

DEC 19 1990

Decision 90-12-060 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the practices of Citizens Utilities Company of California, its operating divisions and its subsidiaries, with regard to the transfer of real property rights and the management of its watershed resources.

ORIGINAL

OII 83-11-09
(Filed November 30, 1983)

In the Matter of the Application of Citizens Utilities Company of California for authority to increase rates and charges for water service in its Guerneville Water District.

Application 60220
(Filed January 27, 1981)

O P I N I O N

This opinion is a response to the petition of Sweetwater Springs Water District (District) for modification of Decision (D.) 89-08-038.

Procedural Background

In D.88-04-068, pertaining to the Guerneville District of Citizens Utilities Company of California (CUCC) the Commission ordered CUCC:

- "4. ...to hire a competent and independent geohydrologist familiar with local conditions to explore potential off-river sources of water, especially those associated with tributary streams feeding into the Russian River..."
- "5. ...to report to the Commission on the outcome of such exploration within one year of the effective date of this interim order so that the Commission can determine whether CUCC should be authorized to drill the three high production wells in the Russian River alluvium recommended by its engineering consultant." (Id., pp. 53-54.)

On August 3, 1989, the Commission issued a supplemental opinion (D.89-08-038) approving a proposed test well drilling program submitted by CUCC and ordering CUCC to undertake the proposed program promptly. The Commission also imposed the following conditions on CUCC:

- "b. During the progress of the work, CUCC shall inform Winzler and Kelly, consultants for Sweetwater Springs Water District (District), of any differences between the actual well drilling process and the proposal.
- "c. During the execution of the work, CUCC or its consultants shall inform Winzler and Kelly or their subconsultant, Todd Engineers, at critical decision points. CUCC or its consultants and District or its consultants shall mutually identify in advance the critical decision points and the procedure for providing notice thereof to District or its consultants." (Id., p. 3.)

Later, CUCC retained Herzog Associates to perform a hydrogeological study, including a test well drilling program, and to recommend alternative sources of supply for the Guerneville District. Having undertaken the subject study, Herzog has now distributed its "Herzog Phase I Report: Hydrogeological Assessment; Guerneville, California" (Herzog Study).

At a meeting on September 11, 1990, the Herzog Study was reviewed and discussed by Herzog representatives, Commission staff members, and District's consultants, Winzler and Kelly, and E. H. Boudreau, registered geologists. Based on these discussions, as well as review of the Herzog Study, District has concluded that the program undertaken by CUCC to investigate alternate sources of water in its Guerneville District is deficient in many respects and requires remedial measures to be undertaken.

District does not believe that CUCC has undertaken a reasonable program to explore the availability of off-river sources

of water, as required by the Commission. The consultant for District, E. H. Boudreau, has undertaken his review of the Herzog Study and has concluded that the reference report is inadequate in several respects. Those alleged deficiencies are set forth at page 4 of the petition and in more detail in the report of E. H. Boudreau attached to the petition. Based on the recommendations of Boudreau, District asked the Commission to review whether the test well drilling program conducted by CUCC constitutes a reasonable effort to identify viable sources of off-river water. District submits that such a review can only lead to the conclusion that CUCC's efforts in this regard have not been reasonable. According to District, CUCC should be directed by the Commission to correct the deficiencies in its test well drilling program as identified by Boudreau, and to initiate a test well drilling program that is consistent with the recommendations of Boudreau.

District requests the Commission to modify D.89-08-038 in a manner that is consistent with the recommendations set forth in its petition and that will ensure that CUCC meets the Commission's previously stated interest in ensuring that potential sources of off-river water to supply the Guerneville District are fully explored.

On October 1, 1990, District filed an amendment to its September 26, 1990, petition for modification. District specifically asked that CUCC be required to bear all of the costs incurred to date in conducting the test well drilling program and that no costs associated with CUCC's efforts to date to explore for potential sources of water be passed on to its Guerneville District ratepayers.

Protest of CUCC

On October 18, 1990, CUCC filed a protest to the District's petition for modification. CUCC opposes the requests of the District on the grounds that: (1) they are based upon incorrect technical assumptions; (2) the District and its

consultants have been fully informed of the progress of CUCC's test well drilling program, and they are now attempting to change the terms of the test well drilling program after the work has been completed and the costs incurred; (3) they are not valid under Rule 43 as "minor change(s)" in a Commission decision or order; and (4) they attempt to reargue issues that have long since been decided by the Commission. In the event that a hearing on the petition was granted by the Commission, CUCC would present the evidence that it describes in its protest. However, CUCC believes that no hearing is required and that this Commission can and should reject the petition for the reasons set forth above and as more fully discussed in its protest. Appendix A to the District's petition is a critique of the Herzog Study by Boudreau, a consultant to the District. In turn, Exhibit A to CUCC's protest is a point-by-point refutation of the Boudreau critique by CUCC's consultant, Herzog. According to CUCC, Exhibit A clearly shows that Boudreau and District are incorrect in their allegations. CUCC summarizes the points made by Herzog and alleges that the technical problems called out by the District are unsupported. It alleges that it is clear that Herzog has carried out the test well drilling project in the manner that the Commission ordered CUCC to have it carried out.

CUCC asserts that since the test well reports confirm CUCC's position that the necessary supply for the Guerneville District must be found closer to the Russian River, the District now argues that CUCC's program is deficient. They take this position after over two years of study (pursuant to D.88-04-068 and D.89-08-038) and an expenditure of over \$150,000 by CUCC. In summary, District's position is that, since the test well program did not work out as it had hoped for, the test well program should be scrapped and started over again.

District, and its consultants, have been advised of the process, have influenced it, and have been heavily involved in it

from the inception. A partial listing of CUCC's contacts with them, since D.89-08-038, is set forth in CUCC's protest. The protest lists 16 different letters, status reports, and meetings occurring between August 30, 1989 and September 11, 1990 involving all interested parties.

In addition, District and/or its consultants have received copies of all reports prepared by Herzog, including reports calling out the results of the pumping of the test wells and the chemical analysis of the water produced, and District representatives have visited the test well sites and observed the actual operations.

With the level of involvement demonstrated by CUCC's listing, and the District's clearly aggressive report, the District's argument that CUCC's entire program has been deficient and not reasonable must be treated as disingenuous. Clearly, District should not be allowed to extend this program, and to increase the cost of it.

CUCC also argues that District seeks a fundamental change in the test well program ordered by the Commission and also a fundamental change in the accounting treatment ordered by the Commission for the cost of that program.

There is no reason in fairness or equity to consider the petition or the supplement. District has been aware of the terms of the test well drilling program from before the date of D.89-08-038. At page 2 of that decision, the Commission states:

"The proposal has the support of the Water Utilities Branch and of the consultants for the Sweetwater Springs Water District."

Indeed, both District and its engineering consultant, Winzler and Kelly, wrote to the administrative law judge (ALJ) to express their support for the test well program proposed by CUCC's consultant, Herzog Associates. (Copies of these letters are attached to CUCC's protest as Exhibits M and N, respectively.) To

allow District to now bring about a change in D.89-08-038 because the program ordered by the Commission, and conducted and paid for by CUCC, has not resulted in the findings District hoped for, would be grossly unfair to CUCC and to its customers.

In the District's petition and in its consultant's report (Appendix A to the petition), the District argues that the test well drilling program carried out by CUCC is not reasonable. The Commission is asked to order CUCC to drill test wells beyond those provided for by D.89-08-038 and in areas not contemplated by that decision. In its argument District conveniently ignores the following conditions of Ordering Paragraph 1a of D.89-08-038:

- "a. CUCC or its consultants shall drill, or cause to be drilled, a minimum of one or and a maximum of three test wells in the tributary valleys."

Clearly, District wants CUCC to exceed the number of wells ordered by the Commission, and equally as clearly wants CUCC to again explore for sources of water beyond the tributary valleys. If that result had been the Commission's intent, then the Commission would not have ordered CUCC to drill from one to three test wells in the tributary valleys. For the reasons set forth above and so that CUCC may be authorized to drill the three high production wells in the Russian River aluvium (as referred to at Ordering Paragraph 5, p. 54, of D.88-04-068), the Commission should deny District's petition for modification of D.89-08-038.

On October 26, 1990, CUCC filed an amendment to its protest in which it calls attention to the commitment from the California Department of Water Resources (DWR) for below market financing for improvements to its Guerneville District under the California Safe Drinking Water Bond Act (SDWBA). These improvements will include new sources of supply for the Guerneville subsystem, which is the subject of the District's petition. According to CUCC, such financing will materially reduce the costs to customers of such improvements, and the improvements will not be

included in rate base upon which CUCC earns a return. CUCC argues that because of both these savings, such financing will have a substantial moderating effect on rates. CUCC further states that DWR is requesting that CUCC make an early decision on the borrowing, because other potential borrowers are prepared to proceed with projects that can be financed with such bonds. In support of its assertions CUCC attaches to its amendment a letter dated October 16, 1990 to CUCC from the Bond Financing and Administration Office of DWR. The letter states that nearly one year has elapsed since DWR issued its letter of commitment for the funds. DWR would like to conclude contract negotiations as soon as possible. DWR requests that CUCC advise of its company's decision regarding certain alternatives discussed in a meeting of October 2, 1990 within the next 30 days.

CUCC contends that if District's petition is granted, and CUCC is required to conduct additional test drilling, the added delay in being able to undertake the project would jeopardize the availability of this financing, as the limited funds that can be loaned may be directed to other worthy borrowers.

CUCC believes that this factor further justifies immediate Commission denial of District's petition in the earliest possible order approving CUCC's source development proposal.

Response of the Water Utilities Branch

On October 23, 1990, the Water Utilities Branch (Branch) of the Commission Advisory and Compliance Division submitted a response to the petition of the District for modification of D.89-08-038. The Branch's response initially summarizes the history of this matter after the issuance of D.88-04-068. Pursuant to that decision, CUCC hired an independent consultant after conferring with both Branch and Department of Health Services (DHS) staffs. The consultants for CUCC performed the required study and produced a report based on the study.

In a letter, dated February 20, 1989, CUCC recommended that it not be required to pursue development of wells in the tributary valleys based on the consultant's report. It felt that commercially exploitable quantities of water may not be available without adverse effects on the water table.

The District, newly formed at that time, opposed CUCC's conclusion, believing that further detailed analysis was necessary before a final water supply alternative could be determined. The District indicated that further studies should be conducted, even if it would mean additional cost to ratepayers in rates.

In response to the District's concern, the ALJ, at the request of the assigned Commissioner, directed CUCC to propose a nominal test well drilling program that would provide an empirical basis for determining whether the Commission should direct CUCC to pursue wells in the tributary valleys or to drill near the Russian River. CUCC submitted its test well proposal on June 19, 1989. The proposal had the support of the Commission staff and District. The Commission issued D.89-08-038 and stated in its order:

- "1. Citizens Utilities Company of California (CUCC) shall execute, as soon as reasonably feasible, the test well drilling program proposed by its consultants, subject to the following conditions:
 - "a. CUCC or its consultants shall drill, or cause to be drilled, a minimum of one and a maximum of three test wells in the tributary valleys.
 - "b. During the progress of the work, CUCC shall inform Winzler and Kelly, consultants for Sweetwater Springs Water District (District), of any differences between the actual well drilling process and the proposal.
 - "c. During the execution of the work, CUCC or its consultants shall inform Winzler and Kelly or their subconsultant, Todd Engineers, at critical decision points. CUCC or its consultants and District or

its consultants should mutually identify in advance the critical decision points and the procedure for providing notice thereof to District or its consultants.

- "d. CUCC shall include the costs of the test well drilling program in its Safe Drinking Water Bond Act project in order to minimize the costs thereof to the consumer."

In a letter to all interested parties, dated October 1, 1990, CUCC indicated that it conducted the test well drilling program according to the conditions of Ordering Paragraphs 1a through 1c of D.89-08-038 and after drilling and analyzing two test wells, has concluded that off-river sources of supply did not contain the quantity or quality of water necessary for a continued supply to its customers.

The Branch and DHS believe that CUCC has complied with Ordering Paragraphs 1a, 1b, and 1c of D.89-08-038. The Branch and DHS also concur with CUCC's conclusion, based on the results of the two test wells, that there are no assurances of ever finding an adequate and reliable off-river water supply, both in quantity and quality, for the Guerneville District customers. The Branch, therefore, recommends that CUCC be deemed to be in compliance with D.89-08-038 and be authorized to proceed with its plan to construct new wells and treatment plant facilities at El Bonita.

The petition of District for modification of D.89-08-038 is based on a review of the CUCC's consultant's (Herzog Associates) study and subsequent well test drilling program by a consultant for District, E. H. Boudreau. As noted in Ordering Paragraphs 1a, 1b, and 1c of D.89-08-038, District's consultants during the test well drilling program were Winzler and Kelly and Todd Engineers. These two consultants reviewed and accepted the program proposed by Herzog Associates and coordinated with CUCC during the program as ordered in the decision. There is no indication that Boudreau was

involved as a consultant to District until after the two test wells were drilled. For District to have one consultant approve the program and monitor its progress without any protest to the Commission and then call on another consultant to review the same program and deem it inadequate is totally unreasonable.

It is the Branch's understanding that the DWR has already committed \$1.6 million of SDWBA low interest loan funds to CUCC for its new wells and treatment plant project and that CUCC is in the final stages of preparing an application for the \$1.6 million SDWBA loan which is in compliance with Paragraph 1d of D.89-08-038.

In view of these facts, the Branch recommends that District's petition to modify D.89-08-038 be dismissed.

Discussion

This matter is easily summarized. In response to District's concerns, the Commission required CUCC to devise a test well drilling program for the tributary valleys. In designing this test well drilling program, CUCC coordinated with the District and its consultants. The Commission in D.89-08-038 required CUCC to execute the test well drilling program that was approved by the District. During the execution of the program the District's consultants monitored the performance of CUCC and its consultants. At no time during the performance of the test well drilling program did the District object to the manner in which it was being conducted.

After CUCC's consultants submitted their final reports on the well drilling program to the Commission, District filed its petition for modification of D.89-08-038 in which it sought to begin the program again, under different assumptions, and to visit the costs of both past and proposed future test well drilling programs on CUCC. The District supports its recommendations using the report and evaluation of a consultant, Boudreau, who had no contact with the test well drilling program as designed or executed.

We agree with CUCC and Branch that the proposals of District are unreasonable and should be rejected. CUCC has in good faith complied with the orders of the Commission in D.88-04-068 and D.89-08-038 as they relate to off-river sources of water, especially those associated with tributary streams of the Russian River. If District had genuine objections to D.88-04-068 or D.89-08-038, those objections should have been made at the time those decisions were issued.

District acquiesced in both D.88-04-068 and D.89-08-038 without objection. Furthermore, it and its consultants acquiesced in the test well drilling program proposed by CUCC, monitored that program while it was being executed, and did not object to any part of it until after the results of the test well drilling were published. Now, District seeks to reverse the entire process and to assign the costs of that program and any future program to CUCC, contrary to the order in D.89-08-038. We wonder that District has the temerity to make such a request.

Findings of Fact

1. By failing to file an application for rehearing of D.88-04-068 or D.89-08-038, District acquiesced in the orders contained therein pertaining to potential off-river sources of water in the tributary streams.

2. By failing to file a petition for modification of D.88-04-068 or D.89-08-038 prior to the completion of the test well drilling program, District acquiesced in the orders contained therein pertaining to the development of potential off-river sources of water in the tributary streams.

3. District participated in the design of the test well drilling program and its consultants monitored the performance of CUCC in executing the test well drilling program.

Conclusions of Law

1. The facts and circumstances surrounding this case, especially District's acquiescence in the design and execution of

the test well drilling program, render its proposed modifications unreasonable.

2. The petition of the District for modification of D.89-08-038 should be denied.

3. In view of the pendency of the DWR loan under the SDWBA, the following order should be effective immediately.

O R D E R

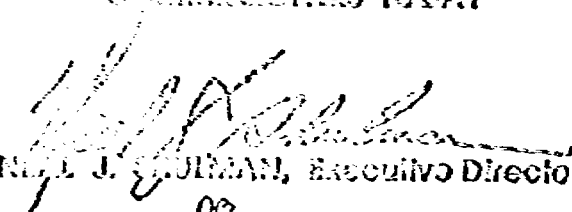
IT IS ORDERED that the petition of Sweetwater Springs Water District for modification of D.89-08-038 is denied.

This order is effective today.

Dated December 19, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS MADE BY THE ABOVE
COMMISSIONERS TODAY


NEIL J. SULLIVAN, Executive Director
ps