WATER/FLC:jrb

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION RESOLUTION NO. W-4607
August 24, 2006

R E S O L U T I O N

(RES. W-4607), AFFIRMS THE REJECTION OF CALIFORNIA WATER SERVICE COMPANY'S (Cal Water) ADVICE LETTER NO. 1744, REQUEST TO AMEND ITS SERVICE AREA MAPS

SUMMARY

This Resolution affirms on review the rejection of Cal Water's Advice Letter (AL) No. 1744.

BACKGROUND

Ritter Ranch is a proposed residential development project of approximately 7,200 homes on 5,000 acres in the City of Palmdale. Palmdale Hills Property, LLC (Palmdale Hills), is the current developer. By AL No. 1744, filed September 13, 2005, Cal Water proposed to add this development to its Leona Valley Division by contiguous extension into an area not presently served by a public utility of like character. (As of 2004, Cal Water served approximately 409 customers in its Leona Valley Division.)

AL No. 1744 did not include the required Water Supply Questionnaire (WSQ). The WSQ allows Staff to determine if there is sufficient water supply and fire flow for any existing customers and the proposed development. Water Division suspended the advice letter twice (on October 7, 2005 and on January 1, 2006) to allow Cal Water more time to complete the WSQ. Because AL 1744 was incomplete, Water Division could have rejected it without prejudice, but because no protests had been filed, Water Division believed that ministerial resolution of the matter might prove possible.

On January 26, 2006, Los Angeles County Mayor Michael D. Antonovich sent a letter to the Commission opposing AL 1744 on a number of grounds. Among other things, the letter contends that Cal Water failed to notify Los Angeles County Waterworks District 40 (District) of its intention to expand into territory within District's boundaries. The Board of Supervisors of Los Angeles County is the governing body which oversees District.

On April 13, 2006 District filed a formal complaint (Case (C).06-04-005) alleging that AL 1744 should be rejected. Among other things, the complaint contends that Cal Water has not established that it has rights to sufficient water to serve Ritter Ranch and points to litigation pending in several courts, including consolidated actions to adjudicate the groundwater basin. On May 12, 2006, Administrative Law Judge (ALJ) Jean Vieth held a prehearing conference on the complaint and preliminarily determined that the dispute over which entity was ready, willing and able to serve Ritter Ranch needed to be adjudicated.

On May 31, 2006, Water Branch rejected AL No. 1744 on the grounds that the advice letter lacked adequate water supply information. In its rejection letter, Water Branch deemed the matter best resolved by Cal Water filing a formal application, which would allow the Commission to look into the facts and render a fully informed decision, thereby avoiding any future complications.

As authorized by General Order (GO) 96-B, Rule 5.1 "Review of Industry Division Disposition" (see Decision (D.) 05-01-032), Cal Water filed a Request for Commission Review on June 12, 2006, as did Palmdale Hills. This resolution disposes of both Requests.

In its Request, Cal Water characterizes the rejection of AL No. 1744 as "unlawful and erroneous". (Cal Water Request, p.1.) Cal Water essentially makes two arguments. Procedurally, Cal Water points out that no protest has been filed. Substantively, Cal Water argues that (1) no factual dispute really exists since at present there are no restrictions on pumping groundwater, which Cal Water has designated as the primary, proposed supply to Ritter Ranch in its amended WSQ, and (2) moreover, District has admitted that it also would use groundwater to serve Ritter Ranch, were it to serve the development. Therefore, according to Cal Water, the Commission has no need to question the completeness of the WSQ but should order Water Division to approve the advice letter on a ministerial basis

Palmdale Hills argues that rejection of the advice letter will "work serious harm on Palmdale Hills and [Cal Water] but, more importantly, upon the Commission itself." (Palmdale Hills Request, p. 1.) Palmdale Hills goes on to make a number of other arguments: (1) while, in fact, an adequate supply of water exists, any question of adequacy is beyond the Commission's jurisdiction as a matter of law, since water supply rights are being adjudicated by the courts (both the respective rights of Cal Water and District pursuant to a 1992 agreement executed by their predecessors and the consolidated complaints for adjudication of the groundwater basin filed in 2004); (2) Public Utilities Code § 1001 requires the Commission to approve all utility requests for service territory extensions into contiguous areas; (3) AL 1744 was properly served but no protests were filed; and (4) District's complaint should not be permitted to derail an advice letter that properly should be reviewed and approved on a ministerial basis.

NOTICE AND PROTESTS

AL No. 1744 was filed September 13, 2005. Notice was provided to the standard service list and District does not appear on the list. Cal Water claims that it corrected the oversight one week later by mailing a copy of AL 1744 to Supervisor Gloria Molina, the Chair of the Board of Supervisors of Los Angeles County. District contends that it has not been lawfully served.

DISCUSSION

Division level advice letter review occurs by delegation from the Commission. D.05-01-032 sets out the most current version of the rules governing advice letter review. While these rules, referred to as GO 96-B, include procedural modifications of GO 96-A intended to clarify and streamline the review process, the fundamental limits on Commission delegation to staff are not new. D.05-01-032 reiterates several points critical to our determination here:

- Advice letters never involve evidentiary hearings. (Findings of Fact 1.)
- Advice letters, being informal, are generally ill-suited to resolving material factual issues; further, the interpretation of a statute or Commission order may require consideration by the Commission itself. (Findings of Fact 7.)
- The reviewing Industry Division may approve or reject any advice letter for which the approval or rejection would be a "ministerial" act, as that term is used in D.02-02-049. (Conclusions of Law 1.)

The Water Division's ministerial rejection of AL 1744 describes a material factual issue critical to any determination of whether Cal Water has the water supply essential to serve Ritter Ranch:

> Normally, a contiguous service area extension does not require Commission approval (per Public Utilities Code Section 1001) and this tariff change would be ministerial. Unfortunately it is clear from the information provided by you, the Los Angeles County Waterworks District No. 40 and Palmdale Hills, LLC. at the prehearing conference for Complaint (C.) 06-04-005, May 12, 2006, that the issue of an adequate supply of water to serve the Ritter Ranch development has not been resolved.
>
> Initially you asserted that water would be supplied by the Antelope Valley East Kern water district. When that supply proved to be only a secondary source, the Water Supply Questionnaire was modified to identify groundwater as the source. In the prehearing conference it was revealed that the groundwater basin is overdrafted and will be adjudicated. Until the water supply issue is resolved, we cannot process your advice letter or provide Department of Real Estate with an approval letter. (Letter from Fred L. Curry, Chief Water Branch, Water Division to Thomas F. Smegal, Manager of Rates, Cal Water, May 31, 2006)

The Water Division has correctly declined to attempt to determine the respective water rights of Cal Water and District under the complex litigation pending in the courts (e.g. their rights pursuant to a 1992 agreement executed by their predecessors in interest and the more recent, 2004 adjudication of the groundwater basin). This factual uncertainty, alone, is grounds for determination that AL 1744 is ineligible for ministerial disposition.

However, Water Division also could have rejected AL 1744 on the basis that District's challenge to Cal Water's right to serve Ritter Ranch presents a service territory contest which requires a hearing. (See, for example, *Ventura County Waterworks Dist, No. 5 v PUC, 61 Cal. 2d 462, 466.)* Cal Water, itself, recently has requested that the Commission hold hearings on another public utility's request to expand its territory (Request for Commission Review of Disposition of Alco Water Service's Advice Letter No. 107, filed May 4, 2006). While the issues and parties in the Alco matter are not entirely parallel with those here, the notion that

service territory extension requests are ministerial as a matter of law borders on the frivolous.

We confirm the Water Division's ministerial rejection of AL 1744. If Cal Water desires to pursue this service territory extension, it may file an application for that authority.

COMMENTS

Public Utilities Code Section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, the draft resolution was mailed to parties for comments on June 20, 2006, with comments due on July 10, 2006.

FINDINGS

1. Cal Water filed AL No. 1744 on September 13, 2006 to replace an existing service area map with a new service are map showing a contiguous extension.

2. On April 13, 2006 District filed a formal complaint (C.06-04-005, Commissioner Brown) alleging that AL 1744 should be rejected because among other things, Cal Water has not established that it has rights to sufficient water to serve Ritter Ranch.

3. On May 12, 2006 ALJ Jean Vieth held a prehearing conference on the complaint and preliminarily determined that the dispute over which entity was ready, willing and able to serve Ritter Ranch needed to be adjudicated.

4. Water Division staff rejected the AL ministerially on May 31, 2006.

5. Cal Water sent a Request for Commission Review of an Industry Division Deposition on June 12, 2006.

6. Palmdale Hills sent a Request for Commission Review of an Industry Division Deposition on June 12, 2006.
7. The concerns expressed in the Cal Water and Palmdale Hills Requests do not constitute justification for modification of the Industry Division disposition of Cal Water's Advice Letter No. 1744.

THEREFORE IT IS ORDERED THAT:

1. Water Branch's rejection of Cal Water's Advice Letter No. 1744 is affirmed.

2. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on August 24, 2006; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director