

Decision 89 06 007 JUN 7 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Hillview Water Company, Inc., for)
authority to enter into an agreement)
with the State of California under)
the auspices of the Safe Drinking)
Water Bond Act for a loan, and to)
increase rates for water services)
in the Indian Lakes System by means)
of a surcharge on existing rates for)
developed lots and a surcharge)
applicable to undeveloped lots to)
repay the principal and interest)
on such loan. U-194-W)

Application 86-03-059
(Filed March 2, 1986;
amended May 22, 1986)

SECOND INTERIM OPINION

Background

In Interim Decisions (D.) 87-09-029 and D.87-11-051, an order extending time, the Commission authorized applicant Hillview Water Company, Inc. to enter into a loan agreement under the Safe Drinking Water Bond Act (SDWBA) with the California Department of Water Resources (DWR) to fund the construction of improvements in its Indian Lakes Estates (Lakes) system.

In D.87-09-029 we recognized that the Madera County Board of Supervisors (County) passed a Resolution of Necessity to acquire the Lakes system and had filed an action in eminent domain under the Resolution of Necessity. Due to the need for the system improvements to eliminate conditions which could endanger public health and safety, we reluctantly authorized applicant's loan request.

Subsequently, applicant notified the Commission that County had acquired possession and control of the Lakes system, and that applicant had not made certain compliance filings because of the system takeover and because of delays in securing State Health

Department approval for its modified improvement plan. DWR advised the Commission that no SDWBA funds for the Lakes system were loaned to applicant.

After litigation, a settlement was reached between applicant and County on the amount of just compensation to be paid to applicant by County for the Lakes system. County paid \$74,727 as the amount of probable compensation that would be awarded for the system. In the settlement County agreed to pay another \$150,273 for the system plus interest. The total sum contained in a Stipulation For Judgment for all claims and demands by applicant and its owners against County was \$244,124.65.

Discussion

The Lakes system was not interconnected with any of applicant's other systems; it was and is several miles from applicant's nearest system.

In amended Application (A.) 84-04-023, applicant sought an emergency adjustment of rates or rate structure to increase revenues to a previously authorized level and to consolidate its four rate areas into one rate area with a uniform rate schedule. D.84-11-089 in that proceeding contains in the following Finding of Fact:

"8. Hillview is operated and maintained as a single water system and a single rate schedule (except for the SDWBA surcharge) is appropriate, just, and reasonable for the entire Hillview system. Hillview's request to consolidate its rate areas is reasonable."

In that unusual proceeding, the Commission dealt primarily with revenues and water consumption issues. It did not establish other rate setting elements in a summary of earnings, including rate base. Utility plant and the reserve for depreciation are elements in rate base. Implicit in establishment of a single rate schedule is the incorporation of the utility plant and the related reserve for depreciation of applicant's several

systems, including the Lakes system, into a common rate base for ratemaking purposes.

On November 28, 1988, the Commission ordered an order instituting rulemaking, R.88-11-041, concerning the ratemaking treatment of capital gains derived from the sale of a public utility distribution system serving an area annexed by a municipality or public entity. That order was corrected by D.88-12-003 on December 5, 1988. Our review of the appropriate ratemaking treatment for such sales was restricted to the allocation of gains which are realized when all of the following circumstances exist:

1. A distribution system of a public utility (i.e. gas, electric, or water utility) is sold to a municipality or some other public or governmental entity, such as a special utility district;
2. The distribution system consists of part or all of the entire utility operating system ("system") located within a geographically defined area;
3. The components of the system are or have been included in the rate base of the utility; and
4. The sale of the system is concurrent with the utility being relieved of and the municipality or other agency assuming the public utility obligations to the customers within the area served by the system.

The Lakes system transfer and purchase on a stipulated basis in a condemnation proceeding meets the above stated criteria for review in R.88-11-041 as corrected in D.86-16-003. Since the decision in that proceeding is pending, the Commission cannot establish the appropriate ratemaking treatment of capital gains related to the Lakes system transfer at this time. Therefore, this decision should be made interim.

We will require applicant to file with the the Director of the Commission Advisory and Compliance Division (CACD) the original cost and reserve for depreciation of the utility plant in its Lakes system on the date established for the condemnation; outstanding Lakes system advances for construction and contributions in aid of construction on that date; applicant's journal entry reflecting the realized capital gain for that system. After issuance of the decision in R.88-11-041, applicant may submit its argument on the appropriate ratemaking treatment on the gain. This decision is made interim to permit the Commission to review applicant's filings and an evaluation of those filings by CACD.

Applicant should also file a report with the Director of CACD showing the amount of customer deposits and 1988 revenues related to the Lakes system through the date County assumed possession of this system. This filing shall describe how the refunds on Lakes system advances will be paid and what arrangements were made to transfer customer deposits to County or to refund those deposits. The filing should contain a worksheet showing its payment to the Commission of any outstanding user fees for the Lakes system.

Prior compliance filings in this proceeding are made moot because of the County's condemnation of the system. Therefore, applicant should be relieved of compliance with our prior orders in this proceeding. But it should make the filings described above.

Findings of Fact

1. Applicant was authorized to enter into a SDWBA loan with DWR to reflect its revised Lakes system improvements plans. Applicant entered into a loan agreement to provide funds to construct facilities included in its revised improvements plans. Applicant did not receive any SDWBA funds for its Lakes system.

2. County filed a condemnation action for the Lakes system in Madera County Superior Court. Pursuant to court authorization County has taken possession of the system and operates it. After

litigation a settlement between applicant and County was reached on the just compensation County will pay for the Lakes system.

3. Applicant did not make certain filings ordered in D.87-09-029 and in D.87-11-051.

4. Applicant can not proceed with the construction contemplated in this application.

5. The Lakes system was not interconnected with applicant's other systems.

6. D.84-11-089 authorized applicant to consolidate four rate areas into one rate area. No determination of rate base was made in that decision. Utility plant and the reserve for depreciation are elements in rate base.

7. R.88-11-041 as modified by D.88-12-003 deals with the appropriate ratemaking treatment of capital gains derived from the sale of a public utility distribution system serving an area annexed by a municipality or public entity under specifically stated circumstances.

Conclusions of Law

1. The filings ordered in D.87-09-029 and in D.87-11-051 are moot. Applicant should not be required to make those filings.

2. Commission authorization of applicant's establishment of a single rate schedule in D.84-11-089 implicitly incorporates the utility plant and related reserve for depreciation of applicant's several systems, including the Lakes system, into a common rate base for ratemaking purposes.

3. The transfer of the Lakes system meets the criteria contained in R.88-11-041. Further review of the treatment on the Lakes system gain requires applicant's filing on its Lakes system, reserve for depreciation, advances for construction, contribution in aid of construction and journal entry described in the body of this decision and to consider applicant's argument and CACD's review based on the decision in R.88-11-041.

4. Applicant retains its obligations to make refunds on any outstanding Lakes system main extension agreements and to refund any Lakes system customer deposits. Applicant should have paid the Commission reimbursement fees on Lakes system revenues through the date County took over the system.

5. Applicant should file the report on those subjects, discussed in today's decision, with the Director of the Commission Advisory and Compliance Division.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Applicant Hillview Water Company, Inc. is relieved of its obligations to construct improvements in the Indian Lakes Estates water system formerly owned by it and to repay the loan authorized in D.87-09-029 and in D.87-11-051.

2. Applicant is not required to make the filings ordered in D.87-09-029 and in D.87-11-051.

3. Applicant shall file a report with the Director of the Commission Advisory and Compliance Division (CACD), as described in the body of this decision within 20 days after today.

4. Applicant may file its argument on the appropriate treatment of the capital gain on the Indian Lakes Estates system within 30 days after the effective date of the order in R.88-11-041.

5. CACD shall review applicant's filing and argument and supply its evaluation for the consideration of the Commission.

This order is effective today.

Dated JUN 7 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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



Victor Weisser, Executive Director

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