

Mailed

Decision 91-11-047 November 20, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Citizens Utilities Company of)
 California (U87W) for an order) Application 85-06-010
 pursuant to California Public) (Filed June 6, 1985;
 Utilities Code Section 2708 restrict-) amended January 10, 1986)
 ing the addition of customers to be) (Petition filed
 furnished with water service in its) October 17, 1991)
 Montara-Moss Beach District.)

ORIGINALOPINION

The petitioners, Judith A. Taylor, Ralph N. Ely, and Thomas Mahon, seek exemption from the moratorium on new water service connections imposed by Decision (D.) 86-05-078 in the Montara-Moss Beach District of Citizens Utilities Company of California (CUCC). Ely, representing a partnership, and Mahon have each drilled two unsuccessful wells. Ely and Mahon have sewer permits from the Montara Sanitary District (MSD). These permits will expire in mid-January unless: (1) water connection approvals are obtained from certain agencies by mid-November, or (2) MSD grants extensions of the permits. MSD has already denied extensions once. Taylor has the ability to use a domestic well for water supply, but she sees in the petitioners' proposal a public benefit that outweighs her narrow interest in developing her own property.

D.86-05-078

In D.86-05-078 we ordered that CUCC:

"...shall connect no more customers in its Montara-Moss Beach District, except the owners of the six Portola Estates lots described in this opinion and the prospective customers to whom CUCC has issued water service commitments on or before the date of the order." (Id., Ordering Paragraph 1, p. 35.)

We further ordered that:

"A prospective customer may seek an exemption from Ordering Paragraph 1 by filing a petition for exemption in this proceeding. The petition shall comply with the Rules of Practice and Procedure and shall show what extraordinary circumstances require an exemption." (Id., Ordering Paragraph 6, p. 36.)

Petitioners' Proposal

The petitioners propose that for each water service connection granted by the Commission, pursuant to the procedure set up in D.86-05-078, petitioners would each retrofit a certain number of existing homes with low flow shower heads and ultra-low flush toilets. The number of homes to be retrofitted would be sufficient in number to result in water savings equal to the average usage for two existing homes. Thus, for each water connection sought by petitioners, quantities of water would be conserved equivalent to the average usage of two existing connections. The net benefit to the system would be the average consumption of one existing connection.

Petitioners offer the following hypothetical case to show how their proposal would work. Assuming that 200 gallons per day is the average consumption of one residential customer, each petitioner would retrofit enough homes to conserve an amount of water equivalent to at least 400 gallons per day. For example, a home with a toilet using 5 gallons per flush would be retrofitted with a toilet using 1.5 gallons per flush, saving 3.5 gallons per flush. That saving would be multiplied by 6 flushes per day to equal 21 gallons per day saved for that retrofit. Twenty such retrofits would save more than 400 gallons per day, an amount more than twice the expected usage of the proposed new connection. Petitioners point out that qualifying fixtures would be used to make the calculation, rather than numbers of homes. Thus, a single

family residence retrofitted with 3 low flush toilets would save 63 gallons per day towards the 400 gallon per day standard.

Each of the petitioners seeks one new water service connection; and each of the petitioners offers in exchange the retrofits described above, which would be at no cost to the existing customers. Petitioners allege that after January 1, 1992, all new construction must, by law, be equipped with toilets using no more than 1.6 gallons per flush. Manufacturers of plumbing fixtures have responded with designs that meet this new standard.

According to petitioners, the proposed new connections would not have any negative effect on MSD, since liquid flows would be reduced and solids loading would be unchanged. No new, unallocated sewer connections would be added.

Discussion

On the surface the proposed exemptions, based on a system of retrofits, have some attractive features. But the problems of the proposal outweigh the benefits.

First, the petitioners allege that there is no opposition to the proposal. What their proposal requires, however, is affirmative endorsements from the affected departments of the County of San Mateo, from MSD, from CUCC, and from the California Coastal Commission. The proposed retrofit program is a major undertaking that cannot be planned and executed in a vacuum. Petitioners attach to their pleading no letters or other positive indications of interest and support from any public agency, private business, community group, or individual.

Second, the County of San Mateo apparently has no program for retrofitting homes similar to the one that petitioners cite in the City of San Luis Obispo. There, the "Retrofit Program" is designed and implemented by the city's Community Development Department. It developed the criteria, and it published them to the community. It then oversees compliance, using its own building inspectors. No similar structure exists in San Mateo County.

Third, while the petitioners' proposal is interesting in concept, it is lacking in factual detail. The petitioners do not propose a number to be used as the average residential consumption. Rather, they expect the Commission or CUCC to determine the number to be used. They propose certain quantities to be used for the capacities of existing and low flow toilets, without showing the derivation of those numbers. They do not describe the structures to be built so that the Commission may evaluate the potential burden that they might place on the system. Two of the petitioners represent partnerships, but neither the names of the partnerships, their members, nor their interests are disclosed.

Fourth, petitioners apparently require relief by the middle of November, but their petition was not filed until October 17. No explanation of the delay is made. This is insufficient time to allow even for the expiration of the protest period provided in Rule 8.3, ignoring the time required for our staff to investigate the proposal and to prepare a report, for prehearing procedures, for evidentiary hearings, for briefs, for the preparation of a proposed decision, and for comments on the proposed decision.

Fifth, petitioners have not alleged that they have conducted even a preliminary survey to test the interest of CUCC's water service customers in their proposed low flow toilet retrofit program. Their presentation to the Montara-Moss Beach Water Improvement Association will not take place until the November meeting of that community group.

Sixth, petitioners propose no enforcement mechanism by which the Commission could assure itself that any conditions it might impose upon an order of exemption would be carried out. The Commission regulates public utilities, not home owners or developers. We do not have statutory authority to regulate the specifications of plumbing fixtures in private residences, nor does our staff have authority to enter homes to inspect plumbing. Even

if we had adequate staff members to perform these duties, such inspections seem to be properly within the authority of city and county building departments.

These considerations show that the petition is prematurely filed and inadequately supported by factual allegations. We will deny the petition without prejudice. Petitioners may refile when they are better prepared to make a complete showing.

Finding of Fact

The petition is inadequately supported by detailed factual allegations concerning the proposal itself and the means by which it would be implemented.

Conclusion of Law

The petition should be denied without prejudice.

O R D E R

IT IS ORDERED that the petition is denied without prejudice.

This order becomes effective 30 days from today.

Dated November 20, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did not
participate.

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