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ORIGINAL

Decision No. 72320

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SKYWAY PARK WATER CO., INC., a)
corporation, for a certificate of)
public convenience and necessity)
to construct a public utility)
water system in the City of Chico,)
Butte County, California; for a)
preliminary order to exercise)
rights and privileges of franchise)
of the City of Chico, Butte County,)
California, to operate a water)
system; to establish rates; and)
to issue stock.)

Application No. 48032
(Filed November 4, 1965)

McPherson, Mulkey & Aisthorpe, by Jack M. McPherson,
for applicant.
McCutchen, Doyle, Brown & Enersen, by A. Crawford
Greene, Jr., for California Water Service Company,
protestant.
W. B. Stradley, for the Commission staff.

O P I N I O N

Applicant requests a certificate and authority to establish rates and issue stock for construction of a water system to serve Skyway Park Unit No. 1, comprising about 140 acres of a projected seven-unit, 860-acre residential and commercial development located within and extending beyond the easterly limits of Chico, Butte County. The application was filed after the developers, Fortino Enterprises, Inc., of Chico and members of the Frank M. Crawford family, of Ukiah, were unable, during negotiations commencing in March, 1964, to conclude an agreement with California Water Service Company, the principal water utility in Chico and its environs, to extend its facilities and service to Unit No. 1. Applicant then proceeded, in 1966, to install its own system.

The application was submitted at the conclusion of a public hearing held, after due notice, on January 4, 1967 at Chico before Examiner Gregory. Protestant urged denial of the requested authority for asserted failure to show that, in the circumstances, public convenience and necessity require certification of applicant's system. Protestant did not indicate, other than by professing willingness to extend service under its own terms, how water service would be made available in the subdivision - the first unit is ready for residential and commercial construction - if the application were denied.

The chief issue raised by the protest is whether or not the Commission, in view of its current water main extension policy (Water Main Extension Rules, 60 Cal. P.U.C. 318; see also Fulton Utility Water Co., 64 Cal. P.U.C. 286; Baywood Water Co., Decision No. 47610, Application No. 33474 - unreported), should certificate applicant's system to serve a potentially speculative or uneconomic subdivision in the periphery of Chico when protestant, claiming superior financial resources and plant, is interested - and has incurred some preliminary expense - in providing service under its extension rule, but has been unable to reach an agreement with the developers. Protestant has asserted the right and duty, under its city franchise, to serve all portions of the municipality, including the annexed area that embraces Unit 1; however, virtual completion of applicant's system, after breakdown of negotiations, suggests that installation of a parallel system by protestant would be impracticable.

The evidence discloses that applicant's installations, designed by protestant during the negotiations, meet or exceed acceptable standards; the water supply from the developers' initial

well, tested at 2,000 gpm, is potable and is adequate at least for the service proposed; the developers have paid approximately \$120,000 for present installations, have financial resources to pay an additional estimated \$20,350 for a pumping plant, to be installed if the proposed service is authorized, and have guaranteed payment of anticipated early operating deficits to the extent of \$10,000. The record also shows that residential, school and other construction in the development awaits only the provision of water service.

Although the record suggests the possibility of an eventual agreement for water service by protestant, we are not disposed to defer a decision on the ultimate issue presented, namely, whether public convenience and necessity require certification of applicant's system now. We have concluded that the application should be granted. The presently installed system, with the proposed pumping plant, meets or exceeds standards set forth in the Commission's General Order No. 103. The developers, who are applicant's officers and directors, have adequate financial resources to initiate and carry on the proposed service. Finally, the public interest to be served by proceeding with the Skyway Park development, including provision of a water supply, overrides whatever private concerns may have led to frustration of an extension agreement and to the decision of the developers to install their own system as the only visible way out of the impasse.

A few points, unresolved by the discussions, may be noted from the testimony. Protestant's first estimate, early in 1964, of a refundable advance totalling \$160,000, was unacceptable to developers, who believed they could install a system in Unit 1 for less. An additional requirement was that developers obtain for protestant a pipeline easement, in unincorporated private lands east

of U.S. 99-E freeway, for a major segment of protestant's preferred transmission route from its then nearest point of service in Chico, near Park Avenue and 20th Street, to a connection at the northerly end of Notre Dame Boulevard, in Unit 1. The intervening landowner, it seems, has been reluctant to grant the easement.^{1/}

Protestant, on May 11, 1964, submitted to the developers a preliminary cost estimate for in-tract facilities in the sum of \$112,166. The proposal was that installation of water mains would be handled under a normal main extension agreement; that protestant would acquire a well site and construct a well in the development, at its own expense, and would increase the size of the connecting mains and the principal main through Unit 1 from 8-inches, estimated as the size required for service to that unit, to 10-inches, also at its own expense, as a means of obtaining surplus distribution capacity, increased fire protection and an immediate source of supply for construction purposes.

Negotiations, including consideration of the possibility - later rejected - of financing the water system by assessment district bonds, continued through 1964. In March, 1965, the parties reached a

^{1/} In May, 1964, a few months after the negotiations began, protestant, in anticipation of using 20th Street for its connection to Skyway Park, had laid a 16-inch conduit, at a cost of about \$3,000, in the U.S. 99-E freeway (then under construction) at the present location of the 20th Street overpass. The route, then about 7,115 feet long, was later shortened to approximately 5,319 feet, following installation of 1,796 feet of 10-inch pipe for Western Pacific Railroad pursuant to an extension agreement executed June 30, 1965. An alternate route, some 5,800 feet in length, is available to - and would be used by - protestant in public rights of way in Park Avenue and along the old U.S. 99-E Highway, with a crossing through the freeway to a connection in the southerly portion of Unit 1.

tentative agreement on detailed plans and specifications for water mains. These were to be installed by developers in accordance with protestant's standards, which, generally, are more restrictive than those prescribed by General Order No. 103. Further correspondence and negotiations ensued, but were terminated on September 27, 1965, when the developers' attorney informed protestant's vice president and chief engineer that his principals had decided to discontinue negotiations for a main extension agreement and, instead, file an application with the Commission to establish their own water system. Accordingly, the developers drilled a well and installed their distribution system in Unit 1 in substantial conformance with the designs and specifications previously agreed to. Protestant, after receipt of a copy of the application, reduced its estimate of the refundable in-tract costs to \$110,511, after allowing for some additional lots to be served and for the closer point of connection, via 20th Street, resulting from the Western Pacific extension completed in 1965.

The parties subsequently attempted to resolve their differences, but without success. The application was then set for a hearing on October 4, 1966, but was removed from the calendar on receipt of advice from applicant's counsel of the tragic disappearance of two of applicant's principals, Frank M. Crawford and Vivian Crawford, his wife, on September 7, 1966 in a private airplane accident in Canada. Probate proceedings are pending. Surviving members of the Crawford family, together with Sam Fortino, all either incorporators, officers, or directors of applicant corporation and the company's general counsel and general auditor, at a special meeting of the Board of Directors held on October 3, 1966, provided for continuation of this proceeding and for retention

of the Crawford family interests in applicant's directorship and management. The hearing was rescheduled and, as stated above, was held at Chico on January 4, 1967.

A final point, arising at the hearing, concerns the basis for acquisition, by protestant, of applicant's present installations by purchase or under an extension agreement. Applicant was unwilling to agree with protestant's estimate of \$25,000 as the present worth of the installations. The amount of the allowance protestant would make for the installations, including the well, if an extension agreement were to be concluded, was not disclosed by the testimony. In short, as far as revealed by this record, the parties are still at an impasse.

Applicant has proposed rates comparable to protestant's present schedules in effect in its Chico District. Since no customers are now receiving service, its estimated results of operation, set forth in the application, must necessarily await the test of experience. Applicant plans to maintain its water service office in the subdivision and to staff it with whatever personnel may be required as the development proceeds.

It should bear emphasis that the operation of a public utility water service, especially in a multistaged and diversified development such as is planned for Skyway Park, requires alert and competent management and personnel for rendition of adequate service to customers and proper maintenance of the system. Although applicant appears to have substantial financial resources at its disposal, this alone would not ensure the quality of service the customers would have every right to expect and which this Commission would, if it should become necessary, enforce.

To summarize, we are of the opinion that applicant has made a sufficient showing to warrant issuance of the certificate and other authority requested; that the presently installed water facilities, together with the proposed pumping plant, meet acceptable standards; that applicant has available sufficient financial resources to initiate the proposed service in Unit 1 of the development, and, finally, that to deny the application merely because applicant and protestant, thus far, have been unable to compose their differences would operate to jeopardize the developers' investment and unduly delay completion of the Skyway Park project.

Applicant has also requested that we issue the order contemplated by Section 1003 of the Public Utilities Code, preliminary to issuance of a certificate to applicant to exercise the rights and privileges of a franchise it is required to obtain from the City of Chico for operation of the water system. Such order, together with the requested authority to issue stock, will be included herein.

Findings of Fact

The Commission finds from the evidence herein the following facts:

1. Applicant, Skyway Park Water Co., Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of California, and is authorized by its Articles of Incorporation, subject to the jurisdiction of the Public Utilities Commission of the State of California, to construct and operate a public utility water system within the State of California.

2. Skyway Park Subdivision Unit No. 1 comprises the first 145 acres of a planned 860-acre multipurpose land development project,

located within and extending beyond the present southeasterly city limits of the City of Chico, Butte County, California; said land is owned, as to an undivided one-half interest, by members of the Frank M. Crawford family and, as to the remaining undivided one-half interest, by Fortino Enterprises, Inc., a California corporation, the sole stockholders of which are Sam Fortino and Gladys Fortino, his wife; on September 7, 1966 Frank M. Crawford and Vivian Crawford, his wife, perished in a private airplane accident in Canada and their estates are now in process of probate; on October 3, 1966, at a special meeting of the Board of Directors of Skyway Park Water Co., Inc., new directors and officers were duly elected in the place of Frank M. and Vivian Crawford, with the result that, on January 4, 1967, the date of hearing of the instant application, the officers and directors of applicant, with the exception of Sam Fortino who was elected First Vice President, were all adult members, by blood or marriage of the Frank M. Crawford family; the combined net assets of applicant's incorporators, officers and directors amounted, at the dates shown by exhibits attached to the application herein, to more than \$8,000,000.

3. California Water Service Company, protestant herein, is a California multidistrict public utility water corporation, the Chico District of which for many years has been and is now the principal water purveyor in Chico and its environs.

4. From March, 1964 to September 27, 1965 developers and protestant attempted, without success, to reach an understanding on the terms of a water main extension agreement, pursuant to protestant's Water Main Extension Rule, for extension of protestant's

facilities in Chico to Skyway Park Unit No. 1; on September 27, 1965 developers informed protestant that they had decided to construct their own water system in the subdivision and would file an appropriate application for a certificate of public convenience and necessity with this Commission therefor. Such application was filed on November 4, 1965 and developers thereafter, during 1966, drilled a well and installed a water distribution system in Unit No. 1; said well has a tested production of 2,000 gallons per minute of potable water and said distribution system is designed and constructed in accordance with standards that meet or surpass minimum standards for water systems set forth in the Commission's General Order No. 103; said well and distribution system, together with 28 installed fire hydrants owned and maintained by the City of Chico are adequate for water service within Unit No. 1, provided that pumping facilities and appurtenances and an auxiliary power unit for the pump are installed at the well site, as planned by applicant, at a total estimated cost of \$20,350. The developers have paid the costs and engineering fees, totaling \$120,252.75, for drilling the well and installing the distribution system.

5. Subsequent to construction of applicant's well and distribution system, developers and protestant continued their negotiations, either for a main extension agreement that would make some allowance for the completed installations, or for purchase of the installations by protestant for its estimate of their present worth, amounting to \$25,000. As of the close of the hearing herein, on January 4, 1967, the parties had not agreed on the terms of either a main extension or purchase by protestant of applicant's presently installed facilities.

6. With respect to land development and improvements in Unit No. 1 of Skyway Park Subdivision, as of January 4, 1967: the Roman Catholic Church has purchased from developers 25 acres for construction of a parochial school; developers have received firm offers from two motel organizations and two major oil companies for commercial sites; the Chico Unified School District has selected an 11-acre site for an elementary school and is ready to acquire the site as soon as a water supply is available; the State of California has acquired a 6-acre site for a highway maintenance station; developers have received a firm offer by a home builder to purchase 100 of the 133 available lots in the residential portion of Unit No. 1 for immediate construction of homes; street improvements, curbs, gutters, sidewalks, paving, sewers and city-owned fire hydrants have been installed pursuant to assessment district financing procedures.

7. No private or public water supplier, other than applicant, presently is ready, able or willing to provide water facilities and service to Unit No. 1 and additional units of Skyway Park Subdivision.

8. Public convenience and necessity require, and will require, the construction and operation by applicant of a water system for sale of water to the general public in Unit No. 1 of Skyway Park Subdivision, as said area is described on the official map of said subdivision, recorded in Book 34 of Maps, pages 1-6 inclusive, in the office of the County Recorder of Butte County, California, and as depicted on a map attached as Exhibit A to the application herein, and as more particularly described by metes and bounds in Exhibit B attached to the application herein.

9. Said developers of Skyway Park Subdivision, including applicant's incorporators, have expended the sum of \$120,252.75 for installation of a well and a water distribution system in Skyway Park Unit No. 1, and will be required to expend the further presently estimated sum of \$20,350 for a pumping system and appurtenances for the initial well now constructed in said Unit No. 1. Said sums represent a total capital requirement, at this time, of \$140,602.75, for which applicant here seeks authority to issue and sell to its incorporators certain shares of its authorized 25,000 shares of common capital stock of a par value of \$10 per share. The issuance and sale of no more than \$140,700 aggregate par value of applicant's capital stock is required, at this time, for the purpose of financing the plant costs hereinabove set forth. The money, property or labor to be procured or paid for by the issue of such amount of stock is reasonably required for the aforesaid purposes and such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. The record does not disclose the amount of applicant's organization expense or working cash requirement.

10. The rates and conditions of service set forth in the schedules attached as Appendix A to this decision and which are hereby incorporated in and made a part of this decision, are reasonable for the service herein authorized.

11. Applicant is required, before commencing operations in the area herein authorized to be served, to obtain a franchise from the City of Chico and a permit from the Department of Public Health of the State of California.

Conclusion

The Commission concludes that the application herein should be granted in accordance with the provisions of the order that follows.

The certificate issued herein is subject to the following provision of law:

The Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

In issuing our order herein, we place applicant and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return applicant should be allowed to earn on its investment in plant and that the authorization herein given is not to be construed as a finding of value of applicant's stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to applicant, Skyway Park Water Co., Inc., authorizing it to construct a public utility water system to serve the area as delineated on the service area map, Exhibit "C", attached to the application herein.

2. Applicant is authorized to file, after the effective date of this order, the schedules of rates set forth in Appendix A to this order, tariff service area maps clearly indicating the boundaries of the certificated area, appropriate general rules, and copies of printed forms to be used in dealing with customers. Such filing shall comply with General Order No. 96-A and the tariff schedules shall become effective on the fourth day after the date of filing.

3. The authority granted herein shall expire unless the designated tariff sheets are filed within one year after the effective date of this order.

4. Within ten days after service is first furnished to the public under the authority granted herein, applicant shall file in this proceeding written notice thereof to this Commission.

5. Applicant shall prepare and keep current the system map required by Paragraph I.10.a. of General Order No. 103. Within thirty days after the water system is placed in operation under the authority granted herein, applicant shall file with this Commission two copies of such map.

6. For the year 1967 and thereafter, applicant shall apply a depreciation rate of 3.0 percent to the original cost of depreciable plant. Until review indicates otherwise, applicant shall continue to use this rate. Applicant shall review its depreciation rates at intervals of five years and whenever a major change in depreciable plant occurs. Any revised depreciation rate shall be determined by: (1) subtracting the estimated future net salvage and the depreciation reserve from the original cost of plant; (2) dividing the result by the estimated remaining life of

the plant; and (3) dividing the quotient by the original cost of plant. The results of each review shall be submitted promptly to the Commission.

7. Within one year after the effective date of this order, applicant may issue not to exceed \$140,700 aggregate par value of its common stock for the purposes specified in this proceeding.

8. Applicant shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order insofar as applicable is hereby made part of this order.

9. Prior to the date service is first furnished to the public under the authority granted herein, applicant shall apply to the appropriate public health authority having jurisdiction for a water supply permit for the proposed system. A copy of the application shall be filed with the Commission within ten days thereafter.

10. When the total number of active service connections reaches 30, or when the number of active service connections larger than 3/4-inch reaches 10, or within three years after the date service is first furnished to the public under the authority granted herein, whichever is earlier, applicant shall have installed a standby source of water to provide for the reasonable continuation of an adequate supply of potable water to customers in case of the failure of the initial single source of supply. Within thirty days after such standby facilities are installed, applicant shall file a written report showing the number of customers then served and the details of the manner in which the requirement of this paragraph has been accomplished.

Upon the filing by applicant of a supplemental application to which is attached a copy of the franchise or permit issued by the City of Chico, the Commission will issue a certificate of public

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convenience and necessity authorizing it to exercise such franchise or permit upon such terms and conditions as the Commission may designate.

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

Dated at San Francisco, California, this 18th day of APRIL, 1967.

[Signature]
President
[Signature]
Attorney
[Signature]
[Signature]
Commissioners

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The area known as Skyway Park, located immediately east of U. S. Highway 99 East in the City of Chico, and vicinity, Butte County.

RATES

	<u>Per Meter</u> <u>Per Month</u>
Service Charges:	
For 5/8 x 3/4-inch meter	\$ 2.30
For 3/4-inch meter	2.50
For 1-inch meter	2.80
For 1 1/2-inch meter	4.80
For 2-inch meter	6.90
For 3-inch meter	12.00
For 4-inch meter	17.00
For 6-inch meter	25.00
For 8-inch meter	34.00
For 10-inch meter	48.00

Quantity Rate:

For all water delivered, per 100 cu.ft. \$ 0.085

The Service Charge is a readiness-to-serve charge applicable to all metered service and to which is to be added the monthly charge computed at the Quantity Rate.

Schedule No. 2R

RESIDENTIAL FLAT RATE SERVICE

APPLICABILITY

Applicable to all residential water service furnished on a flat rate basis.

TERRITORY

The area known as Skyway Park, located immediately east of U. S. Highway 99 East in the City of Chico, and vicinity, Butte County.

RATES

Per Service Connection
Per Month

For a single family residential unit, including premises having the following lot areas:

Up to 6,000 sq.ft.	\$ 3.90
From 6,001 to 10,000 sq.ft.	4.50
From 10,001 to 16,000 sq.ft.	5.30
From 16,001 to 25,000 sq.ft.	6.70

- a. For each additional single family residential unit on the same premises and served from the same service connection 2.80
- b. For each swimming pool, in addition to the above regular flat rates 1.00

SPECIAL CONDITIONS

1. The above residential flat rates apply to service connections not larger than one inch in diameter.

2. All service not covered by the above classification will be furnished only on a metered basis.

3. Meters may be installed at option of utility or customer for above classification, in which event service thereafter will be furnished only on the basis of Schedule No. 1, General Metered Service. When a meter is installed at option of customer, metered service must be continued for at least 12 months before service will again be furnished at flat rates.

Schedule No. 4

PRIVATE FIRE PROTECTION SERVICE

APPLICABILITY

Applicable to all water service rendered for privately owned fire protection systems.

TERRITORY

The area known as Skyway Park, located immediately east of U. S. Highway 99 East in the City of Chico, and vicinity, Butte County.

RATES

	<u>Per Month</u>
For each 1½-inch connection	\$ 2.25
For each 2-inch connection	3.00
For each 3-inch connection	4.50
For each 4-inch connection	6.00
For each 6-inch connection	9.00
For each 8-inch connection	12.00
For each 10-inch connection	15.00

SPECIAL CONDITIONS

1. The fire protection service connection will be installed by the utility at the cost of the applicant. Such cost shall not be subject to refund.

2. If a distribution main of adequate size to serve a private fire protection system in addition to all other normal service does not exist in the street or alley adjacent to the premises to be served, then a service main from the nearest existing main of adequate capacity will be installed by the utility at the cost of the applicant. Such cost shall not be subject to refund.

(Continued)

Schedule No. 4

PRIVATE FIRE PROTECTION SERVICE

SPECIAL CONDITIONS (Continued)

3. Service hereunder is for private fire protection systems to which no connections for other than fire protection purposes are allowed and which are regularly inspected by the underwriters having jurisdiction, are installed according to specifications of the utility, and are maintained to the satisfaction of the utility. The utility may install the standard detector type meter approved by the Board of Fire Underwriters for protection against theft, leakage or waste of water.

4. For water delivered for other than fire protection purposes, charges will be made therefor under Schedule No. 1, General Metered Service.

5. The utility will supply only such water at such pressure as may be available from time to time as a result of its normal operation of the system.

Schedule No. 5

PUBLIC FIRE HYDRANT SERVICE

APPLICABILITY

Applicable to all fire hydrant service furnished to municipalities, duly organized fire districts and other political subdivisions of the State.

TERRITORY

The area known as Skyway Park, located immediately east of U. S. Highway 99 East in the City of Chico, and vicinity, Butte County.

RATE

	<u>Per Month</u>
For each hydrant	\$1.00

SPECIAL CONDITIONS

1. For water delivered for other than fire protection purposes, charges shall be made at the quantity rates under Schedule No. 1, General Metered Service.
2. Relocation of any hydrant shall be at the expense of the party requesting relocation.
3. Fire hydrants shall be attached to the utility's distribution mains upon receipt of proper authorization from the appropriate public authority. Such authorization shall designate the ownership, type and the size of hydrant and the specific location at which each is to be installed.
4. The utility will supply only such water at such pressure as may be available from time to time as a result of its normal operation of the system.