

ORIGINAL

Decision No. 93119 JUN 2 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CONSOLIDATED FIRE PROTECTION )  
DISTRICT OF LOS ANGELES COUNTY, )  
a political subdivision of the )  
State of California, )

Complainant, )

vs. )

SAN GABRIEL VALLEY WATER )  
COMPANY, a California corpora- )  
tion, and DOES I through V, )  
inclusive, )

Defendants. )

Case No. 10696  
(Filed December 5, 1978)

Case No. 10913  
(Filed September 24, 1980)

CITY OF EL MONTE, CALIFORNIA, a )  
municipal corporation, )

Complainant, )

vs. )

SAN GABRIEL VALLEY WATER )  
COMPANY, a California corpora- )  
tion, and DOES I through V, )

Defendants. )

Case No. 10710  
(Filed January 17, 1979)

O P I N I O N

D.91075 dated November 30, 1979 modified D.90784 dated September 12, 1979 in C.10696, Consolidated Fire Protection District of Los Angeles County (Los Angeles) versus San Gabriel Valley Water Company (San Gabriel), and C.10710, City of El Monte (El Monte) versus San Gabriel. D.91075, supra, provided that Los Angeles and

El Monte were to receive fire hydrant service to and including December 31, 1979 in accordance with the provisions of San Gabriel's tariff Schedules Nos. AA-5 and EMV-5 and that San Gabriel may file an advice letter requesting a rate increase to offset losses in fire hydrant revenues resulting from the enactment of Section 2713 of the Public Utilities Code effective January 1, 1980. The modifications to D.90784, supra, included in D.91075, supra, included the deletion of Ordering Paragraph 1 which provided:

"1. San Gabriel Valley Water Company (San Gabriel) shall forthwith commence negotiations with Consolidated Fire Protection District of Los Angeles County (Los Angeles) and the city of El Monte (El Monte) to effect a no-rent agreement similar to the model agreement developed by the Fire Protection Standards and Services Committee of the California Section of the American Water Works Association. The resultant agreement shall be filed as a standard optional tariff schedule by an advice letter filing within sixty days of the effective date of this order."

Also, Ordering Paragraph 4 which provided:

"4. The fire hydrant service charges shall cease on the date that Los Angeles and El Monte receive service in accordance with the no-rent fire hydrant agreement to be filed in accordance with Ordering Paragraph 1 above or sixty days after the effective date of this order, whichever occurs first."

The above deletions were requested in a joint petition filed by San Gabriel, Los Angeles, and El Monte to reflect the addition of Section 2713 to the Public Utilities Code prohibiting a public utility water corporation from charging a public fire protection agency for water for fire protection purposes or charging for public fire hydrant service or facilities in the absence of a written agreement with the agency providing for such charges.

On July 31, 1980 El Monte filed a petition to reopen the hearing for the purpose of receiving evidence to determine if San Gabriel is in violation of D.90784, supra, D.91075, supra, and/or Assembly Bill (AB) No. 1653, Stats. 1979, Ch. 862, which established Section 2713 of the Public Utilities Code.

Similarly, on September 24, 1980 Los Angeles filed a petition to enforce, reopen, and modify D.90784, supra. This petition was assigned C.10913 in accordance with our recently adopted policy of assigning new numbers to petitions to modify decisions filed more than 90 days after the issuance of the decision. These matters are hereby consolidated for a single decision as they relate to D.90784, supra, as modified by D.91075, supra.

Position of El Monte

El Monte alleges that, subsequent to January 1, 1980, San Gabriel has refused to maintain its fire hydrants without a demand for payment for any maintenance service rendered and has, therefore, refused to comply with the provisions of AB 1653, Stats. 1979, Ch. 862.

El Monte refers to the above-mentioned joint petition which contains the following statements:

"Under the form of agreement provided for in revised General Order No. 103, the public fire protection agency could be relieved of hydrant service charges only if it agreed to assume the maintenance obligations specified in Section VIII of the revised order. However, by reason of the enactment of the 1979 Act, San Gabriel, on and after January 1, 1980, may no longer require complainants to assume the maintenance obligations contemplated by General Order No. 103 and by the Decision as a condition of being relieved of hydrant service charges." (Page 3, joint petition.)

"On and after January 1, 1980, any public fire hydrant service which San Gabriel may supply to complainants will be without charge and without obligation upon complainants to maintain the hydrants except pursuant to written agreements between them and San Gabriel as permitted by the 1979 Act." (Page 4, joint petition.)

According to El Monte, these statements support its position that by reason of the enactment of the 1979 Act, San Gabriel must provide fire protection service, including maintenance and/or repair of fire hydrants, at no cost to the fire protection district.

On June 19, 1980 San Gabriel filed Advice Letter No. 178 transmitting for filing, pursuant to Section X-B of General Order No. 96-A, a contract between San Gabriel and El Monte dated June 10, 1980, whereby El Monte pays under protest all charges for maintenance and repairs of public fire hydrants served by San Gabriel within El Monte. According to the terms of the contract, such charges are subject to reimbursement should this Commission or a court of competent jurisdiction resolve the matter in favor of El Monte. This agreement was executed to provide for the maintenance of fire hydrants required to protect the health, safety, and welfare until such a time as there is a resolution of the issues raised relating to compliance with D.91075, supra, and Section 2713 of the Public Utilities Code.

The specific relief requested by El Monte is that C.10710 be reopened for the purpose of receiving evidence to determine if San Gabriel is in violation of D.90784, supra, D.91075, supra, and/or Section 2713 of the Public Utilities Code.

Position of Los Angeles

Los Angeles alleges that since D.91075, supra, was issued, San Gabriel has refused to negotiate any type of agreement remotely touching on fire hydrant service or fire hydrant maintenance and that its president, Robert L. Nicholson, stated publicly on or about February 4, 1980 that San Gabriel has never absorbed maintenance costs and would not start now.

Los Angeles notes that tariff Schedule No. AA-5 provides, among other things, that:

"4. Public fire hydrant service is furnished with the understanding that such hydrants are to be repaired, maintained, painted and inspected at the expense of such (fire) district or agency.

"5. The cost of relocation or modification of any hydrant shall be paid by the party requesting such relocation or modification."

According to Los Angeles, these two provisions are void as a matter of law in that they specifically conflict with the provisions of Public Utilities Code Section 2713 wherein it is provided that no water corporation subject to the jurisdiction and control of this Commission shall make any charge upon any fire agency for furnishing water for fire protection purposes or for any cost of operation, installation, capital, maintenance, repair, alterations, or replacement of facilities relating to furnishing water for such fire protection purposes.

Los Angeles further alleges that after demand by it, San Gabriel has refused, and continues to refuse, to maintain or to replace fire hydrants which have been damaged or placed out of service by the negligence of third parties within the geographic area of its responsibility and that currently upwards of 40 fire hydrants have been damaged or are out of service within San Gabriel's water service area. According to Los Angeles, the loss of these hydrants adversely affects the ability of Los Angeles to adequately defend property from fires.

Los Angeles further states that it is informed and believes that San Gabriel has been receiving offset revenues since the beginning of 1980 to cover the maintenance of fire hydrants within its area of service and, therefore, has been unjustly enriched in that it currently refuses, and has refused, to maintain or replace hydrants out of service, damaged, or caused to be relocated by other entities.

Los Angeles further alleges that it believes that San Gabriel is utilizing funds generated from its operations in the San Gabriel Valley to purchase water systems in Arizona at the expense of adequately maintaining fire hydrants in its service area in San Gabriel Valley.

The specific relief requested by Los Angeles is that this Commission order San Gabriel to:

- a. Enter into negotiations with Los Angeles to effect a uniform fire hydrant service agreement similar to ones already executed by other water companies subject to this Commission's jurisdiction.
- b. Repair, replace, maintain, and/or relocate at its expense the above-mentioned 40 damaged hydrants.
- c. Cease acquisition of water utilities in Arizona until such repairs and/or replacements are completed.
- d. Deposit with this Commission all offset revenues collected this year until such repairs and/or relocations are completed.
- e. Pay reasonable attorney fees for bringing this action under the authority of Consumers Lobby Against Monopolies v Public Utilities Commission (1979) 25 Cal 3d 891, and declare Schedule No. AA-5 is void and has no application to Los Angeles.

Position of San Gabriel

It is San Gabriel's position that Section 2713 of the Public Utilities Code does not prohibit water corporations from charging fire departments for the cost of maintenance of fire hydrants but only provides that any such charges must be made pursuant to written agreement. In support of this position, San Gabriel referred to Assemblyman Chappie's (the author of AB 1653) latest bill, AB 2474, which would require fire protection agencies to meet with water suppliers to develop mutually acceptable proposals to pay the cost of providing water for fire protection purposes. The costs so assessed against the fire protection agency would be reimbursed by the State of California. This bill, however, has not been enacted into law and, therefore, cannot be considered in the resolution of this matter.

San Gabriel notes that El Monte and Los Angeles have historically been responsible and paid for repair and maintenance of public fire hydrants and that such a practice conforms to the provisions of tariff Schedule No. AA-5 which is still in effect.

San Gabriel further asserts that notwithstanding the deletion of Ordering Paragraph 1 of D.90784, supra, requiring negotiations to effect a "no-rent" agreement, San Gabriel has continued to conduct further discussions with El Monte in an effort to conclude an agreement consistent with Public Utilities Code Section 2713 and that in Resolution No. L-213, dated December 18, 1979, this Commission stated:

"Assembly Bill No. 1653 [enacted as Section 2713 of the Public Utilities Code] authorizes public utility water companies to continue, renew or make contractual agreements with any fire protection agencies providing for the furnishing of fire protection facilities and services. Therefore, the Commission fully expects that each public utility water company will undertake all reasonable efforts to continue, renew or make such agreements."

San Gabriel claims it is merely attempting to comply with this directive.

In addition, San Gabriel states that Section 549, as amended, of the Civil Code and Section 2713 of the Public Utilities Code, as adopted by the 1979 Act, do not expressly or impliedly impose upon it any responsibility or liability for the costs resulting from the maintenance, repair, replacement, or relocation of public fire hydrants served by it that was not imposed or assumed by it prior to the enactment of the 1979 Act.

Discussion

All the parties agree that Section 2713 of the Public Utilities Code (AB 1653) clearly prohibits a regulated water utility from charging a fire protection agency for furnishing water for fire protection purposes or for any costs of operation, maintenance, or other costs related to the provision of water for fire protection services without a written agreement authorizing such charges. It is obvious that the legislative intent was to relieve fire protection agencies of the costs of operating and maintaining fire protection facilities in areas served by water utilities subject to this Commission's jurisdiction. It is axiomatic that such costs cannot reasonably be expected to be absorbed by the water utilities. For this reason, we permit the water utilities' advice letter offsets to compensate for revenues lost as a result of the above code section. Such offsets are subject to refund when the matters are



to be fully considered in conjunction with a general rate increase application. This Commission expects water utilities to undertake all reasonable efforts to negotiate contractual agreements with any fire protection agencies providing for the furnishing of fire protection facilities and services. In D.92244 dated September 16, 1980 on Southern California Water Company's A.59426 for a general rate increase for its Metropolitan Division, we had this to say:

"Applicant's president testified that applicant both separately and in concert with the California Water Association sought to establish a new contract with the Los Angeles County Fire Protection District. The contract sought purportedly would serve as a model contract for the industry. Although there are, according to this witness, good prospects for reaching an operational agreement, the chances of either obtaining any revenues from this source or having the fire protection agencies perform any required maintenance are nil." (Mimeo. page 9.)

Since then, this Commission has authorized fourteen uniform fire hydrant service agreements as follows:

| <u>Resolution No.</u> | <u>Date</u> | <u>Utility/District</u>   | <u>Fire Protection Agency</u>  |
|-----------------------|-------------|---|--|
| W-2744                | 11-18-80    | California Water Service Company:<br>East Los Angeles<br>Hermosa-Redondo<br>Palos Verdes  | Los Angeles<br>Los Angeles<br>Los Angeles  |
| W-2750                | 12-2-80     | Dominguez Water Company   | Los Angeles  |
| W-2751                | 12-2-80     | Antelope Valley Water Company   | Los Angeles  |
| W-2752                | 12-2-80     | Uehling Water Company   | Los Angeles  |
| W-2754                | 12-2-80     | California Water Service Company:<br>Portions of Bear Gulch District  | Woodside Fire Protection Agency<br>Menlo Park Fire Protection District             |
| W-2766                | 12-30-80    | Peerless Water Company  | Los Angeles  |
| W-2767                | 12-30-80    | Southwest Suburban Water Company  | Los Angeles  |
| W-2771                | 12-30-80    | California Water Service Company:<br>Portions of Los Altos Suburban District<br>Portions of Bear Gulch District<br>Most of Salinas District<br>South San Francisco District | Central Fire Protection District<br>Redwood City<br>Salinas<br>South San Francisco |

Formal Commission approval was required for these agreements because each one deviates from Section VIII.4. of General Order No. 103 (GO 103). Section VIII.4. of GO 103 provides that when a utility enters into an agreement with a fire protection agency which relieves the agency from the obligation of paying hydrant service charges, the agency is to be responsible for the capital cost of new hydrant installations starting with the tee in the main, replacements caused by age, wear, or change in standards, relocations to accommodate street improvements or changes of grade to the utility's mains, relocations or reconnections of hydrants brought about by replacement of the main by the utility, and maintenance including repairs caused by traffic accidents. These provisions of GO 103 are contrary to the "no charge" provision of Section 2713 of the Public Utilities Code, previously discussed. As a result, many of the fire protection agencies terminated their existing agreements based on GO 103 and indicated a desire to negotiate new agreements so as to maintain working relationships necessary to serve the needs of such agencies. Los Angeles was a lead agency in negotiating such agreements and has received Commission approval for eight such agreements as set forth above.

The agreements provide that there will be no charge for supplying fire hydrant water service or facilities. They require the water utilities to pay for all hydrant relocation, reconstruction, or reconnection costs, including the installation of such additional fire hydrants as may be mutually agreed upon by such utilities and fire protection agencies undergoing replacement, reconstruction, or relocation. The water utilities

will also be responsible for the cost of all hydrant repairs, including those brought about by traffic accidents, vandalism, or other causes. Except as specified above, additional hydrants the fire protection agencies require on existing mains will be installed at their cost. The fire protection agencies may perform minor maintenance and undertake annual inspection of all hydrants within their jurisdiction to ensure the hydrants are mechanically operable and capable of delivering water.

The above-cited agreements appear to conform to Public Utilities Code Section 2713 and to the applicable provisions of Commission Resolution No. L-213. Consequently, the order that follows will require San Gabriel to negotiate similar agreements with both El Monte and Los Angeles.

In its complaint, Los Angeles alleges that San Gabriel is in the process of acquiring the Arizona Water Company with funds derived from its operations in the San Gabriel Valley at the expense of adequately maintaining fire hydrants belonging to Los Angeles. In its reply, San Gabriel points out that it acquired the Arizona Water Company in April of 1978, months prior to Los Angeles' filing of the original complaint. Under these circumstances we find that Los Angeles' allegation is unfounded.

As previously stated, it is Los Angeles' belief that San Gabriel has been receiving offset revenues since the beginning of 1980 to cover the maintenance of fire hydrants within its area of service. By Resolution No. W-2590 dated January 29, 1980, this Commission authorized San Gabriel to impose a surcharge to offset fire hydrant rental revenue losses

resulting from the enactment of AB 1653 adding Section 2713 to the Public Utilities Code. These surcharges cover the revenue loss of the fire hydrant rentals and do not offset additional maintenance and operating costs associated with the transfer of such costs from the fire protection districts to the public utilities. Such additional costs are to be reviewed in connection with future general rate increase applications. Consequently, Los Angeles' request that the offset revenues be deposited with this Commission until fire hydrant repairs and/or relocations are completed is inappropriate.

In Consumers Lobby Against Monopolies v Public Utilities Commission, supra, the California Supreme Court concluded that this Commission has jurisdiction to award attorney fees and costs pursuant to the equitable "common fund" doctrine in quasi-judicial reparation proceedings, but not in quasi-legislative ratemaking proceedings. Under the "common fund" theory "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (Serrano v Priest (1977) 20 Cal 3d 25 quoting from Quinn v State of California (1975) 15 Cal 3d 162.) The Court emphasized that "the common fund doctrine is tailored so that attorney fees are awarded in only the most meritorious cases." (Consumers Lobby Against Monopolies v Public Utilities Commission, supra, at 908.) In the instant proceeding, there is no award of reparation and no common fund available for satisfying an award of attorney fees. Consequently, an award of attorney fees in this case is not appropriate under the reasoning of Consumers Lobby.

As previously stated, Los Angeles has asked that this Commission declare that tariff Schedule No. AA-5 is void and has no application to Los Angeles. The basis for this position is that the provisions of paragraph 4 of the tariff providing for maintenance of fire hydrants by the fire protection agency, and of paragraph 5, providing that relocation or modification of hydrants are to be paid for by the party requesting such change, are, according to Los Angeles, void, as a matter of law, in that they conflict with the provisions of Public Utilities Code Section 2713. San Gabriel contends that the rate schedule provides a basis for charging for maintenance of fire hydrants if a fire protection agency is willing to enter into written agreement for payment of these costs. It avers that a written agreement with a fire protection agency could take the form of a written acceptance of the conditions of the tariff schedule. The tariff schedule is a condition precedent to making a charge for work performed for a fire protection agency under these conditions by San Gabriel. We agree with this position and see no necessity for canceling tariff Schedule No. AA-5.

Findings of Fact

1. Public Utilities Code Section 2713, effective January 1, 1980, prohibits a regulated water utility from charging fire prevention agencies for any costs connected with providing water for fire protection purposes without a written agreement authorizing such charges, but authorizes such charges to others pursuant to existing provisions of law.

2. El Monte alleges that San Gabriel will not maintain fire hydrants and related fire prevention facilities unless reimbursed by El Monte.

3. El Monte has entered into a written agreement with San Gabriel authorizing collection of costs under protest and subject to refund for maintenance of fire hydrants and related facilities.

4. Since January 29, 1980, San Gabriel has been authorized by Resolution No. W-2590 to charge each water customer a surcharge designed to offset the revenue loss due to loss of revenues from fire hydrant rental charges.

5. The maintenance of fire protection facilities within the service area of San Gabriel is necessary for the protection of the health, safety, and welfare of San Gabriel's customers within such an area.

6. The utility costs of operating and maintaining fire protection facilities located within its service area cannot be assessed against the fire protection agency and, therefore, must be borne by the serving public utility water company.

7. San Gabriel is entitled to reimbursement for its costs of operating and maintaining fire protection facilities within its service area by an appropriate charge to its ratepayers.

8. San Gabriel should negotiate uniform fire hydrant service agreements similar to those authorized between Los Angeles and California Water Service Company by Resolution No. W-2744 dated November 18, 1980 with Los Angeles and El Monte.

9. The agreements listed in Finding 8 require Commission approval because they deviate from Section VIII.4 of GO 103 as necessary to conform to the provisions of Public Utilities Code Section 2713. ✓

10. San Gabriel is not in the process of acquiring the Arizona Water Company with funds derived from its operations in the San Gabriel Valley at the expense of adequately maintaining fire hydrants belonging to Los Angeles. ✓

11. This case has not resulted in any award of reparation or in a common fund out of which to award attorney fees under the Consumers Lobby case. ✓

12. A public hearing is not necessary. ✓

Conclusions of Law

1. San Gabriel is not authorized to make charges to and collect from El Monte or Los Angeles for costs related to providing water for fire prevention purposes. ✓

2. Monies collected under protest should be repaid.

3. El Monte's petition to reopen C.10710 for the purpose of receiving evidence to determine if San Gabriel is in violation of D.90784, supra, D.91075, supra, and/or AB 1653, Stats. 1979, Ch. 862, should be denied.

4. Los Angeles' petition to enforce, reopen, and modify D.90784, supra, received as C.10913, should be denied.

5. Los Angeles' request for reasonable attorney fees for bringing this action should be denied.

6. Los Angeles' request that offset fire hydrant rental loss revenues be deposited with this Commission until San Gabriel performs maintenance work on Los Angeles' fire hydrants should not be granted.

7. San Gabriel's tariff Schedule No. AA-5 should not be canceled. The provisions relating to charges to fire protection agencies for maintenance and/or relocation of fire hydrants are applicable to fire protection districts only when included as a part of a written agreement.

8. San Gabriel should negotiate agreements with El Monte and Los Angeles as set forth in Findings 8 and 9.

O R D E R

IT IS ORDERED that:

1. The city of El Monte's (El Monte) petition to reopen Case No. 10710 for purposes of receiving evidence to determine if San Gabriel Valley Water Company (San Gabriel) is in violation of Decision No. 90784, Decision No. 91075, and/or Assembly Bill No. 1653, Stats. 1979, Ch. 862, is denied.

2. Consolidated Fire Protection District of Los Angeles County's (Los Angeles) petition to enforce, reopen, and modify Decision No. 90784, received as Case No. 10913, is denied.

3. San Gabriel is directed to discontinue billing El Monte for costs related to providing water for fire prevention purposes.

4. Los Angeles' petition for attorney fees is denied.

5. Los Angeles' petition to cancel tariff Schedule No. AA-5 is denied.

6. Los Angeles' petition to require San Gabriel to cease acquisition of water utilities in Arizona is denied.



7. San Gabriel shall forthwith commence negotiations with Los Angeles and El Monte to effect uniform fire hydrant service agreements similar to those approved between Los Angeles and California Water Service Company by Resolution No. W-2744 dated November 18, 1980. The agreement with Los Angeles shall include a provision covering repair of hydrants within San Gabriel's service area which are currently damaged or out of service because of third party negligence.


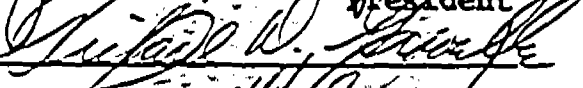
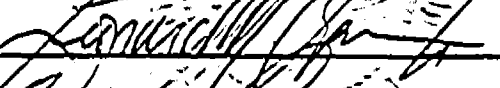

8. Los Angeles' petition to require San Gabriel to deposit offset revenues with the Commission until any damaged hydrants are repaired is denied.

9. Such signed agreements are to be presented for Commission approval by an advice letter filing no later than July 31, 1981.

10. Any monies collected from El Monte for costs incurred since January 1, 1980, related to the provision of water for fire prevention service, shall be refunded within thirty days after the effective date of this order.

This order becomes effective 30 days from today.

Dated JUN 2 1981, at San Francisco, California.

  
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President  
  
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Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.

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Commissioners