(36)

ei

ORIGINAL

Decision No. 83193

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SALINAS UTILITY SERVICES, a California corporation, for a certificate of public convenience and necessity to provide sewer service to Rancho El Toro and surrounding territory in Monterey County.	Application No. 54252 (Filed August 21, 1973)

Clayson, Stark, Rothrock & Mann, by George G. Grover, Attorney at Law, for Salinas Utility Services, applicant.
Brian Finegan, Attorney at Law, for Henry W. Edwards, Jr.; Robert M. Hinrichs, Attorney at Law, for Rancho El Toro, Western Builders; Richard Kelton, Attorney at Law, for Muster Corporation; and Mary Lou Yuckert, for herself; interested parties.
James T. Quinn, Attorney at Law, James M. Barnes, and John J. Gibbons, for the Commission staff.

O P I N I O N

Preliminary

Salinas Utility Services, a California corporation, requests authority to construct or acquire facilities to provide sewer service in and about a new subdivision, known as Rancho El Toro, located near, but not contiguous to, its present sewer system.

After due notice, public hearings were held before Examiner Boneysteele in Salinas on January 7 and 8, 1974 and in San Francisco on March 4, 5, and 6, 1974. Testimony was adduced by 12 witnesses, 20 exhibits were received, and the matter was submitted upon receipt of the final volume of transcript on April 18, 1974.

Witnesses

The 12 witnesses participating were:

For Applicant

Mrs. Diana E. Williams, President
Salinas Utility Services

Donald R. Howard, P.E.
Associated with Thomas M. Stetson,
Consulting Engineers

For the Commission Staff

Robert H. Bennett, P.E.
Associate Utilities Engineer

John J. Gibbons, C.P.A.
Principal Financial Examiner

James M. Barnes, P.E.
Senior Utilities Engineer

Interested Parties

Mrs. Mary Lou Yuckert

Walter Wong, M.P.H., R.S.
Director of Environmental Health
Monterey County Health Department

Michael G. Hughes, President
Western Builders, Inc.

Brian Finegan, Attorney at Law
For Henry W. Edwards, Jr.

Richard E. Dante, P.E.
For Western Builders, Inc. and
Rancho El Toro, Ltd.

Herman Rigmaiden, Superintendent
Washington Union School District

Richard Kelton, Attorney at Law
Secretary of Muster Corporation and
of Bollenbacher & Kelton, Inc.

Present Operations

Applicant presently provides sewer service in the Toro area, located approximately four miles southwest of Salinas, Monterey County, between the Salinas-Monterey Highway and the Fort Ord Military Reservation.

The terrain slopes gently toward the Salinas River with hills on the east and west sides of the service area. At the present time there are 592 customers. The service area is single family residential except for a small commercial center near Toro Park Estates and for condominiums in Creekside.

The utility estimates that there will be 690 prospective sewer connections at full development within the existing subdivisions (Toro Park Estates, Units 1-6; Creekside, Units 1-4; Toro Creek; and Serra Village). In addition, there are 39 homes in Serra Village that are on septic tanks but which may be connected at some future time. If unsubdivided lands within the service area should be developed, there would be a maximum of approximately 900 customers.

The staff engineer, Mr. Bennett, checked with Monterey County Planning Department and County Road Department concerning plans for further residential development within the existing service area. The only proposed development discovered by the staff is a 16-unit residential complex to be built on a 1.4-acre parcel located adjacent to a California Highway Patrol office. There are also tentative plans for an elementary school of approximately 250 pupils that would be located on a 10-acre site in Toro Park Estates.

Existing Sewerage Facilities

The trunk sewer system generally runs parallel to the Monterey-Salinas Highway and extends from the southwestern corner of the service area to the treatment plant site adjacent to the Salinas River. The mains are asbestos cement and are of 8-inch diameter in the upper portion of the service area, 10-inch in the lower, and 12-inch in the reach between the service area and treatment plant. Lateral sewers are 8-inch asbestos cement.

The sewer mains that flow parallel to the Monterey-Salinas Highway are laid on a slope of approximately 0.008. The sewer mains that flow perpendicular to the highway are laid on a slope of approximately 0.004 to 0.005.

The mains appear to be adequate to serve the full development of the existing service area.

The treatment plant consists of two lagoon ponds, each approximately 250 feet by 300 feet in size. Pond No. 1, for primary treatment, has an aerator located in the center. Pond No. 2 is used for secondary treatment. The effluent is pumped from Pond No. 2 into a chlorine contact chamber, is chlorinated, and is then pumped to disposal fields located across the Salinas River, where it is sprayed on the land by sprinkler irrigation.

Staff Engineer Bennett estimated the mean daily plant discharge at the present level of development to be 180,360 gallons per day (gpd). Assuming full development of the existing service area, the mean daily flow would be 282,000 gpd.

County Franchise

Applicant operates under a nonexclusive franchise for a sanitary sewerage system which was granted to applicant's predecessor, Western Pacific Sanitation, by the Board of Supervisors of Monterey County on June 17, 1963. Although the area described in the franchise encompasses about 50 square miles, that part of the proposed service area served by Ambler Park Water Company was specifically excluded.

The application states that the county may require that a new franchise be obtained and, if so, applicant will apply for such franchise.

Discharge Requirements

The California Regional Water Quality Control Board - Central Coast Region, by Order 71-32 dated September 17, 1971, ordered applicant's predecessor, Western Pacific Sanitation, among other things, to comply with the following discharge specifications:

> Discharge to the Salinas River is prohibited.
> The discharge shall be confined to land owned or controlled by the discharger without overflow or bypass to adjacent properties or drainageways at any time.
>
> The mean daily flow shall not exceed 270,000 gallons per day.
>
> The discharger shall provide evidence that adequate land disposal areas will be made available and designated for this purpose.

The Board requires a discharger to file a written report after the discharge equals or exceeds 75-80 percent of the design capacity of the waste treatment or disposal facilities. For applicant this point will occur when the plant discharge generated from about 660 connections equals 202,500 gallons per day. The Board requires the report to include a schedule for studies, design, and other steps needed to provide for additional capacity, otherwise the discharger must limit the flow below the design capacity prior to the time when the plant discharge would be reached.

Regulatory Jurisdiction

Applicant, along with the other California sewer system utilities, was placed under the jurisdiction of the Commission, effective July 1, 1972, by amendment of Sections 216, 230.5, 230.6, and 1001 of the Public Utilities Code. Prior to that time applicant was subject to the regulatory jurisdiction of the Board of Supervisors of the county of Monterey.

Intercorporate Relationships

Applicant is managed in common with three other sewer utilities and one water company. The headquarters for all of these utilities is at Valinda, Los Angeles County. The other sewer utilities are Ontario Utility Services (Ontario), Lompoc Utility Services (Lompoc), and Ventura Utility Services (Ventura). The water company is Mission Hills Water Company (Mission Hills). Mission Hills has two water systems, one located in the same area as applicant near Salinas, and the other near Lompoc, Santa Barbara County, which latter system includes a small system at Santa Ynez.

The existing corporate structure has been in effect since April 9, 1971. Prior to that time Lompoc, Ontario, and applicant were operating districts of Western Pacific Sanitation, a Nevada corporation, and its successor Western Pacific Services. A single set of books was kept for Western Pacific Sanitation and Western Pacific Services until April 1971. Ventura's system has always been a separate corporate entity. Prior to April 1971, Ventura's system was owned and operated by Simi Valley Sanitation Company (Simi Valley), a Nevada corporation; in April 1971 the system was transferred to a new California corporation, Ventura Utility Services, in contemplation of legislation establishing regulation of California sewer utilities by this Commission. Mission Hills has operated as a mutual water company and, at the time of submission of this application, was not under the jurisdiction of the Commission.

Ontario, Lompoc, and applicant are affiliated through ownership of their stock by Western Pacific Services. Applicant's president, Mrs. Diana Williams, testified that, although accounting entries had been made, there had been no formal transfer of real or personal property from Western Pacific Services to applicant. Western Pacific Services, Ventura, and Mission Hills are controlled by Anton C. Garnier, the son of the late Camille A. Garnier, who founded the operations.

Witness Brian Finegan testified that he had been advised by the Secretary of State's office in Sacramento that Western Pacific Services had been suspended as a corporation in 1973.

The Garnier interests also control two large water utilities, Suburban Water System (Suburban) and Southwest Water Company (Southwest), which operate in Los Angeles, Riverside, and San Bernardino Counties. Suburban and Southwest have always been operated separately from the sewer companies and from Mission Hills.

MONY Loan

On December 15, 1964 Western Pacific Sanitation, together with its subsidiaries as of that time, Paradise Services Corporation and Simi Valley (and also Susana Knolls Properties, Inc., a subsidiary of Simi Valley) sold $2,000,000 of Collateral Trust Notes, 5-1/2 percent Series due in 1984, to the Mutual Life Insurance Company of New York (MONY). The staff has not been able to ascertain whether the $2,000,000 was invested in water or sewer properties or whether it was used for other purposes. As of October 12, 1973, Western Pacific's outstanding indebtedness to MONY amounted to $1,750,000, of which $200,000 was overdue, thus placing the loan in default. Interest in arrears as of October 12, 1973 amounted to $433,125. Penalties on

the outstanding arrearages of principal and interest are accruing at 6 percent per annum. In addition, as of October 12, 1973, MONY had supplied $224,989.81 to pay property taxes for Lompoc, Simi, Ontario, and applicant. Of this amount $41,455.62 was paid to Monterey County in behalf of applicant.

Mrs. Williams has informed the staff that under the Collateral Trust Indenture all of the properties now being operated by Lompoc, Ontario, and applicant are subjected to the lien of the indenture. In addition, all of the outstanding stock of the subsidiaries is said to be held in trust for MONY.

The books of account of applicant show $91,783 of the Collateral Trust Notes allocated to applicant as of September 30, 1973.

Financial Condition

According to applicant's balance sheet as of September 30, 1973, current assets amounted to $27,260 in accounts receivable and $24,188 in an account entitled "Accounts Receivable - Inter-companies". There was no cash balance. Current liabilities amounted to $42,030, of which $21,886 was accounts payable. The remainder consisted of $13,224 property taxes payable and $6,920 accrued interest. According to Mrs. Williams, applicant is unable to meet its current liabilities as they mature, and some of its bills are six months to a year in arrears. She also testified that applicant was one year in arrears in payment of franchise fees to the county of Monterey.

According to the staff's Exhibit 5, the staff accountant's figures show a net "out-of-pocket" operating loss of $3,039 for the fiscal year ended September 30, 1973. This loss includes $1,041 of engineering and other outside costs related to the utility's pending rate case. Such costs are not normal recurring expenses every year, however. When recorded interest costs of $2,768 are included, the out-of-pocket loss increases to $5,808. The staff accountant observes that the interest is substantially less than appears reasonable for the $91,783 in 5-1/2 percent Collateral Trust Notes allocated to applicant.

Applicant also has $218,758 in advances for construction outstanding but, since under the terms of the contracts no payments are required for 35 years, no refunds will be due for many years.

The present rates for service, as filed with the Commission, are $5.00 per month for each single family residence and $5.00 per month for each residential unit served by a multiple residential connection. Applicant has pending a rate increase application (A. 53991) which proposes a rate of $7.25 per month. Applicant alleges that the proposed rate would only return out-of-pocket expenses and would make no allowance for depreciation or profit.

Law Suit

At the hearing of March 4, 1974, Mr. Finegan, the attorney for Henry W. Edwards, Jr., the developer of the Creekside subdivision, testified that on February 28, 1974 he filed a suit in Monterey County Superior Court on behalf of Henry W. Edwards, Jr., plaintiff, against Salinas Utility Services, Western Pacific Services, Western Pacific Sanitation, and other Garnier utilities (except Southwest and Suburban), MONY, and various individuals who are connected in one way or another with the utility companies, including Anton C. Garnier personally. The suit is in five counts, the first of which is a

complaint for $300,000 in money damages arising from delays in construction and sale occasioned to his client, Mr. Edwards, because of alleged defalcations of the utility companies. The second cause of action is for an accounting with respect to construction advances and refund agreements.

The third cause of action seeks to place the Monterey County utilities, both sewer and water, that are owned by the applicant corporation or the various Garnier enterprises in a receivership for the purpose of providing proper accounting, management, and planning whereby the companies may be placed on an adequate financial basis so that they may have some hope of surviving, and providing adequate utility services to the Toro Basin.

The fourth cause of action is against MONY and seeks declaratory relief to declare that its claimed liens are invalid in whole or in part for failure to comply with the provisions of Public Utilities Code Section 818 et seq., or in the alternative to establish that the liens of MONY are, if valid, inferior to the claims and equitable liens in favor of his client as represented by refund agreements and various construction advances.

The fifth cause of action seeks an injunction against MONY to enjoin it from foreclosing during the pendency of the action.

Proposed Service Area

The application contains a legal description of the proposed service area, which area is illustrated by two maps, Exhibits A and B attached to the application. The staff report, Exhibit 3, breaks the area into subareas as follows:

a. Rancho El Toro subdivision, composed of a 204-unit single family condominium development and a golf clubhouse. Unit 1, composed of 24 units, is completed and ready for occupancy.

b. A proposed commercial development at the intersection of Corral de Tierra Road and Monterey-Salinas Highway. The preliminary plans call for a complex of 12 businesses totaling 48,500 square feet. The principal businesses would be: a food market, a restaurant and bar, a hardware and nursery, a deli and liquor, and a bank.

c. Ambler Park Water Company service area. There are 141 existing single family residences presently being served by septic tanks.

d. Balance of proposed area as shown on Exhibit B. This subarea reportedly includes approximately 12 single family residences on minimum 1-acre lots that are presently being served by septic tanks.

e. A 400-foot wide strip paralleling the Monterey-Salinas Highway connecting the proposed certificated area to the existing service area.

The application states that, while the area proposed for certification is larger than the Rancho El Toro development, there are no plans at the present time to add specific connections other than those in Rancho El Toro.

As noted above the Ambler Park Water Company service area is specifically excluded from applicant's franchised area.

Rancho El Toro is being developed by Rancho El Toro, Ltd., a limited partnership, of which Western Builders is the general partner. Mr. Hughes is president of Western Builders.

Estimated Sewage Loads

Staff Engineer Bennett estimated the waste discharges at various levels of development as follows:

Development Level	Number of Connections	Inflow To Plant	Net Plant Losses	Plant Discharge
		(Gallons per day)		
Present	592	195,360	15,000	180,360
a. Plus first unit of Rancho El Toro	655	216,150	15,000	201,150
b. Plus full development of Rancho El Toro	796	262,680	15,000	247,680
Full Development of Present Subdivisions In Existing Service Area	690	227,700	15,000	212,700
a. Plus first unit of Rancho El Toro	753	248,490	15,000	233,490
b. Plus full development of Rancho El Toro	894	295,020	15,000	280,020
Full Development of Existing Service Area	900	297,000	15,000	282,000
a. Plus first unit of Rancho El Toro	963	317,790	15,000	302,790
b. Plus full development of Rancho El Toro	1,104	364,320	15,000	349,320
c. Plus proposed commercial development	1,116	367,120	15,000	352,120
d. Plus full development of remainder of service area	1,268	417,280	15,000	402,280
e. Plus proposed elementary school	1,269	419,780	15,000	404,780

The staff concluded that the daily plant discharge of 270,000 gallons would be slightly exceeded under the condition of full development of the present subdivisions within the existing service area plus full development of Rancho El Toro. Before that time applicant should apply to the Regional Water Quality Control Board for "Revised Waste Discharge Specifications" to avoid the possibility of a Cease and Desist Order when the daily plant discharge exceeds 270,000 gallons. A Cease and Desist Order could also result in a prohibition of additional sewer connections.

Proposed Sewer Extension

Applicant proposes to construct 5,551 feet of 12-inch asbestos cement trunk sewer along the Monterey-Salinas Highway from the end of its existing 8-inch trunk sewer to the proposed Rancho El Toro subdivision. The in-tract sewer system would consist of 6-inch and 8-inch vitrified clay pipe (v.c.p.) with 4-inch v.c.p. laterals. Sewers are already installed for the first 63 residential units, and 24 condominium units have been constructed and are, except for the availability of sewer service, ready for occupancy.

Required Additions to Existing Sewer Treatment Plant

The Board of Supervisors of the county of Monterey, on January 30, 1973, approved the expansion of applicant's sewer system to include the Rancho El Toro subdivision provided that additional aeration equipment be installed and an additional five acres for effluent disposal by sprinkler irrigation be added.

Proposed Financing of Proposed Facilities

Applicant estimates the cost of the proposed installations to be $160,614, broken down as follows:

12" Sanitary Sewer Trunk Main	$ 70,000
In-tract Sewer System - Unit 1, Rancho El Toro	14,164
In-tract Sewer System - Units II and III, Rancho El Toro	22,450
In-tract Sewer System - Remainder of Rancho El Toro	50,000
Sprinklers and Sprinkler Lines	2,500
Pumping Equipment	1,500
Total	$160,614

In addition, over $9,000 will be required for equipment to provide for increased aeration.

Applicant proposes that the financing and construction of the facilities be accomplished in the following manner:

a. The developer of Rancho El Toro, El Toro Ltd., to advance the funds and cause the 12-inch sewer trunk line to be installed. The utility to reimburse the developer by payment of $100 per connection from a $300 inclusion fee until the full amount is repaid.

b. The developer to finance the in-tract sewer system without refund.

c. The developer to pay the cost of supplying and installing a line from the existing spray fields to the new spray area.

d. The utility to pay the cost of supplying and installing the sprinklers and sprinkler lines on the new spray area.

e. The utility to pay the cost of supplying and installing the pumping equipment.

The developer would pay the real property taxes on the sewer trunk main and the in-tract sewer lines until the gross receipts from services connected to the trunk main reach $3,000 per year or for a period of 5 years. The developer also would pay all costs associated with the lease of a 5-acre parcel of land for the new spray area.

Operating Expenses and Revenues

Applicant estimates first year operating expenses attributable to the extension as follows:

Administration and General Expenses	$ 784
Maintenance and Operation Salaries	266
Maintenance of Sewer Lines	500
Pumping	425
Treatment	258
Miscellaneous	82
Total	$2,315

Applicant estimates that fifth year operating expenses would be at the same unit cost level as experienced serving the existing system.

Applicant estimates that the proposed certification would add 25 customers the first year, all of whom would be in the Rancho El Toro development. This is expected to increase to 205 customers within five years. Annual revenues would, at the present $5.00 monthly rate, amount to approximately $1,500 for the 25 customers estimated. At the $7.25 rate presently requested, revenues would be $2,175. For the fifth year, corresponding revenues from the 205 connections would be $12,300 and $17,835.

Neither of the staff reports commented on the reasonableness or adequacy of applicant's expense and revenue estimates.

Spray Field Lands

The circumstances under which applicant leased the 33.89-acre plot which is the site of its existing spray field were explained by applicant's president during cross-examination as follows:

"MR. FINEGAN: Thank you, Mr. Examiner.

"Q. Mrs. Williams, you executed that Sublease on behalf of your company, did you not?

"A. Yes.

"Q. Is it not a fact, Mrs. Williams, that your company was unable to obtain a lease for spray area directly and that in order to obtain a spray area it was necessary that Mr. Edwards directly lease it and then sublease it to you?

"A. That is right.

"Q. Merrill Farms, in fact, had refused to lease land for spray disposal directly to your company?

"A. That is correct.

"Q. At the time this sublease was entered into, is it not also a fact that Mr. Edwards was, had been stopped by the County of Monterey from proceeding with the occupancy of his Creekside Development until such spray arrangement was acquired?

"A. That is correct.

"Q. And you are aware, Mrs. Williams, that the lease contained a provision stating as follows, and I am reading from Paragraph 7 of the lease on page 3,

> 'Therefore, the parties agree that during the term of this sublease or any extension thereof, sublessor shall have a first right of refusal as to subsequent connections to sub-lessee's sewer system for the benefit of lands now or hereafter owned or controlled by sublessor.'

Do you recall that provision, do you?

"A. Yes.

"Q. Now, in connection with the proposed extension to Rancho El Toro development, you did not receive any relinquishment of that clause from Mr. Edwards, did you?

"A. It was never applied for."

A copy of the sublease made February 14, 1972 between Henry W. Edwards, Jr., and Western Pacific Services dba Salinas Utilities [sic] Services, and a copy of the master lease of the same date between Merrill Farms, Inc. and Henry W. Edwards, Jr., were received in the record as Exhibit 11.

Paragraph 7 of the sublease, in addition to the passage quoted above, also contains the following concluding language:

> "...and that Bollenbacher & Kelton, Inc., shall have the second right of refusal as to subsequent connections for the benefit only of those lands on which Bollenbacher & Kelton, Inc., now has recorded a preliminary tentative or final subdivision map. Sublessor shall have the right to enjoin the granting of any connection in violation of this paragraph."

Both the lease and the sublease are for a term of five years from February 15, 1972, and providing that lessee and sublessee are not in default, they are renewable for an additional five-year period on the same terms, except that consideration is to be fixed by agreement or, if the parties cannot agree, by arbitration.

Rent under the lease is $2,372 per year and under the sublease is $2,965. The lessor (Merrill Farms) is to pay all taxes and assessments levied on the land, and the lessee (Edwards) is to pay all taxes levied upon personal property and improvements situated on the land. The sublease contains no provision for payment of taxes.

According to the testimony of Mr. Finegan, given in behalf of Mr. Edwards, the 1973 rent on the sublease was not paid until late in 1973. The rent for 1974, to his knowledge, had not been paid.

According to Mr. Wong, the director of Environmental Health for the county, the five-year term and five-year option were accepted by the county in anticipation of the system's discharging to a regional treatment plant within the next ten years. Such a regional disposal facility has been proposed by the Association of Monterey Bay Area Governments (AMBAG). According to AMBAG's plan the regional plant would be located on the Salinas River near applicant's present plant.

Mr. Wong testified that the five-year term of the lease, together with the five-year option to renew, would be an adequate period for possession of the spray field site.

The additional five acres required to provide spray field capacity needed to accommodate the extension is located approximately a half mile downstream from the existing plant. El Toro, Ltd. has obtained a five-year lease on the property, commencing on January 1, 1973, with an option to renew the lease on the same terms for another five years. Rent is $1,000 per year and lessee (El Toro, Ltd.) is to pay all taxes and assessments.

The intervening lands between the two parcels are part of Fort Ord. El Toro, Ltd. has obtained a five-year revocable license to construct and operate a four-inch pipeline within a ten-foot right-of-way across the military reservation from the Department of the Army at a cost of $500.

Staff Engineering Evaluation

Staff Engineer Bennett, in his Exhibit 3, concluded that there is sufficient capacity in the 8-inch sewer mains to handle the estimated peak sewage discharge for full development of the existing service area plus full development of Rancho El Toro. The ratio of depth of flow to pipe diameter of 0.80 in the 10-inch sewer main in Reservation Road would exceed slightly the design criteria ratio of 0.75. Mr. Bennett did not feel that this would be sufficient to require applicant to replace this section of 10-inch pipe with 12-inch pipe. If problems of sewage backup should occur in this section, the utility could increase the capacity by installing additional main.

If the entire requested area were to be considered, however, the design capacity of the existing 8-inch mains would be exceeded. Mr. Bennett recommended that, if sewer service were to be provided for the 152 residential units and 12 commercial connections outside of the Rancho El Toro subdivision, the 12-inch trunk sewer from the requested area to the existing area would have to be extended to the sewage treatment plant, thus paralleling the existing system.

In Mr. Bennett's opinion, an 8-inch trunk between Rancho El Toro and the existing system would be adequate to serve the requested area. Mr. Dante, whose firm designed the 12-inch line, testified that the 12-inch diameter was selected so that other potential service areas, such as Corral de Tierra and San Benancio could be accommodated at some time in the future.

Mr. Bennett stated in his report that he has not received sufficient data on the existing treatment plant and the proposed additions to the plant to permit him to evaluate the capabilities of the sewage treatment facilities. The staff, in a September 4, 1973 letter, requested the following items: (1) construction plans or "as builts" of the existing sewage treatment plant and the proposed additions or alterations to the plant, including the sprinkler system; (2) an itemized breakdown of Exhibit E to the application, "Fixed Costs of Extension", showing quantities, sizes, lengths, etc., of each item; (3) copies of the plans to treat the sewage that are referred to in Exhibit C, the letter from Monterey County Health Department and Exhibit D, letter from Regional Water Quality Control Board; and (4) a copy of the engineering report covering the proposed additions to the sewage treatment plant. He considered the data on the existing plant that was submitted to be outdated and not reflecting the changes that have been made to the treatment plant in the past few years.

Staff Financial Recommendations

Exhibit 3, the report of the staff engineer, Mr. Bennett, in addition to an evaluation of the engineering aspects of the proposed extension, contained comprehensive recommendations regarding financing, as follows:

> "The staff reviewed the above provisions for financing of the proposed facilities along with the utility's balance sheet that was included in the rate increase application. The balance sheet at December 31, 1972 showed the following data:
>
> | | |
> |---|---|
> | Advances for Construction ----- | $200,677.87 |
> | Total Capital (Shareholders equity, advances for construction and collateral trust notes) ---------- | 287,526.09 |

The ratio of advances for construction to total capital of approximately 70% exceeds the recommended ratio of 50% as specified in Section A-2 of Rule 15 'Main Extensions' for water utilities.

"The staff believes that the utility should not be permitted to increase its obligation of advances for construction, and that the financing of the proposed sewer extension should be accomplished in the following manner:

a. The developer should advance the funds, with no refund, for the incremental construction costs of the 12-inch trunk sewer main that are chargeable to Rancho El Toro. The staff believes that this incremental cost would be the estimated construction cost of an 8-inch sewer pipe.

b. The utility should pay the difference in construction costs between the 12-inch sewer to be installed and the 8-inch sewer that should be chargeable to Rancho El Toro.

c. The developer should contribute, with no refund, the intract sewer system and the pipeline between the existing and new spray fields as were specified in the application.

d. The developer should also pay for the obligations, that he assumed, for all of the costs associated with the lease of the 5-acre spray field and the real property taxes on the sewer trunk main for the specified periods of time.

"The agreement between the applicant (utility) and the developer dated December 1, 1972 provides for the developer to pay an inclusion fee of $300 per connection. The utility has been requiring an inclusion fee of $430 per new connection within the existing service area. This requirement has been in effect at least as far back as June, 1965.

"The staff believes that the utility should be permitted to continue to require an inclusion fee of $430 for each new sewer connection for those building units that are under construction or have been completed as of January 1, 1974. These building units shall be those that are within the following subdivisions:

(1) Creekside, units 1, 2, 3 and 4; (2) Serra Village; (3) Toro Creek; (4) Toro Park Estates, units 1, 2, 3, 4, 5 and 6; and (5) Rancho El Toro, first increment of 63 residential units.

"The staff believes that the reduced inclusion fee of $300 for Rancho El Toro is acceptable since the developer has agreed to contribute part of the sewer pipelines, equipment and apparatus, and also agreed to pay the rental, taxes and assessments on the spray field and sewer pipelines. The staff has also recommended that the subdivider advance, without refund, that portion of the 12-inch trunk sewer main that is required to serve Rancho El Toro.

"Based on the staff's recommendation that the developer be required to contribute all intract sewer facilities and the cost of the trunk line facilities to serve only the Rancho El Toro subdivision, it is the staff's judgement that the extension of sewer service to Rancho El Toro will not be a financial burden on the existing customers of the utility."

It should be emphasized that references to the staff, in the paragraphs quoted above, refer to the staff engineer and not the staff accountant representing the Finance and Accounts Division of the Commission staff.

The staff accountant, Principal Financial Examiner Gibbons, originally, in his Exhibit 1, recommended as follows:

1. Applicant should be authorized to serve the Rancho El Toro subdivision. Applicant's service should be restricted to Rancho El Toro and to the subdivisions presently being provided with sewer service unless further extension is authorized by this Commission.

2. Applicant should be permitted to collect inclusion fees of $300 per connection. These fees should be impounded in a separate trust account in a California bank or savings and loan association to be expended only for treatment plant additions and betterments, only after specific Commission authorization has been obtained.

3. Applicant should be authorized to enter into a contract with the developer of Rancho El Toro in substantially the same form as the contract included in this report as Attachment A, except that:

   a. No provision should be included for payment of refunds to the developer from inclusion fees.

   b. All sewer plant provided by the developer other than the 12-inch trunk main should be contributed to the utility without refund.

   c. The developer of Rancho El Toro should be entitled to a refund of a proportionate portion of the cost of the 12-inch trunk main from other subdividers who use this main to serve their own subdivisions. Refund provisions shall not apply to individual residential connections.

As the record developed, however, the staff accountant changed his opinion and, at the hearing of March 4, he responded to a question by Mrs. Yuckert:

> "I'm saying that Rancho El Toro per se will not add to the financial burdens of this company if my recommendations are adopted because all of the plant to serve them, virtually all of the plant will be contributed and they will have inclusion fees, which would help their financial condition. However, I think the company is in such serious straits that everything should be brought to a screeching hault [sic] until this company recapitalizes, until MONY answers letters properly, until the shareholders indicate what they are going to do to straighten things out."

In answer to a question by the examiner he revised his recommendation as contained in the paragraph numbered "1" above to read:

> "Applicant should not be authorized to serve the Rancho El Toro subdivision. If my recommendation is rejected and a certificate to extend service is granted to the utility, applicant's service should be restricted to Rancho El Toro and to the subdivisions presently being provided with sewer service unless further extension is authorized by this Commission."

Mr. Gibbons stated, however, that, in his opinion, if taken in context with his recommendations that trunk main and in-tract facilities be contributed, and that each developer or customer would pay an inclusion fee for each new connection, the following conclusion from his report, Exhibit 1, would still be valid:

> "...assuming that the Commission grants the utility rates in pending Application No. 53991 that are sufficient to cover out-of-pocket expenses of operation, it may be reasonably concluded that the proposed extension will not impose any substantial cash burden on the company in the immediate future, and that it will have a beneficial effect on operations when fully developed."

Mr. Gibbons disagreed with Mr. Bennett's recommendation that the incremental cost between an 8-inch and a 12-inch trunk sewer, estimated to be $23,000, should be paid by the utility. He felt that the additional depreciation and taxes, and potentially, an increased return, could be a burden on existing customers.

Mr. Gibbons also did not believe that the utility would have sufficient funds to pay for the incremental cost. Mr. Bennett held a contrary view, as expressed by the following response:

> "Well, we recommended that there be some contributions of plant. You know, the eight-inch would be contributed, but the differential cost between the eight- and the 12-inch you would be correct in that I wasn't concerned where that money would come from. The company would get it from some source."

Environmental and Community Factors

In 1971 Section 1001 of the Public Utilities Code was amended to include the following language:

> "The commission, as a basis for granting any certificate pursuant to the provisions of this section shall give consideration to the following factors:
>
> (a) Community values.
> (b) Recreational and park areas.
> (c) Historical and aesthetic values.
> (d) Influence on environment."

In 1972 the California Environmental Quality Act (CEQA) was extensively amended (Public Resources Code Section 21000 et seq.). Pursuant to CEQA, as amended, the Secretary of the Resources Agency adopted "Guidelines for Implementation of the California Environmental Quality Act" (14 Cal. Adm. Code, Section 15000 et seq.).

The Commission then, in compliance with CEQA and the Guidelines, on June 19, 1972, added to its Rules of Procedure, Rule 17.1, "Special Procedure for Implementation of the California Environmental Act of 1970 (Preparation and Submission of Environmental Impact Reports)".

Neither applicant nor the staff addressed itself to either the requirements of the added language to Section 1001 of the Public Utilities Code or of CEQA, the Guidelines, and Rule 17.1.

The staff engineer, in Exhibit 3, did report, however:

> "The staff does not believe that an E.I.R. is required for this project. The first increment of the subdivision is already under construction and 24 residential condominium units are completed. The Monterey County Planning Department had evaluated the environmental impact of Rancho El Toro Subdivision before recommending that the Board of Supervisors give tentative approval to the subdivision map. The supervisor's resolution, dated March 28, 1972 stated that the Board of Supervisors had considered the requirements of Section 11549.5 of the State Business and Professions Code in relation to the tentative map and that the Board had made none of the findings referred to in Section 11549.5.

"Section 11549.5 of the Business and Professions Code is entitled 'Grounds for denial of approval of subdivision map' and states the following:

> 'A governing body of a city or county shall deny approval of a final or tentative subdivision map if it makes any of the following findings:
>
> ...(e) that the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
>
> (f) that the design of the subdivision or the type of improvements is likely to cause serious public health problems.'

Section 11549.6 of the Business and Professions Code states:

> 'A governing body shall not deny approval of a final subdivision map pursuant to Section 11549.5 if it has previously approved a tentative map for the proposed subdivision and if it finds that the final map is in substantial compliance with the previously approved tentative map.'"

It is clear from the above that Monterey County is the lead agency as defined by Section 15030 of the Guidelines.

It was possible to determine at the hearing that the extension would not be significantly adverse to the factors listed in Section 1001 of the Public Utilities Code. It was also established that, since the Rancho El Toro project had been approved by the county of Monterey prior to April 5, 1973, it qualified as an "Ongoing Project" as contemplated by Section 15070 of the Guidelines, and no Environmental Impact Report or Negative Declaration is necessary.

Other Staff Recommendations

The staff engineer, Mr. Bennett, had the following additional recommendations not discussed above:

1. Applicant, Salinas Utility Services, should be issued a certificate of public convenience and necessity to extend sewer service to Rancho El Toro only.
2. Applicant should obtain approval on the proposed aerator from Monterey County Health Department prior to extending sewer service to Rancho El Toro.
3. Applicant should be prohibited from providing sewer service to any new customers that are not included within the following subdivisions:

   (1) Creekside, Units 1, 2, 3, and 4; (2) Serra Village; (3) Toro Creek; (4) Toro Park Estates, Units 1, 2, 3, 4, 5, and 6; and (5) Rancho El Toro.
4. Applicant should be required to apply to the Commission for authorization to provide sewer service to customers other than those that are within the subdivisions referred to in Recommendation 3.
5. Applicant should be required to obtain revised "Waste Discharge Specifications" from the Regional Water Quality Control Board before extending sewer service to customers other than those that are within the subdivisions referred to in Recommendation 3.
6. The applicant should initiate the written report that is required by the Regional Water Quality Control Board when the waste discharge equals or exceeds 75-80% of the design capacity of the waste treatment or disposal facilities.
7. Applicant should be authorized to apply the prevailing sewer rate to the Rancho El Toro customers.
8. The utility should be permitted to continue the practice of requiring inclusion fees for new connections within the following subdivisions:

(1) Creekside, Units 1, 2, 3, and 4; (2) Serra Village; (3) Toro Creek; (4) Toro Park Estates, Units 1, 2, 3, 4, 5, and 6; and (5) Rancho El Toro, first increment of 63 residential units. These connections shall include only those that are currently under construction or are completed as of January 1, 1974.

9. The utility should be permitted to charge Rancho El Toro the lower inclusion fee of $300 per connection.

Senior Utilities Engineer James Barnes, Mr. Bennett's immediate supervisor, testified at the conclusion of the hearing in support of Mr. Bennett's recommendation that inclusion fees be discontinued. Mr. Barnes said that inclusion fees have never been allowed for water utilities and therefore should not be allowed for sewer utilities "because for all practical purposes they are synonymous." (Transcript, page 405, line 6.)

Position and Testimony of Other Parties and Witnesses

Mrs. Yuckert, a resident of applicant's existing service area, stated that she had no faith in applicant's financial ability to take care of problems that might arise for the present customers, let alone any more. She based this prognosis on her experience with the affiliated Mission Hills Water Company. Every emergency that had come up affecting Mission Hills had been paid for by Bollenbacher & Kelton, Inc., not the Garnier interests.

Mr. Wong, in addition to the testimony mentioned previously, testified that it was his conclusion that the treatment plant, including the five acres of additional spray field, could only accommodate the full development of the existing subdivisions and Rancho El Toro.

Mr. Hughes, in his testimony, supplied information concerning community and environmental factors. He also explained that an alternative sewage disposal process proposed for Rancho El Toro had undergone extensive delays in testing and demonstration. The only practical sewer service was from Salinas Utility Services.

Mr. Hughes' attorney, Mr. Hinrichs, in his closing statement proposed that authority be granted to connect the 63 units in Unit 1 of Rancho El Toro, and further connections be restricted until applicant's financial problems are solved.

Mr. Rigmaiden's testimony related to his concern that the proposed school in the existing service area might not be able to receive sewer service. It was developed that service would be available and would not be jeopardized by the proposed extension.

Mr. Kelton had several concerns. The first was that the small shopping center near Toro Park Estates in the existing service area and for which inclusion fees had been paid might not be able to obtain sewer service under the staff's recommendations as it could be considered not to be a subdivision. At the beginning of the case he moved that the 400 feet wide strip connecting Rancho El Toro to the existing service area either be expanded to include the entire Bollenbacher & Kelton, Inc. property or else that it be totally excluded. In his closing statement he again urged that this strip not be included.

Mr. Kelton testified that, under a contract between Western Pacific Sanitation and Muster Corporation, made on December 1, 1964, Muster Corporation advanced $73,461.88 for a trunk sewer. Refunds of this advance are being made at the rate of $75 per connection. Mr. Kelton claimed that since the discharge from Rancho El Toro would flow through this trunk, Muster Corporation was entitled to $75 from each connection in Rancho El Toro. This would reduce the amount available from the $300 inclusion fee proposed for Rancho El Toro.

Mr. Kelton explained that he was an outside director of Suburban and his family interests held a large block of stock. He also explained that he was actively negotiating with Mr. Garnier for Bollenbacher & Kelton, Inc. to acquire control of applicant and the Salinas system of Mission Hills. His goal would be to establish

a utility that would have adequate service capacity to serve not only the Bollenbacher & Kelton, Inc. property but also the Rancho El Toro property Mr. Hughes is interested in and undeveloped portions of the present service area.

Mr. Kelton summarized the many problems developed in the record and argued that, should the Commission permit extension of service, and should applicant end up with a total failure of its system, the Commission would have to accept the responsibility to those members of the public that it approved adding to the system.

Discussion

It is apparent from the record that, as a result of operations before it came under utility type regulation, applicant's financial and corporate structure are headed for an inevitable collapse. It is also apparent that the interests presently controlling applicant are taking little active interest in its management and in solving its problems. It is evident that the subdividers in the area are, in their own self interest, vitally interested in seeing that applicant continues as a viable agent for providing sewer service to their developments. It appears, in fact, that the subdividers have assumed responsibility for the actual planning of applicant's future operations and also that the developers would be willing to pick up the pieces after the impending collapse.

The facts developed in this record have been set out above in greater detail than would otherwise be warranted so that we can be sure that we have a full understanding of the situation and of the consequences of any action that we might take.

It is clear that certification of the entire requested area would be both unwise and impractical, and moreover, no adequate showing of public convenience and necessity has been made. The Rancho El Toro subdivision, however, has been duly approved by the

appropriate local agencies, the Planning Commission and the Board of Supervisors of the county of Monterey, and has been, under the assumption that sewer service would be available, partially constructed. Except for the want of sewer service, 24 dwelling units are complete and ready for occupancy.

It has been demonstrated that the proposed extension of sewer service to Rancho El Toro is feasible from an engineering standpoint and that Western Builders, Inc. and El Toro, Ltd. are willing to underwrite the cost of necessary facilities. The extension, with proper financial arrangements, would not burden present customers.

Regulatory caution would indicate that the application be denied. Denial would, however, result in severe hardship to the developers of Rancho El Toro, would deprive the community of a sewer main adequate for future expansion, and would be of no particular benefit to existing customers.

We are not alarmed over the terms of the lease for the treatment plants. It is reasonable to expect that, with the present public concern for clear water and ecological betterment, that AMBAG's regional efforts will be successful within ten years. We also cannot reasonably expect that the Army, having given a license for a sewer right-of-way as an accommodation to a neighboring community, would arbitrarily revoke the license. The fact that the issuing agency, the U.S. Army Corps of Engineers, is actively involved in the field of water quality would lead us to an opposite conclusion.

In evaluating our responsibility for this utility, we are reassured that we are not alone. Health aspects and construction standards are primarily the concern of the county of Monterey. Discharge requirements and water quality are the field of the Regional Water Quality Control Board. Our sector of responsibility is primarily that of rates, certification, and finance.

Fortunately, the presence of regulatory influence on treatment and construction standards has resulted in a reasonably adequate sewer system.

On balance, we find that public interest and public convenience and necessity justify the granting of the extension to the 63 units of Unit 1 of Rancho El Toro. Under Section 1005 of the Public Utilities Code we will limit the certificate to the area of Unit 1.

We conclude that Section 2708 of the Public Utilities Code, upon which the staff relies for authority to restrict service to certain subdivisions within the existing service area, is not applicable. Section 2708 specifically applies to water companies. Since it was not amended, as were Sections 216, 230.5, 230.6, and 1001, to include sewer systems, we must be guided by the premise that, since Section 2708 was not so amended, and the other aforementioned sections were, the Legislature did not intend Section 2708 to apply.

Section 2708 requires that the Commission find that the utility has reached the limit of its capacity to supply water. Even if we should accept the senior staff engineer's contention that, for all practical purposes, water and sewer utilities "are synonymous", the criterion for requiring limitation of sewer connections is a surplus of supply, not a shortage.

We are confident that the on the spot expertise of the Regional Water Quality Control Board is sufficient to handle the problem of disposal capacity. We also are confident that our sister state agency and the Monterey County Health Department are able to enforce their own requirements and orders, and we will not attempt to assist them with directives of ours that their requirements and orders be met.

Insofar as existing contracts provide for refunds for connections to trunks are concerned, we will not disturb them. The provisions regarding "first refusal" and "second refusal" appear not to be in the public interest and to be a grant of "preference or advantage" (Section 454 of the Public Utilities Code). We shall leave it to the parties to these contracts to take such action as they may wish concerning these arrangements, and to determine, in the courts if necessary, whether they are enforceable.

We see no reason to require the utility to pay the difference in cost between a 12-inch and 8-inch trunk main. Such a requirement might jeopardize the entire project and we cannot share the staff engineer's sanguine assumption that the company would get the money "from some source".

As far as inclusion fees are concerned, we are reluctant to discontinue this established source of funds. The fees for the existing service area have been collected for contracts entered into before the Commission assumed jurisdiction. Considering the expenditures for plant being made by Western Builders, Inc. and El Toro, Ltd. the $300 fee for Rancho El Toro does not appear to be unreasonable. We agree with the staff accountant's recommendations concerning the accounting for these $300 fees, and we believe that applicant should file a schedule of all of its inclusion fees as part of its filed tariffs.

Findings

Based on the facts described in this opinion the Commission finds:

1. There is no other purveyor of sewer service ready, willing, and able to supply sewer service to the subdivision known as Rancho El Toro Unit 1.

2. Extension of sewer service to Rancho El Toro Unit 1 under the terms and conditions authorized herein would not be a burden on existing customers of the utility.

3. The facilities, as proposed, are adequate to accommodate the area authorized.

4. The county of Monterey is the lead agency which has the principal responsibility for approving the Rancho El Toro project. The granting of a certificate by the Commission would not invoke a greater degree of responsibility or control over the project as a whole than did the approval of Rancho El Toro Unit 1 by Monterey County.

5. Approval of the Rancho El Toro Unit 1 by the county of Monterey was granted before April 5, 1973. The project is therefore an ongoing project as contemplated by Section 15070 of the Guidelines.

6. No Environmental Impact Report nor Negative Declaration is required.

7. The extension of sewer service to Rancho El Toro Unit 1 would have no detrimental effect on community values, recreational and park areas, historical and aesthetic values, or the environment.

8. Extension of service, under the terms and conditions authorized herein, is financially feasible.

9. Application of applicant's present monthly rates for sewer service to Rancho El Toro Unit 1 is reasonable.

10. An inclusion fee of $300 for Rancho El Toro Unit 1, as authorized herein, is reasonable.

11. No payment of refunds should be made from inclusion fees, except as heretofore provided by contract.

12. Inclusion fees from Rancho El Toro Unit 1 should be impounded in a separate interest bearing account in a California bank or insured savings and loan association. These fees, and

interest accrued thereon, should be expended only for treatment plant additions and betterments and only after specific authorization has been obtained by means of a letter signed by the Secretary of the Commission.

13. Applicant should file a schedule of its presently effective inclusion fees as part of its filed tariffs.

14. Applicant should file a legal description of both its present service area and the area certificated herein.

15. All in-tract sewer plant provided by the developer of Rancho El Toro Unit 1, other than the 12-inch trunk main, should be contributed to the utility without refund.

16. The developer of Rancho El Toro Unit 1 should be entitled to a refund of a proportionate portion of the cost of the 12-inch trunk main from other subdividers who use the main to serve their own subdivisions. Refund provisions should not apply to individual residential connections.

17. Public convenience and necessity require the construction of the proposed sewer system to serve the area known as Rancho El Toro Unit 1, Monterey County.

Conclusions

1. Section 2708 of the Public Utilities Code is not applicable to sewer system corporations.

2. The applicant should be granted to the extent and under the conditions set forth in the order which follows.

O R D E R

IT IS ORDERED that:

1. After the effective date of this order, Salinas Utility Services is granted a certificate of public convenience and necessity authorizing it to extend its public utility sewer system and to serve 63 residential units in the area known as Rancho El Toro Unit 1, Monterey County, subject to the following condition:

Applicant shall enter into a contract with the developer of Rancho El Toro in substantially the same form as the contract included in Exhibit 1 of this proceeding, except that:

No provision shall be included for payment of refunds to the developer from inclusion fees.

All in-tract sewer plant provided by the developer other than the 12-inch trunk main shall be contributed to the utility without refund.

The developer of Rancho El Toro shall be entitled to a refund of a proportionate portion of the cost of the 12-inch trunk main from other subdividers who use the main to serve their own subdivisions. Refund provisions shall not apply to individual residential connections.

A copy of the executed agreement shall be filed with the Commission concurrently with the filing of its tariff service area map.

2. Applicant is authorized to collect inclusion fees for Rancho El Toro Unit 1 of $300 per connection. These fees shall be impounded in a separate interest bearing account in a California bank or insured savings and loan association. The fees and accrued interest are to be expended only for treatment plant additions and betterments, and only after specific authorization has been obtained by means of a letter signed by the Secretary of the Commission. Applicant shall provide the Commission, attention of the Finance and Accounts Division, two copies of an annual statement no later than March 31 of each year, detailing the proper distribution and amount of all additions, interest earned, and withdrawals from the fund during the prior calendar year, together with the balances in the fund at the close of the year.

3. Applicant shall not extend service from the area certificated herein into contiguous territory without further authorization of this Commission.

4. After the effective date of this order, applicant is authorized to file revised tariff sheets, including a revised tariff service area map providing for the application of its present tariff schedule, except for inclusion fees, to the area authorized herein. Applicant shall also file a schedule of all of its inclusion fees and a legal description of both its present service area and the area certificated herein. The tariff filing shall comply with General Order No. 96-A insofar as such compliance is possible for a sewer utility. The effective date of the revised tariff sheets shall be four days after the date of filing.

5. Compliance by applicant with paragraph 4 of this order shall constitute acceptance by it of the right and obligation to furnish public utility sewer service to the area authorized herein. The authority granted herein shall expire unless the designated tariff sheets are filed within one year after the effective date of this order.

6. Within ten days after service is first granted to the public under the authority granted herein, applicant shall file in this proceeding written notice thereof to this Commission.

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

Dated at San Francisco, California, this 23rd day of JULY, 1974.

President

Commissioners