

Decision No. 92112 AUG 19 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of SAN GABRIEL VALLEY WATER COMPANY)
for authority to consolidate its)
Whittier Division with its El)
Monte Division and to increase)
rates charged for water service)
in the new consolidated division)
to be known as its Los Angeles)
County Division.)

Application No. 58416
(Filed October 18, 1978)

Brobeck, Phleger & Harrison, by
Robert N. Lowry, Attorney at
Law, for applicant.

Burke, Williams, and Sorensen, by
Mark C. Allen, Jr., Attorney at
Law, for City of Montebello; and
Robert L. Kress, City Attorney,
for City of Rosemead; interested
parties.

William C. Bricca, Attorney at Law,
and Bert Patrick, for the Commission
staff.

O P I N I O N

As stated in D.90979 dated November 6, 1979 on this matter, the city of Montebello (Montebello), by letter dated September 26, 1979, informed this Commission that on August 14, 1978 Montebello was required to "pay San Gabriel Valley Water Company the sum of \$499,728.65 based upon a judgment in the nature of an inverse condemnation award based upon asserted duplication of services." Montebello took the position that its taxpayers, having been required to contribute \$499,728.65 to San Gabriel Valley Water Company (San Gabriel), should not be required as ratepayers to pay rates based upon capital investments that they have already repaid to the utility.

The \$499,728.65 award consists of \$350,000 in damages, \$83,590.48 in legal expenses, and \$66,138.17 in interest costs. D.90979, supra, granted increased rates to San Gabriel on an interim basis subject to partial refund of a maximum of \$70,000 should Montebello successfully present sufficient evidence to support its position. The \$70,000 reflects the effect of reducing the rate base by the \$350,000 award for damages and is derived by the product of the 9.57 percent authorized rate of return, the \$350,000 rate base reduction, and the net-to-gross multiplier. D.90979, supra, provided that Montebello would be given an opportunity to present its evidence in public hearings provided that an offer of proof by Montebello established the need for hearings.

By letter dated September 26, 1979 Montebello quoted a portion of Public Utilities Code Section 1503 indicating that whenever a political subdivision constructs facilities to provide the same type of service in the same area being provided by a public utility, such an act constitutes a taking of the property of the public utility for public purpose to the extent that the private utility is injured by reason of the property being made inoperative, reduced in value, or rendered useless. Montebello further stated that it would appear elementary in utility rate-making that to the extent a utility receives money from a public agency for damage to its rate base, such money should be applied to reduce the rate base and not be permitted to be passed through to the stockholders as a bonus at public expense. Montebello offered as proof of its position the following: (1) Findings of Fact and Conclusions of Law on certain issues filed November 22, 1976; (2) Interlocutory Judgment filed November 22, 1976; (3) Minute Order filed December 22, 1976; (4) Minute Order filed December 20, 1976; (5) Final Judgment filed January 6, 1977; (6) Decision of the Court of Appeal of the State of California, Second Appellate District, filed April 18, 1978; and (7) a copy of a cancelled check in the sum of \$499,728.65.

Process

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Public hearing on the proper ratemaking treatment of the \$499,728.65 award granted San Gabriel was held before Administrative Law Judge N. R. Johnson in Los Angeles on March 3, 1980, and the matter was submitted subject to receipt of concurrent briefs due May 5, 1980.

Position of Montebello

It is Montebello's belief that San Gabriel's rate base should be reduced by the entire amount of the damages awarded San Gabriel as this sum represents damages for reductions in the value of a portion of the property included in its rate base.

In support of its position Montebello quotes the following:

"The basic principle (of utility rate setting) is to establish a rate which will permit the utility to recover its costs and expenses plus a reasonable return on the value of property devoted to public use." (City and County of San Francisco v Public Utilities Commission (1971) 6 Cal 3d 119, 129.)

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According to Montebello, when a utility has received money from a public agency for damage to its rate base pursuant to the service duplication law, the above-quoted basic principle clearly requires that the utility's rate base be reduced accordingly. Otherwise, the utility will receive a bonus at public expense.

Position of San Gabriel

It is San Gabriel's position that:

- (1) The fact that the service facilities of San Gabriel had been reduced in value by \$350,000 because Montebello had duplicated and paralleled the existing facilities was before the Commission when it issued D.90979, supra, and was not disputed by Montebello either before or at the further hearing.

(2) As the award of damages of which Montebello complains did not constitute a contribution or advance in aid of construction or income to applicant, neither the amount of the award nor the cost to San Gabriel of securing the award was included in the results of operation exhibits presented by San Gabriel and the Commission staff at the initial hearing on the rate increase application.

(3) The Commission and its staff were kept fully apprised of the details of the dispute between Montebello and San Gabriel throughout the entire matter.

(4) When the award of damages was paid (August 1978) the amount of the damages portion of the award of \$350,000 was credited to earned surplus, interest earned was credited with \$66,138.19, and income from nonutility operations was credited with \$83,590.48 reimbursement of litigation expense.

(5) Montebello's initial position that its residents receiving water service from San Gabriel should receive lower rates because as taxpayers they paid the costs of the award against Montebello is inappropriate because the judgment was paid by the Community Redevelopment Agency of the city of Montebello (Agency) out of the proceeds of the bond issues sold by the Agency and not out of the general fund of the city.

(6) Montebello's assertion that rate base was damaged by the amount of the award is incorrect because San Gabriel's rate base consists of utility plant at recorded original cost, less depreciation, plus allowances for working cash and material and supplies, and minus the amount of advances and contributions. Consequently, according to San Gabriel, its rate base was not affected by Montebello's appropriation of San Gabriel's prospective business for none of the plant reflected in the rate base was transferred to Montebello.

(7) In affirming the award of damages the Court of Appeal made it clear that the measure of damages in such cases is the reduction in the market value of property affected as measured by "the highest price estimated in terms of money which the... (property) would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted and for which it was capable." (Exhibit 12, page 7; 84 Cal App 3d at 764.)

(8) The amount of rate base reflected by the \$350,000 damages in the award equals \$56,941 and represents the maximum amount of reduction of rate base that should be permitted should the Commission decide a rate base reduction is in order.

Discussion

Public Utilities Code Section 1503 provides in part:

"...that whenever a political subdivision constructs facilities to provide or extend water service, or provides or extends such service, to any service area of a private utility with the same type of service, such an act constitutes a taking of the property of the private utility for a public purpose to the extent that the private utility is injured by reason of any of its property employed in providing the water service being made inoperative, reduced in value or rendered useless to the private utility..."

Public Utilities Code Section 1504 provides in part:

"Just compensation for the property so taken for public purposes shall be as may be mutually agreed by the political subdivision and the private utility or as ascertained and fixed by a court of competent jurisdiction pursuant to the laws of this State relating to eminent domain, ..."

The above-quoted excerpts from Sections 1503 and 1504 of the Public Utilities Code leave no doubt that the \$350,000 damages received by San Gabriel were awarded as just compensation for the taking of the property of San Gabriel for public purposes. The record is clear that the \$350,000 awarded damages roughly approximated the amount of damages of \$358,782 computed by San Gabriel's consultant's using the reproduction cost new less depreciation method of computation. Such an amount obviously exceeded the original cost of the plant less the depreciation amount included in rate base for ratemaking purposes. The excess in purchase price over rate base is classified as an acquisition adjustment. This Commission has repeatedly stated its policy to fix rates on the basis of original cost rate base and that the plant acquisition adjustment is not included as an element in such rate base. It is axiomatic that the proper adjustment to make to San Gabriel's rate base in this particular instance is the rate base equivalent cost of the plant represented by the \$350,000 award of damages. According to the record, the reproduction cost new less depreciation of the facilities affected by the paralleling of San Gabriel's facilities by Montebello was \$863,706, of which \$504,924 was estimated to remain of continuing use to San Gabriel leaving an estimate of damages to San Gabriel of \$358,782. San Gabriel applied the ratio of the \$350,000 damages award to the computed damage of \$358,782 to allocate the court-awarded damages to the individual plant facilities. The ratio of the court-awarded damages to the reproduction cost new less depreciation of the individual plant facilities was applied to the original cost less depreciation of the individual facilities to obtain the individual facility rate base equivalent of the awarded damages. These amounts were further reduced by the amount of

unrefunded advances outstanding on these facilities as such unrefunded advances were already excluded from rate base for ratemaking purposes. The sum of the damaged portion of the individual facilities included in the 1980 test year rate base thus computed is \$56,941. This amount of the damages award is the equivalent of payment for the rate base value of plant taken by inverse condemnation, and the rate base of \$14,489,600 adopted in D.90979, supra, should be adjusted downward by this amount to the rounded figure of \$14,432,700. The difference between the \$350,000 and \$56,900, or \$293,100, should be treated as a plant acquisition adjustment. The bookkeeping entries used for the \$83,590.48 litigation expense and \$66,138.17 interest received appear appropriate.

D.90979, supra, granted San Gabriel increased rates on an interim basis subject to a partial refund of a maximum of \$70,000^{1/} should Montebello successfully support its position. The proportionate amount of refund reflecting our adopted rate base adjustment of \$56,900 is \$11,400 on an annual basis. This amount, plus 7 percent interest reduced to reflect the period the rates authorized by D.90979, supra, were in effect, should be refunded to San Gabriel's ratepayers, and the tariff schedules should be adjusted accordingly.

D.90979, supra, authorized consolidation of San Gabriel's El Monte and Whittier Divisions for more efficient overall operations. We authorized one rate for both divisions and did not attempt to reflect any existing cost differentials in the establishment of the rates. Under these circumstances, it would be inappropriate to establish a special rate base to reflect the inverse condemnation rate base adjustment. Consequently, the rate reduction will be applied divisionwide on a uniform cents per 100 cubic feet basis.

^{1/} Effect of reducing the rate base by the \$350,000 award for damages (9.57 percent authorized rate of return x \$350,000 x net-to-gross multiplier).

Findings of Fact

1. D.90979, supra, was an interim order providing for the collection of \$70,000, equal to the product of \$350,000 rate base, the 9.57 percent authorized rate of return, and a net-to-gross multiplier, subject to refund should Montebello successfully present sufficient evidence to support its position.

2. A judgment was awarded San Gabriel of \$499,728.65 against Montebello under the service duplication law of the Public Utilities Code Sections 1501 through 1506. The amount of the award consisted of damages \$350,000, litigation expense \$83,590.48, and interest \$66,138.17.

3. The award of damages of \$350,000 roughly approximated the estimate of damages of \$358,782 computed by San Gabriel's consultant using the reconstruction cost new less depreciation method.

4. The court-awarded damages of \$350,000 represent plant whose original cost less depreciation less unrefunded advances used for rate base purposes total \$56,941. ✓

5. The \$56,941 figure represents rate base equivalent of San Gabriel's plant taken for public use in an inverse condemnation-type proceeding. Therefore, the rate base of \$14,489,600 adopted for test year 1980 in D.90979, supra, should be reduced by that amount to a rounded figure of \$14,432,700.

6. A rate base reduction of \$56,900 results in a rate refund and rate reduction of approximately \$11,400 on an annual basis.

7. A refund of \$11,950 computed on an annual rate of \$11,400 plus 7 percent interest for the effective period of the tariffs authorized by D.90979, supra, should be made to San Gabriel's customers.

8. The general rates should be reduced by 0.1 cents per 100 cubic feet on a uniform basis to reflect a reduction in revenues on an annual basis of \$11,400. Because of rounding, the utility's gross revenue reduction amounts to \$14,700. ✓

9. San Gabriel's accounts should be adjusted to reflect a plant acquisition adjustment of \$293,100 and appropriate plant and depreciation reserve adjustments to reflect the adopted \$56,900 rate base adjustment.

10. To preclude unnecessary cumulation of interest of the amount to be refunded, the effective date of this order should be the date hereof.

Conclusions of Law

1. A rate base adjustment of \$56,900 should be made to the adopted findings set forth in D.90979, supra, to reflect the taking of private property for public use by Montebello.

2. A refund of \$11,950 should be made to the customers of San Gabriel.

3. Water rates should be reduced a uniform 0.1 cents per 100 cubic feet as set forth in revised rate schedules attached to this order as Appendix A.

4. San Gabriel's accounts should be adjusted to reflect a plant acquisition adjustment of \$293,100 and appropriate plant and depreciation reserve adjustments to reflect the adopted \$56,900 rate base adjustment.

5. To preclude unnecessary cumulation of interest of the amount to be refunded, the effective date of this order should be the date hereof.

O R D E R

IT IS ORDERED that:


1. Within sixty days after the effective date of this order, San Gabriel Valley Water Company (San Gabriel) shall refund to its customers \$11,950 computed at an annual rate of \$11,400 plus an interest of 7 percent per annum from November 6, 1979 to July 15, 1980.


2. Within thirty days after the effective date of this order, San Gabriel shall adjust its accounting records to reflect a plant acquisition adjustment of \$293,100 and plant and depreciation reserve accounts to reflect a rate base adjustment of \$56,900.

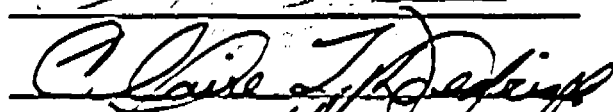
3. After the effective date of this order, San Gabriel is ordered to file the revised rate schedules attached to this order as Appendix A and concurrently to cancel and withdraw the presently effective schedules. Such filing shall comply with General Order No. 96-A. The effective date of the revised schedules shall be four days after the date of filing. The revised schedules shall apply only to service rendered on and after the effective date thereof.


The effective date of this order is the date hereof.

Dated AUG 19 1980, at San Francisco, California.



President






Commissioners

Commissioner Richard D. Cravelle, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
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Schedule No. LAA-1
Los Angeles County Tariff Area

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

Portions of Arcadia, Baldwin Park, El Monte, City of Industry, La Puente, Montebello, Monterey Park, Pico Rivera, Rosemead, Santa Fe Springs, San Gabriel, South El Monte, West Covina, Whittier and vicinity, Los Angeles County.

RATES

Quantity Rates:

	<u>Per Meter Per Month</u>	
First 300 cu. ft., per 100 cu. ft.	\$0.275	(R)
Next 19,700 cu. ft., per 100 cu. ft.384	
Over 20,000 cu. ft., per 100 cu. ft.369	(R)

Service Charges:

	<u>Per Meter Per Month</u>	<u>Fire Protection Revenue Loss Surcharge</u>
For 5/8 x 3/4-inch meter	\$ 3.40	\$0.10
For 3/4-inch meter	3.80	.15
For 1-inch meter	5.15	.20
For 1-1/2-inch meter	10.35	.30
For 2-inch meter	16.50	.35
For 3-inch meter	29.00	.75
For 4-inch meter	42.00	1.05
For 6-inch meter	72.00	1.65
For 8-inch meter	108.00	2.45
For 10-inch meter	122.00	3.00

The Service Charge is a readiness-to-serve charge applicable to all metered service and to which is to be added the quantity charge computed at the Quantity Rates.

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APPENDIX A
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Schedule No. LAV-1
Los Angeles County Division
Vallecito Zone II Tariff Area

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

Portions of the community of Hacienda Heights and vicinity, Los Angeles County.

RATES

Quantity Rates:

	<u>Per Meter Per Month</u>	
First 300 cu. ft., per 100 cu. ft.	\$0.302	(R)
Over 300 cu. ft., per 100 cu. ft.439	(R)

Service Charges:

	<u>Per Meter Per Month</u>	<u>Fire Protection Revenue Loss Surcharge</u>
For 5/8 x 3/4-inch meter	\$ 3.65	\$0.10
For 3/4-inch meter	4.05	.15
For 1-inch meter	5.60	.20
For 1-1/2-inch meter	11.15	.30
For 2-inch meter	17.80	.35
For 3-inch meter	31.00	.75
For 4-inch meter	45.00	1.05

The Service Charge is a readiness-to-serve charge applicable to all metered service and to which is to be added the quantity charge computed at the Quantity Rates.

SPECIAL CONDITION

1. The boundaries of Zone II are delineated on the tariff service area maps. Zone II includes areas generally above 700 feet elevation.

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