

ORIGINAL

Decision No. 82918

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SINGER HOUSING COMPANY,  
a Delaware corporation,

Complainant,

vs.

CITIZENS UTILITIES COMPANY,

Defendant.

Case No. 9599  
(Filed August 13, 1973)

Michael Gannon, Attorney at Law, and B. W. Knox, Jr.,  
for Singer Housing Company, complainant.

William G. Fleckles, Attorney at Law, for Citizens  
Utilities Company of California, defendant.

Cleo D. Allen, for the Commission staff.

O P I N I O N

The Complaint of Singer

On August 13, 1973, complainant Singer Housing Company (Singer) filed this complaint against Citizens Utilities Company, correctly known as Citizens Utilities Company of California (Citizens), and alleged that:

1. Singer has previously requested Citizens to enter into a special facility main extension contract providing for the refund of the total cost of a water well and related equipment which have been added to the Citizens' distribution system in the Niles District of the city of Fremont. Citizens has accepted the facility into its system but has refused to enter into the special facility main extension contract and to refund the advance made by Singer for the special facility.

2. On July 13, 1971, and subsequently, Singer received approvals from the city of Fremont for the construction of Planned District 71-3 containing 574 dwelling units on 60 acres in Citizens' Niles District service area in the city of Fremont, consisting of 177 townhouses, 394 apartments, and 3 single-family detached homes.

3. Singer advanced to Citizens the cost of main extensions, stubs, meter boxes, and fire hydrants required to serve the development under main extension contracts with Citizens providing for refunds of such advances.

4. As a condition for approval of the occupancy of Tracts 3223 and 3450 and PUD 71-7 for 394 apartments, the City Council of the city of Fremont further required that Singer complete a water well with pump, auxiliary power unit, and related equipment capable of delivering at least 1,000 gallons per minute into the Citizens' system prior to authorizing the occupancy of any of the 574 units constructed or to be constructed.

5. The City Council based this judgment on evidence presented to it at a series of public hearings, concurred in by its Director of Public Works, that the water supply, service levels, and safety standards maintained by Citizens were significantly inferior to those available to other residents of the city of Fremont and were in fact inadequate to serve the existing subscribers to the system, and that Singer should be required to complete the well facility and to provide for the additional 574 new subscribers without deteriorating the quality of services to the existing subscribers.

6. Throughout the design phase of the well installation, Singer's water works engineer, Water Resources Engineering, Inc., was required to design within the criteria established by both the Department of Public Works of the city of Fremont and Brown & Caldwell, Inc., the consulting engineers for Citizens.

7. The resulting facility, as described in Plans and Specifications prepared by Singer's engineer, dated March 23, 1973, was approved by the Department of Public Works of the city of Fremont, for issuance of a building permit; and the facility has been constructed at a cost to Singer of \$145,000.

8. On December 5, 1972, Singer forwarded to Citizens a written request outlining the facts stated above and demanding that this special facility be included in the advance covered by the main extension contract previously entered into by Singer and Citizens or by a separate special facility main extension contract under the provisions of subsection C of Citizens' Rule 15, Main Extensions. Citizens refused to enter into such special facility main extension contract and to refund the advance in the amount of \$145,000 to Singer.

9. As another condition precedent for approval of occupancy of Tracts 3223 and 3450, the city of Fremont required the water well to be incorporated into Citizens' water system. Citizens refused to incorporate the private water well into its system and demanded title to the overall production facility. On June 28, 1973, Singer sold the water well to Citizens for \$1.00, expressly reserving the right to file a complaint with the Public Utilities Commission for a determination of the applicability of Citizens' Rule 15, Main Extensions.

10. The well has been designed to supply the area covered by the main extension contract previously entered into by Singer and Citizens and will upon completion of a loop system be able to serve other areas of Citizens' system. Its design capacity exceeds the requirements of the Singer real estate development by at least 50 percent and will provide pressure stabilization, emergency supply through its auxiliary power unit, and reserve capacity for all Citizens' customers in Niles and Union City through new mains presently under construction.

Singer contends that the well and its related equipment qualify as a special facility as defined in Citizens' Rule 15, Main Extensions, on the following grounds:

1. The construction of the well was required by the city of Fremont as a condition precedent to approval of PD 71-3.

2. The well meets the definitional criteria set forth in Rule 15 C.1.b. for a "special facility", and was "required for the service requested", and was not an "extension" as specified in Rule 15 C.1.a.

Singer requests the Commission to issue an order requiring Citizens to enter into a special facility main extension contract with Singer pursuant to Section C.1.b. of Rule 15, Main Extensions, of Citizens so that Singer will be entitled to refunds in the amount of the \$145,000, the cost of the well and related equipment, as provided in Section C.2.c. of Rule 15.

The Answer of Citizens

Citizens filed an answer in which it denied that it has failed to properly administer and/or apply its tariff schedules and/or that it has violated Section C.1.c. and/or Section C.2.b. of its Rule 15, Main Extensions. Citizens admitted that subject to the approval by appropriate governmental agencies it has conditionally accepted the water well and related equipment of Singer into its distribution system and that it has refused to enter into a special facility main extension contract with Singer, but specifically denied that the water well and the related equipment constitute a special facility as defined in Section C.1.b. of Citizens' Main Extensions Rule 15.

Citizens further denied that the water supply and/or service levels and/or safety standards which it has maintained within the portions of its distribution system in the Niles District of the city of Fremont were inferior in any way to those available to other residents of the city of Fremont and/or that they were inadequate to serve any existing subscribers of Citizens' water system.

As an affirmative defense Citizens alleged that on July 6, 1971, in connection with its consideration of a General Development Plan proposed by Singer for property in the city of Fremont commonly called the "California Nursery Property", the City Council of Fremont adopted a resolution regarding said property which contained directions for submission of a Planned Unit Development plan for the area, including a direction that any such proposal require a "water system that will not be detrimental to water service to [the] total Niles area and provide service of [a] quality equivalent to other areas of [the] City and satisfactory fire service."

Citizens further alleged that in order not to impede its plan for development of the Nursery Property, Singer installed a well on the Nursery Property and related equipment capable of delivering 1,000 g.p.m. The installation was designed to meet standards set by the city of Fremont and greatly exceeds the standards established by the Commission as set forth in General Order No. 103. Citizens further alleged that at all times mentioned in the complaint and continuously to and including the date of its answer the production capacity of Citizens' existing Niles-Decoto District water system has significantly exceeded the minimum standards prescribed by General Order No. 103 and has been and now is sufficient to supply water to Singer's development on the California Nursery Property without the installation of Singer's well and related equipment.

Citizens contends that the Singer well and related equipment are not an installation the cost of which is subject to refund to Singer under any provision of Citizens' main extension rule. Citizens requests the Commission (1) to declare that Citizens does not have any responsibility to refund any portion of the cost of the Singer well and related equipment and (2) to dismiss the complaint.

Public Hearing

Public hearing on the complaint was held before Examiner Cline in San Francisco on January 18, 1974. At the conclusion of the hearing the matter was taken under submission.

Issues

1. Was the incorporation of the Singer well and related equipment in the Niles District water system of Citizens necessary to enable such system to meet the minimum service requirements of the Commission's General Order No. 103 in serving its present customers and those subsequently to be added to the system as a result of the occupancy of the dwellings constructed and to be constructed on the Singer California Nursery Property?

2. If the Niles District water system of Citizens without the incorporation of the Singer well and related equipment had the capacity to serve its present customers and those subsequently to be added to the system as a result of the occupancy of the dwellings constructed and to be constructed on the Singer California Nursery Property in accordance with the minimum requirements of the Commission's General Order No. 103, is such well and related equipment nevertheless a special facility within the meaning of Section C.l.b. of Citizens' Main Extensions Rule 15 because the city of Fremont required Singer to incorporate such well and related equipment into the Niles District water system of Citizens as a condition for approval of the occupancy of the dwellings constructed and to be constructed on the Singer California Nursery Property?

3. If the Singer well and related equipment are a special facility within the meaning of Section C.1.b. of Citizens' Main Extensions Rule 15, may this Commission order Citizens to enter into a special facility main extension contract with Singer which will provide for the refund to Singer of the \$145,000 which has been expended by Singer on such special facility?

Discussion

Section A.1.a. of Citizens' Main Extensions Rule 15 reads as follows:

"a. All extensions of distribution mains, from the utility's basic production and transmission systems or existing distribution system, to serve new customers, except for those specifically excluded below, shall be made under the provisions of this rule unless specific authority is first obtained from the Commission to deviate therefrom. A main extension contract shall be executed by the utility and the applicant or applicants for the main extension before the utility commences construction work on said extensions or, if constructed by applicant or applicants, before the facilities comprising the main extension are transferred to the utility."

Section A.4.a. of Rule 15 reads in part as follows:

"a. Any facilities installed hereunder shall be the sole property of the utility. . . ."

Section A.4.d. of Rule 15 reads:

"d. When an extension must comply with an ordinance, regulation, or specification of a public authority, the estimated and adjusted construction costs of said extension shall be based upon the facilities required to comply therewith."

Section C of Rule 15 provides:

"C. Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments or Organized Commercial Districts.

"1. Advances.

"a. Unless the procedure outlined in Section C.1.c. is followed, an applicant for a main extension to serve a new subdivision, tract, housing project, industrial development or organized commercial district shall be required to advance to the utility, before construction is commenced, the estimated reasonable cost of the extension to be actually installed, from the nearest utility facility at least equal in size or capacity to the main required to serve both the new customers and a reasonable estimate of the potential customers who might be served directly from the main extension without additional extension. The costs of the extension shall include necessary service stubs or service pipes, fittings, gates and housing therefor, and meter boxes, but shall not include meters. To this shall be added the cost of fire hydrants when requested by the applicant for the main extension or required by public authority, whenever such hydrants are to become the property of the utility.

"b. If special facilities consisting of items not covered by Section C.1.a. are required for the service requested and, when such facilities to be installed will supply both the main extension and other parts of the utility's system, at least 50 percent of the design capacity (in gallons, gpm, or other appropriate units) is required to supply the main extension, the cost of such special facilities may be included in the advance, subject to refund, as hereinafter provided, along with refunds of the advance of the cost of the extension facilities described in Section C.1.a. above.



- "c. In lieu of providing the advances in accordance with Sections C.1.a and C.1.b, the applicant for a main extension shall be permitted, if qualified in the judgment of the utility, to construct and install the facilities himself, or arrange for their installation pursuant to competitive bidding procedures initiated by him and limited to qualified bidders. The cost, including the cost of inspection and supervision by the utility, shall be paid directly by applicant. The applicant shall provide the utility with a statement of actual construction cost in reasonable detail. The amount to be treated as an advance subject to refund shall be the lesser of (1) the actual cost or (2) the price quoted in the utility's detailed cost estimate. The installation shall be in accordance with the plans and specifications submitted by the utility pursuant to Section A.5.b."

Singer basically contends that the Singer well and related equipment were required to be incorporated into the Citizens' Niles District water system in order to comply with an ordinance, regulation, or specification of the city of Fremont, a public authority, and that such well and related equipment are "special facilities" within the meaning of that term as used in Section C.1.b. of Citizens' Rule 15. Therefore, pursuant to Sections A.4.d. and C.1.b. of Citizens' Rule 15, Singer urges this Commission to order Citizens to enter into a special facilities main extension contract with Singer which will provide for the refund by Citizens to Singer of the \$145,000 which Singer has expended on such special facility.

Citizens points out that the Planning Commission report dated October 14, 1971 pertaining to PUD 71-7, pages 4, 5, and 6 of Exhibit F which is a part of Exhibit 2 in this proceeding, contains the following evaluation of the necessity for the Singer well and related equipment:

"Water System: On June 10, 1971, the Planning Commission approved the general development plan, subject to the following conditions (3)(b)9):

'The water system shall conform to Alameda County Water District standards and be designed to the satisfaction of the City Engineer and Fire Chief for fire flow and domestic service requirements.'

"On July 6, 1971, Council approved the general development plan, adding the following condition (8) on water:

'Require a water system that will not be detrimental to water service to the total Niles area and require water service of quality equivalent to other areas of the city and that satisfactorily meets fire service requirements.'

"Staff has evaluated the existing system based on all available information. This includes material submitted by the consultant [Water Resources Engineers (WRE)] for Singer Housing Company and the Niles Water Committee report. Other information sources include the Alameda County Water District staff, Fire Chief, Fire Flow Standards (AIA), standards set by the State Public Utilities Commission, and water supply texts on the subject.

"The WRE report concludes the following:

- '(1) The plentiful ground water supply and the five existing deep well pumps with a combined capacity of approximately 3,500 gpm will continue to compensate for the lack of adequate elevated storage. They will deliver an adequate quantity of water at sufficient pressure to the Citizens Utilities distribution system. This will meet both the required fire flow plus the increase domestic water requirements of this project development.

- '(2) The Citizens Utilities water distribution system can provide the necessary water service, including a 1,500 gpm fire flow, to the proposed project area.
- '(3) By adding the missing segment of 8" line in Rancho Arroyo Parkway with this development, our analysis shows that the adequacy of the Citizens Utilities distribution system in the area adjacent to the project area will be improved. The remainder of the system will be virtually unaffected, even though the project requires additional domestic water.
- '(4) The added domestic water demand will help stabilize the pressures adjacent to the project area by allowing the deep-well pumps to remain on for longer periods of time and by slightly reducing the magnitude of the rapid pressure changes, which occur when the pumps start up or shut off.'

"Staff has further analyzed this system based on flow figures contained in the WRE report and recommends the provision of a well and pump within the California Nursery area capable of producing a minimum of 1,000 gpm. This well should be tied to the new system with an adequate size main and be equipped with an auxiliary power unit capable of delivering the above flow under power failure conditions. The pump should be equipped with pressure controls. This new well is recommended by staff assuming all of the following conditions could exist in the Niles system at the same time:

- (1) An 1,100 gpm demand for service to the existing Niles system (based on WRE calculations).
- (2) Fire demand of 1,500 gpm.

- (3) 200 gpm demand for service to the California Nursery development (based on maximum day demand calculations).
- (4) The largest single production unit is inoperative.

"With the addition of a 1,000 gpm well and pump under the above severe conditions, the system would still, theoretically, have the capability of supplying approximately 460 gpm to the existing 200,000 gallon elevated storage tank. The 1,000 gpm well and pump with pressure control devices, an adequate discharge line, and auxiliary power unit combined with a new water main in Rancho Arroyo Parkway, will, in staff's opinion, meet fire service requirements and provide a water system that will not be detrimental to water service in the total Niles area. It should, in fact, enhance the present service quality of water service in the area."

The following recommendation was included in the Report of the Planning Commission on page 8 of Exhibit F which is a part of Exhibit 2:

- "13) Design details of the additional 1,000 gpm well, pump, auxiliary power unit, pressure regulators, connections to the mains (see Exhibit 'B') and provision of water for the proposed park shall be subject to design approval of the City Engineer. A bond and contract for this work must be posted with the City prior to issuance of a building permit for the apartments. The well shall be fully operational and connected to the system prior to occupancy of these apartment units."

Exhibit 6 which was prepared by Citizens' witness shows that the additional water supply required to serve an additional 600 customers (the Singer development consists of 574 customers) by a system already serving 1,500 customers (the present customers in Niles) to meet the requirements of the Commission's General Order No. 103 ranges from a minimum of 200 gpm to a maximum of 400 gpm. Exhibit 6 shows that in the Niles District of Citizens the maximum requirement for 2,100 customers under General Order No. 103 is 3,400 gpm. As the actual production of Citizens available in the Niles District at 30 psi is 4,325 gpm from the wells plus 835 gpm from the 200,000 gallon storage tank, the excess supply available without the 1,300 gpm Singer well is 1,760 gpm (5,160 gpm - 3,400 gpm). Similar computations for the Niles-Decoto District of Citizens show an excess capacity based on 3,800 customers of 2,485 gpm without the Singer well.

Citizens contends that the city of Fremont acted arbitrarily in requiring Singer to incorporate the Singer well and related equipment into the Citizens' system as a condition to occupancy of the housing units in the California Nursery development of Singer and that Singer's remedy was to contest this condition in the courts rather than to file this complaint against Citizens.

Citizens points out that where there is a conflict between a General Order of this Commission establishing standards of performance by a regulated public utility and a local ordinance the courts have held that the General Order of this Commission prevails. See Los Angeles Railway Corporation v City of Los Angeles (1940) C 2d 779 and California Water and Telephone Co. (1967) 253 CA 2d 16 in which the court at pages 30 and 31 said:

"No profound exegesis of the contents of the Water Ordinance and the utilities manual and of the contents of the cited sections of the Public Utilities Code and the commission's regulations promulgated pursuant thereto is necessary to conclude that the Water Ordinance as applied to respondents conflicts with general law. Although the wording of both sets of legislation is not identical, the subject matter which is covered by each is substantially identical.

"Moreover, the construction, design, operation and maintenance of public water utilities is a matter of state-wide concern. Of course, the county is vitally interested in the adequacy of the water supply available for fire protection. But the interest is not so parochial. All of the citizens of the complex of communities within the County of Los Angeles and in the neighboring counties are affected by the adequacy of water supply, not only for fire protection but also for other domestic and industrial uses. Under such circumstances, the control of these aspects of water utilities is not a municipal affair subject to a checkerboard of regulations by local governments. 'Neither the public nor the service corporation could tolerate as many standards and policies as there were towns, cities, or boroughs through which they operated... [R]egulations not exclusively local, those affecting the [public utilities] business as a whole, or affecting the public as a whole, and those which the nature of the business and the character of the regulation require should be under the single agency of the state, are by our act committed to the exclusive jurisdiction of the Public Utilities Commission. The subject matter of this ordinance clearly falls within the exclusive jurisdiction of the commission.' (Los Angeles Ry. Corp. v. Los Angeles (1940) 16 Cal. 2d 779, 787 [108 P. 2d 430].)"

In view of the record in this proceeding Citizens contends that the Singer well and related equipment are not special facilities within the meaning of Section C.1.b. of Citizens' Rule 15.

Citizens further points out that Section A.4.d. of Rule 15 relates to a determination of costs rather than to a determination of what is a special facility. The order with which Citizens must comply in connection with the extension is General Order No. 103 of this Commission and not the condition imposed by the city of Fremont on Singer in authorizing the occupancy of the housing units constructed and to be constructed on the California Nursery Property.

Findings of Fact

1. The city of Fremont required Singer to complete a water well with pump, auxiliary power unit, and related equipment capable of delivering at least 1,000 gpm into the Citizens' Niles District water system prior to authorizing the occupancy of any of the 574 housing units constructed or to be constructed by Singer at the California Nursery Property.

2. At a cost of approximately \$145,000 Singer has completed a water well with pump, auxiliary power unit, and related equipment capable of delivering 1,300 gpm into the Citizens' Niles District water system and has deeded such well and related equipment to Citizens for the sum of \$1.00.

3. The Niles District water system of Citizens presently serves 1,500 customers to which will be added 574 customers when the Singer California Nursery Property is fully developed and occupied.

4. Under General Order No. 103 the maximum requirement to serve 2,100 customers in the Niles District is 3,400 gpm. As the actual production of Citizens available from its wells other than the Singer well in the Niles District at 30 psi is 5,160 gpm, the excess available water supply of Citizens in the Niles District without the 1,300 gpm Singer well is 1,760 gpm.

5. The additional water supply required to serve the less than 600 additional customers in Singer's California Nursery Property development under the requirements of General Order No. 103 ranges from a minimum of 200 gpm to a maximum of 400 gpm.

6. Less than 50 percent of the 1,000 gpm design capacity of the Singer well and related equipment is required to supply the additional 574 customers in the Singer California Nursery Property development.

7. The requirement by the city of Fremont that the Singer well and related equipment supply additional water capacity to the Singer Niles Water District is in conflict with the requirements of General Order No. 103 of this Commission, and the requirements of General Order No. 103 prevail insofar as Citizens and the application of its Rule 15 are concerned.

8. The Singer well and related equipment which have been deeded to Citizens are not a special facility under Sections A.4.a. and C.1.b., or any other provisions of Citizens' Main Extensions Rule 15, and Singer is not entitled to have the costs of such well and related equipment included as an advance subject to refund under its present main extension agreement with Citizens or under a special facility main extension agreement with Citizens.

Conclusion of Law

The request that this Commission order Citizens to enter into a special facility main extension contract with Singer providing for the refund by Citizens to Singer of the \$145,000 cost of the Singer well and related equipment which have been deeded by Singer to Citizens for \$1.00 should be denied.



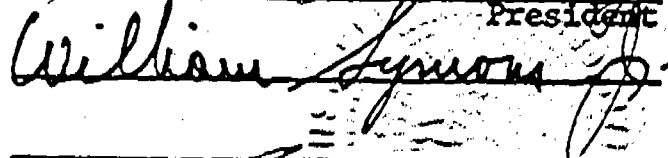
O R D E R

IT IS ORDERED that the relief requested is denied.

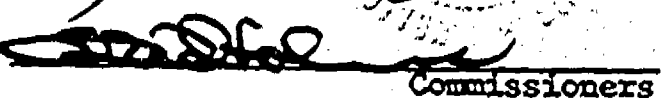
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 29th  
day of MAY, 1974.

  
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President

  
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Commissioners

  
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Commissioner J. P. Vulcasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.