

ORIGINAL

Decision No. 61886

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of AMERICAN UTILITIES, INC., a California corporation, for a certificate of public convenience and necessity to operate a Public Utility Water System, and to establish meter rates for water service, in a portion of the unincorporated area of the County of Santa Cruz, portions of Sections 16 and 21, T9S, R2W, MDB&M, and authority to issue stock, pursuant to the provisions of the Public Utilities Code of the State of California.

Application No. 42985

Wesly S. Burrows and Robert Kuerzel, for applicant.
Orrick, Dahlquist, Herrington & Sutcliffe, by
Robert Keller, for Citizens Utilities Company
of California, protestant.
William B. Stradley and Sidney J. Webb, for the
Commission staff.

O P I N I O N

Applicant's Request

American Utilities, Inc., a California corporation, filed this application on December 21, 1960, and an amendment thereto on February 1, 1961, requesting the Commission to: (1) grant to it a certificate of public convenience and necessity to operate a public utility water system; (2) establish rates for the water service to be rendered; and (3) authorize it to issue capital stock and enter into a long-term conditional sale contract for filtration and pumping equipment.

Public hearing in this matter was held at San Francisco before Commissioner Frederick B. Holoboff and Examiner James F. Haley on March 1, 1961; evidence was adduced and the matter was submitted.

Proposed Operations

The area for which a certificate is requested is located in an unincorporated portion of Santa Cruz County about 2½ miles northeast of the City of Boulder Creek. The area is being developed by Bear Creek Estates, Inc., a subdivider closely affiliated with applicant. Applicant indicates that it plans to construct the water plant to serve the area in two phases.

Phase one construction includes a distribution system to provide service to a subdivision of 41 residences, some of which are completed and in the process of being sold to individual buyers. This phase also includes stream diversion and intake arrangements, filtration plant, a 5,000-gallon filtered water storage tank, a hydropneumatic tank, pumps and auxiliary equipment. The distribution system has been constructed and work is well underway on the balance of phase one construction.

Phase two construction, which applicant plans to accomplish during 1961 and 1962, would consist of an elevated storage tank of 100,000-gallon capacity and a distribution system to serve an additional subdivision being developed by Bear Creek Estates, Inc. Upon completion of phase two applicant would be serving 275 connections.

Applicant states that, if it is not granted the requested certificate of public convenience and necessity to operate the water system as a public utility, it will reorganize and operate as a mutual water system.

Source of Water Supply

Applicant comes before the Commission with an already partly constructed water system. The system, except as to one vital aspect, appears to be well engineered and capable of meeting the requirements of the proposed service area. That vital aspect is the matter of water supply.

As its source of water supply, applicant intends to divert water from Bear Creek, a stream which flows through the proposed service area and which is a small tributary of the San Lorenzo River. On August 12, 1960, applicant filed a now pending application with the State Water Rights Board for the necessary authority to appropriate 100 gallons per minute from Bear Creek. The application for appropriation has encountered opposition from the Water Department of the City of Santa Cruz and from the Department of Fish and Game of the State of California. Applicant states that it has advised the Water Rights Board that, to meet its needs during the interim period before its application to that board is heard and decided, it intends to proceed to appropriate the required water from Bear Creek.

Of more significance herein than the ultimate fate of the application to appropriate water is the serious question as to the very suitability of Bear Creek as a reliable and sufficient year-round, year-in and year-out source of water supply. The record contains no convincing answer to this question. We are not satisfied, on the basis of applicant's showing, that the flow in Bear Creek would be adequate to meet at all times the water requirements of the proposed service area.

Other Available Public Utility Water Service

Applicant represents that its proposed service area is not at this time served by any other public utility water company and that there is no utility which can reasonably extend its service into the proposed area. Citizens Utilities Company of California (Citizens), however, protests the granting of the application on the grounds that the area proposed to be served by applicant lies within the service area of Citizens; that the natural expansion of Citizens' water system encompasses applicant's proposed service area; and that, in addition to providing service in the contested area, Citizens

proposes to serve prospective development in the area between the present termination of its mains and the contested area.

The facts of the matter are that Citizens, on December 6, 1960, filed with the Commission a revised tariff service area map for its Boulder Creek district; that this district, as expanded by the revised tariff map, includes substantial portions of applicant's proposed service area; that Citizens now has no plant in the contested area; and that its mains would have to be extended approximately 11,000 feet to provide service to the Bear Creek Estates, Inc., development.

The evidence indicates that, before subdivision of the contested area was underway, Bear Creek Estates approached Citizens with respect to providing its development with water service and that Citizens, at the request of Bear Creek Estates, furnished the State Division of Real Estate water supply information to the effect that it was willing and able to provide the development with adequate water service. In this connection, Citizens filed with this Commission the above-mentioned revised tariff service area map to include the area in question. It appears that Bear Creek Estates, at some time, made the determination that it would be more desirable from its standpoint to develop a water system with its own source of supply rather than obtain service from Citizens under the uniform main extension rule. As a result, American Utilities, Inc., was formed by the principals of Bear Creek Estates, Inc., and the instant application ensued.

With respect to whether Citizens could reasonably extend its service into the contested area, the record shows that the over-all investment in water plant required for applicant to serve the proposed area, using Bear Creek as the source of water, would be approximately \$180,000 and that the over-all investment required for

Citizens to provide service by extending its mains would be on the order of \$210,000. The \$30,000, or approximately 15 per cent, by which applicant's plant is lower in over-all investment lies in the difference between the \$25,000 required to develop Bear Creek as a source and the \$55,000 needed to extend Citizens mains 11,000 feet. Upon considering this cost differential in the light of the demonstrated reliability of Citizens' supply of water, the Commission concludes that Citizens is in a position to reasonably extend its system into the contested area.

Findings

The record in this proceeding will not permit us to make the finding required by law that the public convenience and necessity require the granting of the requested certificate. The Commission finds, therefore, that the application should be denied.

Applicant is placed on notice that, notwithstanding the denial herein of its request for a certificate of public convenience and necessity, it will become subject to the jurisdiction, control and regulation of this Commission if it operates its water system as a public utility as such is defined by the Public Utilities Code.

O R D E R

Public hearing having been held, evidence having been received, and the matter having been submitted for decision,

IT IS ORDERED that Application No. 42985 be, and it hereby is, denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 25th day of APRIL, 1961.

Charles H. ...
 President

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George E. Hoover

Fredrick B. Hilborn
 Commissioners