ALJ/XJV/sid

Mailed 9/3/99

Decision 99-09-030 September 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of California Water Service Company (U-60-W), Dominguez Water Company (U-330-W), Kern River Valley Water Company (U-295-W), and Antelope Valley Water Company (U-281-U) for Approval of a Plan of Merger of California Water Service Company, Dominguez Water Company, Kern River Valley Water Company, and Antelope Valley Water Company.	Application 99-02-004 (Filed February 5, 1999)

FORMAL FILE COPY

INTERIM OPINION REGARDING APPLICABILITY OF PUBLIC UTILITIES CODE § 2718 ET SEQ. TO THE PROPOSED MERGER

1. Summary

We conclude Pub. Util. Code § 2718 et seq. requires application of its statutory scheme to this water utility merger. To provide context for this interim opinion, we review the parties to and terms of the proposed merger before turning to the narrow legal issue before us. We also grant applicants' motion to file late their reply to the protest of the amendment to their application.

2. Procedural Background

On February 5, 1999, California Water Service Company, Dominguez Water Company, Kern River Valley Water Company and Antelope Valley Water Company (respectively CWS, Dominguez, Kern River and Antelope, or collectively, applicants) jointly filed this application for approval of their proposed merger. The Ratepayer Representation Branch (RRB) of the Commission's Water Division and the Office of Ratepayer Advocates (ORA) filed

permitting a Commission decision on the merger by January 2000. The procedural schedule requires settlement discussions on September 13 and sets evidentiary hearing to follow as necessary beginning on November 1.

Following the PHC, the parties filed these additional pleadings: on May 28, applicants' motion for this interim order; on June 1, a joint protest by RRB/ORA to the amendment to the application; on June 14, RRB/ORA's opposition to the May 28 motion; on June 18, applicants' motion for leave to file a late reply to the June 1 protest; and on June 23, applicants' reply on the May 28 motion.

3. The Proposed Merger

3.1. The Companies Involved

The signatories to the Agreement and Plan of Reorganization (merger agreement) are CWS, its holding company California Water Service Group (CWSG) and DSC. The merger agreement is Exhibit F to the application. The portion of the transaction subject to our jurisdiction is the merger of CWS with the three regulated DSC subsidiaries, Dominguez, Kern River, and Antelope.

CWS, a Class A water utility, is the largest investor-owned water utility in California. CWS provides water to some 373,500 accounts in 20 operating districts that serve 58 communities, all within this state.

Dominguez is a Class A water utility and currently provides water to over 34,000 customers in two operating divisions. Its South Bay division, located in southern Los Angeles County, serves about 32,400 customers. Dominguez' Redwood Valley division, located in northern California, serves about 370 customers in two Sonoma County Russian River communities and about 51 customers in an outlying part of the city of Santa Rosa, approximately 1,250

Upon the transfer to CWS of the Dominguez, Kern River and Antelope Certificates of Public Convenience and Necessity, CWS would assume all concomitant public utility obligations and all direct control of the respective water systems. Among other things, CWS would assume Dominguez' and Kern River's Safe Drinking Water Bond Act (SDWBA) loans, with outstanding debt of about $3 million. Applicants propose that CWS operate and manage each of the DSC subsidiaries as a separate rate district according to its respective tariffs, with one exception -- they propose to merge Dominguez' South Bay division into CWS' Hermosa-Redondo district.

4. Applicability of Pub. Util. Code § 2718 Et Seq.

4.1. The Nature of the Dispute

The legal issue before us concerns the applicability to this merger of Pub. Util. Code § 2718 et seq., the "Public Water System Investment and Consolidation Act of 1997" (Act). The narrow question, framed to capture the dispute between the parties, is: "May the Commission require, as a condition of its approval of a water utility merger, that the rate base value of the acquired distribution system be set below fair market value for ratesetting purposes?" We have not had occasion to address this question before.

Applicants argue that if we approve the merger, then we must establish the rate base value and future rates in accordance with the statutory requirements specified in § 2720(a). RRB/ORA argue the Act does not impose a legislative mandate.

4.3. Statutory Interpretation

The language in § 2720(a) reproduced in italics, above, is the source of the parties' disagreement. They do not dispute that Dominguez, Kern River and Antelope are "public water systems," as defined by §2720(a)(1). And any factual disputes about the proper calculation of "fair market value" (§2720(a)(2)) are not yet ripe for our determination. The parties ask that we resolve the disputed legal issue before they begin the September settlement discussions set to precede evidentiary hearing in November of this year.

For guidance regarding statutory interpretation, we turn to a recent California Supreme Court restatement of the purpose and process of statutory interpretation:

> "Our analysis commences with the premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [citation omitted.] " 'Our first step [in determining legislative intent] is to scrutinize the actual words of the statute, giving them a plain and common sense meaning.' " [citations omitted.] " 'In analyzing statutory language, we seek to give

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difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. In determining whether the additional amounts are fair and reasonable the commission shall consider whether the acquisition of the public water system will improve water system reliability, whether the ability of the water system to comply with health and safety regulations is improved, whether the water corporation by acquiring the public water system can achieve efficiencies and economies of scale that would not otherwise be available, and whether the effect on existing customers of the water corporation and the acquired public water system is fair and reasonable.

(c) The provisions of subdivisions (a) and (b) shall also be applicable to the acquisition of a sewer system by any sewer system corporation or water corporation.

(d) Consistent with the provisions of this section, the commission shall retain all powers and responsibilities granted pursuant to Sections 851 and 852.

Finally, RRB/ORA suggest that the Legislature only intended the Act to apply to the acquisition of small, financially troubled water systems and not to the merger of larger, financially sound Class A companies.

We do not find the RRB/ORA arguments persuasive. Nothing in § 2719 – or any other part of the Act – suggests the Legislature intended discretionary, rather than mandatory, application of the fair market rate base valuation standard and any other reading of the Act is strained. We think RRB/ORA misconstrue the import of this rate base valuation standard, however. Sec. 2720(a) does not undermine or otherwise conflict with our obligation to review a water utility merger within our jurisdiction and to authorize it only if we conclude authorization is in the public interest. Sec. 2720(d) expressly recognizes our continuing merger review authority under §§ 851 and 852. Moreover, applicants have acknowledged they must obtain our authorization under § 851 et seq. before implementing their plan of merger. Were we to find, for example, that application of § 2720(a) would result in an unreasonable increase in rates, while we cannot require a lower rate base valuation as a condition of our approval, our authority to deny the merger remains undiminished.[3] The legislative history of SB 1268 does not include anything to

[3] In their two rounds of comments, RRB/ORA suggest that our view of the application of § 2719 et seq. would foreclose approval of a merger where an applicant, in order to avoid an unreasonably high rate impact, voluntarily seeks a rate base valuation of less than market price. Applicants' reply comments challenge such an interpretation. If this is an issue of concern to the parties here, then neither made that clear to us in its pleadings. We reiterate our view that we cannot conditionally approve a merger by imposing, as a mitigatory measure, a rate base valuation below the standard set out in § 2720(a). However, neither that section nor any other portion of the Act expressly requires an applicant to request such a rate base valuation or prohibits an applicant from seeking a lower rate base valuation in its application or as a product of settlement with other parties.

its approval of a water utility merger, that the rate base value of the acquired distribution system be set below fair market value for ratesetting purposes.

3. The Commission has not had occasion to address this question before.

4. The legal issue before the Commission centers on the statutory interpretation of the first two sentences in § 2720(a).

5. Applicants have acknowledged they must obtain our authorization under § 851 et seq. before implementing their plan of merger.

Conclusions of Law

1. In setting this proceeding for hearing, we revise the determination in Resolution ALJ 176-3010 that no hearing is necessary.

2. On its face, the disputed portion of § 2720(a) is unambiguous. The language quite clearly states what standard the Commission "shall" use to value the rate base of the distribution system of an acquired public water system and for what purposes the Commission "shall" use it.

3. Nothing in § 2719, or any other part of the Act at issue, suggests the Legislature intended discretionary, rather than mandatory, application of the fair market rate base valuation standard. A contrary reading of the Act is strained.

4. Sec. 2720(a) does not undermine or otherwise conflict with the Commission's obligation to review a water utility merger within its jurisdiction and to authorize that merger only if the Commission concludes authorization is in the public interest.

5. Were the Commission to find that application of § 2720(a) would result in an unreasonable increase in rates, while the Commission cannot require a lower rate base valuation as a condition of its approval, the Commission's authority to deny the merger remains undiminished.

PROOF OF SERVICE BY MAIL

I, L. Escandor, declare:

I am over the age of 18 years, not a party to this proceeding, and am employed by the California Public Utilities Commission at 505 Van Ness Avenue, San Francisco, California.

On Sept 3, 1999, I deposited in the mail at San Francisco, California, a copy of:

D 99-09-030
(DECISION NUMBER OR TYPE OF HEARING)

Sept 2, 1999
(DATE OF HEARING)

A 99-02-004
(APPLICATION/CASE/OII/OIR NUMBER)

in a sealed envelope, with postage prepaid, addressed to the last know address of each of the addressees in the attached list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 9/3/99, at San Francisco, California.

Lpd *

*Signature
9/92

A 99-02-004

DECISION: 99-09-030

MAIL DATE: 9/3/99

Copy of **"INTERIM OPINION REGARDING APPLICABILITY OF PUBLIC UTILITIES CODE & 2718 ET SEQ. TO THE THE PROPOSED MERGER"** mailed to the following.

SEE ATTACHED LIST FOR APPEARANCES, STATE SERVICE

Count 20

9-2-99
SMJ

********** SERVICE LIST **********

Last updated on 27-JUL-1999 by: LIL
A9902004 LIST

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