

OCT 21 1992
ORIGINAL

Decision 92-10-038 October 21, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Citizens Utilities Company of)
California (U87N) for an order)
pursuant to California Public)
Utilities Code restricting the)
addition of customers to be)
furnished with water service in)
its Montara-Moss Beach District.)

Application 85-06-010
(Filed June 6, 1985;
amended January 10, 1986)
(Petition filed
July 6, 1992)

O P I N I O N

1. Summary

S. June Carrin (petitioner), who resides in Montara, seeks an 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 (Citizens). The petition is granted, subject to restrictions.

2. Background

In 1985, Citizens sought an order of the Commission, pursuant to Public Utilities Code § 2708, to permit it to restrict addition of customers to its water system in the Montara-Moss Beach District. The Commission issued such an order in D.86-05-078 following findings that supported the admonition of Section 2708:

"Whenever the Commission...finds that any water company...has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by the corporation, the commission may order and require that no such corporation shall furnish water to any new or additional consumers until the order is vacated or modified by the commission...."

The Commission's decision on May 28, 1986, imposed a moratorium, with certain exceptions, on connection of additional customers to Citizens' Montara-Moss Beach District. The term of the moratorium was six months. However, by D.86-12-069, the Commission extended the moratorium until further order. The moratorium is still in effect.

The Commission provided in Ordering Paragraph 6 of D.86-05-078 that:

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

The Commission in D.89-12-020 granted the petition of Farallon Vista Associates for an exemption from the moratorium, provided that the petitioner provide and transfer to the utility production and backup wells that would meet the water needs of a proposed addition. In D.91-11-047, the Commission denied the petition of three individuals who had proposed at their expense to retrofit low-flow fixtures in a number of existing homes to match or exceed additional water use by petitioners. Until now, no further petition for an exemption to the moratorium has been heard by the Commission.

3. The Carrin Petition

By petition dated July 3, 1992,¹ petitioner, who resides in Montara, seeks an exemption from the moratorium on the basis that she and her family face a medical emergency. The

¹ Petitioner's request was made by letter. In view of the medical emergency alleged, the letter was treated, filed, and served as a formal petition pursuant to Rule 87 of the Rules of Practice and Procedure. (See, Administrative Law Judge's Ruling dated July 9, 1992.)

family's water has been supplied for nine years from a private well. The well has gone dry. The family was without water for ten days. The family now is being served through a temporary hookup provided by Citizens while work on the well was in progress. By ruling dated July 9, 1992, Citizens was directed to continue the temporary hookup pending a Commission decision on the petition.

Petitioner is a psychologist. She resides in her Montara home with six special-needs children, all of them adopted, ranging in age from five to nine. Two of the children have medical conditions that require the use of tracheotomy and gastrostomy tubes. Another individual, a teenage woman, lives in a cabin on the four-acre property and helps care for the children. Two other individuals visit frequently to help with the care.

In her petition, Carrin states:

"I am requesting a permanent hardship water connection to Citizens Utilities since I understand there is a moratorium of hookups due to the ongoing drought. I have investigated drilling for a more adequate water supply and find the cost prohibitive.

. . .

"I see no alternative other than requesting a hardship hook-up at this point. The serious medical issues of my children make our water accessibility even more imperative than a normal household. Our infection control issues are multitudinous since my children are very susceptible to life-threatening infections."

Petitioner also requests that the Commission direct Citizens to waive its tariffed connection fee (estimated at \$1,500) on grounds that the utility's increased pumping at its nearby Portola pumping station has contributed to the failure of her private well.

4. Response by Citizens

In its response to the petition, Citizens denies that its Portola No. 1 pumping station is responsible for petitioner's dry

well. It states that the prolonged drought has affected many wells, including its own. It states that it became aware of petitioner's failing well in 1991, and that it has inspected her system, offered recommendations and worked with her to extend her water supply. It arranged a temporary hookup to petitioner's property to permit a local plumber to try to rehabilitate petitioner's well. The utility states:

"CUC's actions demonstrate that [it does] not lack compassion for Dr. Carrin and her family; however, her water well condition is not unique to the mid-California coast. Similarly, CUC has many service applications from building permit holders who have unsuccessfully drilled for water at great expense.

"Granting of an exemption would set a precedent affecting many properties in our service area. CUC must categorically object to the granting of an exemption to the petitioner who has not exhausted all possible remedies to improve or replace the failing well."

If the petition is granted, Citizens urges that the Commission apply a number of conditions to the new connection, including the following:

- o No waiver of connection fee should be granted unless petitioner can show that the utility's actions influenced the failure of petitioner's well.
- o Water may be used by petitioner so as not to place an undue burden on the utility. Petitioner should be permitted to fill her holding tank from the Citizens' hookup only during the hours of 10 p.m. to 4 a.m. on the nights of Monday through Thursday. No water should be withdrawn on weekends, and no outdoor watering should be permitted.
- o Petitioner should be required to make every attempt to replace her private well.
- o The emergency hookup should expire on May 1, 1993, unless otherwise ordered by the Commission on a showing by petitioner of

continued hardship and continued efforts to renovate or replace her failed well.

5. Public Hearing

A hearing was conducted on August 21, 1992. Carrin testified in support of her petition, presenting evidence on the medical needs of her children. She urged the Commission to distinguish her petition, involving an existing household, from those seeking to establish a new residence or business. She said that she has consulted numerous local contractors and spent hundreds of dollars trying to rehabilitate her well, and that she cannot now afford the cost of attempting to drill a new well. While she opposes most of the conditions urged by the utility if the petition is granted, she does not oppose some limitations on water use. She stated:

"If the PUC sees fit to grant us a connection, I sympathize with [the utility's] request that it not place undue burden on the service to other customers. Since I have a holding tank, filling it between 10 p.m. and 4 a.m. seems reasonable if a device can be installed [at utility expense] to insure that this happens. I also request that the time period be Monday through Friday, since if we have more than one ill child at a time, the cleaning of medical equipment and bed linens can sometimes deplete our water supply rapidly. I feel we should...be allowed minimal irrigation. We have some foliage and fruit trees that we water minimally."

Petitioner opposes the utility's recommendation that she be required to reapply for continued emergency service before May 1, 1993. She testified that it is her understanding that other petitions have been granted for hardship cases without special restrictions imposed. She stated that consultants have advised her that the utility's pumping at its Portola No. 1 station may have contributed to the failure of her private well, but she has not spent the money required for tests to support that claim.

L. J. D'Addio, Citizens' general manager, testified that, because of the drought, the water supply in the district has not improved over the conditions that prompted the utility to seek a moratorium on new connections in 1985. He testified that there is insufficient water to properly serve existing customers, particularly in the summer months. Contrary to petitioner's understanding, D'Addio stated that no hardship exemption from the moratorium has been granted. The only exemption of which he is aware is that for Farallon Vista Associates, where the petitioner was required to transfer a production and backup well to Citizens. (See D.89-12-020.)

After hearing petitioner's testimony, D'Addio stated that he believes that petitioner has made reasonable efforts to renovate her failed well. Citizens, therefore, no longer opposes the petition on that basis. Further, if the petition is granted, Citizens would not object to minimal irrigation of about an hour per week. Citizens believes that no basis has been shown for the utility to waive the connection fee authorized by this Commission in D.91-04-068 (Re Revision of General Order 103, 39 CPUC2d 594), or to bear any costs of the connection beyond what it would normally bear. Additionally, D'Addio testified that, since some water use would be in connection with infection control, petitioner may be required by health regulations to install a backflow device to prevent any used water from reentering the holding tank or the Citizens connection. D'Addio explained that the utility's recommendation that petitioner justify a continued exemption by May 1, 1993, is premised on the heavier demands that the utility faces at the start of summer.

6. Discussion

With the withdrawal of the utility's principal objection, and in the absence of any other protest, petitioner's request for an exemption from the moratorium should be granted. Petitioner has demonstrated an extraordinary need for water service justifying an

exemption. She has made reasonable efforts, without success, to restore her private well after its failure.

The utility, however, has demonstrated the need for conditions on this connection. The water shortage that led to the moratorium in the Montara-Moss Beach District has not abated. Any exception should be limited in order to ease the burden on existing customers. Petitioner does not object to limiting her use to the filling of a holding tank during low-use hours on weekdays. We are persuaded that her request for Friday night use also is necessary, and the request for minimal irrigation use is a reasonable one. We agree with the utility that petitioner should be required to again justify her exemption by May 1, 1993, prior to the heavier summer demand for water.

Accordingly, our order requires that petitioner use the Citizens connection only for the purpose of filling her holding tank between the hours of 10 p.m. to 4 a.m. Monday through Friday. The cost of any timing device will be petitioner's responsibility. Additionally, petitioner may for one hour per week on one evening between Monday and Thursday use the Citizens connection for irrigation purposes.

In the absence of evidence that the utility is responsible for petitioner's failed well, we deny petitioner's request that connection fees be waived.

Findings of Fact

1. The Commission in D.86-05-078, as modified by D.86-12-069, found that Citizens had reached the limit of its capacity to supply water in its Montara-Moss Beach District and ordered a moratorium on new connections.

2. In D.86-05-078, the Commission provided that a prospective customer in the Montara-Moss Beach District may petition for an exemption to the moratorium upon a showing of extraordinary circumstances.

3. On July 3, 1992, petitioner filed a petition for an exemption from the moratorium on the basis that she and her family face a water emergency.

4. Petitioner's private well has gone dry and she has been unsuccessful, despite reasonable efforts, to restore the well to service.

5. Petitioner resides in her Montara home with six special-needs children, ranging in age from five to nine.

6. Petitioner's children have infection control requirements that make water service imperative.

7. Citizens has withdrawn its opposition to the petition, provided that an exemption is accompanied by restrictions that will minimize the impact on existing customers.

Conclusions of Law

1. Petitioner has demonstrated an extraordinary need for water service justifying an exemption.

2. Petitioner has not shown that actions by Citizens contributed to the failure of her well.

3. Citizens has demonstrated the need for conditions on water use by petitioner.

4. The petition should be granted, subject to the restrictions set forth in the ordering paragraphs.

5. Because of the extraordinary need for water service demonstrated by petitioner, this order should be made effective immediately.

ORDER

IT IS ORDERED that:

1. The petition of S. June Carrin (petitioner) for an exemption from the moratorium on new water service connections imposed by Decision 86-05-078 in the Montara-Moss Beach District of Citizens Utilities Company of California (Citizens) is granted.

2. Citizens is directed, subject to the restrictions set forth in Ordering Paragraph 3, to provide a water service connection to petitioner's property.

3. This exemption is subject to the following restrictions:

- a. Petitioner shall be subject to any and all costs, including a connection fee, set forth in Citizens' tariffs.
- b. Petitioner may use Citizens water only to fill the holding tank of her private well during the hours of 10 p.m. to 4 a.m. on the nights of Monday through Friday, and for one hour of outdoor irrigation each week conducted in the evening between Monday and Thursday. Citizens shall assist petitioner in installing a timer for use in filling petitioner's holding tank, but all costs associated with the timer shall be borne by petitioner.
- c. Petitioner shall be responsible for the installation of any backflow prevention measures required by state or local health authorities.
- d. Petitioner shall continue to make reasonable efforts to restore her private well.
- e. This exemption will expire on May 1, 1993, unless, at least 30 days prior to that date, petitioner has filed with the Commission and served upon Citizens a petition showing continued need for the Citizens water service. Citizens shall file a written response within 15 days of receipt of such petition. If a petition for continued service is filed, Citizens'

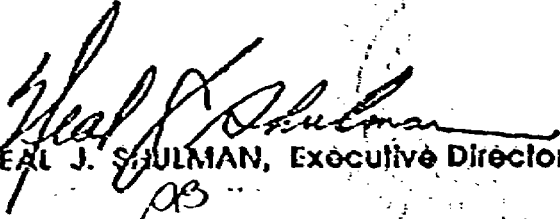
water service to petitioner shall continue pending further action by the Commission.

This order is effective today.

Dated October 21, 1992, at San Francisco, California.

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

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


NEAL J. SULLMAN, Executive Director