

ORIGINAL

Decision No. 92445 DEC 2- 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PERRY A. EARL and PERRY A. EARL
DEVELOPMENTS, INC., a California
corporation,

Complainants,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case No. 10733
(Filed April 17, 1979)

CITY OF IONE, a municipal corporation
of the State of California,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case No. 10748
(Filed May 25, 1979)

Brian C. Davis, Attorney at Law, for Perry A. Earl
and Perry A. Earl Developments, Inc.,
complainants, in C.10733.

James E. Deasy, Attorney at Law, for the City of Ione,
complainant, in C.10748.

Malcolm H. Furbush and Harry W. Long, Jr., Attorneys
at Law, for Pacific Gas and Electric Company,
defendant.

O P I N I O N

The Perry A. Earl and Perry A. Earl Developments, Inc. (Earl) complaint was filed on April 17, 1979. It alleges that defendant Pacific Gas and Electric Company (PG&E) has failed to extend or to agree to extend water service to land owned by Earl within the city limits of Ione. It alleges that Ione City Ordinance No. 102, adopted on February 27, 1962, grants PG&E the exclusive right to provide water service within the city limits of Ione, that PG&E applied to the Commission on August 21, 1962 (Application No. 47722) for authority to exercise the right granted, and that the Commission granted this authority in Decision No. 64331, dated October 2, 1962. It further alleges that the PG&E service area within the city limits of Ione abuts the land owned by Earl on the north, east, and south, and extends westerly of the west boundary of the Earl property, thereby almost surrounding Earl's tract and making it impractical, if not impossible, for another water company to serve its land, even if an additional supplier were available in Ione. Since PG&E is the only source of potable water in Ione, the complaint requests that PG&E be ordered to supply water service to all of the Earl land within the city limits of Ione.

PG&E's answer was filed on May 21, 1979. It agrees to serve 41 lots out of 450 which are wholly or partially within the boundaries of its existing service territory map (which has not been revised to track the boundaries of Ione's city limits). It concludes that it cannot legally provide service outside of its service area and that the limited treatment and distribution capability of the Ione water system would permit service to Earl's land only at the expense of existing and

potential customers within the PG&E treated water service area. The answer suggests that Earl could obtain sufficient potable water by drilling wells on the land to be served. The answer denies that Earl cannot be served by another water company. It also denies the allegation that there is sufficient conflict between and ambiguity in existing service area maps and advice and policy letters to obscure the intent of the original franchise agreement.

The complaint of the city of Ione (Ione) was filed on May 25, 1979. It alleges that PG&E has refused to extend its water service to the entire area within the city limits of Ione, in violation of the 1962 franchise agreement with the city. It is further alleged that PG&E's position has prevented people from settling within the city limits.

PG&E's answer to Ione's complaint was filed on June 29, 1979. It denies that its treated water service area has any relation to the city's boundary. It admits that it has declined to offer treated service to that portion of the city located outside the boundaries of the PG&E Ione treated water service area, as delineated on the company's service area map filed with this Commission by Advice Letter No. 146-W on January 5, 1977, and effective as of February 4, 1977. PG&E denies that its action will have any effect on the future growth of Ione and states there is reason to believe that Ione could secure a supply of potable water by drilling wells. It further alleges that it is not in a position to consider expanding its Ione water service area, since to do so would adversely affect its ability to provide treated water to the present and future customers within its existing service area. Attached to the answer is a letter from its counsel dated April 20, 1979, which is a reply to an earlier letter from the Commission's Executive Director.

PG&E's letter states that it will provide treated water service to those parcels located wholly or partially within its service area. The lots partially within the service area may not be used to indirectly supply those subdivision lots located totally outside of PG&E's service area.

Public hearing was held on October 15 and 16, 1979 in Ione and on October 17, 1979 in San Francisco before Administrative Law Judge Edward G. Fraser. The matter was submitted on concurrent opening and closing briefs, which have been received. Evidence was presented by Earl, Ione, and PG&E. A Motion To Set Aside Submission and Reopen Hearing to receive new evidence was heard on February 4, 1980 in San Francisco. The motion to set aside submission was denied on March 18, 1980 by a ruling of the Administrative Law Judge.

Earl's Testimony

A geologist testifying for Earl advised that a well was drilled on an Earl subdivision and produced water for less than seven minutes before running dry. The test continued for more than three hours while the well produced less than one-fifth gallon per hour. He discovered that several wells sunk near Ione had been abandoned due to lack of water, and that most of the wells producing in the vicinity were supplying water for agricultural purposes, not human consumption. He concluded that most well water would be nonpotable due to coliform contamination and the presence of sulphur, which leaves a rotten-egg smell. Wells in the area obtain water from natural underground basins where rainwater collects. During the dry season, most of these basins dry up and remain dry until the rainy season provides another supply of water. He concluded that wells could not supply an adequate, dependable supply of water on an annual basis and that well water would probably have to be treated before it could be used as drinking or washing water.

Earl testified that he has been a real estate broker for eight years and a developer for 3 1/2 years. He has subdivisions in Oakdale, Modesto, Ceres, and Turlock, all in California. He purchased three adjoining plots of land in Ione during April of 1977. They are aligned in an east-west direction and all are bounded by Sutter Creek, with the easterly subdivision (Spring Creek) approximately 1,000 feet west of downtown Ione, with Sutter Creek forming its north boundary. West of the first subdivision is Edge Brook on the other bank of the creek, extending about 1,500 feet westerly along the north bank. West of Edge Brook is Sunny Brook, bordered on the east by Edge Brook and on the south by the creek. Sunny Brook extends about 1,700 feet along the north bank of the creek. Exhibit 3 is PG&E's February 4, 1977 Water Service Area Map with Earl's subdivisions noted thereon. The copy is almost illegible in spots, but it appears that the Spring Creek Subdivision is partially within PG&E's water service area. Another area is called "water area and city limits". It extends along the south bank of the creek to about 300 feet west of the western boundary of Earl's property. The testimony and exhibit can be understood by visualizing PG&E's water service area as a horseshoe on its side. Downtown Ione is the closed end of the horseshoe, and Earl's three subdivisions extend along and touch the lower arm. The arm extends beyond Earl's property. Earl stated that he first inquired about water service in December 1976, prior to purchasing the property. The city advised him that new developments should be delayed until the water treatment plant improvements were completed. This delayed further inquiry by Earl until 1977 when the property owner from whom Earl purchased assured him that water was available within the city limits. In February of 1978 he telephoned PG&E and finally wrote to them on May 17, 1978

(Exhibit 4) to give the location of his 20 acres and formally request water service. PG&E acknowledged his request on June 13, 1978, and stated it was being evaluated (Exhibit 5). He recalled a phone call from PG&E in August 1978 which advised that all requests for water service from Ione were being considered. A letter from PG&E finally arrived dated September 26, 1978 (Exhibit 6), which noted that lots in the Spring Creek subdivision wholly or partially within the water service area would be supplied with water. Earl testified that he hired an engineering firm during August 1978 to represent him in technical discussions with PG&E representatives. His engineers prepared an accurate map of his subdivisions and provided PG&E and Ione with copies. He testified that when subdivision maps were presented to the utility on his other developments, it considered them the equivalent of a formal request for service from the utility provided with the maps. PG&E did not react until the September 26, 1978 letter directed to Earl's engineer, and a letter dated November 2, 1978 (Exhibit 7) addressed to the mayor of Ione, which stated that PG&E would not serve any subdivision or development lots when only part of the subdivision or development is within the water service area. Earl testified that the November letter caused more confusion and was inconsistent with PG&E's prior position, which represented that PG&E would extend service if the subdivision was partially within the water district. The latter position was taken when Earl first contacted PG&E by telephone and a woman answered, although he did not recall, or was not told her name. PG&E's representatives also maintained that sufficient water was available until about November 1978 when the policy was changed. Page 3 of Exhibit 7, the letter from PG&E's local manager to the

mayor of Ione, states that PG&E was using only about two-thirds of its available raw (untreated) water. Earl testified that he filled out a form titled, "Water Supply Supplemental Questionnaire for Other Than Publicly Owned or Mutual Utility," which he obtained from the Public Utilities Commission (P.U.C.). This form has sections for the property owner and utility to fill out. It provides needed information to all interested parties on areas about to have water service. Earl received a letter from PG&E dated November 16, 1978 which advised that PG&E would not complete the form because the subdivision is not wholly within the service area. Exhibit 15 is a letter from Earl (dated January 19, 1979) to the Commission's Hydraulic Branch to request P.U.C. assistance. Exhibit 16 is a letter to PG&E from Earl (dated January 18, 1979) reminding PG&E's Jackson office of the promise in its letter of September 26, 1978 (Exhibit 6) that lots "in the Spring Creek subdivision wholly or partially within the water service area would be supplied with water". Earl requested that PG&E fill in the form for that portion of the subdivision it will serve. Exhibit 17 is PG&E's reply letter dated February 1, 1979. PG&E reiterates that subdivisions with lots both within and without the service area will not be served. Earl thereupon divided his Spring Creek Subdivision into four smaller units designated as 1, 2, 3, and 4. All Units 1 and 2 lots are wholly or partially within the service area. Unit 1 has 28 lots and Unit 2 has 15, a total of 41 lots (Exhibit 22). Exhibits 23 and 24 include PG&E's survey and its promise that Spring Creek Units 1 and 2, but no other Earl subdivisions, will be provided with water service. Earl further testified that PG&E representatives quoted \$62,500 as the cost of extending water service to Units 1 and 2. Five days later the estimate was raised to \$100,000. PG&E has never given a firm cost figure and it is likely that future calculations will be much higher.

Earl placed Exhibit 26 in evidence. It shows 102 planned residences in the Spring Creek Subdivision, 118 in Edge Brook, and 230 in the 30 acres of Sunny Brook, for a total of 450 homes. Earl combined this exhibit with the information contained in Exhibit 9. He added the 220 new residents from Spring Creek and Edge Brook to the regular in-town customers (592 on his exhibit) for a total of 812, an increase of 37 percent with the extra 220 included. The total of 812 customers will require a peak water flow of 510 gallons a minute, which is less than the total treatment plant peak-day flow, quoted as 545 gallons per minute (Exhibit 26). Earl testified that a market survey conducted in August 1979 revealed that employers in Ione had more than 120 employees who were currently in need of housing in Ione.

Earl's Witnesses

Several witnesses testified for Earl. One man said that he has lived in Ione for 17 years and had his present house constructed in 1970. PG&E told him that he was located outside of its service area but that it would set a meter inside the service area - on the boundary - and he could extend his pipe to the meter. On cross-examination he admitted that his house is now within the PG&E service area.

The mayor of Ione testified that several large corporations refused to build or settle in Ione when it was discovered that no housing was available due to lack of water service.

The Ione Fire Chief testified that water pressure in Ione is inadequate for firefighting and less than the requirements in Commission's General Order No. 103. On cross-examination he admitted that no effort has been made to improve, or increase, the size of the fire hydrants.

A Public Health Sanitarian for Amador County testified that wells are normally required to be sealed and at least 50 feet deep to eliminate the chance of contamination from surface

water. There are not many wells in the vicinity of Ione and the few he has heard of are dry.

A local trucker who deals in gravel and landscaping materials testified that he hauls his water nine miles from a fire hydrant and fills a 4,000-gallon tank on his property, to be used for watering his plants, washing, and supplying his equipment. He had to discontinue a planned nursery business because he could not get water. He has two acres in the city limits, but is not in the PG&E service area.

A real estate developer from Antioch, California, testified that he purchased 107 acres south of the city boundary in 1976. He consulted with the PG&E manager in Jackson and was advised that a survey was being conducted. The drought was on at that time and he did not press his inquiry about water. He received the firm impression that water was available and supply was no problem. PG&E first advised him in November 1978 that his area would not be served. He then hired a geologist who soon told him that the 27 parcels could not be supplied by well water. He has since applied to have his property annexed by Ione as that seems his best hope of getting water service. He has had 30 inquiries from prospective purchasers residing in Antioch. He is convinced the lots will sell if he can supply water. ✓

An agent with the Rural California Housing Corporation testified that his organization is nonprofit and funded by the government to assist those who have no financial status to purchase a home through conventional means. It purchases large tracts of moderately priced land for low-cost housing. He was about to purchase nine acres located in Ione and the PG&E service area, but did not do so because the water pressure for fire protection was inadequate. He stated that wells are not acceptable as a water supply, even if they can maintain a continuous flow.

Regular sewers are also required before a subdivision can be approved.

A recently employed Ione police officer testified that he has tried to find a suitable house in town without success. He is required to live within the city limits and has been looking for two months.

The Ione city engineer testified that the water system suffers huge losses each year. This water is described as unaccounted for. It is lost through evaporation, theft, overflow (when the wrong valve is turned off) and runoff when the system is cleaned or repaired. This loss would be reduced or eliminated if the system was modernized, but cost would exceed \$500,000, and possibly reach the \$1,000,000 mark.

An ecology expert testified that development of homes in the foothills should be encouraged since the level farmlands are thereby preserved for agriculture. He noted that only two first-class farming areas remain comparatively intact in the United States, the gulf in Texas and the Central Valley in California. He concluded that every effort should be made by government and the utilities to encourage development away from the flatlands needed for farming and agriculture.

The final Earl witness was the building inspector for Ione. He testified there are 31 or 32 vacant parcels within the city limits of Ione. Earl's Spring Creek Subdivision is included in this estimate as a single parcel. The other parcels total about 75 or 80 lots, although most are not on the market. Other lots have no access and a few are owned by estates.

Witnesses for the City of Ione

The mayor was the first witness for Ione. He testified as a representative of the city government that the city council should have the right to determine where the city limits should be and whether and when the city should expand. PG&E is presently

dictating what city population and growth will be, since no one can live in Ione without water. The city council has approved the Spring Creek 1 and 2 subdivisions but can take no further action until the outcome of this hearing.

The Amador County Public Health Sanitarian testified that the county has an ordinance which requires that any subdivision located within 500 feet of a water district or a city must request annexation to such district or city. He advised that the only nearby subdivision served by wells has been converted and now obtains its water from the Amador Canal. The wells were found to be inadequate as a method of supply.

The real estate developer who testified for Earl stated that his property is just outside of the city limits and should be connected to the Ione water system under the county ordinance just described. A 1962 city councilman testified that it was his understanding at the time the ordinance was passed that PG&E was accepting an obligation to provide all present and future city residents with water service. He admitted on cross-examination that the text of the ordinance did not include any requirement about serving present or future residents of the city.

A member of the city council who was also the mayor from 1970 through 1978 placed Exhibit 11 in evidence. This exhibit includes a series of letters dated from March 1, 1977 through September 1, 1977, and a last letter dated March 8, 1978. The first letter asks whether water service can be made available in certain areas inside the city limits but not in PG&E service area. This communication is from the Ione city clerk to the local PG&E manager. PG&E replies are dated March 18 and May 24. Both letters refer to a study being completed which will cover potential growth and anticipated water needs. A later letter from the city clerk to PG&E is dated August 22, 1977. This letter estimates water use in the area to be annexed as no more than 50 gallons a day. The

letter also advises that the Ione treatment plant will be complete and in operation by November. PG&E's answer is dated September 3, 1977. It states that there may not be sufficient water available to serve the additional area and suggests that the city council appoint a committee to discuss the problem with PG&E personnel. The March 8, 1978 letter is from the city engineer to PG&E. This letter renews the request made in the first letter and reminds PG&E that a decision was promised at the conclusion of the drought in the area. The witness was city clerk during the eight years previously mentioned. She also served as mayor and as a member of the city council. She testified that a land developer and the owner of a car-wash refused to do business in Ione when the water situation became evident. She emphasized that the lack of available water has seriously restricted Ione's potential for growth.

The Ione vice mayor is also the park commissioner. He testified that the city park had to have a water supply to qualify for certain government grants. An effort to obtain well water was made in 1977 and 1978 and a 300-foot shaft was sunk, but no water was obtained. PG&E then provided service from a meter located outside of the water service area.

A member of the city planning commission testified that 127 of the Earl units have been approved but the lack of water service has prevented any further action. A former owner of the 107 acres now owned by the real estate broker who testified for Earl and Ione, testified that a 6-inch pipeline runs from a PG&E ditch through the property and the city park, then into the Owens-Illinois Glass Plant. On cross-examination he admitted that the pipe is owned by the glass plant, and that it conveys only untreated water.

A resident of Ione with more than 30 years' experience in county government and water development testified that the

county agency in charge of water development is the Amador County Water Agency, which is unable to help due to a lack of funds. He further advised that wells in the county are no longer considered a satisfactory water source and the county is trying to allot the available surface water so as to have an adequate supply in all areas.

The city engineer testified that the water is transported from a reservoir along an open ditch to Ione. Annual loss from the ditch averages from 32 percent to 37 percent of the water carried and can reach 52 percent to 60 percent during a bad month. Piping the entire ditch would reduce the loss to a maximum of 5 percent to 10 percent, and possibly less. If all the water saved was allotted to the Ione supply, it would provide sufficient surplus to justify an expansion of PG&E's Ione service area.

Testimony of Residents

Four local residents made statements for the record. A businessman represented the 35 members of the Ione Merchants Association. He stated that PG&E's refusal to extend water service has imposed a building moratorium on Ione over which the citizens and city government have no control. Developers seek to construct 300 homes within the city limits and 600 more on property adjacent to the municipal boundaries. He advised that local merchants may move to larger towns if future growth is restricted in Ione.

A local newspaper publisher testified that recent population growth in Ione has been zero. This is due to a lack of housing and living facilities. Many of the people employed in Ione and its outskirts cannot find living quarters in town. They live, do their buying, and send their children to school elsewhere, which is no advantage to Ione. Local merchants do less business than many other areas in the county and this reduces the taxes due the city.

A member of the Amador Board of Supervisors, who is also chairman of the supervisor's water committee, stated that surface

water must supply all demands as local wells are not reliable and most do not produce at all. The water system serving Ione has deteriorated and there has been no rate increase for 20 years. The county has plans for a dam to be located about 1 1/2 miles from Ione, but there is no money and any development will be far in the future. Restricting all growth in Ione due to a refusal to provide water service does not seem to be the answer.

The chairman of the Ione "ad hoc" water committee testified that an investigation revealed that Ione used 332, 222, and 285 acre-feet of water during 1976, 1977, and 1978. During those same years ditch losses were calculated at 737, 757, and 811 acre-feet. The committee concluded that, if the lost water could be recovered, it would provide sufficient extra water to provide for Ione's growth and for an adequate flow for fire protection. The city engineer provided a plan for modernizing the PG&E water supply system and operating it at an additional cost of \$12 per month minimum for each domestic household.

PG&E's Witnesses

PG&E presented testimony and exhibits from three witnesses. A senior hydraulic engineer from PG&E's San Francisco office described the Ione water system. Ione is supplied from the north fork of the Mokelumne River by the Amador Canal and the Ione Canal. The Ione water system consists of the Ione Canal and reservoir, the treated water distribution system, the treatment plant, and the service area. The Ione Canal is a little over 14 miles long and runs between Sutter Creek and Ione. It consists of over 10 miles of ditch, a 26-acre-foot reservoir, and about 4 1/4 miles of pipes. Half of the pipe is between the reservoir and Ione; the other half is under the street downstream from the intersection of the Amador Canal with the Ione Canal. The latter has a capacity of about 4 cubic feet per second (cfs). During 1978 an average of 5 cfs was put through the canal to meet the demand of the

Ione system and the other customers. About 2.9 cfs reached the Ione Canal reservoir. The rest was lost en route. An estimated 0.25 cfs was used by the canal customers. The capacity of the pipe which connects the canal reservoir with the Ione treatment plant is about 7.3 cfs. The treatment plant purifies the water and distributes it to the town. It has a rated capacity of 860,000 gallons per day. There is a treated water storage capacity of 780,000 gallons on the system and peak day usage in 1978 was 734,000 gallons or about 1,240 gallons per connection per day. The witness estimated that the treatment plant is capable of serving a total of 700 connections, or 100 more than are now on the system. These 100 extra connections include the 41 lots in Earl's Spring Creek Subdivision. If the growth of Ione continues at its slow past rate, the plant will be adequate until about 1986. This presupposes that the 24 customers along the canal will not increase, which has not happened in the recent past. If the industrial use increased by 10 percent, the remaining capacity of the canal would be completely used. Otherwise the canal can serve a total of about 750 domestic users. The treatment plant can increase its capacity, or additional storage can be provided for treated water. PG&E has recommended that the treatment plant be expanded at an estimated cost of \$97,000 as the least expensive method of providing more water for the system. Even if the size of the plant were doubled, or tripled, the canal will only convey water for a maximum of 750 connections. The 10.3 miles of the open ditch can be treated with gunite, at an estimated cost of \$800,000. If this were done the loss along the ditch would be reduced, but the carrying capacity of the pipes would have to be increased by replacing the pipe with a larger size. This would be very expensive. PG&E has acquired the right of way to pipe the length of the open ditch, but the minimum cost of installing pipe between

Tanner Reservoir and Ione Canal Reservoir has been estimated as about \$1.9 million. Earl would also pay about \$100,500 to get the water to his 41 lots under the Commission's main extension rule which requires the developer to pay the expense of extending water mains to his subdivision.

PG&E produced a commercial analyst from its San Francisco office. A map of the Ione water service area, Advice Letter No. 146-W, Cal. PUC Sheet No. 1066-W, effective February 4, 1977, was placed in evidence as Exhibit 27. The witness testified that PG&E will not provide water service for those who reside outside of its water service area in order to protect those who reside within the area. During the 29 years that the Ione water service area has been in existence, only five minor extensions were made. The service boundary was never expanded to accommodate a change in the city limits.

The witness explained PG&E's policy when an application for water service is received from someone outside of its water service area. The application is reviewed at the office where it is received. Then the district office reviews it again and makes a recommendation. The file is then forwarded to Division Headquarters for further study by division engineers and finally reaches PG&E's San Francisco office where a final decision is made. This process usually takes several months and frequently requires that various personnel from different offices visit the area concerned. He stated that the service area boundaries have no relation to the size of Ione, and PG&E has never indicated or implied that it will serve everyone within the city limits. He has reviewed Ordinance No. 102 of Ione and believes that it authorizes PG&E to provide water service within Ione. It does not require PG&E to serve everyone within the city nor does it authorize the city to determine PG&E's service area. He advised that PG&E has

tried to sell its Jackson water system, of which, Ione is a part, to Amador County Water Agency without success. Help may be required from some public agency to provide the financial backing to make the necessary improvements to increase the capacity of the water system. The witness advised that PG&E's Application No. 58630 to increase its rates and charges for water service provided by Jackson water system, filed on January 25, 1979, is pending before the Commission. It requests a 598 percent rate increase based on the present rate base of approximately \$2 million. If the recommended \$1.9 million is spent to improve the system, the rate base will increase to about \$4 million and rates would be raised 1,000 percent. A customer paying \$5 per month for service would pay \$50 after a 1,000 percent increase.

PG&E's last witness was the rate expert who testified in Application No. 58630. The witness completed a series of computations regarding the upgrading of the Ione treatment plant which would cost approximately \$2 million. His conclusions described the financial impact on the Ione area in two situations. In the first PG&E pays the entire \$2 million. The second alternative presupposes that another party (city, state, or developer) advances the necessary \$2 million. In the 1980 test year the rate base was \$1,965,000 and revenues were \$124,000. The proposed revenues from Application No. 58630 total \$865,000, an increase of \$741,000 over present revenue, with a 600 percent rate increase. If PG&E supplies the additional \$2 million necessary to modernize the system, it will be necessary to collect an additional \$525,000 annually, which would increase the water rates another 423 percent, for a total of 1,023 percent.

The witness advised that if this increase were absorbed by the 606 customers presently on the system, each would pay an additional \$866 per year for water, in addition to the present and proposed rates requested in Application No. 58630. If 450 new customers are added from the three Earl subdivisions, each of the 1,056 customers would pay an additional \$497 yearly. If another party supplied the necessary \$2 million to modernize the system, the annual cost for 606 customers would amount to \$353. If 450 customers are added, the annual cost per customer drops to \$203. The witness cautioned that it would require a minimum of three to four years for the system to absorb 450 new people and present customers would pay most, or all, of the increase imposed for the first few years. The witness admitted on cross-examination that industrial users and domestic users were placed in the same category for the estimates given. Each user was considered as one connection.

The Motion To Set Aside Submission

Earl filed a Motion To Set Aside Submission and Reopen Hearing to Introduce New Evidence on December 21, 1979. Hearing on the motion was held in San Francisco on February 4, 1980 before Administrative Law Judge Fraser. The motion was denied by a ruling of the Administrative Law Judge on March 18, 1980.

During the hearing on the motion, Earl and PG&E appeared and were represented by counsel. Five witnesses testified and Earl petitioned to reopen the proceeding to place Exhibits 28, 29, 30, and 31 in evidence. These items were marked for identification, but not received in evidence.

Exhibit 28, for identification only, consists of a letter from the manager of PG&E's Jackson office to Raymond Vail and Associates, the developer of 107 acres southeast of Ione. The letter advises that the area is not within the PG&E service

area, but a study is underway to determine the feasibility of serving the area. The letter implies that the area will be served when the study is completed. The proposed exhibit includes a November 23, 1979 letter from Earl to the PG&E Jackson manager asking whether PG&E "will serve" outside of its water service area, and enclosing a copy of the PG&E letter to Vail.

Exhibit 29 for identification only is the PG&E reply to Earl dated December 4, 1979. It reminds Earl that he was present at the current hearings and should be aware of the position of PG&E. It also explains that PG&E may consider requests for service outside of water service areas in individual cases where the petitioner is willing to make a substantial capital outlay to defray the extra cost of providing service. The PG&E reply further notes that all ultimate customers should be advised in advance that these costs may result in rates substantially higher than those for customers within the water service area.

Exhibit 30 for identification only is a map prepared by Perry Earl with the Jackson PG&E engineer which shows 33 or 34 lots of Earl's Edge Brook subdivision within the PG&E Ione treated water service area. Earl testified that subsequent to the hearings on his complaint he studied Exhibits 5 and 27 which purport to show PG&E's Ione water service area. These exhibits show the west boundary of the area as extending parallel to Sutter Street for about 3,500 feet in a north-south direction, approximately 250 feet west of Sutter Street, with the southern boundary on the north bank of Sutter Creek. When this information is transferred to Exhibits 2 and 3, which include the three Earl subdivisions, Edge Brook is partially within the PG&E service area. Proposed Exhibit 30 transfers this information to the subdivision map and 33 or 34 lots appear to be within the service area. Spring Brook 3 and 4 are east

of the 34 lots, along with the creek. Exhibits 5 and 27 are the same map, which is PG&E's Advice Letter No. 146-W on file with the Commission. PG&E has Exhibit 8 in evidence which is identified as an accurate U.S. Coast and Geodetic Survey Map. This exhibit was prepared for the 1979 hearings and represents the west boundary of the water service area as paralleling Sutter Street on the west side to a point 500 feet south of the intersection of Sutter Street with Sheakley Lane, at which point the boundary of the water service area bears southeast to the bank of the creek, then easterly. This marked service area does not include any of the Edge Brook subdivision.

PG&E's hydraulic engineer testified that the maps attached to its advice letters may have minor errors; they are an approximation of the service areas. If a party petitions to have service extended to a particular area, then the area is mapped and located exactly by PG&E engineers before a promise to serve is given. This would have happened in the instant case had a request to serve Edge Brook been forwarded to PG&E headquarters in San Francisco. PG&E's local manager and engineer believed that Edge Brook was partially within PG&E's service area when Earl first presented his map. The Jackson manager did not have an accurate map during the first meetings. No one realized the discrepancy in boundaries until the maps (Exhibits 8 and 27) were compared. The difficulty seems to result from a slightly misplaced Sutter Creek. PG&E witnesses emphasized that there was no variance in the position of PG&E which has always been that Edge Brook was not in the water service area. PG&E's engineer measured the distance from the southwest corner of the water service area on Sutter Creek to Marlette Street (Five Mile Drive), located south of the creek, and stated the distance was scaled at about 1,500 feet on both Exhibit 8 and Exhibit 27.

Exhibit 31 for identification only is a letter dated December 18, 1979 from Earl to the Jackson manager of PG&E which

refers to a December 10 meeting wherein it was discovered that approximately 33 lots in the Edge Brook subdivision are within the water service area and to a map (Exhibit 30) which draws in the location of these lots. Earl also offers an easement across Sutter Creek to extend a water main to serve the Edge Brook lots and asks the cost of this main extension to Edge Brook.

The motion to put Exhibits 28, 29, 30, and 31 in evidence was denied. An unfortunate error in mapping has been portrayed as an indication that PG&E's service area boundaries are uncertain. There has been no reliance on this error. Prior to, and during the hearing PG&E was adamant in its position that only 41 lots from the Spring Brook subdivision were within the boundary of the water service area. It is also evident from the record that the error would have been discovered during the engineering analysis formed by PG&E's San Francisco office prior to final approval of the request to extend service to the Edge Brook lots. Exhibits 30 and 31 would not contribute to the record in this proceeding. It could be argued that PG&E should be bound by the boundaries depicted in its Advice Letter No. 146-W map (Exhibit 27), but the map has a notation on its face that it shall not be considered a conclusive determination of "this dedicated area of service or any part thereof".

Exhibits 28 and 29 provide nothing new in view of letters already in evidence. Parties must also be required to conclude the presentation of evidence and argument within the time allotted. The reopening of submitted matters should be discouraged in the absence of fraud, prejudice, or other compelling cause. The random reopening of a proceeding may gravely concern the opposing litigant. Indeed, the party prejudiced may be the quiet one.

Discussion

The practical aspects of this case override the argument that PG&E must be required to serve all the Earl subdivisions and everyone residing within the city limits of Ione. The Constitution of the State of California and the State Legislature have provided this Commission with jurisdiction to determine the size and extent of utility service areas, usually after a hearing in contested cases. If we blend service areas with city limits and require the former to expand with the latter, we are relinquishing our jurisdiction over service territory and ability to serve to various municipalities and city councils, thereby disregarding legislative fiat and the California Constitution, which provides that: "A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission" (Section 8, Article XII).

Earl's brief notes that PG&E has extended out of its service area to at least 4 individuals during the early 1970's, and to the Ione city park to supply drinking fountains and rest rooms. No distinction is made between extending to a few individuals and an expansion to include a subdivision of 102 to 450 homes. A utility's intent to absorb a large or unknown number of new customers must be clear where water supply is limited and augmentation is very expensive. Many of the cases on dedication spring from the California of the 1920's and 1930's when people were few and water was cheap and plentiful. The requirement that a utility must have evidenced an unequivocal intention to serve a new area before being ordered to do so is still the basic rule (Greyhound Lines v P.U.C. (1968) 68 C 2d 408, 413, 415). We find no such intent or conduct on PG&E's part which would justify our directing PG&E to serve.

However, another consideration concerns the dilemma of service versus cost. If the service area is expanded beyond the 41 lots of Spring Brook 1 and 2, the treatment plant operation would be near

its capacity of 700. This would suggest either an expansion of plant or a moratorium on further connections. If no more people could obtain service, the complaints we see before us would be renewed. If both complainants are denied and the growth in Ione continues as it has in the past, the system will be adequate until 1986. The only rate increase imposed would be that requested in Application No. 58630.

Even if expansion were limited to the 102 Spring Brook lots (Units 1, 2, 3 and 4), the system would be operating at, or over, maximum capacity. Improving the plant would provide the capacity for about 50 more customers. It is therefore logical to assume that a complete renovation would be initiated at a cost of almost \$2 million, to be paid by PG&E under the facts before us. The present 606 customers on the system would experience an annual increase of \$866 (\$72 a month) in water rates, in addition to the raise authorized by Application No. 58630. Spring Brook homes were to be constructed at a cost of \$49,500 to \$55,000 in 1979. These homes will cost more now and they may take longer to get on the market and sell than anticipated. The Sunny Brook and Edge Brook subdivisions are projected for the more distant future, with construction of the latter being delayed for 7 to 10 years.

No one knows how fast lots will sell in the new subdivision or even how rapidly they can be developed. If the expansion were directed, the cost of improving the system would have to be assumed immediately by the present customers of the utility. They are entitled to some consideration, especially since it will be 6 to 10 years before improvements are needed if the 1 percent per year population growth normal to the area is related to the future expansion of the water system.

Findings of Fact

1. Earl and Ione allege that PG&E dedicated itself to serve all present and future residents of Ione, regardless of the latter's expansion or growth, when PG&E accepted a franchise from Ione in 1932.

2. PG&E stands on the premise that only this Commission has the authority to order it to expand its service area. During the last 29 years, there have been five minor extensions out of the area.

3. PG&E's hydraulic engineers advise that the capacity of the water system may be exceeded if the present service area is expanded.

4. There are vacant lots and parcels within PG&E's service area. PG&E argues that its service area cannot be expanded until vacant lots within the area are occupied and receiving service.

5. The three Earl subdivisions are in the city limits and bordered on three sides by PG&E's service area.

6. The seller and real estate broker from whom Earl purchased represented that water was available within the city limits.

7. Earl did not ask PG&E about water service prior to purchasing the property.

8. Earl did request water service from PG&E during May 1978. He was informed in September that only lots within the service area would receive water.

9. Ione requested additional water service from PG&E in May 1977. PG&E advised that the situation was under study. PG&E finally refused to provide service in November 1978.

10. PG&E represented that sufficient water would probably be available to serve the proposed developments until about November 1978.

11. During September 1978 PG&E advised that lots wholly or partially within its service area would be served.

12. Earl thereupon divided his Spring Brook subdivision to place the 41 lots of Units 1 and 2 wholly, or partially, within PG&E's service area.

13. Earl subdivisions were designed with 102 lots in Spring Brook, 118 in Edge Brook, and 230 in Sunny Brook, a total of 450 homes.

14. Ione is located equidistant from Stockton and Sacramento with favorable access, weather, recreation, and cost.

15. The Ione water supply is delivered from an obsolete water system consisting primarily of a 10-mile open ditch.

16. Wells cannot be depended upon to provide an adequate supply of water.

17. Annual loss of water from the open ditch averages from 32 percent to 37 percent of the water carried and can total 60 percent in a bad month.

18. This loss will be reduced to 10 percent, or less, if the ditch is replaced with pipe.

19. Ione water pressure and storage are inadequate for fire fighting.

20. People have lost interest in moving to Ione when advised that water service is not available.

21. Ione merchants complain of the zero population growth and some have threatened to settle elsewhere.

22. Ione city officials agree that the PG&E refusal to extend water service to all parcels within the city limits has negated efforts to increase the population of Ione.

23. PG&E's engineers advise that the Ione Water Treatment Plant can process water for a maximum of 700 connections. The plant presently serves 606 customers.

24. If no subdivisions are authorized and the natural growth of Ione is left undisturbed, the treatment plant will remain adequate for a minimum of six years.

25. The open canal will convey water for a maximum of 750 customers. The system will have to be extensively remodeled to handle any more customers.

26. The cost of the necessary remodeling will total a minimum of \$1.9 million.

27. If PG&E assumes the debt necessary to remodel the system to handle more customers, present water user rates will be increased by \$72 per month, or \$866 a year.

28. This raise is in addition to the 600 percent increase in rates requested in Application No. 58630, now under submission before this Commission.

29. It is difficult to predict how fast lots will sell in the first Earl subdivision, or how soon the developer will be able to complete the other subdivisions.

30. PG&E's Advice Letter No. 146-W, effective February 4, 1977, includes a map with a misplaced water service area boundary.

31. The advice letter map includes a notation on its face that boundaries noted thereon are approximate.

Conclusions of Law

1. Where a municipality grants an exclusive franchise to a utility, the latter is not obligated to serve all residents of the city, nor to expand its service area to coincide with the city limits whenever the latter are expanded.

2. An error in metes and bounds on an advice letter map filed with this Commission is no basis for reopening a submitted proceeding where no one has been misled or prejudiced thereby.

3. PG&E has never held itself out or shown an intention to provide service outside the area of its declared water service territory maps and cannot be directed to serve areas outside its service territory map.

O R D E R

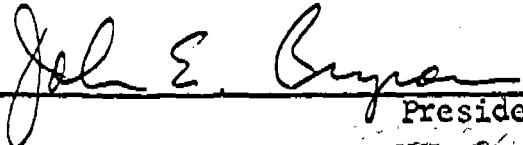
IT IS ORDERED that:

1. The relief requested in Case No. 10733 is denied.
2. The relief requested in Case No. 10748 is denied.

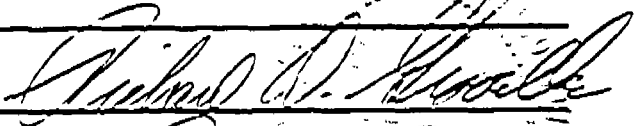
3. The motion by Perry A. Earl and Perry A. Earl Developments, Inc. to disqualify Administrative Law Judge Fraser is denied.

The effective date of this order shall be thirty days after the date hereof.

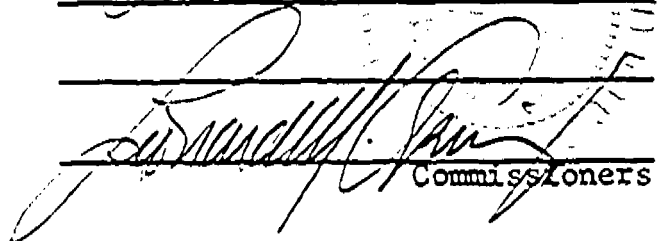
Dated DEC 2 - 1980, at San Francisco, California.



President



Commissioner



Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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