

Decision 83 06 011 June 1, 1983

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of  
CITIZENS UTILITIES COMPANY OF  
CALIFORNIA for authority to increase  
rates and charges for water service  
in its Montara Water District.

Application 60253  
(Filed February 10, 1981)

ALLAN KASS  
GEORGE WALSH,

Complainants.

Case 82-11-06  
(Filed November 26, 1982)

vs.

CITIZENS UTILITIES COMPANY OF  
CALIFORNIA,

Defendant.

OPINION AND ORDER

On March 7, 1983, Allen Kass and George Walsh (Petitioners) for themselves and for the Moss Beach-Montara Committee For Fair Water Rates (Committee) filed an "application for rehearing, reopening and modification of Decision (D.) 82-05-076 and D.82-08-058 and Case (C.) 82-11-06".<sup>1</sup> Petitioners also ask that we dismiss C.82-11-06 upon granting rehearing, reopening the proceeding, and amending the decisions in Citizens Utilities Company of California (Citizens) application for rate relief for service provided in its Montara Water District (Montara).

Petitioners allege that (1) they have standing to petition for rehearing because they are customers and ratopayers of Citizens, (2) their constitutional rights have been violated, (3) the rates

<sup>1</sup> The pleading was docketed as a petition for for modification of D.82-05-076 and D.82-08-058.

authorized by D.82-05-076 are unjust, unreasonable and therefore unlawful, (4) the record in the limited rehearing ordered by D.82-08-058 underscores the need for a thorough and complete rehearing of D.82-05-076, and (5) any rates collected pursuant to D.82-05-076 should be made subject to refund from the date of filing of the petition.

Citizens moved to summarily dismiss the petition alleging that (1) the filing is a repetition of the unfounded complaints of petitioners, (2) the petition is untimely and otherwise does not comply with the applicable statutes and the Commission's Rules of Practice and Procedure, and (3) the facts and law do not entitle the petitioners to the relief sought.

History of Proceeding

Pursuant to its Notice of Intent (NOI) tendered August 5, 1980, Citizens filed A.60253 on February 10, 1981 for a rate increase for service for Montara. Hearings for public witness testimony and statements were held May 21 and 22, 1981 at El Granada. Some eleven days of hearing on a consolidated record<sup>2</sup> were held between April 21 and June 3, 1981 in San Francisco. After some 40 exhibits were received in evidence and 1,159 pages of transcript, D.82-05-076 was issued on May 18, 1982. ✓

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<sup>2</sup> The consolidated record involved the following Citizens proceedings: A.60048 Jackson Water Works Inc.; A.60132 Sacramento County Water District; A.59914 North Los Altos Water Company; A.60220 Guerneville Water Distirct; A.60328 Larkfield Water Company; A.60303 Francis Land and Water Company; and A.62285 Felton Water District. ✓

On October 21, 1982 petitioners Kass and Walsh filed a petition to reopen A.60253. On November 16, 1982 Citizens filed a motion to dismiss the petition. On November 26, 1982 the document filed on October 21, 1982 was docketed as C.82-11-06. Citizens filed an answer to the complaint and renewed its motion to dismiss.

On June 14, 1982 Citizens filed an application for rehearing or modification of D.82-05-076 to correct (1) the customers and consumption used in calculating the rates, (2) understated legal and regulatory expenses, and (3) overstated customer advances for construction deducted from rate base. Limited rehearing was granted by D.82-08-058 and set for December 9, 1982 in San Francisco. On November 26, 1982 the matter was temporarily removed from the calendar pending reassignment to a new Administrative Law Judge (ALJ). A.60253 and C.82-11-06 were then consolidated and scheduled for hearing Wednesday, January 5, 1983 in Half Moon Bay and Thursday, January 6, 1983 in San Francisco. At the request of complainants Kass and Walsh, C.82-11-06 was reset for Tuesday, February 15, 1983 in Half Moon Bay. Rehearing on D.82-05-076 was held January 5 and 6, 1983 in San Francisco. D.83-05-011 dated May 4, 1983 disposes of this rehearing. On February 4, 1983 counsel retained by petitioners requested that C.82-11-06 be removed from the calendar to allow time to review the file. On March 7, 1983 the subject petition was filed.

#### Discussion

The assertion that the Committee has standing as it is "pecuniarily interested" in Citizens because of its ratepayer relationship is without merit. (D.82043 dated October 23, 1973 in A.53498.) If we had considered the pleading to be an application for rehearing, it would have been dismissed for lack of standing and for untimeliness. However, since the pleading is in substance a petition for modification, the question of standing does not arise.

A review of the record fails to disclose that petitioners were denied due process. Both the presiding ALJ and Commission staff counsel advised the public of their rights at the hearing held in El Granada.<sup>3</sup> Although the record does not indicate whether petitioner Walsh was in attendance at the El Granada hearing, petitioner Kass was in attendance and made a statement in opposition to any rate increase. The Commission procedure and decision process was also explained to those in attendance. In addition, at the request of the ALJ, staff counsel made himself available to members of the public and represented those wishing to make use of his services. ✓

The petitioners have presented us with no valid considerations which would cause us to take the unusual step of reopening a rate proceeding more than a year after the decision issued. Petitioners had ample opportunity to present evidence and testimony for our consideration. We suggest that they prepare to participate in the next proceeding for Citizens' Montara District. We simply cannot relitigate issues in rate proceedings or else we could not process the current volume of new rate proceedings. ✓

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<sup>3</sup> Public hearing was held in El Granada because it was the nearest facility large enough to accommodate the large public turnout expected. ✓

With respect to the limited rehearing authorized by D.82-08-058, the allegation that the record was inadequate is without merit. The rehearing consumed two days, 12 exhibits were introduced with 159 pages of testimony. As stated in D.82-08-058,<sup>4</sup> the rehearing was to be limited to three issues. Petitioners were afforded the opportunity to cross-examine the witnesses and had they chosen, could have introduced evidence and testimony on these subjects. The ALJ correctly denied the introduction of evidence on other subjects. ✓

With respect to the allegation that the rates authorized are unjust, unreasonable, and therefore unlawful and that because of the poor record the Commission was forced to guess on many of the expenditures allowed, we would only point out that the record in this and the consolidated cases consists of some 1,200 pages of testimony and over 40 exhibits. The multitude of issues raised by petitioners were addressed at length in D.82-05-076 (and companion decisions) after careful consideration of the entire record.

Findings of Fact

1. D.82-05-076 dated May 18, 1982 authorized Citizens to increase its rates for water service in its Montara District by \$357,900 for test year 1981 and a further increase of \$31,000 for test year 1982.

2. D.82-08-058 dated August 4, 1982 granted rehearing limited to (a) the amount of metered water consumption, (b) the appropriate amortization period for legal and regulatory expenses, and (c) the amount of customers' advances for construction in estimated test year 1982.

3. On October 21, 1982 petitioners filed an application for rehearing of D.82-05-076.

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<sup>4</sup> Rehearing was limited to (1) the amount of metered water consumption, (2) the appropriate amortization period for legal and regulatory expenses, and (3) the amount of customer's advances for construction for test year 1982. ✓

4. On November 26, 1982 the document filed October 21, 1982 as a petition to reopen A.60253 was docketed as complaint in C.82-11-006.

5. Citizens filed a timely answer in C.82-11-006 requesting that it be dismissed for petitioners' lack of standing and failure to file within the time requirements of the Commission's Rules of Practice and Procedure.

6. Limited rehearing of D.82-05-076 was set for December 9, 1982. The matter was temporarily removed from the calendar pending assignment of a new ALJ.

7. A.60253 and C.82-11-06 were consolidated and set for hearing in Half Moon Bay on January 5, 1983 and in San Francisco on January 6, 1983.

8. At the request of petitioners C.82-11-06 was reset for February 15, 1983 in Half Moon Bay.

9. Rehearing on D.82-05-076 was held January 5 and 6, 1983 in San Francisco.

10. On February 4, 1983 petitioners' counsel requested that C.82-11-06 be removed from the calendar.

11. On March 7, 1983 petitioners filed the subject petition naming the Committee as an interested party.

12. Petitioners had the opportunity to file an appearance at the public hearing held at El Granada on May 21 and 22, 1981. ✓

13. The record does not disclose that petitioners were denied due process. ✓

14. Petitioners had ample opportunity to present evidence and testimony for our consideration prior to the issuance of D.82-05-076. ✓

15. The first petition to reopen the proceeding filed by petitioners was filed October 21, 1982, some five months after D.82-05-076 was issued. ✓

16. The Petition for Modification filed March 7, 1983 by petitioners and the Committee raised the same issues as did the petition filed October 21, 1982 and docketed as C.82-11-06.

17. The estimates of operating revenues, operating expenses, rate base, and rate of return for test years 1981 and 1982 as adopted by D.82-05-076 and as amended are reasonable.

Conclusions of Law

1. The petitions filed by petitioners on October 21, 1982 and March 7, 1983 were untimely petitions for rehearing.

2. The petitions filed present no good cause for us to reopen a rate proceeding more than a year after a decision was issued.

3. The petition should be denied without prejudice to the petitioners to raise the same, or similar issues in a timely manner in any future rate application by Citizens for its Montara District. ✓

4. C.82-11-06 should be dismissed without prejudice.

IT IS ORDERED that:

1. The "Petition for Modification of D.82-05-076 and D.82-08-058" filed by the Moss Beach-Montara Committee For Fair Water Rates, Allan Kacs, and George Walsh, dated March 7, 1983, is denied. ✓

2. This denial is without prejudice to petitioners to raise the same, or similar, substantive issues in a timely manner in any future rate application by Citizens Utilities Company of California for its Montara Water District. ✓

3. C.82-11-06 is dismissed without prejudice. ✓

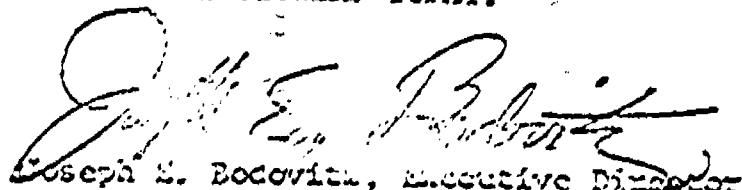
This order becomes effective 30 days from today.

Dated June 1, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director



S3 C6 C11 JUN 1 1983

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17. The estimates of operating revenues, operating expenses, rate base, and rate of return for test years 1981 and 1982 as adopted by D.82-05-076 and as amended are reasonable. ✓

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1. The petitions filed by petitioners on October 21, 1982 and March 7, 1983 were untimely petitions for rehearing.

2. The petitions filed present no good cause for us to reopen a rate proceeding more than a year after a decision was issued.

3. The petition should be denied without prejudice to the petitioners to raise the same, or similar issues in a timely manner in any future rate application by Citizens for its Montara District.

4. C.82-11-06 should be dismissed without prejudice.

IT IS ORDERED that:

1. The "Petition for Modification of D.82-05-076 and D.82-08-058" filed by the Moss Beach-Montara Committee For Fair Water Rates, Allan Kass, and George Walsh, dated March 7, 1983, is denied.

SS 3.2. C.82-11-06 is dismissed without prejudice.

2.  
3. This denial is without prejudice to petitioners to raise the same, or similar, substantive issues in a timely manner in any future rate application by Citizens Utilities Company of California for its Montara Water District.

This order becomes effective 30 days from today.

Dated JUN 1 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President  
VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners