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Decision 91-05-032 May 8, 1991

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the adequacy and)
status of San Gabriel Valley Water)
Company's water supply.)

I.90-05-034
(Filed May 22, 1990)

ORDER MODIFYING INVESTIGATION

On December 22, 1989, San Gabriel Valley Water Company ("San Gabriel") filed a complaint with the Commission alleging that its principal source of supply, Fontana Union Water Company ("Fontana"), had become a public utility subject to the Commission's jurisdiction. (C.89-12-035.) Under Section 2707 of the Public Utilities Code, the Commission is authorized to determine whether "any person, firm, or corporation . . . owning, controlling, operating, or managing any water system or water supply within this State" is a public utility. Seventy-five years of precedent confirms the primary jurisdiction of the Commission to make this determination.

On March 28, 1990, Fontana filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Central District of California. As a consequence, under Section 362(a)(1) of the Bankruptcy Code, the Commission's review of the complaint brought by San Gabriel was automatically stayed.

On May 22, 1990, in keeping with the terms of Section 362(b)(4) of the Bankruptcy Code which provides an exception from the automatic stay for proceedings initiated by governmental agencies to enforce their regulatory powers, the Commission on its own motion instituted the present investigation into the adequacy of San Gabriel's supply and, necessarily, Fontana's status as a public utility.

On September 5, 1990, Fontana filed with the Bankruptcy Court a complaint for an injunction and an application for a

preliminary injunction to bar the Commission from determining Fontana's status.

On November 13, 1990, despite the exception to the automatic stay provided by Section 362(b)(4), as well as the Commission's primary jurisdiction to determine whether a particular entity is or is not a public utility, the Bankruptcy Court granted the preliminary injunction requested by Fontana.

On November 20, 1990, the Commission filed a timely notice of appeal of the Bankruptcy Court's order with United States District Court for the Central District of California. This appeal is pending before that court.

On March 12, 1991, in the interest of facilitating an expeditious resolution of the issue of Fontana's status, the Commission entered into a stipulation with Fontana to resolve this litigation, subject to approval by the Bankruptcy Court. Under the terms of the stipulation, the Commission agrees not to adjudicate the issue of Fontana's status unless one of the following events were to occur: (1) Fontana's petition is dismissed or a plan of reorganization is confirmed without the issue of Fontana's status having been determined by the Bankruptcy Court; (2) the Bankruptcy Court indicates that it would not resolve Fontana's status before confirming a plan of reorganization; or (3) the Bankruptcy Court determines Fontana's status, its determination is reversed or vacated on appeal, and on remand the Bankruptcy Court fails to resolve the issue within 90 days. The Commission further agrees to modify its investigation so as to remove the issue of Fontana's status and also to dismiss its appeal of the preliminary injunction ordered by the Bankruptcy Court. For its part, Fontana agrees to dismiss its complaint for a permanent injunction and to have the preliminary injunction vacated. In addition, both parties agree that the rulings made in connection with the injunction would have no precedential effect in terms of res judicata, collateral estoppel, or law of the case:

[T]his Stipulation shall not be construed as resolving the questions of whether a determination of the public utility status of an entity under the California Public Utilities Code falls within the primary jurisdiction of the CPUC and whether an investigation instituted by the CPUC falls within the 11 U.S.C. § 362(b)(4) exemption to the automatic bankruptcy stay.

On March 25, 1991, the Bankruptcy Court approved the stipulation and commenced a hearing on the status of Fontana as a public utility.

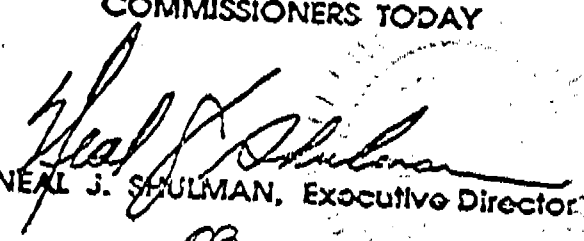
Accordingly, consistent with these developments, we hereby modify our Order Instituting Investigation to remove the issue of whether Fontana is a public utility within the meaning of the California Public Utilities Code.

This order is effective today.

Dated May 8, 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


NEAL J. SHULMAN, Executive Director