

ORIGINAL

Decision 82 03 055 MAR 16 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension  
and Investigation on the Commission's  
own motion of tariff filed by Advice  
Letter No. 186 of San Gabriel Valley  
Water Company, Fontana District in  
San Bernardino County.

(I&S)  
Case 11022  
(Filed September 1, 1981)

Michael Whitehead, Attorney at Law, for  
respondent/applicant.  
Oliver P. Roemer, for West San Bernardino  
County Water District; and Larry Hendon,  
for San Bernardino County Local Agency  
Formation Commission; interested parties.

O P I N I O N

This matter first came before the Commission when San Gabriel Valley Water Company, Fontana District, (SGVWC), filed Advice Letter 186 in August 1981 to extend its service into the Jurupa Hills Regional Park, in the City of Fontana.

Soon afterward we received a letter from the West San Bernardino County Water District (West District) advising us that it had made application to the Local Agency Formation Commission of San Bernardino County (LAFC) in June to extend its "sphere of influence" to encompass the Jurupa Hills Regional Park. The letter requested that we take no action on SGVWC's advice letter until LAFC had acted on West District's application.

We therefore ordered an investigation and suspended the tariffs related to the advice letter. By Decision 82-01-11 we extended the suspension of those tariffs and ordered a hearing on the matter. Our desire was to determine whether there was a conflict between this Commission and the local agency formation commission, to try to resolve it if there was, and to reach a solution which would best serve the ratepayers of the area in question.

Local agency formation commissions were created in each county by the Legislature when it enacted the Knox-Nisbet Act (Government Code Section 54773 et seq.):

"Among the purposes of a local agency formation commission are the discouragement of urban sprawl and the encouragement of the orderly formation and development of local governmental agencies based upon local conditions and circumstances...

"In order to carry out its purposes for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously provide for the present and future needs of the county and its communities, the local agency formation commission shall develop and determine the sphere of influence of each local governmental agency within the county..." Government Code Section 54774. (Emphasis added.)

The Knox-Nisbet Act gives LAFC jurisdiction only over public water agencies in its county and the Public Utilities (PU) Code (Sections 2701 and 2702) gives only this Commission jurisdiction over water companies which are privately held and purvey water to others. Thus we are confronted with the question of how best to deal with this parallel jurisdiction where a private company is requesting of us the right to extend its service at the same time a public agency is making a similar request to its county local agency formation commission regarding the same territory.

The parallel jurisdiction dilemma warranted our suspension of tariffs and investigation. In this regard we are mindful of the California Supreme Court's admonition to us in Ventura County Waterworks Dist. v P.U.C. (1964) 61 C 2d 462, 39 Cal. Rptr. 8 which held that:

"It is for the commission to decide whether the public convenience and necessity require the certification of a private water utility when service by a public water district is also available, but it can properly make its decision only after considering what the alternatives are." 61 C 2d 462,466.

On January 8, 1982 a properly noticed investigative hearing was held before Administrative Law Judge Alison Colgan. The matter was submitted on the same date. Representatives from SGVWC, West District, and LAFC testified and various documentary exhibits were received.

Preliminarily, counsel for SGVWC, Michael Whitehead, moved to dismiss the proceeding on the ground that the letter from West District did not meet the statutory requirements for a formal complaint under PU Code Section 1001. The motion was taken under submission. Whitehead's motion must be denied since the Commission's authority to initiate and hold an investigative hearing in this instance is separate from the provisions of PU Code Section 1001, arising under PU Code Section 455. Here SGVWC by its Advice Letter 186 proposed a change in service territory, which under Section 455 is a change in a "practice", and we suspended the proposal under Section 455 for investigation. Had we not suspended the Advice Letter for investigation on our own motion SGVWC's procedural observation would have merit, and anyone opposed to the service territory extension would have the burden of filing a complaint under PU Code Section 1001.

West District was represented by Oliver P. Roemer, its vice president. Roemer testified himself and also presented the testimony of Ira Pace, general manager of West District. These two witnesses offered their opinion that the area in question would best be served by West District. During the course of their testimony it became clear that their concern is not so much with water service to the Jurupa Hills Regional Park site, but with water service to a proposed 8,000-unit residential community which is not part of but is adjacent to the area of expansion in Advice Letter 186. The sphere of influence which West District is attempting to extend (designated as "Parcel E" on Exhibit 1) encompasses the Jurupa Hills Regional Park and extends beyond it to the west where the residential community is to be built.

A review of the maps received as Exhibits 1 and 9 makes it clear that access to the westerly segment of West District's proposed sphere of influence will be nearly cut off if SGVWC is given exclusive service of the park site. In fact, Roemer testified that later service to this proposed residential

community by West District would require some parallel water lines if SGVWC is allowed to serve the park. He stated that West District presently has water lines located one-half mile from the park site.

Roemer and Pace testified that SGVWC should not be granted the extension because taxpayers in the future development might be subject to double taxation for supplemental water. As they explain it, there are two regional water districts in the vicinity of this site. One is the San Bernardino Valley Municipal Water District (Muni) and the other, adjacent to the south, is the Metropolitan Water District (Met). These regional districts have a contractual obligation with the State to supplement the ground water of their regions in drought years to protect, among other things, the water quality. They also have the authority to levy taxes on the ratepayers in their regions to accomplish this task.

West District is in the Muni region--and so is the park site in question and the proposed residential development. However, these witnesses claim that SGVWC does not get much of its water from the Muni region.

Rather, SGVWC buys water indirectly from the Chino Basin Municipal Water District (Chino), among others, which is in Met's region. In a drought year, they argue SGVWC could be taxed by Met for supplemental water and would pass along that cost to its ratepayers in the form of higher rates. They claim that since the proposed development is in the Muni region its residents could end up paying these "hidden taxes" to Met via higher rates and direct taxes to Met if it were to levy taxes regionwide.

No evidence was offered to corroborate or substantiate this belief, although a great deal of testimony, often speculative and confusing, was presented by West District along with several documentary exhibits. In our proceedings, when a party wishes to present its viewpoint to us, it must do so in a manner that is organized enough to be followed. Thus, where the party believes that certain documents will aid in our understanding of its point of view, or aid in proving its contention, those documents should be introduced at the hearing after a foundation is laid for their introduction. This simply means that the party must explain, through the person who is testifying, what the document is, where it came from, how the person testifying knows that it is accurate and/or authentic, and how it will help illustrate or prove this party's contention. In the main West District missed the mark in this regard.

The evidence presented by both SGVWC and by LAFC supports the proposed expansion of SGVWC. We find the evidence provided by LAFC particularly significant since that organization has a statutory mandate to provide for the best interests of the citizens of the county for the present and the future. Larry Hendon, testifying about the conclusions reached by the LAFC staff, stated that on December 4, 1981 representatives from LAFC, the Commission staff, SGVWC, West District, the City of Fontana, and Chino met in a workshop to deal with this very problem. He stated that the workshop reviewed water service, water capacity, water storage, service lines of each water agency, the ability of each to serve this particular area, the relationships between these two bodies and the two regional districts

(Muni and Met) whose responsibility it is to supply supplemental water, water rates and related charges of each agency, and the relationship to and preference of the City of Fontana. He further stated that his staff spoke with Met, Chino, and Muni about the concerns raised by West District about importation of water from one basin to another. He stated that "none of those bodies has expressed a concern in terms of whether or not the Fontana Water Company /SGVWC/ or the West District serves this southern boundary." (RT 111.) Hendon added that with respect to "long-term future impacts" on the ratepayers, the LAFC staff concluded that there would be no difference as a result of one of these agencies providing water rather than the other. He added that in other respects SGVWC "is more capable of serving this area of Fontana and, in fact has the support of the City of Fontana in that position." (RT 111.) (Also see letter attached to Exhibit 7.) Hendon also testified that the PUC Commission staff agrees with this position. ✓

Terry Draper, assistant manager of the Planning Department for the City of Fontana, testified that he is the environmental officer for the Jurupa Hills park site which, he stated, consists of 300 acres, approximately 13 of which are being developed and are in need of water.

Ivan G. Holmberg, Jr., vice president and general manager of SGVWC, testified that SGVWC has 8½ million gallons total storage capacity in the vicinity and a 10-inch water line in place adjacent to the area in question. He also testified that the City of Fontana has asked for water service to the park buildings, sprinkler service, and two fire hydrants. Holmberg stated that the available water was more than adequate to meet these needs.

Weighing this testimony against the testimony for West District, we can find no basis for denying SGVWC's application.

Obviously we do not wish to take an action today which will adversely affect ratepayers in the future. However, West District failed to show by a preponderance of the evidence that this would be the result of our granting an expansion to SGVWC.

We suggest to West District that if it has a serious concern about ratepayers' interests, when and if the matter of water service to the proposed 8,000-unit development comes before us, that it prepare its case in a manner which puts verified facts properly before this Commission so that the information can be seriously weighed.

Findings of Fact

1. SGVWC moved to dismiss this matter for lack of jurisdiction. The motion was taken under submission.
2. The Jurupa Hills Regional Park is presently being developed and is in need of water for buildings, sprinklers, and fire hydrants.
  - 3.a. The extension requested by SGVWC is within a city in which it has heretofore lawfully commenced operations.
  - b. The extension requested is into territory contiguous to SGVWC's system and the territory has not heretofore been served by another water utility.
  - c. The proposed extension does not now and is not about to interfere with the already constructed water system of West District.



4. Fontana, the community to be served, and a representative of the agency which coordinates the actions of public agencies for the county in which Fontana is situated (LAFC) have expressed a preference for SGVWC.

5. The representatives of West District expressed the opinion that this extension would result in higher rates to future ratepayers than the alternative which they proposed. The representative from LAFC expressed a contrary opinion. Neither offered corroborating evidence.

Conclusions of Law

1. Jurisdiction to hear this matter does exist under Sections 314, 317, and 701; therefore, SGVWC's motion to dismiss should be denied.

2. Present public convenience and necessity require the extension requested.

3. The proposed extension meets all criteria set forth in PU Code Section 1001 for granting of an extension without the necessity of obtaining a separate certificate of public convenience and necessity, and community values indicate a preference for the service of SGVWC.

4. West District failed to show, by a preponderance of the evidence, that granting this extension would be disadvantageous to ratepayers.

O R D E R

IT IS ORDERED that:

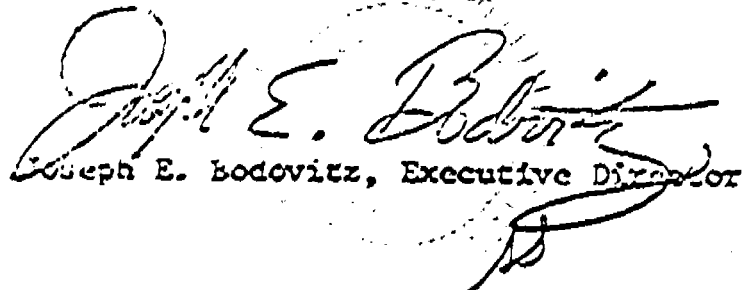
1. San Gabriel Valley Water Company's (SGVWC) motion to dismiss is denied.
2. The suspension of tariffs as ordered by Decision 82-01-11 is lifted.
3. The tariffs filed by SGVWC under Advice Letter 186 shall become effective on the effective date of this order.

This order becomes effective 30 days from today.

Dated MAR 16 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. CRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director