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ORIGINAL

Decision 93841 DEC 15 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of CALIFORNIA WATER SERVICE)
COMPANY, a corporation, for an)
order authorizing it to (a) furnish)
water service in the area contiguous)
to its Los Altos-Suburban district)
now served by North Los Altos Water)
Company (exclusive of the area)
within the City of Mountain View),)
(b) furnish such service in)
accordance with the rules and the)
schedule of rates applicable in its)
Los Altos-Suburban district,)
subject however to the imposition)
of a special surcharge for such)
service, and (c) include in its)
operating expenses for such service)
for ratemaking purposes rental)
payments under a lease to it from)
the City of Los Altos and the)
City of Los Altos Community)
Facilities District No. 1.)

Application 60807
(Filed August 12, 1981)

O P I N I O N

California Water Service Company (CWS), a California corporation, requests authority of the Commission to:

1. Furnish water service in the territory and political subdivision of the City of Los Altos (City) excluding the area within the City of Mountain View.
2. Furnish the above water service to City's customers in accordance with the rules and rates applicable in the Los Altos-Suburban District of CWS, plus a 40% surcharge on rates.
3. Approve the lease (Exhibit 1 attached to the application) between CWS, the City, and Los Altos Community Facilities District No. 1 (District), which is an entity of City conducting its water operations.

4. Include in operating expenses of CWS, for ratemaking purposes, the rental payments to City under the proposed lease.

Background

Since 1955, until sale and transfer to the City, a fully owned subsidiary of Citizens Utilities (Citizens) known as North Los Altos Water Company had supplied water service to customers in a portion of Los Altos, a municipality in Santa Clara County. The rates which Citizens charged to its Los Altos customers were set and regulated by this Commission. Citizens served about 1,300 customers in that district. Because of severe water quality and service deficiencies (see Decision (D.) 88127) in 1977, District filed a complaint in Santa Clara County Superior Court to condemn Citizens' Los Altos facility. District was organized under the Community Facilities Law of 1911, Health and Safety Code Sections 4600-4650. On May 21, 1980, a jury returned a verdict of \$2,120,000 as just compensation due Citizens for the City's condemnation of the water system. District's motion for a new trial was granted on July 22, 1980. On October 21, 1980, Citizens filed an appeal of the order granting a new trial.

On May 26, 1981, City and Citizens executed an agreement for the sale of Citizens' Los Altos facilities for \$2,070,000. The agreement is by its own terms subject to the approval of the Commission. The City will sell Citizens \$2,070,000 in bonds, to be paid over 20 years at 8% interest. In effect, Citizens will be loaning the City the money to purchase the company. The agreement also provides for the dismissal of all legal actions pertaining to the City's takeover of the water system. Citizens filed Application (A.) 60687 on June 26, 1981, seeking Commission approval of Citizens'

sale and transfer to the City of the system. The application was granted by D.93595 dated October 6, 1981. Transfer of the system was effected October 7, 1981.

CWS filed A.60807 on August 12, 1981, requesting authority, as discussed above. The proposed agreement between CWS and City provides for lease by CWS of the North Los Altos water system. The lease period is for 15 years with possible five-year extensions. Initial rental payments by CWS to City will be at the annual rate of \$193,600, an amount calculated to amortize the bonds over their 20-year life. The Los Altos-Suburban District of CWS is contiguous to the North Los Altos system, which makes feasible the proposed interconnection of CWS' water system to the North Los Altos system. This and closure of the existing North Los Altos wells are expected to significantly improve water quality in North Los Altos.

Issues

The technical proposals before the Commission do not raise any difficult questions other than tests of reasonableness and fairness to District's customers and to CWS' other customers. The principal issue facing the Commission at this juncture is whether it has jurisdiction to set the rates to customers of a publicly owned water utility leased to, operated, and managed by an investor-owned water company.

Staff

The Commission's Legal Division has concluded that the Commission does not have jurisdiction to set rates in these circumstances and that the application should be dismissed (see "Staff Motion to Dismiss" filed October 30, 1981). The staff reasons that legislation clearly distinguishes between privately owned utilities regulated by this Commission and municipally owned utilities which are self-regulated.

CWS

CWS filed its reply to the staff's motion on November 12, 1981. It opposes the staff's position and argues that the Commission does have jurisdiction to fix rates for the City-owned North Los Altos system. CWS cites the Commission's approval by D.29749 of a lease by Southern California Edison Company (SoCal) of portions of the electric system owned by the City of Vernon (SoCal, (1937) 40 CRC 486). The lease contained conditions as to relative rate levels in Vernon. However, the Commission stated at 40 CRC 490:

"This Commission has no authority over the construction and operation of municipal electric plants. The rates charged by a city are not subject to review by us as are the rates of a private utility. . . ."

Notwithstanding this language, this same order included the following:

"...provided nothing contained in such agreement nor in this decision shall by the Edison Company...be held to limit the Commission's authority from ordering and directing said Southern California Edison Company...from charging in said City of Vernon rates for electric service which are higher or lower than the rates provided for in said agreement."

CWS also refers to D.55703, a general rate increase application of SoCal ((1957) 55 CPUC 743, 771-774). Here the level of rates in the City of Vernon was a specific issue. The question of the Commission's authority to fix rates of a municipally owned utility system leased by a public utility was not raised nor was it discussed in the order. Vernon electric rates were ordered to be increased 14.5%.

Discussion

The State's authority to regulate rates of privately owned utilities is unequivocally established by the Constitution:

"ARTICLE XII

"SEC. 3. Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities."

In furtherance of this section, the Legislature enacted numerous sections of the Public Utilities (PU) Code giving the Commission explicit jurisdiction over rates, among other things, of privately owned public utilities, e.g., Sections 216, 451 et seq., and 2701. It is equally clear that the Commission has not been given authority to set rates of publicly owned utilities. In the case of municipalities, the California Constitution provides that they may establish and furnish water service to their inhabitants:

"ARTICLE XI

"SEC. 9. (a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.

"(b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law."

Under this constitutional provision the Legislature has explicitly provided for the creation and operation of municipally owned utility districts. PU Code Sections 10001 through 14401 apply to municipally owned districts. Sections 11885 and 12809 make each district responsible for setting its own rates:

"Sec. 11885. The board shall supervise and regulate every utility and facility owned and operated by the district, including the fixing of rates, rentals, charges, and classifications, and the making and enforcement of rules, regulations, contracts, practices, and schedules, for or in connection with any service, product, or commodity owned or controlled by the district."

* * *

"Sec. 12809. The rates and charges for commodities or service furnished by a district shall be fixed by the board. As far as possible utilities shall be selfsupporting but the board is not required to fix a rate which in its opinion is unreasonably high, nor to cover by rates large expenditures and the interest thereon required for future needs and developments."

Some uncertainty remains because the District was formed, not under the above PU Code sections, but under the "Community Facilities Law of 1911" codified in the Health and Safety Code, Sections 4600-4650. These sections provide for the formation of a district, acquisition or construction, and operation of a water

system, etc. Though these sections do not address rate-setting authority the only consistent conclusion is that such power rests with the District's governing body, as it does with any publicly owned utility. Any other assumption is totally unsupported.

Another question must be considered. Does the lease of a publicly owned water system to a privately owned public utility change the conclusion that was obvious up to this point, i.e., the Commission does not have jurisdiction over the rates of a publicly owned utility?

Taken alone PU Code Section 241 could lead one to the answer that the Commission does have jurisdiction:

"Section 241. 'Water corporation' includes every corporation or person owning, controlling, operating, or managing any water system for compensation in the State."

However, the California Supreme Court has repeatedly held that "In the absence of legislation otherwise providing, the PUC's jurisdiction to regulate public utilities extends only to the regulation of privately owned utilities." (LAMTA v Public Utilities Comm. (1959) 52 Cal 2d 655 at 661.) Also, "[t]he commission has no jurisdiction over municipally-owned utilities unless expressly provided by statute." (Orange County Air Pollution Control District v Public Utilities Comm. (1971) 4 Cal 3d 945 at 953, footnote 7.) The Legislature has enacted no statute which expressly authorizes the Commission to regulate the rates and service for customers of a municipally owned utility simply because it is leased to a privately owned water company. It is our opinion this is not the result of oversight by the Legislature.

The Constitution and the Legislature have consistently established a clear pattern of two kinds of public utilities.^{1/} One is privately owned and regulated by the Public Utilities Commission. The other is publicly owned, self-regulated, a political entity and not subject to this Commission's jurisdiction.

However, we should note that the California Supreme Court expressly disapproved statements that "the Legislature is prohibited by the California Constitution from conferring regulatory jurisdiction over municipally owned public utilities." (Los Angeles Met. Transit Authority v Public Util. Com., (1963) 59 Cal 2d 863, 870). Discussing the case of Los Angeles Metropolitan Transit Authority (LAMTA) v PUC (1963) 59 Cal 2d 526, the court found it significant that when the Legislature first gave this Commission regulatory authority over the L.A.M.T.A., it enacted a specific statute and in doing so observed that such legislation stood as an exception to a long-established policy. County of Invo v Public Utilities Com., (1979) 26 Cal 3d 154, 166).

We disagree with the jurisdiction asserted by the Commission in setting City of Vernon rates in the SoCal-City of Vernon matters. (D.29749 and D.55703 supra), and find those decisions should not be relied on when addressing this jurisdictional issue.

1/ Constitution, Article XI, Section 9 and Article XII, Section 3; PU Code Sections 216, 451 et seq. and 2701, relating to regulation of privately owned utilities and Sections 10001 through 14401, relating to creation and operation of municipally owned utilities; General and Special District Acts, such as the Community Facilities Law of 1911.

If we were to accept jurisdiction and grant CWS' application the incongruous result would have two levels of government (the Commission and City) regulating rates for customers of a municipal water system as a result of a lease agreement; further, we would assume the obligation to set just and reasonable rates for City's customers when it is City, as a governmental entity, which is ultimately accountable to these customers both statutorily and at the ballot box. A "lease agreement" cannot and should not abrogate that accountability.

Alternative operating arrangements are available to City, as we pointed out in D.93595, October 6, 1981, where we authorized sale of North Los Altos Water Company to City. In that decision we stated:

"...that if District entered a service contract for CWS to maintain and perform operational activity for District, with District setting the rates for its customers at a level to enable it to operate, no authorization from this Commission would be required. It would simply be a business arrangement between CWS' management and District; and, of course, this Commission would not be regulating the rates and service for District's customers and/or electorate."

Findings of Fact

1. City owns the water system formerly known as North Los Altos Water Company.
2. CWS proposes to lease and operate City's water system.
3. The customers of the publicly owned water system would be those of City, a governmental entity.
4. CWS requests the Commission's authority to set rates for City's customers equal to rates in the adjacent Los Altos-Suburban water system of CWS, plus a rate surcharge of 40%.

Conclusions of Law

1. A public hearing is unnecessary to decide the jurisdictional issue.
2. The Constitution and the statutes recognize two kinds of public utilities--those that are privately (investor-) owned and those that are publicly owned.

3. The statutes provide that the Commission shall regulate privately owned public utilities.

4. Applicable statutes on publicly owned utilities provide that they shall be self-regulated; they do not confer regulatory authority on this Commission.

5. The Commission does not have jurisdiction to set rates for the customers of the District and/or City.

6. The application of CWS should be dismissed.

O R D E R

IT IS ORDERED that A.60807 of California Water Service Company is dismissed.

This order becomes effective 30 days from today.

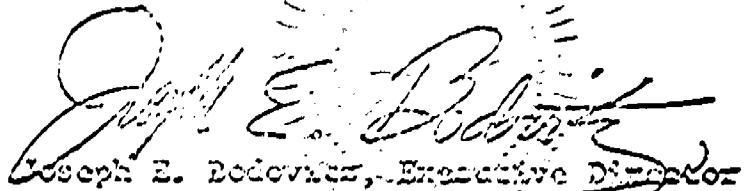
Dated DEC 15 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
FRANCESCA C. CREW
Commissioners

I abstain.

VICTOR CALVO, Commissioner

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


Joseph E. Rodovick, Executive Director