

L/cdl/rys

Decision 91-07-019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CONTEL CELLULAR OF CALIFORNIA, INC.)
for a Certificate of Public Convenience)
and Necessity under Section 1001)
of the Public Utilities Code of the)
State of California for authority)
to construct and operate a new)
domestic public cellular radio)
telecommunication service to the public)
in the California RSA No. 9)
encompassing Mendocino and Lake)
Counties.)

ORIGINAL

Application 90-08-025
(Filed August 15, 1990)

ORDER DENYING REHEARING OF DECISION 90-12-090

On August 15, 1990, Contel Cellular of California, Inc. (Contel) filed an application with this Commission for a certificate to develop a new wireline cellular radiotelephone service in California Rural Service Area 9, encompassing Mendocino and Lake Counties. Decision (D.) 90-12-090, issued December 19, 1990, granted the requested authority. On January 4, 1991, Robert C. and Joan Lininger, owners of property adjacent to the site who had filed comments under the California Environmental Quality Act (CEQA) and had tried to file a protest to the project, filed an application for rehearing of D.90-12-090. Contel filed a response in opposition.

As a preliminary matter, because of the sequence of events in this case, the Liningers' Motion to File Late Protest could not be considered before D.90-12-090 was issued. We believe the motion should be granted and the protest reviewed, which we have done in the course of reviewing their application for rehearing.

After consideration of all the arguments raised in the protest, as well as in the application for rehearing and the response in opposition thereto, we are of the opinion that all

the technical requirements of CEQA have been met, and that insufficient grounds have been stated to warrant granting rehearing. First, concerning the date upon which the project application was accepted as complete, that date was September 11, 1990, as was certified by letter by our Executive Director, not August 17, 1990 as the Liningers allege. Secondly, while it is unfortunate that the Liningers did not receive notice of the project until November 20, 1990, there is no requirement either in CEQA or in our own Rules of Practice and Procedure that they be notified earlier; we are, however, taking this matter under advisement as we review and revise our rules applicable to certificates of public convenience and necessity for cellular facilities (General Order 159). Thirdly, in approving the project, we considered all the comments filed in response to the Negative Declaration, including those of the Liningers. The issues raised in their protest are substantially similar to the ones raised in their comments.

We are concerned with their allegations of possible harm to their well, which is in somewhat close proximity to Contel's monopole. It is not clear from either their comments, their protest, or their application for rehearing just what specific harm they anticipated. However, the Initial Study and Negative Declaration indicated that tests done prior to construction strongly indicated that no ground water reserves would be disturbed during construction. Moreover, we are informed by Contel in its opposition to the application for rehearing that the monopole is in actuality 33, and not 9, feet from the well, that special care was taken during construction to insure the structural integrity of the well, and that the backup generator for the facility will be fired by propane and not diesel fuel, thus greatly reducing any possibility of contamination of ground water from a fuel leak. We are satisfied that at this time, the Liningers' well has not been threatened. If at any time, the Liningers have good cause to believe their

well has been harmed by this project, they may file a complaint with us.

We note finally that regarding the Liningers' concerns about the potential dangers of radiation from electromagnetic fields associated with operation of a cellular system, the Initial Study and Negative Declaration state that presently, no federal or state standards exist which would warrant any restrictions on this project; however, future federal or state action could change this. This Commission is currently conducting an investigation into the effects of electromagnetic fields (I.91-01-012); at such time as we adopt any standards which would operate as restrictions on this or any other cellular telecommunications facility, those standards will be made applicable thereto.

IT IS ORDERED that the Liningers' Motion to File Late Protest is granted.

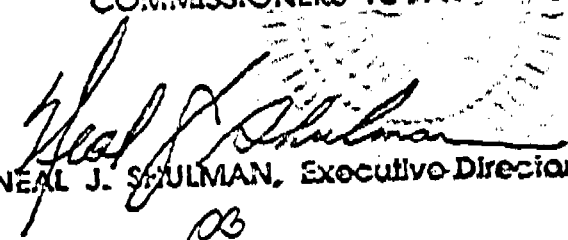
IT IS FURTHER ORDERED that after consideration of the protest and the application for rehearing, rehearing of D.90-12-090 is denied.

This order is effective today.

Dated July 2, 1991 at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


3 NEAL J. SCHULMAN, Executive Director
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