

Decision No. 81107

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA  
GAS COMPANY and PACIFIC LIGHTING  
SERVICE COMPANY for an order,

- (a) determining and deciding pursuant to the jurisdiction conferred by Section 11592 of the California Water Code the character and location of new facilities required to be provided by the Department of Water Resources pursuant to Article 3, Chapter 6, Part 3, Division 6 of the California Water Code;
- (b) directing and requiring the Department of Water Resources to provide and substitute such facilities of Applicants to be taken or destroyed by said Department; or, in the alternative, to reimburse the Applicants for necessary costs incurred in the relocation of their facilities;
- (c) determining and deciding all controversies between Applicants and the Department of Water Resources concerning the requirements imposed by Article 3, Chapter 6, Part 3, Division 6 of the California Water Code; and
- (d) granting other appropriate and joint relief.

Application No. 53549

(Filed August 25, 1972)

Loren Miller, Jr. and Robert Salter,  
Attorneys at Law, for applicants.  
Evelle J. Younger, Attorney General,  
Iver E. Skjeie, Assistant Attorney  
General, and Richard D. Martland,  
Deputy Attorney General, by Richard D.  
Martland, for State of California  
Department of Water Resources, respondent.  
Elmer Sjostrom, Attorney at Law, for  
the Commission staff.

RULING ON MOTION TO DISMISS

The application was filed on August 25, 1972. On October 24, 1972, the Attorney General of California filed a document entitled "Special Return of Respondent Department of Water Resources of the State of California to Application No. 53549 By Way of Motion to Dismiss for Lack of Jurisdiction", together with points and authorities in support thereof. On January 19, 1973, applicants filed a memorandum of points and authorities in response to the motion to dismiss.

A hearing on the motion to dismiss was held before Examiner Rogers in Los Angeles on January 22, 1973. No testimony was presented but argument of counsel was heard.

Applicants quote sections of the California Water Code which provide that the Department of Water Resources (DWR) shall not take or destroy public utility property in connection with the construction of the California Aqueduct unless it has provided substitute facilities (Section 11590), the cost is a part of the project cost (Section 11591), and if the DWR and the utility cannot agree as to the character or location of the new facilities, the issue shall be decided by this Commission (Section 11592).

Applicants allege that the DWR has undertaken to construct the California Aqueduct (aqueduct), which construction will include the filling of the Pyramid Dam resulting in the submersion and destruction of certain of applicants' properties and that DWR has denied that it has any obligation to relocate or furnish substitute facilities. The applicants further allege that the DWR applied for a license from the Federal Power Commission (FPC), and the FPC examiner ruled that the DWR has no obligation to relocate or substitute facilities for applicants.<sup>1/</sup>

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<sup>1/</sup> Exhibit No. 1, page 74.

Except for the added fact that an examiner for the FPC has made an initial ruling that the DWR has no obligation to pay any of the costs of relocating applicants' facilities, this application is controlled by the decisions of this Commission under Application No. 48869, the application of the Oroville-Wyandotte Irrigation District, and particularly Decision No. 72200, wherein it is stated that the position of the DWR was that "if the parties hereto are in conflict, then exclusive jurisdiction lies in the Federal Courts because each of the parties are (sic) Federal Power Commission licensees and only the Federal Courts can determine the duties and liabilities of such licensees under the provisions of the Federal Power Act."

Therein, we said: "We disagree. There are without question areas of responsibility which lie exclusively within federal jurisdiction. The problem posed by the application here is one that, as we see it, falls squarely within Section 11592 of the California Water Code and in which we do have jurisdiction."

The foregoing quote is apposite.

The DWR cites and relies on the initial decision of the FPC examiner, supra. In that decision the examiner relied on three United States Supreme Court decisions for the proposition that "the law is well settled that in a case of such conflict it is the Federal Power Act and not the state statute which is controlling." (See First Iowa Hydro-Electric Cooperative v Federal Power Commission (1946) 328 US 152, 90 L ed 1143; City of Tacoma v Taxpayers of Tacoma (1958) 357 US 320, 2 L ed 2d 85; City of Seattle v Beezer (1964) 376 US 224, 11 L ed 2d 656; reversing Beezer v City of Seattle (1963) 62 Wash 2d 569.)

We find no conflict between the state statute and the Federal Power Act; therefore, the decisions referred to are not in point and reliance thereon is misplaced. We will follow Decision No. 72200.

The motion to dismiss is denied. The application will be set for public hearing.

The effective date of this order is the date hereof.

Dated at Los Angeles, California, this 6<sup>th</sup> day of MARCH, 1973.

Vernon L. Sturgeon  
President  
William J. Sproull, Jr.

[Signature]  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.