

Decision No. 31857 JUN 3 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of CALIFORNIA WATER SERVICE COMPANY, a corporation, for a certificate of public convenience and necessity to construct a non-contiguous water system in its Salinas District, and for authority to execute an agreement which deviates from its filed Rule No. 15, Main Extensions, in regard to such certificate.

Application No. 59225
(Filed October 22, 1979;
amended October 22, 1979)

In the matter of the Application of ALISAL WATER CORPORATION, a corporation, for a certificate of public convenience and necessity to construct a non-contiguous water system in the Salinas area, and for authority to execute an agreement which deviates from its filed Rule No. 15, Main Extensions, in regard to such certificate.

Application No. 59320
(Filed December 6, 1979)

McCutchen, Doyle, Brown & Ewersen,
by A. Crawford Greene, Attorney at Law,
for California Water Service Company,
applicant in A.59225.

William G. Fleckles, Attorney at Law, for
Alisal Water Corporation, applicant in
A.59320 and protestant in A.59225.

Firmin A. Grub, for Northern California
Savings & Loan Company, interested party
in both applications.

O P I N I O N

Statement of Facts

The Salinas valley in the vicinity of the city of Salinas is a flat alluvial flood plain about six miles wide extending northwesterly towards the sea at Monterey Bay. Along the southwesterly side of the valley the plain is threaded erratically by the meandering course of the Salinas River. On the southwesterly side of the river and running along the base of the foothills of the Sierra de Salinas is a road called the River Road (Monterey County G-17). State Highway 68 on its way south from Salinas through El Toro Park to the city of Monterey intersects with the River Road. Just northwest of the intersection begins the Fort Ord Military Reservation. Southeast of the intersection a short distance and across the river is the Spreckels Sugar Company plant and town. The floor of the river valley is zoned and primarily used for agriculture. The general plans of both the city of Salinas and Monterey County call for retention of this greenbelt, leaving residential development to the foothills south of the River Road in lands once a portion of the Buena Vista Rancho. At present there are three real estate subdivisions existent along the River Road in the immediate vicinity at interest here, all served by mutual water companies.^{1/}

Moving to fill a developing and recognized need for additional housing in the Salinas area, Northern California Savings and Loan Company (Northern California) several years ago purchased a 93.7 acre parcel of land for subdivision. The parcel, approximately ✓ 7 miles southeast of Salinas and 3 miles southeast of the River Road-State Highway 68 intersection, on the southwestern side at 250 River Road overlooking the Salinas River, gently slopes uphill^{2/} from the

1/ Indian Springs, Pedrazzi Subdivision, and Pine Canyon.

2/ Varying in elevation from 53 feet at the River Road to 134 feet at the upper level, a distance of 2950 feet.

River Road into the lower foothill slopes of the Sierra de Salinas mountains (See Map, Appendix A). To be known as Vista Del Río, the quality subdivision will include 80 one-acre homesites. To move the project toward fruition Northern California thereafter entered into a partnership with Harrod Homes, a local real estate developer, and in 1978 moved to obtain the various approvals required from the county of Monterey to proceed with development. An Environmental Impact Report was completed and approved as part of this process. When it came to the question of determining upon a water utility, the project area being neither contiguous to nor near any public water utility, Northern California discussed the possibility of putting in its own system, then either selling it or running it as a mutual. After consideration Northern California decided it preferred not to be in the water business. Desirous of a good quality system, and recalling its very satisfactory experience with California Water Service Company (Cal-Water) over a number of years in establishment and maintenance of good water service, Northern California in May 1978 contacted Cal-Water, proposing that Cal-Water design and install the subdivision water system and thereafter provide the new subdivision, when built, with utility water service. Discussions followed, and after Northern California obtained final approvals on the subdivision, in October 1979 Northern California signed an agreement with Cal-Water covering the water utility project applicable to the subdivision.

Cal-Water, a California corporation with its principal place of business in San Jose, owns and operates water systems in 20 districts^{3/} in California. Its Salinas district comprises the greater portion of the city of Salinas as well as adjacent unincorporated

^{3/} At the time of Cal-Water's application there were 21 districts. Since then the former Broadmoor district has been consolidated into applicant's South San Francisco district.

areas (See Map, Appendix A). As provided under the terms of its contract with Northern California, Cal-Water by its instant application proposes to include the noncontiguous Vista Del Rio subdivision within the service area of its Salinas district, and pursuant to the provisions of Section 1001 of the Public Utilities Code, seeks a certificate of public convenience and necessity to construct the water system for addition to its system.

Cal-Water proposes to construct a system consisting of one well equipped with pump, motor, and necessary appurtenances, approximately 6,900 feet of 8-inch and 1,400 feet of 6-inch AC pipe, 80 one-inch services and 11 fire hydrants along with the necessary valves and fittings. In addition, Northern California would contribute to Cal-Water an existing well which Cal-Water would equip with auxiliary power for standby service, an easement to this latter well, and the land on which the new well would be located. The estimated cost of the facilities as proposed by Cal-Water would be \$348,811 and the estimated value of the contributed well, easement, and well site is \$20,500.

Concurrent with the granting of a certificate of public convenience and necessity, Cal-Water also asks that it be authorized, pursuant to the provisions of Section 491 of the Public Utilities Code, to carry out the terms and conditions of its agreement with Northern California as these pertain to the method of financing the proposed construction. While it is essentially a standard main extension agreement, the Northern California agreement provides for certain deviations from Cal-Water's Rule No. 15, Main Extensions. The Northern California agreement provides that Northern California will advance to Cal-Water the total installed cost of the facilities, estimated to be \$348,811. However, refunds, to be made under the percentage-of-revenue method of Rule No. 15, are not to exceed \$56,000. This limitation on refunds, which, based upon the 80 proposed

services for Vista Del Rio, would amount to \$700 per service, is comparable to the cost of similar facilities which would be needed to serve a normal contiguous main extension project of comparable size in Cal-Water's Salinas service area.^{4/} The difference between the final full cost and the ultimate refundable amount would be shown as a contribution in aid of construction. Cal-Water would apply its Salinas district General Metered Service tariff rates^{5/} to the homes in the Vista Del Rio subdivision. The respective service areas are close enough to permit unified operation without need to add additional personnel, unit water production costs would essentially be the same, and overall, allocated supervision, billing, accounting, engineering, and administrative costs would be uniform. Cal-Water would not have to obtain any additional franchise to serve Vista Del Rio in that its present perpetual franchise from Monterey County is not limited to service in any specific unincorporated area. Cal-Water further states that after construction of the new well and acquisition of the developer's second well it would ask the State Department of Health to amend its existing public water supply permit to incorporate the new supply source.

At this point it should be observed that immediately adjacent, on the westerly side, to the Vista Del Rio subdivision, and also fronting on the River Road, is another and many times larger parcel of land which for the past two years has also been in

^{4/} Its application here is intended to insure that Cal-Water's present Salinas district customers would be burdened with water service rates no higher than those which otherwise would be in effect as the result of a normal contiguous extension.

^{5/} Cal-Water's General Metered service rates became effective January 1, 1979 when Advice Letter No. 645 was approved as effective. Zone rates would here not be appropriate or feasible.

process through the various governmental agencies who must approve development. Comprising 1577 acres, it will be known as Los Palmas Villages, and is being developed by Los Palmas Ranch Partnership (Los Palmas) to provide approximately 1,500 multi-family and single-family residential units. The developers anticipate resolving the development issues and obtaining approval to proceed by 1981. The Los Palmas subdivision would extend much higher up into the foothills of the Sierra de Salinas mountains than will Vista Del Rio (See Map, Appendix A). Lying side by side as they do, the two subdivisions would be a natural combination for a shared water service. Accordingly the Los Palmas developers have also asked Cal-Water to coordinate and supply water service to their subdivision when they are ready. The expectation of such a large combined service territory makes Vista Del Rio particularly attractive to Cal-Water, and the Vista Del Rio system designed by Cal-Water contemplates an intertie of service. In addition, normally the county health department would also require that a 52,000 gallon emergency reserve storage tank be provided within the Vista Del Rio subdivision,^{6/} but in this instance both the health department and the Vista Del Rio developers have agreed that it would be preferable to have this reserve placed on one of the much higher elevations available in the larger Los Palmas subdivision, and to combine it with part of the Los Palmas reserve, thereby providing both subdivisions with a combined larger reserve and an enhanced pressure capability. Accordingly for the present

^{6/} The county health department wants such a water storage tank as an emergency water source in the event of power failure, earthquake, or other natural disaster. It determined that normal usage and short outages could be handled by the underground water supply system with its backup pump and power source, but that for the final system it would require a storage tank, whether located higher up in Los Palmas Villages, or lower down in Vista Del Rio. The department concluded that it would also be logical to wait on the good chance that the tank could be put at the higher Los Palmas location, and thus be fed by gravity, rather than at the lower Vista Del Rio location which would require costly booster pump equipment.

the health department has agreed to waive its usual requirement that a tank be installed within Vista Del Rio, with the condition that the developers must initially install a pressure system within the subdivision with capacity to provide domestic and fire protection capability with water drawn directly from underground source, and to include a backup pump and power source. Later, when 50 percent of Vista Del Rio's dwellings are occupied, or 2 years from the date of county acceptance of the on-site installation (whichever is earlier) the health department will review the status of the Los Palmas project with the Vista Del Rio developer. If Los Palmas is not approved or is substantially further delayed, and the health department deems it necessary, the Vista Del Rio developer at its expense will be required to then install a 52,000 gallon tank for storage capability, using reserved lots 70 and 71.^{7/} That installation would then be contributed to the utility.^{8/}

Following filing of the Cal-Water application and an amendment thereto,^{9/} the Commission staff determined it to be reasonable and began processing it ex-parte. However before it was adopted, on November 20, 1979 Alisal Water Corporation (Alisal), a California corporation with its principal place of business in Salinas, filed a formal protest, asserting that public convenience and necessity did not require extension of Cal-Water service to Vista Del Rio, that Alisal could more logically serve the Vista Del Rio subdivision, and that Alisal's rates would be lower.

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- ^{7/} These lots will be encumbered with a 100 x 100 foot easement reserved for possible installation of a water storage tank. If subsequently a water tank will not be required, the easement would terminate and the developer will be permitted to develop the lots.
- ^{8/} The developer's performance in this regard will be secured by a bond with the county.
- ^{9/} The amendment clarified certain technical omissions in the initial filing and furnished an estimate of anticipated water consumption and projected revenues and expenses allocated to the new area.

On December 6, 1979, following up its protest, Alisal filed the instant application. Now serving about 20 percent of Salinas and certain adjacent unincorporated areas (See Map, Appendix A), Alisal proposes that it rather than Cal-Water be authorized to include Vista Del Rio subdivision in its public utility service area and be granted a certificate of public convenience and necessity to install a water system in the area. At the date of the hearing there had been no agreement or understanding reached between Alisal and Northern California for a main extension.

Assuming that this Commission were to designate Alisal as the water public utility to serve the area of the Vista Del Rio subdivision, concurrent with the granting of a certificate of public convenience and necessity, Alisal would also ask authorization be granted, pursuant to the provisions of Section 491 of the Code, to negotiate and enter into an agreement with Northern California, an agreement which primarily would be a standard main extension agreement, but one incorporating certain deviations from Alisal's filed Rule No. 15, Main Extensions. These deviations would require that Northern California contribute as an aid to construction, the entire installed cost of the facilities, estimated by Alisal to be \$247,627, with no provision for refunds. The facilities as proposed by Alisal would include construction of a two-well water system equipped with pumps, motors, and necessary appurtenances, approximately 7,200 feet of 8-inch, and 975 feet of 6-inch AC pipe, 80 1-inch services and 11 fire hydrants along with the necessary valves and fittings. Alisal goes beyond Cal-Water, however, in that it also includes a 50,000-gallon water storage tank with appurtenant booster and a 100 kW diesel electric stand-by generator in its proposal. Alisal would also require that the existing well be contributed by Northern California together with pumping equipment, easement, and well site at an estimated value of

\$20,500. Alisal would also apply its present General Metered service rates to the subdivision. The subdivision and Alisal's present area are close enough together to permit operation without employment of additional personnel, and administration would essentially be uniform for the old and new customers. As with Cal-Water, Alisal would not need to obtain a franchise from the county to cover the requested addition as its present perpetual franchise is not limited to any specific unincorporated areas. It would ask amendment of its public water supply permit from the State Health Department to cover the new source of supply.

Because the two applications pertained to the same subdivision and involved related questions of fact and law, they were consolidated by the Administrative Law Judge for hearing and decision pursuant to the provisions of Rule No. 55 of this Commission's Rules of Practice and Procedure. A duly noticed public hearing on the consolidated proceedings was held December 27 and 28, 1979 in Salinas, California, before Administrative Law Judge John B. Weiss. At conclusion of the hearing the consolidated matters were submitted.

At the hearing evidence was presented by Cal-Water's vice-president, its Salinas district manager, and its chief technical officer responsible for planning, design, and construction; by Alisal's president-general manager, and its consultant (a licensed civil engineer); by Northern California's president; by Harrod Home's vice-president; by Los Palmas' managing partner; and by a supervising sanitarian for the county of Monterey's health department.

At the hearing counsel for Alisal moved to dismiss Cal-Water's application after conclusion of Cal-Water's case-in-chief on grounds that Cal-Water had not complied with the provisions

of Rule No. 18 of our Rules and Practice and Procedure.^{10/}
After pointing out that where, as here, the proposed project is routine and involves a stable, well-known, sizable, and experienced water company, little cost detail may be required in a given matter unless during its review of the application the Commission staff requires it to make a determination, and that in this consolidated proceeding Alisal could get a reasonably detailed breakdown from witnesses present in the hearing room if Alisal wanted them, Judge Weiss took the motion under consideration. We herewith deny the motion. While Alisal is technically correct in pointing out that Cal-Water's application only summarily described the proposed system to be installed, mentioning wells, pump, motor-piping, services, hydrants, etc. for the 80-unit subdivision, and gave only the total cost of these facilities, these facts were in this routine installation deemed sufficient to warrant processing the application on an ex parte basis without demanding a breakdown. The total cost was reasonable as defined by the staff's experience and more was not needed. The staff's experience has been gained in evaluating numerous other subdivision applications over the years. The utility making the application enjoys an excellent reputation—the same reputation which first led the officers of Northern California, Harrod Homes, and Los Palmas to seek Cal-Water as their water utility. In our opinion the public interest was considered and quite adequately protected under the procedure followed.^{11/}

^{10/} Which provides that an application by a water utility for a certificate of public convenience and necessity shall contain, inter alia, "a statement detailing the estimated cost of the proposed construction or extension..."

^{11/} Any technical defects arising out of Cal-Water's failure to provide detailed breakdown of the project's estimated costs were cured by the answers arising from the extensive Alisal questions put to adverse witness Jephtha A. Wade, Jr., Cal-Water's chief technical officer.

Testimony at the hearing also put the role of the water storage tank into proper perspective. It is not required for every day provision of domestic water and fire protection; rather the county health department wants the storage tank as an emergency water reserve in the event of power-failure, earthquake, or other natural disaster. It agrees that domestic usage, fire protection, and normal or expected outages could be handled by drawing directly upon the underground water supply, and by the back-up pump and power source planned, but for the final completed system the county contends it also will require a storage tank, whether located high up in Los Palmas Villages (the preferable location for distribution by gravity) or lower down within Vista Del Rio (where a booster will be required).

Early on in the hearing, counsel for Alisal made reference to seven factors which in certain prior certification proceedings have been held to be applicable in determining which of two competing water utilities should be certificated to serve a new area. Thereafter Alisal structured its hearing presentation around these factors. In the precursor of this analytical approach, San Gabriel Valley Water Co. (1969) 69 CPUC 339 (and also that predecessor most reflective of the issues at bar herein), these seven factors were identified as:

1. Financial soundness and managerial ability,
2. Adequacy of water supply,
3. Adequacy and cost of new system,
4. Utilization of new system in providing additional back-up facilities for existing system,
5. Proximity of new area to the logical operating territory of the utility,
6. Level of rates to be charged new customers, and
7. The preference of the developer.

While Cal-Water did not agree to constrain consideration of the issues to these factors, the evidence adduced and the arguments

presented by both parties largely followed that outline, with most of the evidence presented being directed to development of cost components in the respective proposals, ascertainment of the differences between these costs, and exploration of the reasons for these differences. Summarized by major components, the installation costs as estimated by the two protagonists are:

<u>The Major Components</u>	<u>Per Cal-Water</u>	<u>Per Alisal</u>
Mains	\$127,996	\$80,746
Services	16,066	11,977
Hydrants	17,749	10,860
Storage Tank	*	23,500
Wells, pumps, pressure tank, auxiliary housing and equipment	187,000	120,544
Total Estimate	<u>348,811</u>	<u>247,627</u>

*Cal-Water's proposal included no dollar allowance to cover a water reserve tank, although it did provide that if the county subsequently required a tank to be located within confines of the Vista Del Rio subdivision the developer would provide it as a contribution in aid of construction.

In accord with its normal construction policy and practice, Cal-Water would not perform the construction itself but would employ the services of an outside construction firm (West Valley Construction Company),^{12/} which, under the supervision of Cal-Water's chief engineer Wade and other Cal-Water personnel, would perform all installation

^{12/} Cal-Water, faced with numerous large and small extension and other construction tasks to accomplish each year, elects not to retain its own construction crew. Rather, it annually enters into a continuing contract with a local pipeline construction firm to handle installation projects. Thus it has at hand in advance fixed unit prices applicable to different classes of work, enabling Cal-Water to anticipate costs for periods in advance and to offer firm estimates. Here, West Valley is the local firm doing Cal-Water's main installation work in the Salinas district. The Cal-Water estimates thus reflect West Valley's fixed unit charges, including allowances for contractor's overhead and profit, and is based strictly upon union labor rates.

work on this project. Alisal would use its permanent field service employees, augmented as necessary with temporary additional labor, and all under the supervision of its president Adcock (an electrical contractor) and its retained consultant Tunstall (a registered civil engineer), to accomplish the installation. The employees of West Valley Construction Company are union; those of Alisal are not.^{13/} As of the hearing Cal-Water's installation plans had formal approval of the county while Alisal, having rushed its proposal through in order to compete here, had not yet received formal approval. However, Alisal's president testified he had information that the health department had reviewed the plans, that they met the department's criteria, and that they would be approved.

The thrust of the testimony presented by the interested party, Northern California, as well as that from the managing partner of Los Palmas, went to support their strong stated preference that Cal-Water be the certified utility. Northern California was also vitally concerned with any delay and its cost.

Discussion

In San Gabriel (supra, at p. 343) we stated that "among the factors to be considered when determining which of two competing utilities should be permitted to serve a new area" were the seven set forth in our Statement of Facts. Our applicants to the instant proceeding choose to present their cases framed in the context of these factors, and to a considerable extent we, too, will proceed in that context.

(1) Financial Soundness and Managerial Ability

Comparison of each's financial soundness and managerial capabilities tends to indicate that while either utility would be

^{13/} Alisal's president testified that "the major difference" in the proposals of each utility arose from the fact that Alisal would use its own outside employees and hire supplemental workers, all paid on the basis of water work employment wages, whereas a pipeline contractor usually works with a union work crew paid union pipeline wages which are higher. And in addition Alisal would not charge overhead or profit.

able to complete the facilities installation at Vista Del Rio, and could provide the needed water service, because of its varied and extensive experience, superior capital structure, and in-depth managerial strength, Cal-Water must be considered the stronger candidate. Serving over 15,000 customers in its Salinas district alone (and over 300,000 in California) Cal-Water would bring tremendous back-up to this small subdivision. Certainly addition of 80 more customers would make no significant impact upon the utility's resources.^{14/} On the other hand, for all the competence displayed in this proceeding, Alisal is substantially a one-man operation. Addition of 80 more customers to Alisal's 3,500 would be significant, representing about half a year's average growth. Alisal necessarily must depend upon outside professionals for engineering design services in any depth. To both utilities the addition of 80 customers means operational efficiencies and lower unit costs; and neither would have to add permanent personnel. One important measure of the financial strength each has is the relationship of advances to capital. Cal-Water's ratio is only

^{14/} Alisal charges that Cal-Water really has no independent interest in serving Vista Del Rio, and that its only interest is that it offers a stepping stone to the 1,000-1,500-unit subdivision anticipated for Los Palmas. While readily admitting its interest in Los Palmas, Cal-Water points to the fact of a signed contract binding it to Vista Del Rio (this Commission concurring). But Cal-Water also points out the advantages of the association of interests between the subdivision. This interrelation is readily apparent from a glance at a topographical map of the area (See Exhibit No. 1). The wells in Vista Del Rio can produce more water than the subdivision requires and could readily be tied into an area system with Los Palmas Villages. This ready dovetailing of facilities interests both developers also. The dovetailing opportunities present in one large quarter- to half-million-gallon emergency reserve tank high up in Los Palmas to serve both subdivisions have been of interest also, and would obviate the need for several individual subdivision tanks. As both stated, the developers seek the demonstrated soundness and expertise offered by Cal-Water. Here their interests interrelate.

15 percent whereas Alisal represents its ratio to be 46 percent.^{15/} Reputation is also an indication, and it is not without significance that both Northern California and Los Palmas, with long-term awareness of both utilities and a first-name familiarity, citing local reputation in the business and financial community, sought out Cal-Water in preference when the need for utility service arose with each.^{16/}

(2) Adequacy of Water Supply

In that both utilities must depend upon the same on-site sources of water to meet domestic, fire, and emergency requirements in this noncontiguous subdivision, there is really nothing to differentiate between the two as regards adequacy of the water supply.

When application of the water supply is considered, aside from adequacy, there is one difference between the proposals that merits comment. It involves the emergency supply mandated by the county health department beyond normal domestic and fire protection resources. Alisal would meet that requirement immediately by providing a 52,000-gallon tank within the Vista Del Rio subdivision.

^{15/} Alisal presented financial information from unaudited reports for both June and September, 1979, a circumstance revealing some small disparities.

^{16/} The president of Northern California testified that he was not convinced that the proposals were equal and that his savings and loan company preferred service from Cal-Water. Cal-Water's reputation was further attested to by evidence of take over contacts received from Salinas Hills Water Co. and Pine Canyon Estates, two local independents. To support its asserted capability to undertake and successfully complete a project of this nature and size, Alisal's president testified of the experience Alisal gained in 1978-79 successfully completing installation of an integrated water system project to serve a World War II ex-prisoner of war camp (Camp McCallum, located 4.5 miles southeast of Salinas) converted by a farm labor cooperative organization under FHA financing into 60 residential units for farm labor families. Under Alisal supervision and using developer-furnished labor, the \$125,000 water installation project was completed in timely fashion within budget. Renamed San Jerardo, the 11+ acre subdivision is now part of Alisal's service territory (See Decision No. 87610 dated July 19, 1977 in Application No. 57342). Alisal's president further referred us to the fact that in 1975 it had successfully drilled a well and installed 2,000 feet of 12-inch-pipeline to serve a county corporation yard. That project involved transfer of service

(Continued)

Cal-Water would propose to rely for this emergency supply upon a much larger tank to be located high up in the adjacent Los Palmas subdivision, a subdivision now laboring its way through the local agency approvals mill. This latter tank would be integrated with the Los Palmas requirements and serve both subdivisions with substantially larger margins of reserve. This latter method would depend upon gravity flow rather than booster pumps and is preferred. In recognition of this the health department has agreed to permit postponement of a tank installation by Cal-Water pending Los Palmas developments. Either way, Vista Del Rio will get its emergency supply, but the Cal-Water proposed installation is superior in concept.

(3) Adequacy and Cost of New System

We have reviewed and considered the evidence presented in this consolidated proceeding, and from this we conclude that Cal-Water and Alisal have both proposed systems which would be adequate to meet the basic water service requirements of the Vista Del Rio subdivision. Indeed, apart from the differing approach each would take to resolve the emergency reserve requirements mandated by the county health department, there is really little substantive difference in the basic installation each would offer. Obviously in some respects the Alisal construction would be more strictly utilitarian, whereas that proposed by Cal-Water

16/ (Continued)

territory from Cal-Water to Alisal to enable Alisal, the utility with the nearer facilities, to serve the county yard which was situated on the service boundary line between the utilities. By this Commission approval allowing Alisal, the closer utility, to serve the county was saved approximately \$34,000 in main extension costs (See Alisal Advice Letter No. 22 dated January 9, 1975 and Cal-Water Advice Letter No. 473 dated January 19, 1976).

reflects somewhat more of the quality aspect of the subdivision.^{17/} But while the qualitative disparity accounts for some of the difference in cost between the two proposals, the big distinction arises from the application of diverse labor rates, and from the fact that Alisal includes no allowance for overhead and profit.^{18/} As noted elsewhere, the explanation of the diverse labor rates is that Alisal would use its own nonunion field employees, augmented as needed by temporary hires. These people are paid on the basis of their being nonunion water works employees. On the other hand, Cal-Water uses a pipeline contractor to do its installation, and that contractor employs union labor paid union pipeline scale. Finally, Alisal proposes to charge no overhead or profit in its bid, whereas Cal-Water cost includes passed-through overhead and profit elements.

^{17/} For example, Alisal would erect frame structures to house the pumps and standby generators, makes no allowance for other than minimal site preparation and provides only a small landscaping allowance. Therefore in its proposal it need include only \$7,500 for these items. On the other hand, with acquiescence of the owner-developer, Cal-Water provided for more substantial concrete block-housing structures for this equipage, and has allowed for site preparation and landscaping commensurate with the general luxury class nature of the subdivision and to achieve architectural compatibility. Accordingly Cal-Water allowed \$47,000 for these highly visible items. As another example of utilitarianism v. quality contrasts in the proposals, Alisal would double up on many of the service lines leading from the main to individual lots, using one service line to serve two lots, thus lessening costs. Cal-Water's standard, applicable to a quality development with acre sites as is the case here (Cal-Water's breakpoint for split-services is at the 8,000 square foot point), requires each lot to have its own individual service from the main, thereby minimizing such things as noise interference. Obviously, individual service lines are more costly than split-services.

^{18/} Transcript: p. 157, lines 3-25.

On balance, of the two proposals Alisal's is the less costly,^{19/} and it would further appear that if Alisal's proposal were adopted, and if the savings were passed through by Northern California to lot purchasers, a lower price per lot to purchasers could result. Of course we have no means to assure such a pass through; this Commission has no jurisdiction over real estate sales. It is also a commonplace that cheapest is not always the best. Many considerations other than price alone enter into contracting decisions. Nonetheless, the thrust of Alisal's protest and argument is that in view of its less costly proposal, and with pass through a possibility in a competitive real estate market, the public interest requires that this Commission should intervene to refuse sanction to the Northern California/Cal-Water agreement and deny certification to Cal-Water, and instead to grant Alisal authority to contract with Northern California to accomplish the financing of the system proposed, and also to grant Alisal certification.

But does the public interest require it? In a situation such as that before us, where the owner-developer of a noncontiguous real estate subdivision selects, wants, and has contracted (subject to our approval) with a qualified local water utility for service, is it the proper business of this Commission to intervene upon the protest of a second (and by-passed) water utility now seeking to serve the same noncontiguous subdivision, when the

^{19/} The exact amount of the difference is difficult to ascertain. Some factors cannot be exactly priced. For example, while the Alisal proposal casts the cost of the entire project as a contribution in aid of construction, the Cal-Water proposal provides that approximately \$56,000 out of the total cost would be an advance from the owner-developer subject to possible refund (whereby 22 percent of revenues over a 20-year-period conceivably could be refunded). There is no way in advance to determine the effect on the ultimate purchaser when it comes to trying to factor in refunds under the Cal-Water agreement with Northern California, but there would be some.

intervention is based upon a proposal which would be less costly to the owner-developer of the subdivision, and the lesser costs are to be derived from cheaper labor rates and from omission of any overhead or profit elements? In reality, these are the issues before us.

The purpose of the Public Utilities Act is to assure customers that a public utility will provide them with adequate service at reasonable rates without discrimination (Pacific Tel. & Tel. Co. v Public Util. Comm'n (1950) 34 C 2d 822 at 856). Such rates necessarily must reflect the costs of materials and service going into the plant. It is settled that a public utilities commission has power to prevent a utility from passing on to its customers unreasonable costs for materials and services (Pacific Tel. & Tel. Co. v Public Util. Comm'n., supra at 826). Further, by use of its authority to grant or deny entry to a new service area, this Commission effectively can insure that any main extension contract necessary to effect entry, and which involves unreasonable costs, cannot be implemented at all. But unless it can be clearly shown that the components making up the costs of the materials and services in such a main extension contract are unreasonable, it should not be the business of this Commission to interfere on grounds of cost with the rights of parties to contract with whom-ever they please for these materials and services. In the instant case the component costs at issue are those of labor, and overhead and profit. The questions to be answered are whether in this context (1) the labor rates used by Cal-Water are unreasonable, and (2) it was unreasonable for Cal-Water to include overhead and profit.

Whether labor rates used by a particular public utility or its subcontractors are unreasonable is primarily a matter to be judged on factors inherent to that particular utility, rather than by comparison with the rates of another utility. While industry standards may be helpful, they cannot be determinative of the issue,

and it certainly is not the function of this Commission to try to establish wage levels within an industry or for a particular utility (Oakland v Key Sys. Transit Line (1953) 52 CPUC 779). Public policy in this State favors resolution of wage issues directly between the parties involved. Thus the reasonableness of rates is not a question of whose rates for labor are the lowest. Nor does it matter whether the labor rates applicable are union or nonunion; either or both may be reasonable. As long as the labor rates involved, whether union or nonunion, are not otherwise unlawful or unconscionable and have been freely arrived at between the parties as the result of an arm's-length concert, the rates are reasonable. Use of labor rates so derived and constituted, as part of the costs making up charges for materials and services to be rendered by a utility, meets the requirement of Section 451 of the Public Utilities Code that such charges be just and reasonable, and a contract price for materials and services derived from them is ordinarily accepted as a proper cost to a utility for such materials and service (Pacific Tel. & Tel. Co. v Public Util. Comm'n., supra). Accordingly, the mere fact that Alisal offers an installation based upon cheaper labor rates than those used by Cal-Water, the first utility on the scene, will not in itself require our intervention to deny a certificate to Cal-Water in favor of awarding a certificate to Alisal.

We believe a similar analysis is applicable to the question whether or not it is reasonable to include overhead and profit charges in installation proposals. In a free enterprise system business necessarily must be conducted to make a profit, and a profitless business does not long survive. A reasonable charge for installation may include more than merely the labor, materials, taxes, insurance, and other costs of installation; it may also properly include overhead and an equitable return, or profit,

for the capital invested in the business entity. Accordingly, in the instant matter Cal-Water's agreement with Northern California is not unreasonable merely because it would pass through overhead and profit elements. Here, on the other hand, in order to obtain Vista Del Rio Alisal proposes to further underbid Cal-Water by including no overhead or profit elements in its proposal. It is able to do this because it won't have to go outside to get the labor. Instead it proposes to use (and charge Northern California for) the labor services of some of its own permanent field personnel to perform the installation work. But the wages, overhead and profit for the labors of these personnel are already being paid for once. They have been factored into rates authorized previously by this Commission for Alisal's existing operation. These elements are already being paid for by Alisal's 3,500 existing customers, and therefore these customers would be subsidizing Alisal's lesser bid to construct Vista Del Rio. Because of this subsidy Alisal's proposal does not reflect what otherwise would be its actual cost of rendering the materials and services proposed. In the context of comparing proposals for certification purposes, a proposed charge which is less than actual cost to render the service is not a reasonable charge.^{20/}

If it had been shown that Cal-Water was in some fashion exacting unreasonable charges from Northern California for the materials and services it would be furnishing, a case might be made for our intervention. But such is not evident here. Nowhere has it even been asserted that Cal-Water's agreement with Northern California contains unreasonable charges. All that has been asserted and shown is that Cal-Water's charges would be higher than those that Alisal would charge. There was nothing shown to be unlawful, unconscionable,

^{20/} Indeed, pricing services below their real cost with a deliberate design to drive a competitor out of the competition has been considered a predatory practice, and will not be approved by this Commission.

extortionate, or otherwise excessive about Cal-Water's charges - only that they are within a zone of reasonableness. Thus we are asked to substitute our judgment for that of the responsible officers of the respective companies as to with whom they should contract so that Northern California can obtain the quality installation and reliable service it wants for its new subdivision. There is no showing of any lack of independent choice which is essential to taint a contract. Northern California is well-experienced in real estate matters. Cal-Water is a respected, competent, financially sound water utility merely applying its standard predetermined fixed unit prices to a proposal. While neither private companies nor utility companies can, by contracts made between themselves, control a matter that is affected with a public interest, in situations such as the one at hand the Commission will not interfere to denegate or impair the basic residual right of the parties to contract with whomever they choose, so long as the terms arrived at are neither unconscionable, oppressive, or unreasonable, and do not impair the utility's ability to discharge its duties to the public.

(4) Utilization of New System in Providing Additional Backup Facilities for Existing System

Between the applicants there is little to differentiate how each would utilize the new addition to back up each's existing system. Both would achieve operating efficiencies, and each would lower unit costs. Neither would require additional personnel to operate the resulting augmented system. Vista Del Rio would both benefit and be benefited by some degree of integration with Los Palmas Villages when the latter is built,^{21/} and such integration would be

^{21/} Los Palmas proposes to develop approximately 1,500 residential units on the adjacent 1,577 acres of the former Violini property. The project is currently being processed through local governmental agencies and the county planning director was told by the Board of Supervisors to employ an outside consultant to plan the development. This is now being done. The project could be approved for somewhat less than 1,500 units, or even more. In the study stage for 2 years, it could be awhile longer before the subdivision is constructed.

more probable if Cal-Water obtains Vista Del Rio than were Alisal to receive approval, in that the Los Palmas developers testified they would also want Cal-Water as their water utility.^{22/} If Cal-Water has both, the systems can be integrated. Integration is unlikely if Alisal obtains approval to serve one of the subdivisions.

(5) Proximity of New Area to the Logical Operating Territory of the Utility

While the bulk of Cal-Water's existing service territory lies between Alisal's service territory and the Vista Del Rio proposed subdivision, the actual travel distances from the respective utility yards are very close, being 9.7 miles vs. 7.2 miles. In this day of radio-dispatched utility trucks that difference is not very significant.^{23/}

(6) Level of Rates to be Charged New Customers

Comparison of service charges and quantity rates which each utility would apply reveals that at the consumption rates anticipated for this subdivision, 19 Ccf per month, Cal-Water's rates would be a shade less than those of Alisal. For greater consumption Alisal's rates would be higher; for less consumption Alisal's rates would be less.^{24/}

^{22/} The Los Palmas managing partner made it very clear that in his order of priorities he would first choose Cal-Water (and had already asked Cal-Water for assistance), a mutual second; and that if he could not have Cal-Water he'd prefer a mutual and would "go the mutual route before going the third choice" (another utility-including Alisal).

^{23/} Alisal has an interest in Toro Water Service, Inc., a small water utility serving a residential area on Route 68 on the way to Monterey. The Toro area is about equidistant from Vista Del Rio as is Alisal; however Toro does not have the equipment and facilities to operate a system at Vista Del Rio.

^{24/} In this regard, Alisal's statement contained in its protest to Application No. 59225 that its rates would be lower, is not supported by the record.

(7) The Preference of the Developer

In this matter the owner-developer, an established California savings and loan organization with substantial experience in the field, on the basis of reputation and past experience, prefers Cal-Water. The president of Northern California testified as follows:

"Our experience with Cal-Water has been very satisfactory, and it has been over a number of years. They have shown to be reliable and have been able to meet their commitments in establishing and maintaining good water service. I think it's obvious and logical that we would choose people whose reputation was good and whose experience we have been able to judge and view over a number of years. We contacted Cal-Water because we felt they were the right one and the best one to serve that area. We still believe that, and that is the reason we signed a contract to have that job done."

In reply Alisal's attorney argues that the matter should not be decided on what the developer's preference is. While the preference expressed by the owner of the land cannot control the Commission's action, in our opinion it still remains an important factor to be considered (Park Water Co. (1941) 43 CRC 627; see also San Gabriel Valley Water Co., supra where the preference of the developer was also a consideration even though the other water company's estimate was over \$100,000 less than that of the preferred utility's). As we stated earlier, there are many considerations other than cost that enter into a decision with whom one wants to contract. Here we deal with estimates, not firm, binding contract prices, and the owner-developer must pay the total of the final installed costs even though the full extent of these costs are ascertained only after construction is completed (W. Art Sutter (1980) Decision No. 91189 in Case No. 10647). Consequently reputation and experience as exemplified by a good, solid track record are strong

decisional factors. The owner-developer here is an institution well-versed in such matters. It wants and is willing to pay for a quality installation and understandably prefers to rely upon Cal-Water's proven reputation. Alisal's biggest accomplishment is San Jerardo, but San Jerardo is not the equivalent of Vista Del Rio.

To the above factors, we add one more:

(8) First in Point of Time Filed

While mere priority of filing does not alone determine the granting of a certificate, under some considerations it is a factor to be considered (West Water Co. v P.U.C. (1972) 73 CPUC 69).^{25/} In this instance Cal-Water filed its Application October 22, 1979; Alisal filed its application December 6, 1979.

In conclusion, we find that although Cal-Water is financially the considerably stronger candidate, both applicants have the requisite financial and managerial ability to complete installation of a water supply system at Vista Del Rio, and both could provide satisfactory water service. Both utilities would depend upon the same water sources and the system proposed by each is basically adequate although Alisal's is more strictly utilitarian. As was recognized by the County Health Department, Cal-Water's plan to coordinate the county-required emergency water reserve with that for Los Palmas, and to locate a large supply tank up in the Sierra del Salinas foothills where it could serve both subdivisions is the preferable plan. Alisal's proposed system is estimated to cost less than that of Cal-Water, primarily as a consequence of its projected use of nonunion in-house labor, its forgoing of overhead and profit, and its more utilitarian construction. The new

^{25/} Here, in that both applicants could satisfactorily serve the new area, the first to file is entitled to some consideration for his initiative and diligence.

system would complement either utility's existing system equally and would provide operating economies to either while necessitating no addition of personnel to either. Cal-Water's existing operating territory lies between that of Alisal and the new system, although the respective utility yards are almost equidistant. At the anticipated consumption levels for this subdivision, Cal-Water's rates would be slightly less than those of Alisal. The owner-developer strongly prefers service from Cal-Water. With the cooperation of the owner-developer, Northern California, Cal-Water was the first to file to obtain authority to install a system and serve the new subdivision.

After consideration of all the relevant factors involved we conclude that Cal-Water's application should be granted, and that it should be authorized to deviate from the provisions of its Rule No. 15, Main Extensions, as requested.^{26/} Alisal's application should be denied. As discussed in the paragraphs above devoted to analysis of the respective factors, we further conclude that the only factor clearly favoring Alisal's proposal was that of the cheaper cost, and in that regard determine that where the cost elements proposed by a utility preferred by the owner-developer of a subdivision desiring service are in no way shown to be unreasonable, we will not be disposed to intervene to substitute our judgment for that of the owner-developer who must assume all the risks in such a development venture.

^{26/} Considering the desperate conditions prevalent today in the real estate subdivision business, and the critically volatile state of financing commitments, the old adage that "time is money" was never more true. Delay is very costly here to the owner-developer, Northern California. In its sequence of development it is ready now for installation of the water system and delay only translates to great expense. Considering this situation we will make this decision effective the date it is signed. Furthermore, since submission, the Commission has learned that Northern California, impatient at mounting costs of delay, went ahead and used a local construction firm to install most of the water main system. Cal-Water's personnel allegedly closely inspected, if not supervised, the installation (See Case No. 10842).

One matter remains. As a condition of our approval of Cal-Water's application, Cal-Water will be required to add an amendment to its contract with Northern California in the form of a provision that Northern California agrees that it will advance as a nonrefundable contribution in aid of construction any and all costs which may be involved in providing that share of the costs for a site and emergency reserve water supply tank attributable to Vista Del Rio should it be ultimately determined that such a tank will be located outside Vista Del Rio subdivision and shared with another subdivision.

Findings of Fact

1. Several years past Northern California purchased a 94-acre tract and is developing it to constitute a residential subdivision of 80 one-acre homes southeast of Salinas in Monterey County. The subdivision is known as Vista Del Rio.

2. There are no water utilities, either public or privately owned, contiguous to, or in the immediate vicinity of the subdivision, in a position to serve the Vista Del Rio subdivision.

3. Based upon long years of satisfactory experience with Cal-Water, Northern California determined upon that utility as its water service provider in preference to a mutual, and asked the utility to design and construct a water supply system and thereafter to provide water service to Vista Del Rio.

4. Accordingly, on October 15, 1979 Northern California and Cal-Water entered into an agreement with provisions essentially pursuant to Sections A and C of Cal-Water's standard Rule 15, Main Extensions, but deviating from the provisions of that rule to provide for no "proportionate cost" refunds related to special facilities, and for a maximum refund up to \$56,000 subject to "percentage of revenue" provisions. The total estimated cost of the facilities was \$348,811.

5. On October 22, 1979 Cal-Water filed Application No. 59225 (amended the same day) seeking ex parte a certificate of public convenience and necessity pursuant to Section 1001 of the Public Utilities Code before starting construction of a noncontiguous extension to its Salinas District water system to serve Vista Del Rio, and for authorization to perform the October 15, 1979 agreement with Northern California containing the deviation from Rule 15.

6. The Commission staff proceeded ex parte to prepare a Commission order granting the certificate and authorizing the requested deviation for this routine-type application, but before completion, on November 20, 1979 Alisal filed a protest to the Cal-Water application, and on December 6, 1979 followed this with its Application No. 59320, by which it seeks certification and authorization itself, so that it instead of Cal-Water might be permitted to install the water system and serve Vista Del Rio subdivision.

7. Alisal estimates that its installation would cost \$247,627 plus contribution of an existing well, well site, and improvements estimated at \$20,500. Alisal proposes that Northern California would contribute these facilities without provision for any refund.

8. The two systems are fundamentally the same, both being designed to provide for all General Order No. 103 domestic and fire requirements, but in some regards Alisal's construction would be more utilitarian than that contracted for between Cal-Water and Northern California.

9. The Alisal system provides for an on-site emergency reserve storage tank utilizing pumps to meet a separate county health department requirement, whereas Cal-Water (with county concurrence) proposes to defer this in expectation of subsequent participation in a far larger capacity gravity flow reserve tank system to be operated jointly with Los Palmas Villages, the much larger adjacent subdivision now in its planning stage.

10. Should Los Palmas Villages subdivision be delayed or not built, and the county require an on-site Vista Del Rio reserve supply installation, Cal-Water has provided for installation on reserved lots of a similar reserve tank system as that proposed by Alisal.

11. Vista Del Rio can produce more water than needed by the subdivision, and therefore would integrate well with Los Palmas Villages in the future, with mutual benefits from an area system. Such an integration is more likely with Cal-Water than with Alisal.

12. The developer strongly prefers that Cal-Water install its system and provide water service to Vista Del Rio.

13. The developer of Los Palmas Villages prefers Cal-Water first, a mutual second, and any other water company last, to serve Los Palmas Villages.

14. Both Cal-Water and Alisal are financially able to undertake the construction and provide the service, have competent management, would utilize the same on-site water supplies, and have designed a system meeting Commission standards. Both applicants would benefit from addition of the subdivision to each's local operations in and around Salinas, are reasonably close to the subdivision, and at basic consumption levels for this class and type of residential subdivision would charge comparable rates (although at higher consumption levels Cal-Water's rates would be less).

15. Alisal's cost to construct the proposed system would be less than Cal-Water's. In part the lesser costs arising from (1) use of more utilitarian construction than that contracted for between Cal-Water and Northern California, (2) use of in-house nonunion water works employees rather than subcontractor union pipeline employees, and (3) Alisal's exclusion of overhead and profit from its bid.

16. The labor costs to be incurred by Alisal and Alisal's forbearance to charge overhead and profit elements to the extent both are possible and derived from utilization of in-house water works employees whose costs are already factored into a rate of return applicable to its existing customers in the Salinas area, and whose costs are therefore already paid for, are not reasonable.

17. The labor costs to be incurred by Cal-Water through use of subcontractor pipeline labor are reasonable.

18. Cal-Water's proposed pass-through to Northern California of overhead and profit elements is not unreasonable.

19. Cal-Water was first to file in point of time of filing.

20. Public convenience and necessity require that Cal-Water's application be granted and that Alisal's application be denied. Similarly, Alisal's protest to Application No. 59225 should be denied.

21. Cal-Water in its contract with Northern California should provide against the contingency of possible shared costs to be incurred by reasons of subsequent location of a joint emergency reserve water tank in Los Palmas Villages.

22. Northern California urgently requires resolution of these matters to proceed with construction.

Conclusions of Law

1. The public convenience and necessity require that Cal-Water's application should be granted and that Alisal's protest and application should be denied.

2. The certificate hereinafter granted shall be subject to the following provision of law:

The Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

3. The effective date of this order should be the date hereof in order to cause Northern California no further delay and expense in the construction of its subdivision.

The action taken herein is for the issuance of a certificate of public convenience and necessity only and is not to be considered as indicative of amounts to be included in a future rate base for the purpose of determining just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. California Water Service Company is granted a certificate of public convenience and necessity to extend, construct, and operate its Salinas District public utility water system in that noncontiguous territory known as Vista Del Rio subdivision located southeast of Salinas in Monterey County, as shown on the map attached hereto as Appendix A.

2. Pursuant to provisions of Section 491 of the Public Utilities Code, California Water Service Company is authorized to carry out the terms and conditions of its October 15, 1979 agreement with Northern California Savings & Loan Company, which agreement provides for deviations, as set forth in California Water Service Company's application, from the utility's filed Rule No. 15, Main Extensions. This authorization is conditioned upon the provisions of Ordering Paragraph 3, hereto following.

3. California Water Service Company and Northern California Savings & Loan Company shall add to their October 15, 1979 agreement an amendment to provide that in the event the emergency reserve water supply tank and appurtenances requirement of Monterey County is met by locating such tank outside the confines of Vista Del Rio subdivision on a shared basis with another subdivision, Northern California Savings & Loan Company agrees to advance that share of the

costs incurred attributable to Vista Del Rio as a contribution in aid of construction not subject to refund. A copy of such amendment shall be filed with the Executive Director of this Commission before the terms of the agreement shall be activated.

4. California Water Service Company is authorized to revise, within thirty days after the effective date of this order and in conformity with General Order No. 96-A, such of its tariff schedules, including a tariff service area map, as are necessary to provide for the application of its tariff schedules to the area certificated herein. Such tariff sheets shall become effective on the fourth day after filing.

5. California Water Service Company shall notify this Commission, in writing, of the date service is first rendered to the public under the rates and rules authorized herein, within ten days thereafter.

6. Application No. 59320 of Alisal Water Corporation, and its protest to the application of California Water Service Company, are denied.

A.59225, 59320 ALJ/jn

7. The motion of Alisal Water Corporation to dismiss Application No. 59225 is denied.

The effective date of this order is the date hereof.

Dated JUN 7 1997, at San Francisco, California.

John E. Guyon
President
Richard L. Stanger
Michael W. Howell
Thomas M. Haines
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
A. 59225
SERVICE AREAS AND
SUBDIVISION LOCATIONS

SAN JERARDO

