

Decision 99-04-061 April 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sierra Club, Angeles Chapter,

Complainant,

vs.

Valencia Water Company,

Defendant.

ORIGINAL

Case 98-09-025
(Filed September 16, 1998)

O P I N I O N

Background

On September 16, 1998, the Sierra Club filed this complaint against the Valencia Water Company (Valencia) seeking an order of the Commission, pursuant to Public Utilities (Pub. Util.) Code Section 2708, determining that Valencia had reached the limit of its capacity to supply new customers without "injuriously withdrawing the supply wholly or in part from [its current customers]." The Sierra Club stated that Valencia and other water retailers had overpumped their common source of supply, the Santa Clara River alluvial aquifer, and without regard to whether other sources of water, such as the State Water Project, are available.

The Sierra Club further stated that Valencia is a wholly-owned subsidiary of the Newhall Land and Farming Company, which also owns the development companies. Valencia's affiliate development companies have proposed housing developments for up to 20,000 homes for which preliminary plans show Valencia

as the water provider. Sierra Club states that the water supply is not adequate for these new developments and that waiting to make water availability determinations at the building permit or tentative tract map stage "represents poor planning and can lead to unrealistic land use entitlements." Complaint at 3.

On October 30, 1998, Valencia filed its answer to Sierra Club's complaint in which it stated that the current water supply in the Santa Clarita Valley is approximately 100,000 acre feet, with groundwater and imported water from the State Water Project. Current demand, according to Valencia, is approximately 45,000 acre feet, leaving substantial surplus for current and projected uses. Moreover, Valencia states, the proposed development projects have not yet secured needed authorizations from the County of Los Angeles and that the actual development is projected to occur over a 25 - to 30 year period. Prior to any such approvals and building, Valencia states, it will prepare and submit to the Commission an annexation application which will include a water plan addressing "anticipated water demand, required water storage facilities, booster pump stations, and on- and off-site piping needed for adequate domestic and fire water flow pressure to the Specific Plan site." Answer at 5. In sum, Valencia contended that the Sierra Club complaint is premature.

On November 3, 1998, assigned Commissioner Duque and assigned Administrative Law Judge (ALJ) Bushey held a prehearing conference (PHC), which both parties attended. Pursuant to the schedule adopted at the PHC, the Sierra Club and Valencia filed briefs addressing the issue of the Commission's jurisdiction to resolve this complaint.

On December 17, 1998, the Sierra Club filed its Statement of Jurisdiction in which it stated that the Commission had jurisdiction pursuant to Pub. Util. Code Section 761 to prohibit Valencia from engaging in "unreasonable" acts. In

addition, Sierra Club states, Pub. Util. Code Sections 2708, 2709, and 2710 impose duties on the Commission which may not be delegated to local water planning authorities. The Sierra Club contends that the Los Angeles County Development Monitoring System (DMS)¹ which provides for consideration of the adequacy of water supply prior to granting development authority, is no substitute for the Commission's statutory duties found in Sections 2708, 2709, and 2710. The Sierra Club contends that the Commission is more effective in protecting the public interest because the Commission, unlike the DMS, has subpoena and auditing authority over Valencia. The Sierra Club also argues that the DMS, due to the potential for a statement of overriding considerations, lacks clear authority to deny a project. In contrast, Sierra Club submits, the Pub. Util. Code sections require only a factual finding that the water company has reached the limit of its capacity to supply additional customers, without injuriously affecting existing customers. Thus, the Sierra Club concludes, the Commission's substantive standards better protect the public interest than the County's procedural standards.² Finally, the Sierra Club states that the Commission should act now

¹ The data is used in evaluating siting applications. Specifically, the Monitoring System provides the basis for the infrastructure factors in the Urban Services Analysis. Among the infrastructure to be analyzed is the capacity of the water agency or district to provide an "acceptable level of water supply." If the proposed development exceeds current thresholds for acceptable service, mitigation measures may be ordered such as phasing the development to allow expansion of the infrastructure service, reducing the size of the proposed development, and ordering the developer to fund the capital costs of the infrastructure expansion. Even if the mitigation measures are insufficient to prevent significant impacts on the infrastructure, the planning agency may nevertheless approve the project provided it makes certain findings in a statement of overriding considerations. Los Angeles General Plan, Amendment No. SP 86-173, Technical Supplement D-11, Development Monitoring System, at pages D-30 to D.37.

² The Sierra Club cites a law review article by Professor Michael Blumm and Thea Schwartz for this proposition. The assigned ALJ is a former student of Professor

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because Valencia admits that it intends to serve new developments such that it would be inappropriate to "delay the day of reckoning until the time of crisis."

On January 8, 1999, Valencia filed its Statement of Jurisdiction in which it argued that (1) to the extent the Sierra Club seeks a adjudication of water rights in the Santa Clara River Basin, the Commission has no jurisdiction over the complaint and (2) the Commission's process for approving expansions of a water company's service territory allow the Commission to make development-specific determinations of water supply adequacy which precludes the type of hypothetical determination sought by the Sierra Club. The Commission's process for approving service area expansions is found in General Order 103 which requires, among other things, that Valencia demonstrate that it possesses an adequate supply of water for the proposed expansion. Valencia states that the Commission has recently approved two Valencia expansions and that one such request remains pending at the Commission and that the Sierra Club is a party to the process considering that expansion. Valencia concludes that the Commission lacks jurisdiction over the Sierra Club's complaint and requests that the complaint be dismissed.

Blumm and agrees with his and Ms. Schwarz's proposition but disagrees with the Sierra Club's assertion that the referenced statutes "impose a limit on ecological degradation." Pub. Util. Code Section 2708 is permissive, the Commission "may order and require that no such corporation shall furnish water to any new or additional customers." (Emphasis added.) As the Sierra Club notes, the Commission's general regulatory standard requires it to "consider every element of the public interest." Sierra Club Statement of Jurisdiction at 8. This standard leaves ample room for the Commission to consider the same matters as would be included in a statement of overriding concerns and to reach the same conclusion, i.e., allowing the development. As such, the Commission's process, like the County's, confers only procedural rights and does not impose a limit on ecological degradation.

The Commission's Role In Water Planning

The two state agencies primarily responsible for overseeing water planning are the California Department of Water Resources, which manages the State Water Project and produces the California Water Plan, and the State Water Quality Control Board and Regional Water Quality Control Boards which have authority over water allocation and water quality protection.

In addition to the state agencies which have broad planning and management powers, local government also has a part in water use decisions. For example, county boards of supervisors, county water agencies, land use planning agencies, city governments, municipal water districts and many special districts all have a role in the use of water in California.

In this context, the Commission has recognized the futility of one party taking unilateral action to protect a groundwater basin:

Rehabilitation of the Santa Maria Groundwater Basin is not the responsibility of, and is beyond the physical and financial resources of any single individual, company, or agency. Even if [Southern California Water Company] were to stop drawing from the basin entirely and injected into the basin the entire 7,900 AFY it desires to obtain from the [Central Coast Water Authority], the basin's fundamental problems of declining quantity and water quality would not be solved. Most simply put, the basin's salvation as a water resource requires the immediate, undivided, sincere and selfless attention of all its users.

(Re Southern California Water Company, 48 CPUC2d 511, 519 (D.93-03-066)(emphasis in original).)

The Commission's role is limited to ensuring that each jurisdictional water utility provides its customers with "just and reasonable service, . . . and facilities as are necessary to promote the safety, health, comfort and convenience of its patrons, employees, and the public." (§ 451.) The Commission has further

delineated the service standard in its General Order 103 where it proscribes Standards of Service including water quality, water supply, and water pressure, as well as many other details of service.

The Commission has not, however, dictated to investor-owned utilities what method of obtaining water must be used to meet its present and future responsibility of providing safe and adequate supply of water at reasonable rates. (Southern California Water, 48 CPUC2d at 517.)

Which is not to suggest that the Commission ignores issues of water availability in its regulation of water utilities. The Commission requires that all water utilities prepare, file, and update a water management plan which includes identification of water sources as well as consumption projections over 15 years. These plans are updated by the utility as part of its general rate case .

As part of its most recent general rate case, Valencia submitted its water management program which included its projections of sources and use through 2010. Based on this program and other evidence in the record, the Commission concluded "Valencia is providing satisfactory water service, and the water furnished meets current state drinking water standards." (Valencia Water Company, 57 CPUC2d 601, 067 (D.94-12-020).)

The Commission has a more specific role in considering a water company's capacity to supply water in project-specific service area expansion requests. Where the water utility is proposing to serve its first territory or to serve an area which is not contiguous to its previously designated area, the utility must file a formal application with the Commission. (Pub. Util. Code § 1001.) Such an application requires a formal Commission hearing process and results in a Commission decision. Interested parties may participate and present evidence for the Commission's consideration.

Where the water utility is proposing to expand into a contiguous area, the water utility must amend its service territory map on file with the Commission. This is accomplished through filing an advice letter. If not protested, an advice letter goes into effect but if it is protested the advice letter can be assigned for hearing and decision much like an application.

Should Valencia propose to expand its service territory to include new developments, Valencia will bear the burden of proving in either the application and advice letter process that it has adequate supplies for the proposed new customers.³

The Commission Staff has recently reviewed a protest filed by the Sierra Club to Valencia Advice Letter 83 and concluded:

The water from the State Water Project of 10,400 acre-feet plus water from wells of 12,800 acre-feet equals a current supply of 23,200 acre-feet per year. Based on forecasted demand, VWC has an adequate supply to meet its requirements through 2002.

Letter to Robert DiPrimio, President, Valencia Water Company and Martin Schlageter, Conservation Coordinator, Angeles Chapter, Sierra Club, from Daniel R. Paige, Commission Staff, January 19, 1999.⁴

³ See, Ambler Park Water Utility and California American Water Company, D.98-09-038, where the Commission found that the issue of adequacy of supply for a potential development would be addressed in the advice letter process.

⁴ In its comments on the draft decision, Sierra Club contended that the forecasted use would be exceeded due to approximately 3,500 new hookups in Valencia's service territory. Even accepting as true Sierra Club's alleged number of new connections, an allegation that Valencia disputes, would result in Valencia having a total of 23,300 customers. The letter notes that each customer uses approximately one acre foot per year, thus requiring a supply of 23,300 acre feet. Valencia's current supply is 23,200 acre feet, a theoretical shortfall of .4%. Given the imprecise nature of these forecasts, such a

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On March 11, 1999, Valencia filed its Advice Letter 84. Based on conversations with Commission Staff, Sierra Club is expected to file a timely protest. In such a protest, Sierra Club may raise issues regarding Valencia's supply.

Discussion

The Commission may entertain complaints against public utilities where such complaints set forth "any act or thing done or omitted to be done . . . in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission." (Pub. Util. Code § 1702.) Where a complaint fails to allege any such violation, the complaint will be dismissed for failure to state a claim upon which the Commission has jurisdiction to act.

The Sierra Club alleges that Valencia is in violation of § 2708 because Valencia "has reached the limit of its capacity to supply water." Should the Commission conclude that Valencia has reached the limit of its capacity, the statute gives the Commission the authority to impose a moratorium on new customers. (See generally Citizens Utility Co., 80 CPUC 297 (1976)(D.86193).)

In its complaint, Sierra Club does not contend that Valencia's customers have experienced or are experiencing water shortages. Rather, Sierra Club asserts that the current sources of Valencia's water supply have reached their limits, a view not consistent with the Commission's findings in Valencia's most recent general rate case nor the service territory expansions which have been approved since that case.

difference amounts to no credible shortfall at all. Thus, Sierra Club's allegations do not prove their point.

We share Sierra Club's concern for preserving a sustainable water supply. All state residents have an interest in ensuring a reliable water supply and minimizing environmental degradation. The Commission, however, is charged with oversight of only a small fraction of water users, investor-owned water utilities. Municipal water districts and other major water users are beyond our jurisdiction. Even if the Commission were to issue the order Sierra Club has requested, other, non-jurisdictional, water suppliers could simply replace Valencia as the water provider to the new developments. As noted above, all water users must work cooperatively to achieve a true resolution of basin depletion issues.

We are aware of the concerns Sierra Club has raised about the competing factors water planning agencies may consider in their water allocation decisions. Nonetheless, the Commission's limited jurisdiction would prevent us from granting the comprehensive relief the Sierra Club seeks.⁵

Which is not to suggest that the Sierra Club has no other venue for its issues before the Commission. Sierra Club can be assured that unless and until the Commission grants a service area expansion request, Valencia is prohibited from serving any additional areas. Coupled with its burden of proof, this allows the Commission to oversee an orderly and sustainable expansion of service territory. It also clearly imposes the risk on Valencia that the Commission will ultimately determine that the supply is inadequate.

⁵ Moreover, the statutory purpose is protection of existing water users, not protection of the environment. Thus, the Commission would only consider the water supply issues and not any consequences such supplies might have for the environment.

Sierra Club alleges that Valencia has announced its intention to serve new customers despite evidence that Valencia has reached the limit of its capacity to supply water and the available water supply is inadequate to service the new developments. As an initial matter, we note that if the Sierra Club is correct that Valencia has made such an announcement, and Valencia denies that it has, announcing an intention would not appear to be a violation of the Public Utility Code. We would assume, until proven otherwise, that Valencia in making such an announcement would intend to fully comply with the Commission's requirements prior to extending service.

Sierra Club's allegation that Valencia lacks sufficient water supply to serve additional customers is squarely at issue in any service territory expansion request that Valencia would file. Until such a filing, or an allegation of unauthorized service extension, the relief which § 2708 authorizes us to grant, a moratorium on new customers, is theoretical only. Rather than hypothesizing a request for authorization to serve additional customers, the Commission can better consider these issues in the concrete context of an actual proposal.

An important difference between the application/advice letter process and the complaint process is the burden of proof. In this proceeding, Sierra Club bears the burden of proving that Valencia's water supply is inadequate for additional customers. In contrast, Valencia has the burden of proving that it has adequate supply in an application/advice letter process.

In conclusion, the Commission monitors water supply issues as part of general rate cases and through service territory expansion requests. The Commission may also take up supply issues where significant unanticipated events affect water supply, such as a prolonged drought. (See Measures to Mitigate the Effects of Drought on Regulated Water Utilities, 53 CPUC2d 270

(D.94-02-043.) All recent Commission reviews of Valencia's water supply have shown that it has access to sufficient supply to meet its customers' needs. The Sierra Club has failed to allege any significant intervening unanticipated event which would render the Commission's previous determinations invalid, or that the current processes fail to provide a sufficient level of review by the Commission. Accordingly, this complaint should be dismissed.

Findings of Fact

1. The Commission considers water supply issues in Water Management Program studies, which are included in each class A and B water utility's general rate case.
2. The Commission reviewed Valencia's Water Management Program, which contained source and use forecasts through 2010, in its last rate case.
3. The Commission considers water supply issues for proposed service territory expansions in advice letters or applications filed with the Commission.
4. The Commission Staff has determined the Valencia's current supply is 23,200 acre feet.
5. The Sierra Club's alleged number of new customers would require a supply of 23,300 acre feet.
6. A theoretical short fall of .4% is no shortfall at all due to the imprecise nature of the underlying forecasts.
7. The Sierra Club's factual allegations, even if accepted as true, do not support the conclusion that Valencia has "reached the limit of its capacity to supply water."

Conclusions of Law

1. The Commission requires that water companies prove the adequacy of supply prior to Commission authorization to serve additional areas.

2. The Commission has previously determined that Valencia has sufficient supply to serve its current customers in its approved service territory.
3. Valencia bears the burden of proving that it has adequate capacity to serve customers in any proposed additional service area.
4. The Commission will adjudicate Valencia's capacity to serve additional customers in the proceedings where Valencia seeks authorization to serve those customers.
5. This complaint should be dismissed.
6. Pursuant to Rule 6.6 of the Commission's Rules of Practice and Procedure, Article 2.5 ceases to apply to this proceeding.

O R D E R

Therefore, **IT IS ORDERED** that the complaint of the Sierra Club is dismissed with prejudice to refiling based on the same facts.

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners