearings were taken off calendar to permit briefs by the interested parties on motion to dismiss the petition and to strike paragraph 6.

On the first day of hearing on the Petition for Supplemental Order (June 2, 1971) the attorney for applicant stated:

"By the petition which was filed on November 5 and particularly Exhibit E, which consisted of a covering letter dated July 9, 1970, and a copy of a study and plan, and Exhibit F, which again was a covering letter dated October 26, 1970, and a modified plan of allocating costs, the company did make this filing with the Commission.

"Our request was merely that the filing be accepted in compliance with the requirement of the ordering paragraph.

"It is not the intention of the company to introduce any witnesses as to any of the facts which might be desired as to the receipt of this information by the company and as a filing or other related matters.

"There are present in the audience Mr. Thomas Richards, who is the manager of the company and has been for years, and Mr. Richard Entwistle, who is vice president-treasurer, who would be available should anyone care to call them for any information regarding these matters."

The attorney for applicant stated that:

"We sent copies of the petition to Independent Service Station Operators, Inc., Jack Urich, President; to Clinton O. and Flora K. Harris; to Batistelli Bros.; and to Bodinus Land Company. Another affected property owner was either Prudential or Affiliated Properties, Inc., but of course those two companies are well aware of the proceedings since they were the ones that had participated and submitted the plan and study.

"That, Mr. Examiner, as I see it, represents the company's presentation at this time and, as I say, we have people available, if it is necessary, that can during the proceedings shed additional light on this matter."

The applicant thereupon rested and the attorney for API and Prudential took over. His opening statement provides a good resume of the issues. The pertinent portions of this statement are as follows:

"First of all, let me say that API and Prudential Savings and Loan Association are sort of related companies, so that we don't get confused as we go along, we may use the terminology interchangeably.

"Both are subsidiary companies of Financial Federation Corporation. Prudential was the lender of funds on this property with the original owner and as a result of foreclosure proceedings, came into ownership of the property.

"API, or Affiliated Properties, Inc., is sort of a service organization of Financial Federation. They take over lands that have been recovered under foreclosure proceedings and they proceed to rehabilitate the lands and complete whatever developments are necessary to be completed so they are in effect serving all of the various financial subsidiaries of Financial Federation or savings and loan associations.

"As such, at some point in the game Prudential was dealing with Vallecito and dealing with Brown & Caldwell, and at a later stage, when Affiliated Properties took over their regular job with respect to Prudential, they were the ones that did it.

"So far as the terminology is concerned, you would be able to consider API and Prudential to be the same parties in effect.

"Now, as far as the purpose of the proceedings, I see it coming about as a result of this Commission Decision No. 75014. As Mrs. Morgan indicated, that was an ex parte decision. The Commission didn't hold a hearing at that time, I presume that it did feel there was no need to hold a hearing.

"The reason that the application was filed at all was because our client, Prudential, applied to the water company to extend its service area to serve this particular company; there was a need for Vallecito to come to the Commission to get authority to extend its service area.

"It, I believe, was under a prohibition from extending its service area without applying to the Commission, and I'm not absolutely sure of that, but we can establish that at a later time.

"In addition, Vallecito Water Company was affected by the fact that the Commission main extension rules which limits the amount of main extension contracts that a water company can enter into without PUC approval was also a motivating factor for filing this application with the Commission.

"It is my understanding that because of the size of the advance that was going to be required in this case, the total advance for special facilities and for in-tract facilities being in excess of \$400,000, because of the amount of that advance, that the water company, Vallecito Water Company, would have exceeded the limitations established by the Commission when they ordered the companies to adopt this uniform Rule 15 for main extensions.

"So that we find ourselves in a position where Prudential needs the water service, has to advance the money, and apparently, as a result of this proceeding, as near as I can determine from reviewing the Commission file and reviewing the application and the order, the Commission came to the conclusion that it would not have been in the best interests of Vallecito to require it to follow the usual procedures of repaying these advances, whether they were under the special facilities provisions or under the in-tract facilities.

"Instead Vallecito and API presented to the Commission a position whereby Vallecito -- excuse me -- Prudential agreed to donate the cost of all of the special facilities to Vallecito so that it would not be under the burden of having to repay those amounts.

"Because of the terrain, this was a very substantial amount per customer, as I understand from a review of the file, and this was satisfactory with API and was satisfactory with Vallecito, apparently was satisfactory with the Commission.

"However, the attorney then representing Prudential in correspondence with the Commission suggested that Prudential was willing to make the contribution to the water company but it asked the Commission to condition this contribution on a requirement that if any future developers of adjacent areas benefited from these contributed facilities which were being donated by Prudential to Vallecito, that the Commission make some provision for these future developers to share the cost of those facilities which they would be benefiting from.

"And the Commission, I believe, in paragraph 6 of the decision was making that provision. It was in effect saying to Vallecito, 'Conduct a study to determine if in fact any benefits will be realized by developers in adjacent areas because of these special facilities that are going to be constructed and given to you and then if you find that there are some benefits, submit to us a plan showing the equitable assignment of those costs.'

"And as Mr. Skelton has indicated, when Vallecito received these materials, they assumed that this was in response to the Commission order and they have been submitted to the Commission.

"Now, I see this hearing, the purpose of this hearing as being, one, to determine if there are any benefits to any of the surrounding properties.

"I think that is something the Commission would want to know before they had their supplemental order issued and carried out, what would appear to be their motive in initially giving the order.

"Secondly, I think if there is a determination that there are benefits, that the next question to be decided by the Commission would be how should they be prorated, what portion of those benefits should be paid by what developers when they take advantage of those benefits, you might say, when they go ahead and develop their land.

"And I think probably the third question that we should try to resolve in this hearing is the question of what is the amount that should be allocated.

"If the Commission finds that there is a benefit, and that if there is a benefit it should be prorated, and then a determination of what is the proper amount to be determined."

Staff counsel stated:

"Well, Mr. Examiner, this is the rather funny position that the utility has been placed in by the prior ex parte decision. The utility is placed in the position of being a middleman to collect from one subdivider to pay another subdivider.

"In effect, I think the utility has been placed in a rather ridiculous position here, if I might say so. And the prior decision also said that Vallecito will conduct a study and yet we are faced now with the study which has been prepared by API, and all Vallecito is really trying to do is get off the hook from that prior decision which ordered the utility to file a study."

As stated by counsel for applicant:

"It seems that we are merely a conduit or collection agency if this plan is followed out to receive moneys from certain developers and to pay them over to Prudential or API."

Harris, the owner of a 61-acre parcel of land partly within and partly without the service area boundaries of applicant, stated that his land had been receiving (irrigation) water from applicant for 14 years. The counsel for an additional owner (Bodinus) stated that his client had been receiving (irrigation) water from applicant for over 40 years.

Applicant's vice president, who joined the applicant on November 6, 1969, under questioning by counsel for API and Prudential, testified that in approximately January or February 1970, he became aware of Ordering Paragraph No. 6 of Decision No. 75014 and that it had not been complied with, and that he informed API of the problem.

He further testified that good management would not have extended service to API unless the resources and facilities constructed to serve the tracts were donated to applicant; that anyone who would take water from the reservoirs (Heather Field and Belle River) which were constructed by API to serve the two tracts would benefit from the facilities and water is being served to customers from the two reservoirs. [Exhibit No. 2 herein shows the land owned by API, Tracts, Nos. 29803 and 29942 for which the Heather Field and Belle River reservoirs were constructed, and the existing western boundary of applicant's certificated service area.] The witness testified that the two reservoirs are on land owned by API and the land and reservoirs are to be deeded to applicant as contributions in aid of construction. The witness suggested to API that it prepare a study (per Ordering Paragraph 6) to show the benefits to be realized by other developers or property owners; and that API had such a study^{2/} prepared by Brown and Caldwell, a firm of consulting engineers.

Brown and Caldwell's engineer-witness testified that he estimated the cost of facilities required to serve Tracts 29803 and 29942; that his firm designed the facilities to serve the tracts; that he is familiar with Ordering Paragraph 6 of Decision No. 75014; that the firm made the study attached to the petition as Exhibit E allocating the costs between the various property owners affected; that the design criteria are for facilities to take care of 307 acres of land; the Exhibit E shows in Table 2, page 4, seven individual parcels of land the facilities were designed to serve; that the property owners, with reference to Exhibit No. 2 herein, are:

^{2/} See Exhibits E and F to "Petition For Supplemental Order" herein.

API, areas 1A - 79.4 acres, 2A - 25.5 acres, and 7A - 57 acres; 3A Urich (now United California Bank), 57.6 acres; 4A Harris - 68.8 acres; 5A Batistelli - 4 acres; and 6A Bodinus - 14.7 acres; and that approximately one-half of the 307 acres is outside the certificated service area of applicant (but contiguous thereto).

The witness further stated that 158 of the 307 acres are in Pressure Zone II (600 - 800 feet); 124 are in Pressure Zone IV (800 - 1000 feet); and 25 are in Pressure Zone V (over 1000 feet); and he divided the costs on the basis of cost of the facilities for the zone, the percent allocation of the total facilities serving the zone, and the acreage owned by the property owner in the pressure zone (Exhibits 3 through 7). The witness stated that water has been furnished to the Harris' for irrigation through the existing system but at a lower pressure; and the increased pressure would require additional facilities.

The engineer stated that each of the parcels of land in Exhibit No. 2 has been assigned a portion of the cost of the special facilities, the total cost of which is \$405,200; and that said costs have been apportioned between zones as follows:

Zone III Costs

Turnbull Canyon Booster Station	\$ 81,400
Heather Field Reservoir	96,100
Heather Field Site	16,100
Total	<u>\$193,600</u>

Zone IV Costs

Heather Field Booster Station	\$ 43,800
Heather Field Site	12,600
Belle River Reservoir	79,300
Belle River Site	24,700
Total	<u>\$160,400</u>

Zone V Costs

Belle River Booster Station	\$ 30,800
Belle River Reservoir	16,000
Belle River Site	5,000
Total	<u>\$ 51,800</u>

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These total costs have been apportioned between properties as follows:

<u>Area Number</u>	<u>Area Description</u>	<u>Amount</u>
1A	Tract 29942, API	\$ 114,400
2A	Tract 29803, API	31,300
7A	South of Edison right-of-way API	<u>73,800</u>
	Subtotal	\$ 219,500
3A	Portion of tentative Tract 28053 (Urich - now United California Bank)	79,000
4A	East of Tract 28052 (Harris)	84,400
5A	Portion of tentative Tract 26484 (Batistelli)	4,900
6A	Tentative Tract 25080 (Bodinus)	<u>18,000</u>
	Total	\$ 405,800

The attorney for Bodinus stated that his client's property has been in the applicant's service area for many years and has been receiving agricultural water from it. He said that Bodinus would be better off, when he subdivided, to go the main extension route rather than contribute to the API system.

The attorney for the Harris' (4A on Exhibit No. 2) has been furnished water for many years by applicant, that the Harris' have a .5 million gallon reservoir and pressurize the water for use on their avocado grove; and that the Heather Field Reservoir (from which applicant would furnish water) is at a higher level than the Harris' property and they would be required to reduce the pressure to use water from that reservoir.

Staff counsel stated: "I would recommend dismissing this present petition but with a paragraph saying if in the future, API believes that there are adjacent landowners who are in fact receiving a benefit from the facilities that were put in by API, then let them appear before us and argue it."

Briefs were filed by the various property owners, applicant and Affiliated Properties, Inc.

The United California Bank moved that the petition be dismissed for the following reasons:

1. The petition was untimely in that no study was submitted within 180 days of the effective date of the order, as required by Paragraph 6, and hence any obligation of the Commission to act pursuant to the paragraph has lapsed; and

2. It would be illegal, improper, and outside the Commission's jurisdiction for the Commission to assign any part of the costs to United California Bank, in that

- a. The land owned by United California Bank is outside of the certificated area of Vallecito Water Company; and
- b. United California Bank did not approve, and was never given the opportunity to be heard with respect to, the installation of the facilities designed, constructed and paid for by Affiliated in furtherance of its own interests; and
- c. If United California Bank owes anything to Affiliated, it should collect such obligation, and it should not use a public utility as a collection agency; and
- d. If, in the future, developers of lands outside of the service area of Vallecito Water Company desire to be included within the service area, that is the time to consider the price which should be paid for inclusion. It is premature to assign such costs at this time solely for the benefit of Affiliated; and
- e. United California Bank is not a developer of land, being engaged solely in the banking business, and related activities as permitted by law.

3. Decision No. 75014 was improperly rendered contrary to law and Public Utilities Code Section 1705 in that it was an ex parte decision which should not have been made in a non-routine, highly controversial matter solely for the benefit of a landowner, seeking to use a public utility as an agent to collect its costs from landowners outside the service area of the utility; and

4. Decision No. 75014 does not contain, as required by Public Utilities Code Section 1705, separately stated findings of fact and conclusions of law by the Commission of all issues material to Ordering Paragraph 6.

Bodinus Homes urged that the petition be dismissed for the claimed reasons that:

1. Paragraph 6 violates equal protection provisions of both the State and Federal Constitutions and is void.

2. Ordering Paragraph 6 is in violation of due process and is therefore void.

3. Ordering Paragraph 6 has lapsed by its own termination and the Commission is therefore without jurisdiction to hear the petition.

4. Affiliated Properties, Inc. and Vallecito deprived Bodinus of the right to participate in the design and construction of the water plan to best serve Vallecito customers and not just Affiliated Properties, Inc.

5. Ordering Paragraph 6 was never meant to apply to Vallecito's existing customers.

Clinton and Flora Harris urge:

1. Ordering Paragraph 6 was void in its inception for lack of notice and hearing and consequent lack of due process and equal protection.

2. Ordering Paragraph 6 was in violation from its inception in that it was not within the scope and limit of the jurisdiction.

3. There has been no compliance with Ordering Paragraph 6 and it has lapsed for noncompliance.

4. Application of Ordering Paragraph 6 would deny the Harris' the benefit of Vallecito's Rule No. 15 for equal application of its then applicable rule at the time of the development of the property.

5. Ordering Paragraph 6 cannot be implemented except on the basis of pure speculation.

In response, applicant states:

1. Paragraph 6 should not be stricken for the reasons that presumption of regularity is to be indulged with respect to orders of the Commission as has been done with respect to judgment of the courts.

2. Ordering Paragraph 6 has not lapsed and the Commission has jurisdiction to hear Vallecito's petition.

3. Paragraph 6 did require that a study and plan be made by Vallecito.

4. The proceeding should not be dismissed.

Affiliated Properties, Inc., the real party in interest, urges:

1. Ordering Paragraph 6 does not violate the due process or equal protection clauses of either the State of California or the Federal Constitution.

2. The order requiring Vallecito to undertake a study of benefits and propose a plan for the assignment of costs was clearly within the Commission's jurisdiction.

3. Ordering Paragraph 6 does not violate Section 532 of the Public Utilities Code.

4. Ordering Paragraph 6 does not violate Section 1705 of the Public Utilities Code.

5. It would be inequitable to penalize API for Vallecito's failure to comply with Ordering Paragraph 6 within the limited time provided therein.

We have reviewed the record herein, including the original application, the Petition for Supplemental Order, the transcripts of the hearings herein, and the briefs of the parties, and we are convinced that Decision No. 75014, the cause of the controversy, should be amended by striking in its entirety Ordering Paragraph No. 6 thereof and dismissing the Petition for Supplemental Order which is pending and it will be so ordered. This action is within our authority; William A. Sale v. Railroad Commission of the State of California, 15 Cal. 2d 612, 616 (1940).

"The Commission has continuing jurisdiction to rescind, alter or amend its prior orders at any time (citing Public Utilities Act, Section 64, now Section 1708, Public Utilities Code)."

The request contained in the original application states specifically:

"The off-site and special facilities for the two tracts totaling \$335,900 and as detailed at Exhibit C, being special facilities benefiting only the two tracts (underlining ours) will be contributed to applicant and paid for by Prudential in their entirety." (Paragraph XIII, page 6 of application)

Nowhere in the official pleadings on which we based our decision was there any suggestion that any other person or entity would pay any portion of these costs and the express allegations of the application refute any such cost allocation.

We are not apprised of the reason for paragraph 6 being included in the decision, and it appears to be without any basis or legal support. It should be stricken. It is clear that we have plenary authority to correct our decisions (Section 1708, Public Utilities Code, supra). Such power includes the right to modify our decisions particularly where no vested rights have intervened as in the instant case.

ORDER DISMISSING PETITION

Good cause appearing,

IT IS ORDERED that:

(1) Decision No. 75014, dated November 26, 1968, in Application No. 50485, is hereby amended by striking therefrom Ordering Paragraph No. 6.

(2) The Petition for Supplemental Order herein considered is dismissed.

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

Dated at San Francisco, California, this 11th day of JANUARY, 1972.

William L. Steiner Chairman
[Signature]
Vernon L. Steiner
[Signature] Commissioners

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[Handwritten signature], Chairman