

Decision 87 12 032 DEC 9 1987**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 tariff filed by )  
 Advice Letter No. 244 of Citizens )  
 Utilities Company, Sacramento- )  
 Lincoln Oaks District, in )  
 Sacramento County. )

(I&S)  
 Case 87-05-021  
 (Filed May 13, 1987)

Holliman, Hackard & Taylor, by Michael A. Hackard,  
 Attorney at Law, for Citizens Utilities Company  
 of California, applicant.  
John V. Lemmon, Attorney at Law, for Northridge  
 Water District, protestant.

OPINION

On April 13, 1987, Citizens Utilities Company of California (CUC) filed Advice Letter No. 244 consisting of a map filing made for the purpose of including within its Sacramento-Lincoln Oaks tariff service area, an area stated to be contiguous to that being served where it was stated that requests for water service had been received from a developer of residential property and the Seventh Day Adventist Church.

On April 17, 1987, Northridge Water District (Northridge), a county water district, filed a protest letter in accordance with the provisions of Section 1001 of the Public Utilities Code alleging that the tariff extension area had been annexed to it by formal action of the Local Agency Formation Commission of Sacramento County (LAFCO) on July 16, 1986.

The Water Utilities Branch of the Commission Advisory and Compliance Division recommended that the advice letter be suspended and the matter set for hearing. The Commission suspended Advice Letter No. 244 on May 13, 1987, and extended the suspension on

September 10, 1987. Currently, the suspension extends to April 30, 1988, or until further Commission order, whichever occurs sooner.

A duly noticed public hearing before Administrative Law Judge (ALJ) Orville I. Wright was held in San Francisco on July 13, 1987, and the matter was submitted for decision upon the receipt of concurrent briefs on August 13, 1987.

The ALJ's proposed decision was filed on November 5, 1987.

#### Withdrawal Request

CUCC's Advice Letter No. 244 was filed for the primary purpose of enabling it to extend service to a proposed residential tract known as Antelope Hills.

On October 20, 1987, counsel for Northridge forwarded a letter to the Commission wherein the developer of Antelope Hills writes that he has changed his preference for provision of water service from CUCC to Northridge.

As its primary purpose is no longer achievable in this proceeding, CUCC's comments to the proposed decision includes a withdrawal of Advice Letter No. 244 from further consideration by the Commission.

#### Findings of Fact

1. CUCC filed Advice Letter No. 244 for the primary purpose of including a proposed residential development known as Antelope Hills within its Sacramento-Lincoln Oaks tariff service area, the developer having requested service from CUCC.

2. After hearing, the Commission was informed that the developer of Antelope Hills had changed his preference for provision of water service, and had arranged for such service to be provided by Northridge, a county water district contiguous to the proposed development.

3. The ALJ's proposed decision finding Northridge to be the more natural entity to provide water service to Antelope Hills was filed on November 5, 1987.

4. CUCC's comments to the proposed decision includes a withdrawal of Advice Letter No. 244 from further consideration by the Commission.

Conclusions of Law

1. Advice Letter No. 244 of CUCC is withdrawn.
2. This investigation should be discontinued.

ORDER

IT IS ORDERED that:

1. Advice Letter No. 244 of Citizens Utilities Company of California is withdrawn.
2. (I&S) C.87-05-021 is discontinued.

This order is effective today.

Dated December 9, 1987, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL

FREDERICK R. DUDA

G. MITCHELL WILK

JOHN B. OHANIAN

Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.



Victor Weiner, Executive Director

Decision \_\_\_\_\_

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OPINION

On April 13, 1987, Citizens Utilities Company of California (CUTC) filed Advice Letter No. 244 consisting of a map filing made for the purpose of including within its Sacramento-Lincoln Oaks tariff service area, an area stated to be contiguous to that being served where it was stated that requests for water service had been received from a developer of residential property and the Seventh Day Adventist Church.

On April 17, 1987, Northridge Water District (Northridge), a county water district, filed a protest letter in accordance with the provisions of Section 1001 of the Public Utilities Code alleging that the tariff extension area had been annexed to it by formal action of the Local Agency Formation Commission of Sacramento County (LAFCO) on July 16, 1986. In accordance with the promises of Northridge made at the time of the action of annexation, stated the protest, Northridge had installed water mains in the two roads fronting both sides of the tariff extension area. Northridge further alleged that the proposed

interference with the district's annexed property would injuriously affect Northridge because it would be unable to recapture the cost of the installed water mains located on the boundaries of subject property.

The Water Utilities Branch of the Evaluation and Compliance Division recommended that the advice letter be suspended and the matter set for hearing. The Commission suspended Advice Letter No. 244 on May 13, 1987, and extended the suspension on September 10, 1987. Currently, the suspension extends to April 30, 1988, or until further Commission order, whichever occurs sooner.

A duly noticed public hearing before Administrative Law Judge Orville I. Wright was held in San Francisco on July 13, 1987, and the matter was submitted for decision upon the receipt of concurrent briefs on August 13, 1987.

General Order No. 96-A

Paragraph I. E. of General Order 96-A provides that:

"The utility shall, before commencing service, file tariff service area maps for extensions into territory contiguous to its line, plant, or system and not theretofore served by a public utility of like character."

The record in this proceeding shows that neither the property of the developer of residential property (developer) nor the property of the Seventh Day Adventist Church is contiguous to the service area of CUCC as alleged in Advice Letter No. 244. CUCC's map and evidence shows that the developer intends to obtain an easement to extend a water main across undeveloped property lying between developer's parcel and CUCC's present service area. CUCC's evidence omits any further reference to service to the parcel owned by the Seventh Day Adventist Church (Church).

With respect to service to Church, the record shows that water service to it is being provided by Northridge from its service area which is contiguous to this customer's property. CUCC makes no showing that Church has requested its service or how any

CUCC service to it would be accomplished. CUCC is not contiguous to Church.

With respect to service to developer, the evidence is that developer's property is not contiguous to CUCC's service area. Developer testified that he had an oral commitment from the owner of an undeveloped parcel between his project and CUCC's service area that he could obtain an easement to permit CUCC's water main to traverse the vacant parcel to developer's project. This arrangement does not meet the Commission's criteria for contiguous territory.

We also note that on October 20, 1987, counsel for Northridge forwarded a letter to the Commission wherein developer writes that he has changed his preference for provision of water service from CUCC to Northridge. While the developer's preference is only one factor of many we consider in this type of proceeding, here the preference is more critical as CUCC depends upon developer to obtain the necessary access easement.

Evidence of Northridge

Northridge places great emphasis on the fact that developer's parcel is included within a substantially larger area of undeveloped land which has been annexed to protestant by action of LAFCO.

Northridge testified that it has laid 12-inch water mains along a perimeter of both developer's property and Church's property on the assumption that the LAFCO annexation approval conveyed exclusive rights to protestant to provide water service in the area of annexation. The assumption is incorrect, however, and, as there is no evidence that the water mains are required in Northridge's present service, we disregard these premature improvements in reaching decision in this case.

"With or without the concurrence of LAFCO, a city cannot, under color of a 'preplanned service area', block out large tracts of unserved territory for the purpose of sequestering and reserving

4. CUCC's comments to the proposed decision includes a withdrawal of Advice Letter No. 244 from further consideration by the Commission.

Conclusions of Law

1. Advice Letter No. 244 of CUCC is withdrawn.
2. This investigation should be discontinued.

ORDER

IT IS ORDERED that:

1. Advice Letter No. 244 of Citizens Utilities Company of California is withdrawn.
2. (I&S)C.87-05-021 is discontinued.

This order is effective today.

Dated DEC 9 - 1987, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
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G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

such tracts for future exclusive development by its municipal water utility, all for the purpose of excluding an already existing and contiguous privately owned public water utility." (California Water Service Company and City of Bakersfield, D.86-03-064, March 19, 1986, mimeo. p. 9.)

The relevant evidence submitted by protestant Northridge is that Church's property is contiguous to protestant's service area, that Church requested water service from protestant, and that such water service is presently being provided by Northridge. Further, developer's parcel is also contiguous to protestant's service area so that Northridge is the more natural entity to provide water to the proposed residential development.

Findings of Fact

1. CUCC filed an advice letter for the purpose of including within its Sacramento-Lincoln Oaks tariff service area, an area alleged to be contiguous to the utility's present service area. The advice letter further alleged that it had received requests for water service from a developer of residential property and from Church.
2. The area sought to be included in the advice letter filing is not contiguous to CUCC's service area.
3. There is insufficient evidence that an easement could be obtained by CUCC to extend its water main over undeveloped property separating CUCC's service area from subject property.
4. There is no evidence that Church requested water service from CUCC.
5. Northridge is providing water service to Church.
6. Northridge's service area is contiguous to property owned by Church and by developer.
7. LAFCO has approved annexation of subject property to Northridge.
8. Northridge is the more natural entity to provide water to the proposed residential development of developer.



9. The Commission has suspended the advice letter until April 30, 1988, or until further order.

Conclusions of Law

1. Public convenience and necessity require that Northridge Water District provide water service to the disputed area.

2. Advice Letter No. 244 of CUCC should be permanently suspended.

ORDER

IT IS ORDERED that:

1. Citizens Utilities Company of California's Advice Letter No. 244 is permanently suspended.

2. C.87-05-021 is discontinued.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.