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Decision No. 80999

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of John S. Cavanaugh & Evelyn Cavanaugh dba Hillview #6 Water Co. (Declared a Public Utility by the Public Utilities Commission in Case #8967) for a Certificate of Convenience and Necessity to operate a Public Utility Water System and Establish Rates for service in that portion of the Rio del Mar Lodge Sites Subdivisions 1 & 2 purchased in 1960.	Application No. 53558 (Filed August 31, 1972)

John S. Cavanaugh, for applicants.
H. E. Davis, for himself, interested party.
Robert T. Baer, Attorney at Law, for the Commission staff.

O P I N I O N

Applicants John S. Cavanaugh and Evelyn Cavanaugh, husband and wife, seek a certificate of public convenience and necessity for a public utility water system.

Public hearing was held before Examiner Catey in Santa Cruz on November 21, 1972. Notice of hearing had been published in accordance with this Commission's rules of procedure. In addition, notice was mailed to the twelve customers of the existing water system whose addresses were known to applicants. One other customer was notified through a neighbor but applicants were unable to contact the remaining two customers. The matter was submitted on November 21, 1972.

Testimony on behalf of applicants was presented by one of the applicants. A customer testified in his own behalf and in behalf of three other customers. The Commission staff presentation was made by a staff engineer.

Service Area

Applicants' proposed certificated area consists of Rio del Mar Lodge Sites, Subdivisions 1 and 2, and two nearby lots outside

of those subdivisions. The area is about 2-1/4 miles north of Aptos in Santa Cruz County. There are 376 lots in the two subdivisions, but applicants estimate that because (1) lots as subdivided are small, (2) off-street parking must be provided for homes constructed in the area, and (3) the terrain is quite rugged in places, only about 125 building sites are available.

History

A public utility, Aptos Water Company, had served customers in and about the community of Aptos at least as far back as 1913. Rio del Mar Lodge Sites was part of the area it had undertaken the obligation to serve. By 1937, the utility already had extended service into a portion of Subdivision No. 1 of Rio del Mar Lodge Sites.

Decision No. 35803 dated September 29, 1942 in Application No. 25153 authorized Aptos Water Company to transfer the water system to James A. Harris, Jr. and G. W. Cooper, doing business as Monterey Bay Water Company. The authorized transfer was effected, so the obligation to serve Rio del Mar Lodge Sites, under applicable filed tariffs, passed to the Harris-Cooper co-partnership. The two partners and various heirs and assigns operated the Aptos water system until 1964.

In 1960, applicants and others acquired about 290 lots in Rio del Mar Lodge Sites. The then owners of Monterey Bay Water Company did not deny their obligation to serve the subdivision but allegedly were unable financially to provide the necessary facilities. Thus, in order to provide water service to their lots, applicants installed a well, a tank, and a connecting distribution main. Monterey Bay Water Company connected the new facilities to its then existing public utility system but the arrangement between the parties apparently was never reduced to writing. The utility operated the system for a short time until, pursuant to Decision No. 66712 dated January 28, 1964 in Application No. 46001, Monterey Bay Water Company sold its assets to Soquel Creek County Water District (SCCWD). The

SCCWD operated the Rio del Mar Lodge Sites system for a while, but title to that portion of Monterey Bay Water Company's system was not passed to SCCWD. Subsequent efforts by applicants to effect the transfer of the Rio del Mar Lodge Sites system to SCCWD, at no cost, were unsuccessful. In fact, SCCWD physically removed a short section of its pipeline and separated the Rio del Mar Lodge Sites system from the rest of the SCCWD system.

In the meantime, several of the lots in the subdivision were resold and the purchasers built residences. With at least the tacit approval of applicants, the homeowners connected service pipes to the water system. During the year 1965 and until September, 1966, applicants charged the homeowners a flat rate of $2.50 per month for water service.

In 1966, applicants discontinued collecting the monthly flat rate and the customers undertook maintenance and operation of the system but applicants continued to be responsible for the power bills on the well pump. This arrangement was not formalized at that time by a written agreement.[1/]

In Case No. 8967, a complaint filed in 1969 against applicants by three of their customers, applicants stated their intention to continue to pay the power bills, pending determination of the responsibilities of SCCWD. Applicants intended at that time to institute legal action in the courts to force SCCWD to resume operation of the water system and service to the area, pursuant to the stipulation filed by SCCWD as a condition precedent to Commission authorization of the transfer of Monterey Bay Water Company's assets to the district:

1/ One of the customers in the current proceeding testified that a statement in Decision No. 77059 dated April 7, 1970 in Case No. 8967 is incorrect. That decision stated that an agreement had been entered into on September 9, 1966.

> "District will be subject to all legal claims for water service which might have been enforced against... Monterey Bay, including such claims as may exist in territory outside of the boundaries of District."

Because of that unqualified stipulation, and the fact that SCCWD had served the area before it severed the pipeline, it appeared unlikely in 1970 that SCCWD would continue to refuse service. Decision No. 77059 in Case No. 8967 established that applicants were a public utility water corporation subject to this Commission's jurisdiction and required applicants to continue operating on somewhat of a caretaker basis pending resumption of service by SCCWD or the establishment by applicants of more conventional service arrangements and rates, after approval by this Commission. Service was restricted to the seventeen parcels already being supplied.

Applicants did not have sufficient funds to carry out their intended legal action against SCCWD. Instead, they formed Rio del Mar Lodge Sites Mutual Water Company, Inc., and requested authority in Application No. 52887 to donate the water system, together with certain future improvements, to the mutual. After a hearing on the application, however, the Commission found, in Decision No. 80469 dated August 31, 1972, that, among other things, the mutual did not reflect the wishes of many of the existing customers, who opposed the transfer of the system to the mutual. The application was denied.

The situation now is at an impasse. Applicants' financial statement, Exhibit No. 1, shows that they have practically no liquid assets. They have not even been able to pay the power bills on the water system pump pursuant to their interim agreement with the customers, resulting in a current delinquent balance of $850 owed to the electric utility. Most of their assets consist of some 125 building sites in Rio del Mar Lodge Sites, and even those assets have been mortgaged. Applicants' sole source of income is proceeds from sales of the building sites. Without water service, the sites owned by applicants are useless for building, thus freezing the only source

of funds to make needed improvements to the water system. Without extensive improvements in the water system's sources of supply, pumping and storage facilities, the system cannot supply all of applicants' building sites.

Proposed Solutions

Applicants ask that they be granted a certificate of public convenience and necessity (CPC&N) to operate[2/] their water system as a public utility, to establish a $10 monthly flat rate, and to serve all of Rio del Mar Lodge Sites, Subdivisions 1 and 2.

The sequence of future events apparently visualized by applicants is: 1. With removal of the present prohibition against adding customers to the water system, applicants' building sites will become salable. 2. After about seven additional customers have been added, water system revenues at applicants' proposed rates will cover out-of-pocket costs of maintaining and operating the system. 3. Proceeds from sale of building sites will provide applicants with the funds needed to make improvements to the system so it can serve the entire certificated area. 4. After more customers are added to the system, meters will be installed and rates established consistent with costs of operation and return on investment.

The Commission staff recommendations in Exhibit No. 3 are designed to achieve essentially the same end result as applicants' plan but with some significant safeguards designed to protect the present customers, prevent premature overexpansion, and insure timely construction of improvements. In summary form, the staff recommendations are:

1. Grant CPC&N with a certificated area including Rio del Mar Lodge Sites and the two lots served outside

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2/ The only CPC&N applicable here is pursuant to Section 1001 of the Public Utilities Code. This is a certificate to construct, not operate, a water system, although the area to be served by the constructed system normally is specified in the certificate and is termed the "certificated area".

that tract, but make the certificate contingent upon applicants' obtaining title or rights to land upon which their existing storage tank and pipeline are located.

2. Allow only 20 additional customers until an additional supply of water is available.

3. Require applicants to establish a plant replacement fund from proceeds of their real estate sales in the service area.

4. Grant applicants' request for a $10 monthly flat rate.

5. Require applicants to install future plant only on property to which they have title or rights-of-way.

Discussion

Applicants' history does not inspire great confidence in their reliability or judgement. Their construction of a public utility water system without first obtaining Commission authorization was clearly in violation of Section 1001 of the Public Utilities Code. The infraction cannot even be attributed to naivete because applicants were at the time owners of a public utility water system elsewhere in Santa Cruz County.

Nevertheless, we are faced with a situation where (1) the best solution, resumption of service by SCCWD, is apparently unattainable and (2) the next best solution, ownership and operation of the system by the customers in the form of a mutual water company, has been attempted without success. Under these circumstances, the Commission staff's recommendations seem to offer the best possibility of a workable solution to the present unsatisfactory situation.

The customer who appeared at the hearing questioned the need for a $10 monthly rate. He pointed out that when the customers were operating the system they did not spend that much, even including some capital items. The customers, however, were not paying for power bills, ad valorem taxes, or plant depreciation. Also, whatever labor and management talents the customers contributed to the operation would not be available free to applicants. The customer

conceded that he personally will be willing to pay the proposed monthly charge if applicants maintain and operate the system properly themselves.

The Commission staff engineer concluded that the present well source can supply sufficient water to serve twenty additional customers. Revenue from additional customers at the $10 monthly rate should eventually cover all operating expenses and provide some return on investment. That return and any depreciation accruals covered by revenues can be reinvested in such essentials as improved automatic controls on the pump as suggested by the staff engineer and single-phasing protective relays as suggested at the hearing by a customer. Major improvements obviously will require more funds than can reasonably be generated from operation of the system. A plant improvement fund from applicants' sale of lots and homes should provide assurance that the system improves commensurate with its growing needs.

Findings

1. The rate authorized herein is reasonable until there is a significant increase in customers, and that rate will not do more than cover maintenance and operation expenses for the foreseeable future.

2. Public convenience and necessity require the construction of improvements to a system to serve the certificated area requested by applicants.

3. Applicants' source of supply is adequate for serving only 37 customers.

4.a. Applicants have not yet acquired land or rights-of-way for their storage tank and connecting lines.

b. Applicants' only source of funds for major additions and improvements to their water system is from sale of lots within their requested certificated area.

Conclusion

Applicants should be granted their requested rate and CPC&N, but the CPC&N should not become effective until applicants have

(1) obtained legal right to occupy land upon which parts of the system are located and (2) agreed to establish a fund for system additions and replacements.

O R D E R

IT IS ORDERED that:

1. After the effective date of this order, applicants John S. Cavanaugh and Evelyn Cavanaugh are authorized to file the revised rate schedule attached to this order as Appendix A. Such filing shall comply with General Order No. 96-A. The effective date of the revised schedule shall be four days after the date of filing. The revised schedule shall apply only to service rendered on and after the effective date thereof. The rate schedule shall supersede the operating arrangement authorized by Decision No. 77059 dated April 7, 1970 in Case No. 8967.

2. A certificate of public convenience and necessity is granted to applicants authorizing them to construct improvements to their water system to serve Rio del Mar Lodge Sites, Subdivisions 1 and 2, and the two nearby lots identified as Tax Code Areas 105-364-1 and 105-364-2, about 2-1/4 miles north of Aptos, Santa Cruz County.

3. Until authorized by further order of this Commission, applicants shall not provide service to more than their present seventeen customers and twenty additional customers within their certificated area. The twenty additional customers shall be the first twenty applicants for service who have obtained a building permit for constructing a residence on property within the certificated area.

4. The certificate granted herein is conditioned upon the following:

   a. Applicants shall obtain title to, or rights-of-way on, all land upon which are located their 63,000-gallon storage tank and pipelines connecting that tank with their well and with pipelines on Redwood Road.

   b. Applicants shall agree to establish a plant improvement and replacement fund from the proceeds of sales of lots which they own within the certificated area. The amount deposited in the fund

shall be $200 for each unimproved lot sold and $500 for each lot with residence sold. The funds are to be deposited in an interest-bearing special account in a bank or savings and loan association, separate from applicants' other cash accounts. The fund, including earned interest, shall be used only for additions to or replacements of plant facilities. Withdrawals from the fund shall be made only after letter approval signed by the Commission's Secretary. A report shall be filed in this proceeding by applicants by March 31 every year, detailing additions to and expenditures from the fund during the preceding year and the year-end balance in the fund.

5. In future construction, applicants shall obtain title or rights-of-way for all land upon which plant is to be installed.

6. After the effective date of this order, applicants are authorized to file revised tariff sheets, including a tariff service area map, to provide for the application of their tariff schedules to the areas certificated herein. The map shall clearly state that only twenty services will be added after January 1, 1973, and that priority for installing services will be determined by the chronological order of the issuance of building permits by the County of Santa Cruz to the applicants for service.

7. Compliance by applicants with paragraph 6 of this order shall constitute acceptance by them of the right and obligation to furnish public utility water service within the area certificated herein.

The effective date of paragraph 1 of this order shall be twenty days after the date hereof. The effective date of the rest of the order will be established by supplemental order after applicants have filed in this proceeding proof of their compliance with paragraph 4.

Dated at San Francisco, California, this 30th day of JANUARY, 1973.

President

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

Schedule No. 2R

RESIDENTIAL FLAT RATE SERVICE

APPLICABILITY

Applicable to all flat rate residential water service.

TERRITORY

Rio del Mar Lodge Sites Subdivisions Nos. 1 and 2 and parcels identified as Tax Code Areas 105-364-1 and 105-364-2, Santa Cruz County.

RATES

	Per Service Connection Per Month
For a single-family residential unit	$10.00

SPECIAL CONDITIONS

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

2. Service is limited to the present 17 customers and the first 20 additional lot owners to obtain a building permit from Santa Cruz County.