Decision **PROPOSED DECISION OF ALJ EDMISTER** (Mailed 1/28/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Valencia Water Company(U342W) a Corporation, for an Order Authorizing it to Increase Rates Charged for Water Service in Order to Realize Increased Annual Revenues of $4,013,000 or 15.97% in a Test Year Beginning January 1, 2014, $858,000 or 2.93% in a Test Year Beginning January 1, 2015, and $1,270,000 or 4.23% in an Escalation Year Beginning January 1, 2016, and to Make Further Changes and Additions to Its Tariff for Water Service and for other Items as Requested in this Application.	Application 13-01-003 (Filed January 2, 2013)
And Related Matters.	Investigation 13-04-003 Application 13-01-004 Case 13-01-005

DECISION DISMISSING CONSOLIDATED PROCEEDINGS AND DECERTIFYING PUBLIC UTILITY

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DECISION DISMISSING CONSOLIDATED PROCEEDINGS AND DECERTIFYING PUBLIC UTILITY

Summary

Before the Commission in Application (A.) 03-01-003, et al., are four consolidated proceedings: a general rate case,[1] a cost of capital request,[2] a complaint challenging a transfer of ownership,[3] and our own investigation.[4] This decision dismisses all four proceedings for lack of jurisdiction.

We conclude that applicant and respondent Valencia Water Company (Valencia) is no longer a "private corporation,"[5] by virtue of its acquisition by intervenor and respondent Castaic Lake Water Agency (Agency). Government-owned utilities – i.e., Valencia and Agency – are outside the scope of this Commission's jurisdiction, save for in limited circumstances not applicable here. Government ownership of a utility deprives this Commission of jurisdiction over that utility, whether the ownership takes the form of a stock acquisition, as here, or the more common form of an asset acquisition.

Accordingly, we hereby: (1) dismiss Valencia's applications for changes in its rates and its cost of capital, (2) dismiss complainants Santa Clarita Organization for Planning and the Environment, et al.,'s (collectively, SCOPE's) complaint, (3) close our investigation into Valencia and Agency, and (4) cancel Valencia's certificate of public convenience and necessity. All pending motions in

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1 A.13-01-003.

2 A.13-01-004.

3 Complaint 13-01-005.

4 Investigation 13-04-003.

5 Cal. Const. Art. XII, § 3.

the consolidated proceedings other than Agency's motion to dismiss SCOPE's complaint are denied; this decision is, in part, a grant of Agency's motion to dismiss.

1. Factual Background

1.1. An Overview of Valencia Water Company and Castaic Lake Water Agency (Agency)

1.1.1. Valencia

Valencia has historically been a Class A water utility subject to the Commission's jurisdiction. Valencia Water Company was established in 1954 to provide retail water service to Newhall Land's Valencia developments. Valencia's service territory covers portions of northern Los Angeles County, including Valencia, Stevenson Ranch, Saugus, Newhall, and Castaic.

In December, 2012, Agency acquired Valencia through a condemnation of all of Valencia's stock.

1.1.2. Agency

Agency is a public water wholesaler, created by a special act of the California Legislature.[6] It obtains water from the State Water Project for sale on a wholesale basis to Valencia and other retail water purveyors in the Santa Clarita Valley.

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[6] "The Agency was created by the Legislature in the Castaic Lake Water Agency Law. (West's Ann. Wat.Code Appen., § 103-1 et seq., hereinafter, the Agency [Enabling] Act . . . . [T]he Agency is a special district whose purpose, according to section 15 of the Agency Enabling Act, is to "acquire water and water rights . . . and provide, sell, and deliver that water at wholesale only . . . ." .)" *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal. App. 4th 987, 991 (*Klajic I*) (citing Agency Enabling Act, § 103-15, p. 500, italics added). The Agency operates in the Santa Clarita Valley in Los Angeles County. *Klajic v. Castaic Lake Water Agency* (2004) 121 Cal. App. 4th 5, 7 (*Klajic II*).

Agency also sells water to retail customers formerly served by Santa Clarita Water Company, which Agency acquired in 2003 through a stock purchase. The history of that acquisition explains much about how Agency structured its acquisition of Valencia, and also about the controversy now before us.

Agency's acquisition of Santa Clarita Water Company is the subject of two appellate court decisions, *Klajic I* and *Klajic II*. As the Court of Appeal explains in the second of those decisions:

> Beginning in 1999, the Agency commenced efforts to sell water directly to consumers. It did so by relying on [Water Code] Section 12944.7, subdivision (b). That statute allows a wholesale water agency to sell water at retail "only pursuant to written contract with ... a water company ... subject to regulation by the Public Utilities Commission and serving water at retail within the area in which the consumer is located." ([Water Code] § 12944.7, subd. (b).) Accordingly, the Agency entered into a transaction with [Santa Clarita] Water Company. (*Klajic I*, *supra*, 90 Cal.App.4th at pp. 991-992.).[7]

The 1999 transaction between Agency and Santa Clarita Water Company "involved two inextricably connected parts. In the contract portion, the Water Company and Agency executed an agreement to permit the Agency to sell water directly to consumers . . . . In the condemnation proceeding, *the Agency concurrently took by eminent domain all of the outstanding stock of the Water Company in order to give the Agency complete control of the Water Company.*"[8] We emphasize

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[7] *Klajic II*, 121 Cal. App. 4th at 8.

[8] *Klajic I*, 90 Cal. App. 4th at 991-92 (emphasis added).

the last portion of the quote, because it describes the identical method that Agency used to acquire Valencia.

Before the transaction to acquire Santa Clarita Water Company closed, the *Klajic* plaintiffs, who were "property owners, residents, and taxpayers located in the area covered by the Agency,"[9] sued to halt the transaction. They argued, among other things, that Water Code § 12944.7(b) authorized Agency to sell at retail only pursuant to a contract with an independent water retailer which is subject to this Commission's regulation. According to the *Klajic* plaintiffs, there was no such contract between Agency and Santa Clarita Water Company. Santa Clarita Water Company was just Agency's alter ego, and so any contract between it and Agency was simply an invalid contract with itself.

The *Klajic I* court agreed with the plaintiffs that Agency's right to sell water at retail was "only pursuant to written contract with" a separate entity that is subject to the Commission's regulation.[10] The *Klajic I* court remanded the case to the trial court to determine whether, as the result of the challenged transaction, the Water Company continued to exist as an entity separate from the Agency, and continued to be subject to regulation by the Commission, so as to satisfy the requirements of Water Code § 12944.7(b).[11]

The story does not end there. As the *Klajic II* court explains:

> While Klajic I was pending, the Agency sought a legislative solution. The Agency sponsored Assembly Bill No. 134 (2001-2002 Reg. Sess.). . . . [S]ection 3 of Assembly Bill No. 134 . . . added Section 15.1 to the Agency Enabling Act. Section 15.1

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[9] *Id.*

[10] *Id.* at 997.

[11] *Id.* at 1000-1001.

> reads in pertinent part: "Notwithstanding subdivision (b) of Section 12944.7 of the Water Code [analyzed in Klajic I] and Section 15 of this act [authorizing the Agency to sell water at wholesale only], but subject to paragraph (2), the agency may exercise retail water authority only within the [specified] boundaries..." (Agency Enabling Act, 72A West's Ann. Wat.-Appen. (2004 Supp.) § 103-15.1, subd. (a)(1), p. 4, italics added.) The statute then defines the boundaries by reciting specific metes and bounds. [12]

The metes and bounds[13] described in Assembly Bill (AB) 134 encompassed Santa Clarita Water Company's service territory. Presented with AB 134's changes to Agency's Enabling Act, the Court of Appeal held in *Klajic II* that AB 134 gave Agency authority to sell water at retail, independent of Water Code Section 12944.7(b). Agency was thus free to go forward with its acquisition of Santa Clarita Water Company's stock, and so it did.

Of potential significance now, the geographic area described in AB *did not* encompass *Valencia's* service territory. Thus the stage was set for a potential replay of *Klajic I* if and when Agency acquired Valencia. And so it has come to pass.

1.2. The Acquisition

1.2.1. Agency's Courtship of Valencia

Prior to the acquisition, intervenor Newhall Land & Farming Company (Land & Farming) solely owned Valencia. Land & Farming ultimately entered a

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[12] *Klajic II*, 121 Cal. App. 4th at 9.

[13] The metes and bounds of a piece of real property are the "territorial limits . . . as measured by distances and angles from designated landmarks and in relation to adjoining properties." BLACK'S LAW DICTIONARY 1012 (8th ed. 2004).

deal with Agency, which resulted in Agency's consensual condemnation of Land & Farming's shares of Valencia.

1.2.2. The Deal Structure

On December 11, 2012, Agency presented Land & Farming with "an Offer to Purchase all issued shares of common stock of [Valencia]."[14] A copy of the contract of sale between Valencia and Agency, executed on December 17, 2012, is attached to SCOPE's complaint as Exhibit D. It is entitled "Eminent Domain Settlement Agreement among the Castiac Lake Water Agency, the Land and Farming Company, and Valencia Water Company" (Settlement Agreement). Though styled as a settlement of litigation, it is in substance a share purchase agreement.[15] In return for $73 million (subject to various adjustments not material here), and upon court issuance of a condemnation order, Land & Farming agreed to convey all of the shares of Valencia to Agency.

In Section 4.1.7 of the Settlement Agreement, entitled "Consents and Approvals," Agency asserted it needed no governmental approvals beyond those obtained to consummate the transaction. Valencia's and Land & Farming's covenants relating to governmental consents, at Sections 5.2 and 5.3 of the Settlement Agreement, respectively, include no such definitive statement. Rather, they commit Valencia and Land & Farming to take "reasonable efforts" to secure

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[14] Minutes of the Special Meeting of the Board of Directors of the Castaic Lake Water Agency – December 12, 2012, *available at* http://clwa.org/docs/wp-content/uploads/2013/03/Minutes121212.pdf. We take official notice of the minutes pursuant to Rule 13.9.

[15] *See* Article I of the Settlement Agreement, entitled "Share Purchase Agreement."

"all consents, waivers, and authorizations" needed to "consummate the transactions contemplated by this agreement."

None of the parties to the Settlement Agreement sought this Commission's approval of the acquisition.

1.2.3. Agency Approval of the Acquisition

On December 12, 2012, by a vote of 9 to 1, Agency's board of directors voted in favor of buying Valencia. It appears that Agency's board members were given only one day's notice of that meeting. The next day, December 13, 2012, Agency filed an eminent domain action in Superior Court. Less than a week later, on December 17, 2012, the Agency's board approved and executed the settlement agreement. The day after that, Agency filed the settlement agreement with the Court. This was also a mere five days after Agency filed its eminent domain documents, and was also the last Wednesday before the Christmas and New Year's holidays.

1.3. State Court Approval of the Settlement of the Eminent Domain Case

The Los Angeles Superior Court issued an order condemning Land & Farming's shares in Valencia on December 18, 2012. That was the same day that Agency filed the Settlement Agreement. When the Court issued its order, Agency had acquired Santa Clarita Valley's last privately held water retailer. According to press reports at the time, the acquisition gave Agency 84 percent of the valley's retail water connections.[16]

[16] http://www.signalscv.com/archives/84301/. (Although we take notice of the press accounts we accord them no evidentiary weight on their own.)

Valencia asserted in its January 2, 2013 applications that Agency was pursuing a Superior Court action in eminent domain with the intention of acquiring all the capital stock of Valencia. Valencia further stated that it expected this change of ownership and control is likely to be completed no later than early 2013.[17]

In fact, as just noted, the Superior Court in Los Angeles County had *already* entered a judgment approving the condemnation on December 18, 2012 – two weeks prior to Valencia filing its two applications. That the condemnation had already happened is something Valencia should have noted in its applications.[18]

1.4. Post-Acquisition State Court Litigation

Agency's acquisition of Valencia proved controversial. Santa Clarita Organization for Planning and the Environment, et al.,'s (SCOPE) filed an action in Superior Court for a writ overturning the condemnation order.[19] SCOPE's state court litigation is ongoing as of this date.

2. Procedural Background

2.1. SCOPE'S Complaint

SCOPE filed Complaint (C.) 13-01-005 against Agency and Valencia on January 4, 2013. SCOPE contends, among other things, that Agency's acquisition

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[17] Application 13-01-003 at 28.

[18] *See* Commission Rule of Practice and Procedure (Rule) 1.1 (never . . . mislead the Commission or its staff . . .). As we see no benefit accruing to Valencia from this misstatement, we will give Valencia the benefit of the doubt here, and presume that Valencia's use of future rather than past tense to describe the acquisition's status was an oversight rather than a deliberate attempt to mislead us.

[19] *Santa Clarita Organization for Planning the Environment v. Castaic Lake Water Agency et al.*, Los Angeles County Superior Court, Case No. BS141673.

of Valencia required this Commission's approval which, as discussed above, neither Agency nor Valencia ever sought, much less obtained.

On January 18, 2013, the Chief Administrative Law Judge instructed Agency and Valencia to answer SCOPE's complaint by February 17, 2013.

On January 31, 2013, the assigned Administrative Law Judge (Judge) issued a "Ruling Requiring Applicant's to File Pursuant to California Public Utility Code Section 851[20] for Authority to Transfer Control of a Public Utility; and that Valencia Water Company and Castaic Lake Water Agency must timely file and serve a full and complete answer to Case 13-01-005." On February 11, 2013, Valencia moved for reconsideration of the ruling; SCOPE opposed the motion, and the motion is still pending.

On February 19, 2013, Valencia and Agency filed their answers to the Complaint. On February 20, 2013 Valencia and Agency both moved to dismiss the Complaint. SCOPE opposed the motions to dismiss. The motions are still pending.

SCOPE in turn filed on March 14, 2013 a Motion That the California Public Utilities Commission Hold a Hearing as Described in Section 855 and Thereafter that the Public Utilities Commission File an Action in Los Angeles Superior Court Writs & Receivers Department to Obtain the Appointment of a State Court Receiver Under Section 855 Over Valencia Water Company." Valencia and Agency opposed this motion. The motion is still pending.

[20] All further statutory references will be to the California Public Utilities Code unless otherwise specified.

On June 17, 2013 SCOPE filed a notice of intent to seek intervenor compensation. On August 20, 2013 the assigned Judge issued a ruling which, subject to specific limitations and guidance, found SCOPE to be eligible.

On June 21, and June 26, 2013 SCOPE filed motions to compel the production of documents. On July 31, 2013 the assigned Judge issued a ruling disposing of the motion.

On July 1, 2013, SCOPE also filed a "Motion for Order that Valencia Water Company discontinue its Advice Letter Submittals and that the Water Division cease its approval of such Advice Letters (until the question of jurisdiction is decided, or, in the alternative, Valencia Water Company, submits to the jurisdiction of the Commission and files an Application to Transfer Ownership in compliance with the Rules and Regulations of the Commission.)" Valencia opposed this motion. On July 18, 2013, the assigned Judge issued by e-mail a ruling denying this motion.

Finally, Newhall County Water District (District) and Newhall Land & Farming Company (Land and Farming) were granted party status.

On September 30, 2013 Valencia filed an amendment to the motion for interim rate relief. ORA filed in opposition, and Valencia was allowed to reply. This motion is pending.

2.2. Valencia's Applications

Turning to Valencia's applications, in accordance with the Rate Case Plan for Class A Water Companies as adopted and modified by the Commission's Decision (D.) 04-06-018 and D.07-05-062, and with Rule 6(a), Article 4, and Article 6 of the Commission's Rules of Practice and Procedure (Rules), Valencia filed its general rate case Application (A.) 13-01-003 for Test Years beginning

January 1, 2014 and January 1, 2015, and for an Escalation Year beginning January 1, 2016. Valencia also filed A.13-01-004 to update its cost of capital.

For the Test Year beginning July 1, 2012 and Escalation Years beginning July 1, 2013 and July 1, 2014, Valencia requests increases in rates for general metered water service. Valencia is also requesting that the tariff rate for recycled water which the company requested by a separate application (A.11-06-005) be adjusted to equal 75 percent of the quantity rate the Commission adopts for general metered service in this proceeding. Finally, Valencia is requesting advice letter treatment for an in-conduit hydro generation project.

2.3. Our Investigation

In Investigation 13-04-003, we directed Valencia to file a Tier I Advice Letter to establish a Transfer of Control Memorandum Account. Valencia filed Advice Letter No. 148 on April 16, 2013. Valencia's rates are subject to refund for any components currently included in rates which would be unjust and unreasonable costs of service by a public utility subject to the jurisdiction of this Commission.

3. Discussion

The welter of pleadings and motions we have received in this case raise a series of questions regarding this agency's jurisdiction. At issue are: (1) our jurisdiction to review a governmental entity's acquisition of a jurisdictional utility, (2) our continued jurisdiction over an erstwhile jurisdictional utility following its acquisition by a governmental entity, and (3) our jurisdiction over the new, governmental, owner of an erstwhile jurisdictional utility.

Accordingly, in a ruling dated July 1, 2013, the assigned Judge asked for briefing on a series of jurisdictional questions.[21] The parties' responses to those questions shape our discussion below.

3.1. Commission Jurisdiction Generally

The Public Utilities Commission is "not an ordinary administrative agency," but a body with broad legislative and judicial powers to regulate and supervise the operations of the State's utilities.[22] Those powers are rooted in the State Constitution: Article XII specifically authorizes the Commission to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures for "private corporations and persons."[23] The state legislature, pursuant to its plenary authority to do so, has further expanded the scope of the Commission's authority and jurisdiction.[24] The legislature has vested the Commission with, among other things, authority to "supervise and regulate every public utility in the State."[25]

The legislature also enacted Section 1759, which provides:

> No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or

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[21] Agency, Valencia, SCOPE, District, and the Division (now "Office") of Ratepayer Advocates (ORA) all filed opening briefs in response to this ruling. These same entities, plus Land & Farming filed reply briefs. SCOPE filed a reply and sur-reply brief.

[22] *Wise v. Pacific Gas & Electric* (1999) 77 Cal. App. 4th 287, 300.

[23] *See* Cal. Const., Art. XII, §§ 2, 4, 6.

[24] *See* Cal. Const., art. XII, § 5 (authorizing the legislature "to confer additional authority and jurisdiction upon the commission" and "to establish the manner and scope of review of commission action in a court of record").

[25] Section 701.

> decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

The legislature thus conferred exclusive jurisdiction on the Commission over matters within its regulatory sphere. This exclusivity is applied broadly: Section 1759 has been interpreted to bar actions not only when an award would directly contravene a specific order or decision of the Commission, "but also when an award of damages would simply have the effect of undermining a general supervisory or regulatory policy of the commission."[26]

It is a longstanding rule that this Commission has the power to determine for the purpose of the exercise of its jurisdiction all questions of fact essential to the proper exercise of that jurisdiction. Its jurisdiction cannot be affected by the circumstance that these facts are denied.[27] We are vested with power to determine facts upon the existence of which we are authorized to exercise jurisdiction.[28]

The Commission's jurisdiction is, however, limited to "private corporations and persons,"[29] except in limited circumstances that the legislature may establish.[30] In general, the Commission has "no tenable ground upon which to base the conclusion that the rates charged by a municipality for its service in

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[26] *San Diego Gas & Electric Co. v. Sup. Ct.* (1996) 13 Cal. 4th 893, 918.

[27] *Limoneira Co. et al. v. Railroad Commission* (1917) 174 Cal. 232, 242-43.

[28] *Producers Transp. Co. v. Railroad Commission* (1917) 176 Cal. 499, 506.

[29] *See* Cal. Const. art. XII, § 3.

[30] *Id. See, e.g.,* Section 29047 (subjecting the San Francisco Bay Area Rapid Transit District to Commission safety regulation).

carrying on any public utility, either within its own limits or in outside territory, are under the control of the . . . commission."[31] Put more starkly, the Commission is not "empowered to regulate and supervise municipally owned public utilities."[32] "In the absence of legislation otherwise providing, the Commission's jurisdiction to regulate public utilities extends only to the regulation of privately owned utilities."[33] The Supreme Court reiterated this principle in *Orange County Air Pollution Control Dist. v. Public Util. Com.*: "The commission has no jurisdiction over municipally owned utilities unless expressly provided by statute."[34]

Against the backdrop of these general rules, we turn now to the particular issues before us.

3.2. Commission Review of the Condemnation

3.2.1. What jurisdiction, if any, does the Commission have to determine the legality of Agency's condemnation of Valencia's stock?

We conclude that the Commission has no authority to review the condemnation, or to require filings from Agency or Valencia under Section 851 et seq. in connection with the condemnation. Both conclusions rest on *California Public Utilities Comm'n v. City of Fresno*.[35]

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[31] *City of Pasadena v. Railroad Commission* (1920) 183 Cal. 526, 535 (*City of Pasadena)*, *overruled in part by County of Inyo v. Pub. Util. Com.* (1980) 26 Cal. 3d 154, 164 (*County of Inyo)*.

[32] *Los Angeles Gas & Elec. Corp. v. Dep. Of Public Service* (1927) 52 Cal. App. 27, 29.

[33] *Los Angeles Met. Transit Authority v. Public Utilities Com*. (1959) 52 Cal. 2d 655, 661.

[34] *Orange County Air Pollution Control Dist. v. Public Util. Com.* (1971) 4 Cal. 3d 945, 953 at n. 7.

[35] *California Public Utilities Comm'n v. City of Fresno* (1967) 254 Cal. App. 2d 76 (*Fresno*).

Footnote continued on next page

Section 851 concerns Commission review of, among other things, a jurisdictional utility's disposition of assets. It provides in pertinent part as follows:

> A public utility, other than a common carrier by railroad subject to Part A of the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its . . . plant, system, or other property necessary or useful in the performance of its duties to the public . . . or by any means whatsoever, directly or indirectly, merge or consolidate its . . . plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having either secured an order from the commission authorizing it to do so.

Section 854 concerns Commission review of a change in ownership of a jurisdictional utility. It provides in pertinent part as follows:

> No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. . . . No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this Section.

Fresno is the leading case on Commission review of condemnations. In *Fresno,* the Commission sued to set aside the City of Fresno's condemnation of assets of the Bowen Land Company, Inc., a water corporation and so a public utility subject to this Commission's jurisdiction. In July 1965, the company agreed to sell its entire water system and related facilities to the City of Fresno. The City

of Fresno and the Bowen Land Company filed with the Commission pursuant to Section 851, seeking Commission approval of the sale.

In September 1965, the Commission stated that the proposed agreement of sale between the jurisdictional water company and the City of Fresno did not protect the water company's consumers. Nonetheless, we approved the sale (to take effect one year thereafter) subject to certain conditions.

Instead of accepting the conditions imposed by the Commission, the City of Fresno filed suit in superior court to condemn the Bowen Land Company's system. The trial court entered judgment on the pleadings in favor of the City of Fresno.

The Commission appealed, seeking to have this judgment set aside. We argued on appeal that the superior court could not enter a final unconditional judgment transferring title to assets of a jurisdictional utility until and unless we granted approval under Section 851.

The Court of Appeal disagreed with us. It framed the issue before it as follows: does Section 851 regulate a municipality's otherwise unrestricted power to condemn public utility property under Civ. Proc. § 1241? The court concluded that Civ. Proc. § 1241 trumped Section 851 for three basic reasons:

> (1) [Section 851] contains no express language which purports to control or affect a public entity which is exercising its own separate, distinct, and independent power to acquire property for a public use through the exercise of the power of eminent domain..[36]
>
> (2) [Section 851] deals with the disposition of public utility property in general . . . . On the other hand, Code of Civil

[36] *Id.* at 82.

> Procedure Section 1241 is specific; it unequivocally empowers a city to condemn public utility property even though it has already been appropriated to a public use . . . It is the rule that a specific provision of a statute controls a general provision.[37]
>
> (3) [When] all of the legislative enactments on the subject were carefully considered and reconciled, the conclusion is inescapable that the Legislature did not and could not have intended to include a public entity's power of eminent domain within the mandatory requirement of [Section 851]."[38]

The court also noted that "under . . . Sections 1401-1421, the Commission is authorized to determine the just compensation payable by a public entity for public utility owned property which it seeks to acquire through eminent domain if it is invited to do so by the condemnor." The court of appeal found that these Sections of the Code demonstrate that the Legislature intended to involve the Commission in a condemnation proceeding only at the condemnor's request, and then only on the limited question of "just compensation." [39]

Sections 851 and 854 have a common purpose, and relate to the same subject matter: regulation of the transfer of utility property. Section 851 addresses disposition of utility assets, while Section 854 addresses changes in utility ownership or control. The reasoning of the *Fresno* court regarding Section 851 applies with equal force to Section 854. Section 854, like Section 851, says nothing about condemnation actions. Section 854 is, like Section 851, a statute that concerns a general set of transactions, and not condemnation

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[37] *Id.* at 84 (internal citation omitted).

[38] *Id.* (internal citation omitted).

[39] *Id.* at 85 (internal citation omitted).

specifically, and the "legislative enactments" that the *Fresno* court references in its decision are the same for both Sections 851 and 854.[40]

Accordingly, we conclude that we lack jurisdiction to require Valencia or Agency to file with us under Section 851 et seq. for review of Agency's acquisition of Valencia.

This conclusion holds true even if Agency's condemnation is outside of its legal authority (i.e., *ultra vires*), and even though some or all of Valencia's service territory is outside the metes and bounds set out in AB 134. The *Fresno* court held that "the jurisdiction of the superior court, though limited to an action in eminent domain, is also *exclusive*."[41] Therefore we are bound by the superior court's judgment in Los Angeles Superior Court Case BC 497322 (December 18, 2012 Final Order of Condemnation) as to the legality of the condemnation.

3.3. Commission Jurisdiction Post-Condemnation

3.3.1. Agency's Authority to Engage in Retail Sales in Valencia's Service Territory

One of the odder aspects of this proceeding is that Valencia is asserting that we have continuing jurisdiction over it. It is unusual for an entity to actively assert that we have jurisdiction over it. More typical by far is for an entity to dispute our assertion of jurisdiction.[42] We do not purport to know Valencia's

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[40] *See County of Inyo v. Los Angeles Dept. of Water & Power,* D.89576, 84 CPUC 515, 526, 1978 Cal. PUC. Lexis 1379 *30.

[41] *Id.* at 88 (emphasis added).

[42] Typically, putative utilities contest our exercise of jurisdiction. *See, e.g. Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal. 2d 406; *Richfield Oil Corp. v. Pub. Util. Comm*. (1960) 54 Cal. 2d 419, cert. den. sub nom. *Southern Counties Gas Co. of California v. Pub. Util. Comm.*, 364 U.S. 900; *People v. Western Air Lines, Inc.* (1954) 42 Cal. 2d 621. That said, assertions of jurisdiction are not altogether unheard of. *See*, *e.g.*, *Covalt*, *supra*.

motives. But an understanding of the *Klajic* cases, and in particular the changes to the Agency Enabling Act that *Klajic I* spawned, may help provide some context for the current issue.

The legislation amending the Agency Enabling Act, which was promulgated during the pendency of the *Klajic* cases, authorized Agency to make retail sales within a specified geographic area. But, as discussed earlier, Valencia's service territory is today outside the retail service area of Agency set out in AB 134.

The practical implication of this is that Agency may not be able to rely on its authority under the Agency Enabling Act to engage in retail sales, at least to Valencia customers outside the geographic area described in AB134. Thus, to serve those customers, Agency would appear to need to exercise its independent authority under Water Code § 12944.7.

The *Klajic I* court stated in dicta that, notwithstanding Water Code § 12944.7's limitation on Agency's acquisition of retail water sellers, Agency could acquire a retail water seller if the retail water seller became: "a wholly-owned subsidiary of, or wholly separate from, the Agency." The appellate court went on to say: "but whatever form [the acquired retail seller] takes, it must be distinct from the Agency and remain subject to PUC regulation to comply with the statute."

This may be why Valencia is arguing that it is subject to our jurisdiction. It appears that, to sell water pursuant to Cal. Water Code § 12944.7, Agency may need Valencia to remain subject to this Commission's jurisdiction.

3.3.2. How Can a Governmental Entity Own a Private, For-Profit Company Like Valencia?

We asked of the parties how Agency can buy and hold stock in a nominally private for-profit entity.[43] DRA cited us to, and *Klajic I* Agency relied on, Art. XVI, § 17 of the California Constitution. That Section provides in pertinent part as follows:

> The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.[44]

Having been presented with the authority purportedly underlying Agency's acquisition, we searched for prior Commission decisions in circumstances in which a governmental entity acquired a Commission-jurisdictional entity. Remarkably, the Commission seems never to have encountered this fact pattern before.[45] Deeper exploration of Art. XVI, § 17's history offers some explanation of why not.

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[43] The question we posed was: "What authority authorizes Agency, a public entity, to (1) become and (2) remain the 'parent' of a wholly-owned private subsidiary?"

[44] Cal. Const. Art. XVI, § 17.

[45] In addition to a complete absence of Commission decisions dealing with Cal. Const. Art. XVI, § 17, we located only one court decisions citing to the water provisions of Cal. Const. Art. XVI, § 17 – *Klajic I.* The *Klajic I* court merely noted Agency's assertion of

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The language of Art. XVI, § 17 first appeared in nascent form in the 1849 constitution, Art. XI § 10, where it read: "The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association, or corporation, nor shall the State directly or indirectly become a stockholder in any association or corporation." It has since been amended numerous times.

The Constitution of 1879 contained an essentially identical provision at Art. XII, (then Corporations, now Public Utilities) § 13: "The State shall not in any manner loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation." In the early 1930s and '40s, some exceptions to the 1879 provision were added to Art. IV (Legislative), allowing specific political subdivisions to hold stock of mutual water companies. For example, Art. IV § 31(b), added Nov. 8, 1932, read: "Nothing contained in this Constitution shall preclude the City of Escondido, California, from acquiring or holding shares of the capital stock of any mutual water company or corporation when such stock is so acquired or held for the purpose of furnishing a supply of water for public or municipal purposes…." Similar specific provisions were added in 1934 and 1942, allowing acquisition of mutual water company or corporation shares or stock first by "school districts and cities of the fifth and sixth class," and then by "the State."

The present language in Art. XVI, § 17 took shape in 1956. The legislature placed a measure on the 1956 ballot as Constitutional Amendment No. 29. The amendment repealed the provisions of Article IV just mentioned, and extended the water company provision to the State and each of its political subdivisions.

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authority under Cal. Const. Art. XVI, § 17, without discussion. The *Klajic* court did not rule that section 17 *did* apply.

The measure passed, and so as of 1956, Art. XII § 13 read: "The State shall not in any manner loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation, *except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when such stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal, or governmental purposes.*" Subsequent amendments to the Constitution renumbered the provision, first to Art. XIII, § 42, and now to its current place at Art. XVI , § 17.[46]

As we have already remarked, we can find no record of our ever having encountered Cal. Const. Art. XVI, § 17 or its predecessors, much less of having exercised jurisdiction post-acquisition over a water corporation that has been acquired pursuant to them.[47] The parties have brought no such instances to our attention. It is notable as well that the only reported case discussing the provision in the context of the acquisition of a mutual water company or corporation is *Klajic I*. This proceeding would appear to present the first instance ever of a governmental entity that acquired shares in a water company seeking to have us exercise jurisdiction over the acquired entity.

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[46] Amendments also added and revised the portions of the section relating to public pensions, which are not material here.

[47] We note that we did exercise jurisdiction over Independence Water Co. at a time when the Los Angeles Department of Water & Power (LADWP) owned 36.68% of outstanding shares. *See Application of Independence Water Co.*, D.78385, 72 CPUC 10, 1971 Cal. PUC Lexis 347. Share acquisition, in 1934, predated Art. XVI § 17 and its predecessors. We are unaware of the legal basis for LADWP's ongoing ownership of shares, or its subsequent acquisition of the company's remaining shares.

The language of Art. XVI, § 17 is ambiguous. It raises the question of whether "mutual" modifies "water company" only, or modifies both "water company" and "corporation." That is, the text could be read equally well as "the State may hold shares in any mutual water company or in any mutual water corporation" or as "the State may hold shares in any mutual water company, or in any corporation."

Section 1858 of the California Code of Civil Procedure provides guidance on how to resolve this ambiguity:

> In the construction of a statute . . . the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

In addition, Section 1859 of the Code of Civil Procedure states that "[i]n the construction of a statute the intention of the Legislature . . . is to be pursued, if possible." These rules of statutory construction "appl[y] with equal force to initiative measures adopted by the electorate."[48]

Courts often examine ballot pamphlets to help discern an initiative's purposes. For instance, the California Supreme Court used the ballot pamphlet for Proposition 13 to interpret that initiative. The Court stated: "[W]hen, as here, the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may

[48] People v. Callegri, 154 Cal. App. 3d 856, 866 (1984) (citing Sand v. Superior Court, 34 Cal. 3d 567, 571 (1983); Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, 22 Cal. 3d 208, 245 (1978)).

be helpful in determining the probable meaning of uncertain language."[49] Reference to ballot pamphlets is a long-standing practice in California for the purposes of interpreting initiatives,[50] as the ballot pamphlet is analogous to the legislative history of a particular measure.

The ballot arguments for adoption of what is now Art. XVI, § 17 strongly suggest that Art. XVI, § 17, as envisioned in 1956, authorized only acquisition of shares and/or stock in mutual water companies. As the ballot argument in favor of adoption states: "it . . . provide[s] a means by which public and private water users can work together harmoniously *through existing non-profit mutual water companies.*"[51] There is no ambiguity here; the proponent's argument refers only to mutual water companies, and clarifies further that they should be not-for-profit.

We do not, as a general rule, regulate mutual water companies.[52] Insofar as Art. XVI, § 17 was only meant to – or was only perceived as meaning

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[49] Amador Valley, 22 Cal. 3d at 245-46.

[50] See People v. Ottey, 5 Cal. 2d 714, 723 (1936) ("argument sent to the voters . . . may be resorted to as an aid in determining the intention of the framers and the electorate when . . . necessary.").

[51] 1956 Ballot, at 20 (Argument in Favor of Senate Constitutional Amendment No. 29) (emphasis added). We take official notice of the contents of the ballot proposition pursuant to Rule 13.9.

[52] A mutual water company is one that is "organized for the purposes of delivering water to its stockholders and members at cost . . . ." Section § 2705; *see*, *e.g.*, *Thayer v. California Development Co.* (1912) 164 Cal. 117 (a private water company may be organized to sell water for purposes of private gain and not in so doing become a public utility); *Stratton v. Railroad Commission* (1921) 186 Cal. 119 (mutual water company not a public utility, and so superior court, not the railroad commission, had jurisdiction over a dispute concerning allocation of water among stockholders in the mutual water company); *Mound Water Co. et al. v. Southern Cal. Edison Co.* (1921) 184 Cal. 602 (same). What is nominally a mutual water company may be, or may become, a public utility subject to the Commission's jurisdiction if it dedicates its assets to public use.

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to – authorize acquisition of shares in non-profit mutual water companies, most or all invocations of authority under Art. XVI, § 17 and its predecessors would not draw our notice. That may be why we have not previously seen the fact pattern now before us. Valencia, we note, was a for-profit water corporation, prior to its acquisition, and not a mutual water company.

The language of Art. XVI, § 17 and the ballot language that led to its adoption as part of the California Constitution suggest that Agency's reliance on Art. XVI, § 17 as authority permitting it to own Valencia as a for-profit entity would be misplaced. While that is ultimately for the courts rather than for us to determine,[53] even an unfounded public perception that Art. XVI, § 17 is limited to acquisition of mutual water company shares would explain why we have not encountered it previously. And so we face a question of first impression: does a governmental entity purchasing all a corporation's shares remove the purchased corporation from our jurisdiction?

3.3.3. The Commission's Jurisdiction Extends only to Private, For-Profit Utilities; The Commission Lacks Jurisdiction over Municipal Utilities

As discussed above, Cal. Const. Art. XII, § 3 extends the jurisdiction of this Commission only to "private corporations." The Public Utilities Act does not specifically define "private corporations," but does define "corporation" as

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See Samuel Edwards Assocs. v. Railroad Comm., 196 Cal. 62 (1925); *see also Richfield Oil Corp.*, 54 Cal. 2d at 425 (discussing public dedication generally). So far as we are aware, Valencia has always been a for-profit public utility rather than a mutual water company or corporation.

[53] *See* discussion, above, re our lack of jurisdiction to review condemnations.

including "a corporation, a company, an association, and a joint stock association." Absent from this list is any political subdivision of the State. [54]

The legislature may extend the Commission's jurisdiction to cover municipalities, under Cal. Const. Art. XII, § 5. As the Supreme Court noted in *County of Inyo*, the legislature had not extended this Commission's jurisdiction to cover municipal utilities serving customers outside of municipal boundaries. The legislature has still not done so.

Upon Agency's acquisition of Valencia, Valencia became a state-owned rather than "private" corporation. Just as whether Agency condemned Valencia's stock or assets is of no moment to whether we have jurisdiction to review the condemnation, whether Agency owns Valencia's stock or its assets is of no moment to whether we have ongoing jurisdiction to regulate Valencia. The effect is the same – Valencia is now a state-owned rather than privately-owned corporation. It is therefore outside our jurisdiction, pursuant to *City of Pasadena et al.* and *County of Inyo,* just as Valencia would be outside our jurisdiction going forward had Agency acquired all of Valencia's assets rather than its stock.

We recognize that the effect of our decision is to leave Valencia's customers without recourse to the Commission. The *Fresno* and *County of Inyo* decisions unequivocally establish that our desire to protect consumers does not confer standing to challenge a condemnation, and that unless the legislature "confer[s] jurisdiction upon the PUC to correct this situation"[55] we are unable to regulate Valencia going forward. Our desire to protect consumers does not of itself create

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[54] Pub. Util. Code § 204.

[55] *County of Inyo*, 26 Cal. 3d at 167.

jurisdiction. Thus, for instance, the residents of Inyo County were left subject "to the fixing of water rates by the [LADWP] over whom they have neither control nor check."[56] Their fate did not lead the Supreme Court to find that we had jurisdiction over LADWP rates.

We recognize as well that dicta in *Klajic I* may be read to imply that this Commission can retain jurisdiction even where Agency buys up a retail water company's stock. We do not subscribe to such a reading. *Klajic I* remanded to the trial court the question of our jurisdiction over the acquired entity; the *Klajic* trial court and the *Klajic II* court never reached that question because of AB 134's passage. Thus the courts have never directly addressed the issue of our jurisdiction in a situation such as the one before us.

4. Conclusion

We conclude, as discussed herein, that we lack jurisdiction to review Agency's condemnation of Valencia, and that we lack ongoing regulatory jurisdiction over Valencia. Consistent with those conclusions, we dismiss the consolidated proceedings. We also cancel the certificate of public convenience and necessity for Valencia.[57]

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[56] *Id.*

[57] We note that there is at least some possibility that SCOPE may prevail in its Superior Court action against Valencia and Agency. If the acquisition is reversed, it may be that Valencia once again becomes a public utility subject to our jurisdiction. Should that be the case, we would expect Valencia to file on an expedited basis for a certificate of public convenience and necessity. We would also expect Valencia to refile its currently-effective tariffs so that we could put tariffs back in place quickly.

5. Categorization and Need for Hearing

We affirm the preliminary determination of adjudicatory for the consolidated proceedings.

Our preliminary determination was that hearings were required in all of the consolidated proceedings. In light of our dismissal of those proceedings, we conclude that no hearings are necessary.

6. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. The following parties filed comments: Agency, District, Land & Farming, ORA, SCOPE, Valencia. Each Party also filed reply comments.

District, ORA, SCOPE, and Valencia all ask us correct the Proposed Decision's (PD's) description of the area within which AB 134 authorized Valencia to provide retail service, and related discussion. We have corrected those portions of the decision. Since the corrections relate only to the background for our decision, they do not impact any of our conclusions of law or fact, or our ordering paragraphs.

Agency asks the Commission to "consider simply deleting the portions of the PD that are not relevant to the core questions resolved in the PD: (1) whether the Commission is vested with jurisdiction over Agency's acquisition of the shares of Valencia through eminent domain (Part 3.2.1 at pp.15-19; and (2) whether, following that acquisition, the Commission retains any jurisdiction over Valencia (Part 3.3.3 at pp. 26-28.)." Upon consideration of Agency's request, we opt to leave the PD's discussion of the transaction and related legal issues intact. As discussed in the PD, there are numerous unique aspects to these

proceedings that warrant examination, even if they ultimately do not determine the proceedings' outcome. It is appropriate for us to set out the context for the jurisdictional dispute that we here resolve, as well as for us to discuss the potential practical ramifications of our decision.

Land & Farming continues to argue for ongoing Commission jurisdiction over Valencia. We do not find its arguments persuasive.

Land & Farming cites to Rule 7.1 and to the Commission's preliminary determination that hearings were required in these consolidated proceedings to argue that failing to hold hearings constitutes legal error. This argument lacks merit. A determination under Rule 7.1 that hearings are needed is merely preliminary.[58] We may, as we do here, subsequently determine that no hearings are needed. Land & Farming offers no explanation for why hearings are needed to supplement the record here, where the only material fact – *i.e.,* that the government now wholly owns Valencia – is indisputable.

Land & Farming incorrectly contends that the PD "ignores" Valencia's status as a corporation in good standing. In fact, the decision holds that *even if* Valencia is a corporation in good standing (as Land & Farming contends), it is no longer a *privately owned* corporation. As discussed at length above, the state Constitution limits our remit to private corporations unless the legislature directs otherwise, and the legislature has not done so here.

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[58] *See*, *e.g.*, Rule 7.1(b) (emphasis added): "Complaints - For each proceeding initiated by complaint, the Chief Administrative Law Judge, in consultation with the President of the Commission, shall determine the category of the proceeding and shall preliminarily determine the need for hearing."

Finally, Land & Farming devotes several pages of its brief to arguing that Valencia is not Agency's alter ego. Land & Farming's argument is not relevant to our decision. We make no finding on alter ego here, and need not do so to reach our conclusions.

7. Assignment of Proceeding

Catherine J. K. Sandoval is the assigned commissioner and Todd O. Edmister and Douglas M. Long are the co-assigned ALJ's and co-Presiding Officers in this proceeding.

Findings of Fact

1. Agency is a governmental entity.
2. Agency condemned all Valencia's stock through an eminent domain proceeding.
3. Valencia is now a wholly-owned subsidiary of Agency.
4. All pending motions not previously ruled on are moot.

Conclusions of Law

1. The Commission's jurisdiction is limited to "private corporations" except where the legislature has extended jurisdiction to a governmental entity.
2. The Commission lacks jurisdiction to subject condemnations by governmental entities to review under Cal. Pub. Util. Code §§ 851 or 854.
3. Because of Agency's acquisition of Valencia, Valencia is no longer a private corporation.
4. No legislation extends our jurisdiction to Valencia, now that Valencia is a wholly-owned subsidiary of Agency.
5. If a Commission-regulated water utility becomes governmentally-owned, its certificate of public convenience and necessity should be cancelled.

6. Castaic's motion to dismiss is partially granted. All pending motions not previously ruled on are denied.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity of Valencia Water Company is cancelled.
2. If Valencia Water Company becomes a public utility again in the future, we will entertain an application for a certificate of public convenience and necessity and a filing of tariffs.
3. Castaic Lake Water Agency's motion to dismiss is granted in part. All other outstanding motions are denied.
4. Application (A.) 13-01-003; Investigation 13-04-003; A. 13-01-004; and Case 13-01-005 are dismissed.
5. The consolidated proceedings are closed.

This order is effective today.

Dated _____, at San Francisco, California.