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MAIL DATE
11/21/97

Decision 97-11-085

November 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California-American Water Company
for a Certificate of Public Convenience
and Necessity to Operate Public Utility
Water and Sewer Systems in Orange
County, and to Establish Interim Rates
for Public Utility Water and Sewer
Service.

(U-210-W)

ORIGINAL

A.94-06-019

(Filed June 9, 1994)

**ORDER VACATING DECISION 95-01-014 AND DISMISSING
APPLICATION FOR REHEARING AS MOOT**

An application for rehearing of Decision (D.) 95-01-014 was filed by the Santa Margarita Company. In D.95-01-014 we issued an order denying motions to dismiss and held the proceeding on an application for public convenience and necessity filed by California-American Water Company (Cal-Am) in abeyance pending action by the Local Agency Formation Commission of Orange County. In D.95-01-014 we departed from our general policy which does not favor the issuance of advisory opinions. Based upon the circumstances before us we found it appropriate to provide a preliminary analysis on the issue of Cal-Am's proposed standby fee on undeveloped property. The application for rehearing that is before us challenges the portion of D. 95-01-014 wherein we provide a preliminary conclusion that approval by the Commission of a standby charge as depicted in the Cal-Am application would not be constitutionally impermissible.

Subsequent to the issuance of D.95-01-014, Cal-Am withdrew its application for a certificate of public convenience and necessity, and the Commission issued an order dismissing the application on September 25, 1995.

We have reviewed the application for rehearing filed by Santa Margarita Company, as well as the Responses filed by Mission Viejo Company and Cal-Am. We have determined that because the underlying proceeding has been dismissed, it is appropriate under the facts of the case before us to vacate D. 95-01-014. We are guided by the reasoning of the U.S. Supreme Court in United States v. Munsingwear (1950) 340 U.S. 36. In that case the Court observed as follows:

"The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below... That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision that in the statutory scheme was only preliminary." United States v. Munsingwear, supra, at 39-40.

We have considered all the allegations of error raised in the application for rehearing, and are of the opinion that in light of our dismissal of the underlying proceeding, D.95-01-014 should be vacated.

Therefore, **IT IS ORDERED,**

That D.95-01-014 is vacated, and that the application for rehearing of D.95-01-014 filed by the Santa Margarita Company is dismissed as moot.

This order is effective today.

Dated November 19, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners