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Decision No. 84406

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN GABRIEL VALLEY WATER COMPANY, a successor to 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 areas.

Application No. 50485
(Filed August 13, 1968;
amended August 21, 1968)

CLINTON O. HARRIS and FLORA HARRIS,

Complainants,

vs.

VALLECITO WATER COMPANY, a corporation,

Defendant.

Case No. 9549
(Filed April 30, 1973)

J. E. Skelton, Attorney at Law, for Vallecito Water Company, applicant in A.50485 and defendant in C.9549.

Remington & Jackman, by Michael Remington and James A. Jackman, Attorneys at Law, for Bodinus Homes, protestant in A.50485 and intervenors in C.9549; Martin E. Whelan, Jr., Attorney at Law, for Clinton Harris and Flora Harris, protestants in A.50485 and complainants in C.9549.

Gibson, Dunn & Crutcher, by Raymond L. Curran, Attorney at Law, for Prudential Savings and Loan Association, and Affiliated Properties, Inc.; Michael W. Dorne, Attorney at Law, for Hacienda View Estates; and Donnelly, Clark, Chase & Haakh, by Ernest M. Clark, Jr., for United California Bank; interested parties.

Robert C. Durkin and Elinore C. Morgan, Attorney at Law, for the Commission staff.

O P I N I O N

On August 13, 1968, Vallecito Water Company (Vallecito) filed Application No. 50485 seeking a certificate of public convenience and necessity to furnish water service to Tracts 29803 and 29942 (including Lot 148) outside but adjacent to, its existing service area. Vallecito stated that the developer would contribute the then estimated cost of $335,900 for off-site and special facilities plus the land with its improvements for the reservoir sites required for serving the tracts. Reservoir capacity of 2.2 million gallons was proposed, as was total booster capacity of 2,800 gallons per minute (gpm). Decision No. 75014 dated November 26, 1968 granted the requested authority ex parte. In that decision Finding 4 was made, as follows:

> "4. 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."

Ordering Paragraphs Nos. 3 and 6 of that decision are 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 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 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."

Prudential Savings and Loan Association was the original lienholder on the area involved and its related company Affiliated Properties, Inc. completed this development; they will jointly be referred to as API.

Case No. 9549 was consolidated for hearing with the original application.

Since the entry of Decision No. 75014, there have been multiple hearings, pleadings and Commission decisions, the last one being Decision No. 83299 dated August 20, 1974, which exhaustively reviewed the earlier events and proceedings, and which we shall not restate here. This latter decision set aside the prior submission of these proceedings, reopened them for further hearing, and set forth the perimeters of such further hearing by the following language on page 12:

> "So that there will be no mistake as to what is expected of the parties at the reopened hearing, the examiner is instructed to receive evidence upon which to make findings of fact on the following three questions:
>
> 1. What is the extent of the special facilities constructed and of the land with its improvements to be utilized for reservoir sites in connection with the development that is the subject of Application No. 50485?
>
> 2. To what extent, if any, do the facilities described in Question 1 benefit each new developer?
>
> 3. Are the developers liable for their share of any benefits found to accrue to them?"

The reopened hearings were held before Examiner Phillip E. Blecher on January 22, 23, 24, and 27, 1975. On January 27, 1975 the matter was submitted subject to the filing of concurrent briefs and proposed findings of fact by API, Vallecito[1/] and the staff.

1/ Vallecito was merged into San Gabriel Valley Water Co. effective December 20, 1974. We shall refer to the original applicant by its former name, though San Gabriel Valley Water Co. is now the proper name of the applicant.

At the commencement of the new hearings, Exhibits A, B, and C were filed. These exhibits are essentially settlement agreements and stipulations between API and developers of adjacent tracts either presently served, or to be served in the near future, by Vallecito. Exhibit A pertained to Tract 28052 and Tentative Tract 30697 (formerly Lot 148 of Tract 29942). Exhibit B pertained to Tentative Tract 32019 and the remaining 12 acres in the original parcel owned by the complainants (Harris) in Case No. 9549. Exhibit C pertained to Tract 25080. These exhibits did not affect the rights of Vallecito and API as to each other, but all other appearances withdrew prior to the presentation of evidence in the reopened hearings. Since the issue in Case No. 9549 of whether a certain portion of the Harris property is within or outside of Vallecito's service area is no longer in dispute, we shall order, pursuant to the agreement of the various parties, that Case No. 9549 be dismissed, though without prejudice only as to the remaining 12 acres still owned by Harris, and we shall not discuss or comment further on this case.

The issues raised by the parties remaining to be determined, other than those set forth in Decision No. 83299, may be summarized as follows:

1. Why were the special facilities constructed in excess of the size and capacity authorized by Decision No. 75014?[2/]

2. What is the cost properly attributable to the special facilities constructed?

3. What is the excess capacity,[3/] if any, of the special facilities constructed?

4. Should Vallecito serve a 57-acre tract of API in addition to Tracts 29803 and 29942?

2/ Reservoir capacity approved was 2,200,000 gallons.
Reservoir capacity constructed was 3,000,000 gallons.
Booster plant capacity approved was 2,800 gpm.
Booster plant capacity constructed was 3,600 gpm.

3/ Excess capacity as used here means that capacity over the capacity necessary to serve Tracts 29803 and 29942 (excluding Lot 148).

Issue 1

API urges that the oversizing of the facilities was unreasonable, improper, and unnecessary, and that Vallecito should be ordered to refund that portion of the assessable costs that are deemed to be unreasonable. Vallecito urges that under its main extension rule in effect at the time, paragraph A4b[4/] controls. It appears that both parties have overlooked paragraph A8 of Vallecito's Rule 15, which reads:

> "In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears unreasonable to either party, the utility, applicant or applicants may refer the matter to the Commission for determination."

The parties agree that the special facilities were designed to serve the two tracts in question (including Lot 148 which was not owned by API). Those tracts contained 105 acres, and the design was based on two dwelling units (du) per acre or 210 dus[5/] in three zones (based on the difference in altitude of the terrain), designated as Zones III, IV, and V. Zones IV and V used one reservoir. Vallecito required a self sufficient fireflow storage in the zones and a 1.3 maximum day (md) equalizing storage for each zone. The special facilities were built to these specifications, though API contends that a reservoir in the upper zone (Zone V) would have sufficed for all the zones, and that a .3 md storage was adequate and was always designed and used by Vallecito in the past for its facilities. The difference between the positions is huge -- at least 735,000 gallons fireflow storage excess and 4 1/3 times pump booster capacity excess for Vallecito's requirements as compared

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4/ The pertinent portion of A4b is as follows: "The size, type, quality of materials, and their location shall be specified by the utility;..."

5/ 198 dus were actually built, thus creating even greater excess capacity than designed.

to API's recommended criteria. However, even using Vallecito's greater requirements, Exhibit P indicates (and this was uncontradicted), that the three booster plants built as proposed in the application, as amended, namely Turnbull Canyon (TC), Heather Field (HF), and Belle River (BR) had excess capacity for the proposed dus of 168 percent, 205 percent, and 47 percent respectively. The two reservoirs, Heather Field (HFR) and Belle River (BRR) had similar excess capacities of four percent (which can be discounted) and 14 percent respectively, on the same basis. Thus, it is clear that the original specifications of Vallecito were in excess of API's requirements. Using API's criteria, which were not used in the original design, the excess capacity would have been substantially larger. But API never invoked paragraph A8 of Vallecito's Rule 15, nor was the unreasonableness ever raised by API until much later. API had the opportunity in 1968 to appeal Vallecito's demands to the Commission, but never did so. Contrariwise, the evidence of witnesses Bollenbacher, an API employee, and Brockmeier prove that after Decision No. 75014 was rendered, Bollenbacher relayed API's decision to expand the facilities even further so as to reduce the unit cost per lot, since API expected to be reimbursed pro rata for the oversized facilities as set out in Decision No. 75014. Vallecito agreed, and this resulted in the building of the existing facilities, which had an additional total capacity in the three booster plants of 800 gpm and in the two reservoirs of 800,000 gallons, in excess of the capacity set out in the amended application filed in 1968. It is apparent that the statement in Vallecito's application that these were minimum facilities designed solely for API's tracts was not entirely accurate. Further, Vallecito authorized the construction of facilities in excess of that authorized by the Commission in violation of Sections 762 and 1001 of the Code and its own main

extension rule. It thus appears that both parties were appearing before the Commission after pursuing a course of conduct that left much to be desired. Under such circumstances, we believe that neither party should benefit at the other's expense, and that Vallecito should not be allowed to benefit from the other developers of the tracts involved.

Issue 2

Vallecito agreed with API's statement of cost of the special facilities and the land with its improvements as $429,455, which includes an assigned cost of $45,000 for 4 lots used for the reservoirs and $16,163 for API owners miscellaneous overhead. (Exhibit L indicates that Vallecito carries these special facilities at $412,437, with the difference of $17,018 being due primarily to the exclusion of API's overhead from the total utility plant.) No evidence was presented as to the original cost of these lots to API, nor was there any evidence indicating that these lots were necessarily contributed because of the oversizing of the facilities, nor is it disputed that some land and some overhead would necessarily have been contributed by API to complete its development only. Nothing to the contrary having been proved it is reasonable to infer, and we so do, that the land and owner's overhead would have been contributed by API if the facilities were sized only for its development. Thus, we are reducing the cost of the special facilities to be assessed, if at all, by the sum of $61,163, bringing the assessable cost to $368,292.

Issues 3 and 4

The evidence indicates that API's development totaled 153 acres (rounded off). This includes the two tracts for which the proposed plan was submitted (about 96 acres) plus a 57-acre tract. The proposed plan included Lot 148 (9 acres) not owned by API. Brown and Caldwell (B&C), the engineering firm hired by Vallecito to design and prepare the plans and specifications, designed the back up facilities for 307 acres, using the design criteria specified by Vallecito, which B&C whose witness Luthin, testifying on behalf of API, would not have used in toto if B&C used what they considered to be the applicable criteria. The discrepancy is large, both in size and dollars, as set forth earlier. Adopting either of the specifications preferred by API would result in a substantially larger excess capacity than stated earlier, but in view of our hereinafter stated conclusions, it is unnecessary to determine which of the specifications is more reasonable.

General Discussion

There is no dispute that other developers are using or propose to use the oversized special facilities constructed. Equally, there is no dispute that the facilities were designed to serve 307 acres at two dus per acre, a projected total of 614 dus. API has built 198 dus on 96 acres, and, excluding Lot 148 (about 9 acres), there should be adequate facilities for an additional 211 acres and 416 dus. There is no dispute that the design envisioned the inclusion of API's 57-acre tract not yet developed, nor is there any dispute that the average du per acre is running between 2 and 2.5, and that through 1974, 184 dus in Tracts 25080 and 32019 on about 67 acres have been benefitting from these facilities (See Exhibit K). Further API's 57-acre tract has 92 lots (See Exhibit D, Table 11), and is thus designed for 92 dus. The tentative

development of Tract 28052 consists of 146 dus on 58 acres. These may be tabulated as follows:

Tract No.	Lots or dus	Acres (rounded)	
57 acres	92	57	
25080	42	15	
32019	142	53	
28052	146	58	
	422	183	= (2.3 dus per acre)
Facilities as proposed and designed	614	307	
Tracts 29803 and 29942 excluding Lot 148 ...	(198)	(96)	
Balance after 29803 and 29942 excluding Lot 148, as proposed and designed	416	211	= (2 dus per acre)

(red figure)

It is obvious from a perusal of the above that the potential capacity of the facilities built closely matches the developments built and proposed since the filing of the original application, based on Vallecito's criteria.[6/] Since API has received some contribution via its settlements with the developers of these various tracts (See Exhibits A, B, and C), and since API, through its course of conduct and business decisions contributed substantially to its own problems, we believe that it has already received equitable treatment. It is futile to determine a question now rendered moot by the parties. On the other hand, Vallecito also contributed substantially to the problems through its conduct and unauthorized deviation from its own rules and the Code. Its assets increased substantially at no cost, with some benefit to its existing service area and customers. Yet it now contends that it has insufficient excess capacity to serve API's 57-acre tract which was clearly encompassed in the special facilities area proposed in Exhibit E of

6/ The excess capacity would be much larger, using either of API's disputed criterion.

the Petition for Supplemental Order filed on November 5, 1970 by Vallecito. We believe this is not the case, and that it is also equitable to require Vallecito to service this 57-acre tract consisting of not more than 92 dus without requiring any further contribution for reservoir or booster stations from API or any assignee, if application for service to this area is filed by API or assignee within two years from the effective date of this order. Nor shall any contribution be required for reservoir or booster facilities from any developers of tracts identified herein as 28052 and 30697. We believe this to be a fair and reasonable solution for all parties concerned at this late stage in these proceedings, and this determination is proper under A8 of the main extension rule and the applicable sections of the Code (701, 762, 1001).

Findings and Conclusions

1. The original application, as amended, contemplated API's 57 acre tract being served by the special facilities described therein, pursuant to agreement of Vallecito and API.

2. API was not the owner of Lot 148 of Tract 29942.

3. There was sufficient capacity designed and built into the special facilities constructed to serve API's 57 acre parcel.

4. The special facilities applied for were designed to serve more than Tracts 29803 and 29942 (excluding Lot 148), and were designed for approximately 153 acres at 2 dus per acre.

5. After Decision No. 75014 was rendered, API and Vallecito agreed to, and did erect special facilities designed to serve 307 acres, which facilities were larger than those approved in Decision No. 75014.

6. The special facilities constructed were in excess of those applied for and approved by the Commission, in Decision No. 75014, and were constructed in violation of Sections 762 and 1001 of the Code.

7. The special facilities constructed benefit existing customers and ratepayers by creating additional fireflow and storage capabilities that could extend to Vallecito's Zones I and II.

8. The special facilities have benefitted developers of adjacent tracts, all of whom have settled their differences with API, pursuant to Exhibits A, B, and C.

9. Issues 2 and 3 set forth in Decision No. 75014 are now moot, since the concerned parties have agreed to a contribution among themselves, and any determination we might make in this regard would be a useless act.

10. The special facilities constructed contained excess capacity of not less than 800,000 gallons storage, and not less than 800 gpm booster pump capacity.

11. The cost of the land and owner's overhead are not properly included in the total cost of the utility plant, as they would have been contributed even if the facilities were not oversized; thus, the cost of the special facilities is $368,292.

12. The Commission has the right to determine disputes arising under the utility's main extension rule.

13. API never submitted such a dispute to the Commission for determination.

14. A water utility has the right to design the facilities it requires to serve the public, subject to the Commission's determination of any disputes as to any such specifications.

15. It is equitable and reasonable to require Vallecito to serve API's 57-acre tract, which was included in the specifications in the application, as to reservoir and booster pump capacity, without any further cost to API for such facilities.

16. It is equitable and reasonable to require Vallecito to serve Tracts 30697 and 28052 as to reservoir and booster pump capacity, without further cost for such facilities, as the special facilities contributed by API have sufficient or near sufficient capacity to serve said tracts.

O R D E R

IT IS ORDERED that:

1. Case No. 9549 is dismissed, without prejudice only as to the twelve acres still owned by the complainants, all pursuant to agreement between the complainants and the defendant.

2. San Gabriel Valley Water Company, successor to Vallecito Water Company, shall furnish reservoir and booster pump facilities to not more than ninety-two dwelling units in API's 57-acre tract without any further charge to API, its transferees or assignees, for such facilities, provided that API, its transferees or assignees, apply for water service for ninety-two or less dwelling units in that tract within two years from the effective date of this order.

3. San Gabriel Valley Water Company, successor to Vallecito Water Company, shall furnish reservoir and booster pump facilities to the developers of Tracts 28052 and 30697 for not more than one hundred forty-six and twenty-eight lots, respectively, without further charge to those developers for such facilities.

4. All other requests for relief are denied.

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

Dated at Los Angeles, California, this 6th day of MAY, 1975.

President

Commissioners