

Mailed

APR 11 1991

Decision 91-04-023 April 10, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Temescal Water Company (U 383 W))
for authority to increase rates.)

Application 89-01-012
(Filed January 10, 1989)

ORDER OF DISMISSAL

This proceeding was initiated by the Temescal Water Company (Temescal) pursuant to Public Utilities Code Section 454, when it filed an application with the Commission on January 10, 1989, for authority to increase its rates.

The Administrative Law Judge's (ALJ) proposed decision was filed and mailed to the parties on December 31, 1990. Comments on the proposed decision were filed by Temescal and the Elsinore Valley Municipal Water District (EVMWD) jointly; and by the Cities of Riverside and Corona, and the Lee Lake Water District (hereinafter collectively referred to as "Corona"), Temescal Users Association, and the Water Branch. Reply comments were filed by EVMWD.

At the time the proposed decision was issued an appeal was pending in the California Court of Appeal, Fourth Appellate District concerning the Judgment in Condemnation issued by the Superior Court of Riverside County, Action No. 200301. The details of which are set forth in the proposed decision of ALJ O'Leary and need not be repeated herein.

On March 1, 1991, the Court of Appeal filed its decision. The conclusion and disposition portions of the Court of Appeal decision are as follows:

"CONCLUSION

"Because we conclude that the trial court abused its discretion in granting Intervenor's motion to intervene in the eminent domain action, we must also reverse the order setting aside and

vacating Elsinore's judgment in condemnation against Temescal. In order to attack the validity of that judgment, Intervenor's first properly must have been parties to the eminent domain action in which the judgment was rendered. The effect of our holding here is that at the time Intervenor's moved to set aside the judgment they had no legal right to participate in the eminent domain action. In other words, Intervenor's were not parties to the action when they moved to intervene. Intervenor's only wanted to be parties.

Unfortunately, this is truly one of those situations where desire, no matter how intensely held or strongly expressed, is simply not enough. In concluding as we do here, that Intervenor's may not participate in Elsinore's eminent domain action against Temescal, and thus reversing the trial court, we do not address, and therefore do not express an opinion, on the merits of Intervenor's substantive claims. Our holding means merely that the claims, if any there be and whatever they are, may not be asserted by intervening in the Elsinore v. Temescal eminent domain action.

"DISPOSITION

"Let a peremptory writ of mandate issue commanding the trial court to vacate its order granting the motion of Intervenor's, City of Corona, Lee Lake Water District and City of Riverside, to intervene, as defendants in intervention, in this action, and further commanding the trial court to enter a new order denying that motion.

"The order granting the motion of Intervenor's, City of Corona, Lee Lake Water District, and the City of Riverside, setting aside and vacating the judgment in condemnation, is reversed. The trial court is directed to reinstate that judgment."

In view of the decision of the Court of Appeal, this Commission does not have any jurisdiction over the rates charged by EVMWD. The application should therefore be dismissed.

Comments to the proposed decision filed by Corona, Temescal Users Association, and the Water Branch focus on the resolution of EVMWD, dated March 12, 1990, increasing rates for the customers of the "Temescal Division" of EVMWD. The comments urge the Commission to conclude that the rate increase authorized by EVMWD's resolution dated March 12, 1990 was an unauthorized rate increase and order refunds of the unauthorized rate increases.

Should the customers of Temescal wish to pursue their contention that the rate increase authorized by EVMWD's resolution dated March 12, 1990 was an unauthorized rate increase, they may pursue the matter through this Commission's complaint procedure or in civil court.

IT IS ORDERED that Application 89-01-012 is dismissed.
This order is effective today.

Dated April 10, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

[Signature]
NEAL J. SULLIVAN, Executive Director
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