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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application)
of Homeowners for Water Rights to)
modify Decision 83-12-066 to stay)
the implementation of a 39% sur-)
charge for 120 days to allow the)
submission of the Los Angeles)
County Engineers study and report.)

Application 84-09-071
(Filed September 27, 1984)

O P I N I O N

Applicant, Homeowners for Water Rights (Homeowners), seeks modification of Decision (D.) 83-12-066 dated December 22, 1983 to stay the implementation of a 39% surcharge for 120 days to allow the submission of a Los Angeles County (County) engineer's study and subsequent report and for an order that East Pasadena Water Company (EPWC) not commit or expend any anticipated funds from the California Department of Resources (DWR) loan.

In D.83-12-066, we authorized EPWC to borrow \$1,545,000 from the State of California, under the Safe Drinking Water Bond Act of 1976 (the Act) administered by DWR, to execute a loan contract, and to use the proceeds for the purposes specified in Application (A.) 83-02-45. During consolidated hearings on A.83-02-45 and A.83-05-05, Homeowners filed a motion to continue those proceedings so as to enable that organization to do further study on EPWC's applications which was denied as was Homeowner's petition to set aside submission of A.83-02-45 after it had been submitted. Because of Homeowners' opposition to the applications and to afford EPWC's customers every opportunity to come forward

with tangible or alternate plans to EPWC's requests for a rate increase and for authority to borrow funds under the Act, we made our order in D.83-12-066 effective in 90 days rather than the customary 30 days to afford Homeowners or any other customer group the opportunity to come forward with either convincing evidence that an adjoining water supplier was willing to acquire EPWC's water plant and provide the new water mains and storage facilities to serve EPWC customers, or with a plan that was capable of implementation. We indicated that we would then consider reopening this proceeding for further hearings upon receipt of a petition which had to be fully supported and was in compliance with Rule 84 of the Commission's Rules of Practice and Procedure.

In A.84-09-071, Homeowners alleges that County's board of supervisors authorized \$50,000 for a comprehensive study of condemnation and/or alternative methods of securing control of water distribution, and that County's engineering department prepared a comprehensive scope of work requesting bids for the County study. Homeowners further alleges that based on reasonable alternatives available to it, its priorities would not necessarily include items 1, 6, and 7 of Phase 1 of EPWC's master plan and that needless expenditures of taxpayers' dollars could possibly result if EPWC were allowed to proceed prior to the completion of the County study.

We have examined the application of Homeowners and its accompanying exhibits but fail to see any basis upon which to stay the implementation of the surcharge which was to become effective October 1, 1984. While it appears that County has budgeted \$50,000 for a study to be made of EPWC's water system,

there is no assurance that once the study is completed any further action will be taken by County. Indeed the County Engineer has informed the Assigned Commissioner by letter dated September 21, 1984 that "The engineering Consultant's water study recommendations may or may not adversely impact or compliment [sic] the present improvement program and loan recommended by the East Pasadena Water Company and approved by the Public Utilities Commission." (Emphasis added.)¹ Certainly the County Engineer's equivocal position does not provide a sufficient basis for us to conclude that the implementation of D.83-12-066 should be stayed.

There was convincing evidence received in A.83-02-45 that there was an immediate need for the Phase 1 improvements of the master plan submitted by EPWC which would have to be made regardless of who operated the water system. The Phase 1 improvements for which the loan from DWR was obtained consist mainly of replacing old and deteriorated transmission lines containing many leaks, as well as work on two water reservoirs. The water system currently is unable to meet fire flow requirements and the Phase 1 improvements are necessary to bring the water system up to current standards. Although testimony from a State Health Department representative during the proceedings had uncovered no current health dangers, there was sufficient evidence to show potential health hazards from this very old water system.

¹ Copies of this letter from County Engineer Stephen J. Koonce were sent to all parties of record.

We have considered every argument submitted by Homeowners to delay hearings on the applications of EPWC and have found no basis for granting such delays. We have previously granted Homeowners a limited additional hearing on its petition to set aside submission of A.83-05-05 for the purpose of considering certain allegations raised by Homeowners in its petition. Homeowners failed to present any evidence during the limited additional hearing to support the allegations contained in its petition and, furthermore, it was admitted by Homeowners' president that its sole purpose in these proceedings was to have the Commission deny or delay action on EPWC's application while the group pursued a condemnation proceeding against the utility. We also pointed out in D.83-12-066 that, according to staff, in order for the surcharge to produce enough revenue to meet the initial payment of interest due on the Act loan in January 1985, it was necessary for EPWC to place a surcharge into effect beginning October 1984 so as to enable the utility to meet the initial payment and make the regular semiannual payment thereafter.

Several times during these proceedings we have indicated to Homeowners and to all other utility customers that we were willing to walk that last mile with them to give them every opportunity to present some valid alternatives to the applications submitted by EPWC. We delayed the effective date of D.83-12-066 by an additional 60 days and we further set aside submission of A.83-05-05 to enable Homeowners to present additional evidence. It failed to do so. We do not believe that the allegations contained in Homeowners' A.84-09-071 are sufficient to warrant either reopening these proceedings or granting it the order it seeks in this application. For these reasons, Homeowners' application to stay the implementation of D.83-12-066 for 120 days and to order EPWC not to commit or spend any anticipated funds from the DWR loan should be denied.

Findings of Fact

1. Homeowners, in its application, has presented no convincing facts or evidence to warrant a stay of the implementation of a surcharge by EPWC as ordered in D.83-12-066.

2. Homeowners has submitted no new facts or evidence to warrant our ordering EPWC not to commit or expend the anticipated funds from the DWR loan.

Conclusions of Law

Inasmuch as we have previously found an immediate need for the Phase 1 improvements of the master plan presented by EPWC, which would have to be made regardless of who operates the water system, and the fact that Homeowners has failed to produce any facts or convincing evidence to stay any part of D.83-12-066, A.84-09-071 should be denied.

O R D E R

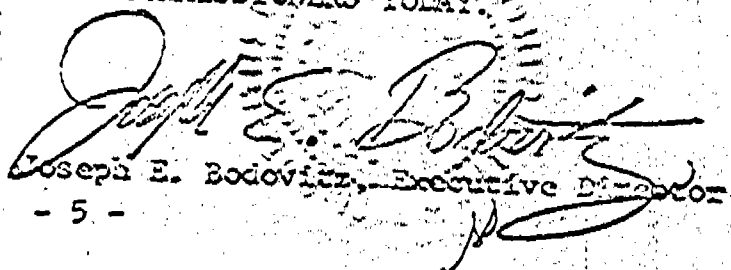
IT IS ORDERED that Application 84-09-071 is denied. ✓

This order is effective today.

Dated December 5, 1984, at San Francisco, California.

DONALD VIAL
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
FREDERICK R. DUDA
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director
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