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Decision No. 79796

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension and
Investigation on the Commission's
own motion of tariffs filed under
Del Este Water Company Advice Letter
No. 45 extending service into an
area outside the filed area.)

Case No. 9294
(Filed November 23, 1971)

Craig McAtee, Attorney at Law, for
Del Este Water Company, respondent.
Peggy Phipps, for herself; Vernon Johnson,
Attorney at Law, for City of Turlock;
and Victor Johnston, for himself,
interested parties.
Paul W. Avery, for the Commission staff.

O P I N I O N

By Advice Letter No. 45, filed October 20, 1971, Del Este Water Company (Del Este) filed a revised tariff service area map of System 6, Turlock, which would extend the utility's present service area.

The City of Turlock (City), by letter received November 8, 1971, requested that Advice Letter No. 45 be suspended and a public hearing held.

On November 23, 1971, the Commission issued Case No. 9294, an order of suspension and investigation, which suspended the effective date of the tariff sheets filed under Advice Letter No. 45 until February 17, 1972. By Decision No. 79727, dated February 15, 1972 the period of suspension was extended to and including May 15, 1972.

Public hearing in the matter was held at Turlock before Examiner Gillanders on January 19, 1972. The matter was submitted on February 11, 1972 upon receipt of late-filed Exhibit 15.

At the hearing, evidence was presented with respect to (a) the water service which Del Este proposed to provide in the new territory pursuant to its main extension rule and under Commission regulation; (b) the water service which City represented it would provide those prospective customers who would agree to annexation of their property into the City; and (c) the preference of both the area's present residents and the developer of a new tract within the area for water service from Del Este rather than from the City.

The evidence adduced shows that Del Este and the City are equally capable of serving the disputed area with domestic water service and the required fire service. However, City refuses to serve unless the landowners in the territory consent to annexation by the City--a condition to which the landowners refuse to accede. The developer, Mr. Victor Johnston, and another principal landowner in the area, Mrs. Lillian Hicok, both testified that they would not consent to annexation, since it would mean higher taxes and a variety of city-imposed restrictions upon the use of their property. Mrs. Victor Johnston, who is also a licensed realtor in Turlock, testified that the marketability of homes in the proposed development would be impaired by annexation because it is laid out and conceived to appeal to persons who wish to be free of use restrictions imposed by the City. Moreover, the residents would be obliged to pay higher rates for City water during the period prior to annexation. The area's present residents have their own water supplies from wells and thus might never agree to annexation simply to obtain a public water supply.

It has long been the policy of this Commission that all else being equal the expressions voiced by the public concerned should be given the fullest consideration in consonance with the public convenience and necessity.

Findings of Fact

The Commission finds that:

1. Del Este Water Company and the City of Turlock are equally capable of serving the disputed area with domestic water and fire protection service.

2. The concerned public requests service from Del Este Water Company.

Conclusions of Law

The Commission concludes that:

1. Public convenience and necessity require that Del Este Water Company provide public utility water service to the disputed area.

2. Case No. 9294 should be discontinued.

O R D E R

IT IS ORDERED that:


1. Del Este Water Company shall refile suspended tariff sheets Nos. 213-W and 214-W in accordance with General Order No. 96-A.

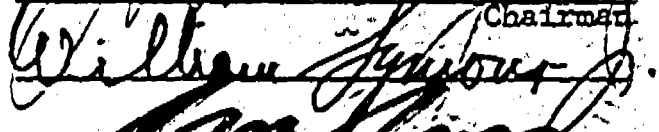
2. Del Este Water Company, on the effective date of the refiled tariff sheets, shall take such action in accordance with its filed tariff as may be required to render service to applicants within the area covered by such refiled tariff sheets.

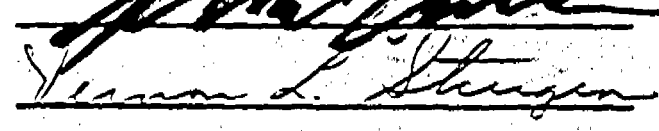
3. Case No. 9294 is discontinued.

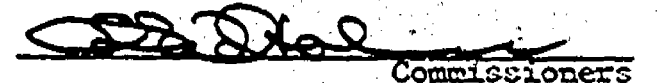
The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 14th
day of MARCH, 1972.



Chairman


William J. Sturgeon


William J. Sturgeon


Commissioners