

ORIGINAL

Decision No. 75626

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Estate of
 MIRIAM E. CONLIN (Executor Danny
 Conlin), an individual proprie-
 torship doing business as CONLIN-
 STRAWBERRY WATER CO., for author-
 ity to extend water service to
 include "Dymond's Strawberry Ridge
 Subdivision", a noncontiguous area,
 and to establish rates for water
 services to this area, approxi-
 mately 26 miles east of the City of
 Sonora, County of Tuolumne, State
 of California.

Application No. 50608
 (Filed October 11, 1968)

Danny Conlin, and Louis Graham & Associates,
 by Louis Graham, for applicant.
 Dymond's Strawberry Ridge (a California cor-
 poration) by Frank Cliff, Esq., interested
 party.
Tedd F. Marvin, for Hydraulic Branch staff.
I. B. Nagao, for Division of Finance & Accounts
 staff.

O P I N I O N

By this application, Danny Conlin as Executor of the Estate of Miriam E. Conlin, an individual proprietorship doing business as "Conlin-Strawberry Water Co.", seeks authority to extend the existing public utility water system to a noncontiguous area of approximately 155 acres, the nearest point of which is located 1.3 miles from its existing system. In effect, applicant is seeking a certificate of public convenience and necessity to construct the system necessary to supply the new area.

Public hearing in the matter was held before Examiner Emerson on April 7 and 8, 1969 at San Francisco. The matter was submitted on the latter date.

Applicant's existing water system has been serving the Strawberry area of Tuolumne County for about 60 years and presently has 217 customers. Complete development of the present area might add another 200 customers. Customer growth since 1963 has been at an average rate of 1.7 percent per year. Such system has had certain deficiencies, including that of an inadequate or marginal supply of water during the late summer months and, primarily because of such situation, applicant has been prohibited from extending the system beyond that which existed in 1963.¹

Dymond's Strawberry Ridge area which applicant proposes to serve is a 155-acre parcel which, except for one additional small parcel known as the "Convent Chalet", is wholly surrounded by Forest Service lands. It is, as above related, 1.3 miles from applicant's water system. The nearest other public utility water system is about 4 miles distant. Dymond has applied to applicant for service, has entered into a main extension agreement with applicant for such service and is now developing the first unit of 55 lots. Completion of the first unit as well as any further development and the sale of lots is awaiting disposition of this proceeding. The eventual subdivision development of the area contemplates 272 lots, in four stages or units. Lot sizes will range between 10,000 and 18,000 square feet in area and the anticipated sales prices will range between \$5,000 and \$7,500. Building restrictions are stated to be such that permanent medium- and large-size residences will necessarily be erected.

The primary source of water supply for applicant's existing system has for many years been 150 miner's inches of the flow

¹ See Decision No. 66037, in Application No. 44688, issued September 17, 1963.

of Herring Creek. Such supply has recently been augmented by the drilling of two wells which, on 72-hour pump tests, proved to develop 68 gallons per minute. Storage on the existing system consists of six tanks with a total capacity of 163,000 gallons. The design for supplying the new area includes a 6-inch main between the present and new areas, with a new 100,000-gallon tank approximately midway between the two areas, one 126,000-gallon tank in the new area and provision of sites for additional tanks within the new area. The combination of the augmented supply and the total of old and new storage is adequate to meet the now-foreseeable needs of the total system. In this respect, and in view of the fact that the system for the new area will meet the requirements of our General Order No. 103, the evidence presented by engineering witnesses is convincing that the total system will be adequately served and that the present limitation on applicant's service area may be lifted. Having well in mind, however, that applicant's water supply has in the past been at times inadequate, applicant is placed on notice that should customer growth in the new area exceed that now foreseen and thereby create a demand on the total system for either a greater supply or a greater amount of storage, or both, applicant will be required to supply the same before any additional customers may be served.

The economic feasibility of applicant's proposed extension of the system is dependent to a large extent upon the rapidity with which new customers may come on the system in the new area. In this respect, it is not unlike a wholly new enterprise. The testimony indicates that it may be as long as 10 years before the new system develops enough revenue to offset out-of-pocket expenses attributable to the new area. Applicant is aware of such possibility and has

testified that he is financially able to and will in fact personally meet the burden of such prospective losses during the developmental period. It is fundamental that losses on the new system should not become a burden upon customers of the present system.

The methods by which losses might be met or offset or accounted for produced sharply opposing testimony and widely divergent views of the witnesses representing the Finance & Accounts Division and the Hydraulic Branch of the Commission's staff. Neither of their opposing proposals were palatable to either the applicant or the subdivision developer. The recent "ex parte" decisions or "resolution" of the Commission² relied upon as precedent for the treatment urged as being controllable in this proceeding were, we find, based on circumstances unrelated and not comparable to those present herein. They are inappropriate and are not controlling here and should not be accorded a stare decisis status.

In an attempt at a reconciliation or a compromise respecting the divergent staff positions and applicant's hesitance in endorsing either view, counsel for the developer committed the developer to contribute the "special facilities" to the utility³ and suggested that the Commission authorize the same as a "deviation" from the utility's main extension rule. Such special facilities, in essence, are the backup facilities necessary to the proper serving of the area. This proposal has considerable merit and, we find, its implementation would not be adverse to the public interest and in this instance deviation from the rule would be reasonable. The total

² Decision No. 74514, in Application No. 50093.
Decision No. 74677, in Application No. 50262.
Decision No. 75082, in Application No. 50320.
Resolution No. W-1156 re: Advice Letter 13, Cedar Ridge Water Co.

³ The "special facilities" are defined in the main extension agreement between the utility and the developer (Exhibit No. 3).

plant costs for the initial development (Unit No. 1) are made up of \$17,600 for in-tract facilities and \$47,130 in "special" facilities. The \$47,130 figure, under the terms of the agreement, is split into two amounts by which \$42,330 is allocated to the developer and \$4,800 is allocated to the utility. It is the first amount of \$42,330 which the developer has now been committed to contribute to the utility. Unlike the other dollar amounts, the \$42,330 would not be subject to future refunds but would constitute a "Contribution In Aid Of Construction" and be so recorded on the books of the utility. Amendment of the extension agreement is thus necessary.

From the evidence, the Commission finds:

1. Public convenience and necessity require the extension of applicant's existing plant into the Dymond's Strawberry Ridge area.
2. To the extent that the aforesaid extension modifies and enlarges applicant's certificated area of operations, said modification and enlargement are justified.
3. Deviation from the utility's main extension rule, for the purposes hereinabove discussed, is not adverse to the public interest.
4. The financing arrangement respecting contributed plant hereinabove discussed, together with the accounting therefor, is reasonable.
5. It is just and reasonable to require that the main extension agreement hereinabove discussed (a copy of which is Exhibit No. 3 in this proceeding) be modified so as to provide that the developer will contribute to the utility the sum of \$42,330 and that said sum be not subject to refund.
6. The extension of applicant's plant facilities into the new area will require revision of applicant's maps and tariffs.

The Commission concludes that the application herein should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The area of operations for which applicant has heretofore been issued a certificate of public convenience and necessity (Decision No. 66037, in Application No. 44688, issued September 17, 1963) is hereby enlarged to include the area of Dymond's Strawberry Ridge Subdivision and the area known as the "Convent Chalet" as the same are shown on Exhibit No. 1 attached to the application herein.
2. Applicant is hereby authorized to establish a service connection for the Boy Scout Camp known as "Camp Bray".
3. Applicant is authorized to accept from the developer contributed plant consisting of backup facilities to a total of \$42,330.
4. The main extension agreement between applicant and the developer heretofore entered into on September 1, 1968 (a copy of which is Exhibit No. 3 in this proceeding) shall be modified or amended by the parties so as to provide that the sum of \$42,330 mentioned in paragraph 3(c) of such agreement shall be contributed to applicant without future refund thereof. A copy of such a modified agreement or an appropriate amendment to said agreement, as signed by the parties, shall be filed in this proceeding prior to the serving of any water thereunder.
5. Within ninety days of the effective date of this order applicant shall file tariff sheets (including a tariff service area map) revised in such manner as to clearly show thereon the total area served and the applicability of its tariffs to such area.

6. Within thirty days of the date service is first rendered in the Dymond's Strawberry Ridge Subdivision, applicant shall file with the Commission two copies of a current system map in conformance with the provisions of General Order No. 103.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 24th day of APRIL, 1969.

William S. S. S.
President

August

John P. M. M.

John P. M. M.

John P. M. M.
Commissioners