

3. D.87-09-065 should be modified.

Therefore, good cause appearing,

IT IS ORDERED that D.87-09-065 is modified as follows:

1. The first paragraph of the Discussion Section on page 9 is modified to read:

Inasmuch as the facts show that the excavation and installation of the water main within El Monte have been accomplished, the first cause of action should be dismissed as moot.

2. The first sentence of the second paragraph of the Discussion Section on page 9 is replaced with the following material:

With respect to the second cause of action, wherein El Monte seeks an order requiring compliance with CEQA, the complaint should be dismissed because the main extension which is at issue here is not a project within the meaning of CEQA. Public Resources Code (PRC) §21100 provides, in pertinent part:

All state agencies, boards, and commissions shall prepare . . . an environmental impact report [EIR] on any project they propose to carry out or approve which may have a significant effect on the environment.

PRC §21065 defines a "project" as:

(a) Activities directly undertaken by any public agency.

(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

CORRECTION

**THIS DOCUMENT HAS
BEEN REPHOTOGRAPHED**

TO ASSURE

LEGIBILITY

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ORIGINAL

Decision 88 01 055 JAN 28 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF EL MONTE, CALIFORNIA)
a general law city,)

Petitioner and Complainant,)

vs.)

Case 87-01-009
(Filed January 6, 1987)

SAN GABRIEL VALLEY WATER COMPANY,)
a California corporation; and)
DOES 1 through 10, inclusive,)

Respondent and Defendants.)

ORDER MODIFYING DECISION 87-09-065
AND DENYING REHEARING

The City of El Monte (El Monte) has filed an application for rehearing of Decision (D.) 87-09-065, in which the Commission dismissed El Monte's complaint against the San Gabriel Valley Water Co. (SGV). SGV has filed a motion to permit late filing of a response to El Monte's application for rehearing and its proposed response. El Monte has filed a motion to amend its application for rehearing and its proposed "Supplement to Application for Rehearing." We will address these procedural motions first.

SGV states that it mailed its response to the application for rehearing on the last day for filing, rather than hand-delivering the response, so that its response was not received within the time provided by Rule 86.2 of the Commission's Rules of Practice and Procedure. SGV has therefore filed a motion to permit late filing of its response. SGV filed its motion and proposed response well before the Commission was prepared to act on El Monte's application for rehearing. Moreover, the period for filing a response to an application for

Rules of Practice and Procedure the Commission will waive the time limit of Rule 86.2 and grant SGV's motion. However, we wish to emphasize that under Rules 86.2 and 44 the Commission should receive any response to an application for rehearing within 15 days after the day the application for rehearing was filed; mailing of the response within those 15 days is not sufficient.

El Monte filed a motion to amend its application for rehearing a month after the period for filing an application for rehearing had passed. The Commission generally denies such motions to amend applications for rehearing. P.U. Code §1731(b) provides that no cause of action arising out of any decision of the Commission shall accrue to any person unless the person has filed an application for rehearing within 30 days after the Commission mails the decision. P.U. Code §1732 provides that no person shall in court urge or rely on any ground not set forth in its application for rehearing. If we were to allow a party to amend its application for rehearing after the period for filing such an application had passed, we would, in effect, permit the party to circumvent the limits of these statutory sections. El Monte has not shown why we should allow it to circumvent these statutes nor why we should depart from our usual practice. Accordingly, we will deny El Monte's motion.

We have carefully considered all of the issues and arguments raised in the application for rehearing and SGV's response and are of the opinion that sufficient grounds for granting rehearing have not been shown. We are, however, of the view that the decision should be modified to clarify our reasoning.

Conclusions of Law

1. SGV's motion to permit late filing of its response should be granted.
2. El Monte's motion to amend its application for rehearing should be denied.

3. D.87-09-065 should be modified.

Therefore, good cause appearing,

IT IS ORDERED that D.87-09-065 is modified as follows:

1. The first paragraph of the Discussion Section on page 9 is modified to read:

Inasmuch as the facts show that the excavation and installation of the water main within El Monte have been accomplished, the first cause of action should be dismissed as moot.

2. The first sentence of the second paragraph of the Discussion Section on page 9 is replaced with the following material:

With respect to the second cause of action, wherein El Monte seeks an order requiring compliance with CEQA, the complaint should be dismissed because the main extension which is at issue here is not a project within the meaning of CEQA. Public Resources Code (PRC) §21100 provides, in pertinent part:

All state agencies, boards, and commissions shall prepare . . . an environmental impact report [EIR] on any project they propose to carry out or approve which may have a significant effect on the environment.

PRC §21065 defines a "project" as:

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(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Here, the Commission did not directly undertake the water main extension, provide any financial assistance for the extension, or issue SGV any permit or license, etc. to build the extension. Thus, pursuant to PRC §21065, the water main extension at issue here was not a "project" within the meaning of CEQA insofar as this Commission was concerned. Thus, PRC §21100 -- which requires the Commission to prepare an EIR on any "project" with a significant environmental effect that it proposes to approve or carry out -- did not require the Commission to prepare an EIR on this water main extension. Moreover, the Commission did not "approve" or "carry out" the water main extension.

Prior Commission decisions considering the issue have similarly concluded that the Commission need not prepare an EIR for utility construction not involving Commission approval. See D.85951, 80 Cal. Pub. Util. Comm. 111, 114-15 (1976); H.B. Ranches v. Southern California Edison Co., D.83-04-090, mimeo at 1, 9-10 (April 20, 1983). Each of those cases concluded that the Commission is not required to prepare an EIR covering construction of an electric transmission line of less than 200kV within a utility's existing service area, because, pursuant to G.O. 131, the utility is not required to obtain a certificate of public convenience and necessity before constructing such a line and therefore the construction of the line is not a "project" within the meaning of CEQA. See also D.85934, 80 Cal. Pub. Util. Comm. 90, 94, 96 (1976) (Big Basin Water Co.), finding that "[t]he expansion of a water corporation into a contiguous area is not a project, so far as the Commission is concerned, requiring an EIR as a prerequisite to such expansion," because the water corporation did not have to obtain a certificate or other entitlement from the Commission before undertaking the expansion.

Even if the water main extension were a "project," PRC §21080.21 would exempt it from the requirements of CEQA.

3. The last two sentences of the first partial paragraph on page 10 are replaced with the following material:

The Commission takes official notice that the excavation conducted by SGV within the boundary of El Monte amounted to approximately 675 feet, more or less, and that the excavation within Arcadia amounted to approximately 1,765 feet, more or less, totaling approximately 2,440 feet, which is considerably less than one mile and thus would fall within the exemption of PRC §21080.21.

For these reasons, the request by El Monte for an order that the Commission order and perform an environmental assessment of the extension of water service performed by SGV should be dismissed.

4. Finding of Fact No. 1 on page 10 is modified to read:

1. Pursuant to a court order, El Monte issued the excavation permit sought by SGV.

5. Finding of Fact No. 3 on page 11 is modified to read:

3. The Commission did not directly undertake the water main extension at issue here, provide any financial assistance for the extension, or issue SGV any permit, license, or other entitlement to build the extension.

6. Additional Finding of Fact No. 3A is inserted on page

11:

3A. The water main extension at issue here was an installation of a pipeline of less than one mile in length within a public right-of-way.

7. The Conclusion of Law on page 11 is replaced with the following material:

Conclusions of Law

1. Inasmuch as the issues in this matter are now moot, the complaint should be dismissed.
2. The water main extension at issue here is not a "project" within the meaning of CEQA insofar as this Commission is concerned. Therefore this Commission is not required to prepare an EIR on this water main extension.
3. Even if this water main extension were a "project," Public Resources Code §21080.21 would provide an exemption from CEQA's requirements.

IT IS FURTHER ORDERED that San Gabriel Valley Water Company's motion to permit late filing of its response is granted.

IT IS FURTHER ORDERED that El Monte's motion to amend its application for rehearing is denied.

IT IS FURTHER ORDERED that rehearing of D.87-09-065 as modified herein is denied.

This order is effective today.

Dated JAN 28 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDENICK R. DUDA
G. MITCHELL WILK
JOHN B. O'HANIAN
Commissioners

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


Victor Weissert, Executive Director

L/JTP/cip *

Decision 88 01 055 JAN 28 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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a general law city,

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We have carefully considered all of the issues and arguments raised in the application for rehearing and SGV's response and are of the opinion that sufficient grounds for granting rehearing have not been shown. We are, however, of the view that the decision should be modified to clarify our reasoning.

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Conclusions of Law

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IT IS FURTHER ORDERED that El Monte's motion to amend its application for rehearing is denied.

IT IS FURTHER ORDERED that rehearing of D.87-09-065 as modified herein is denied.

This order is effective today.

Dated JAN 28 1988, at San Francisco, California.

STANLEY W. HULETT
President
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Commissioners