

ORIGINAL

Decision No. 87022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAMUEL URCIS and DORY URCIS,)

Complainants,

v

CALIFORNIA-AMERICAN WATER
COMPANY, a California
corporation,

Defendant.

Case No. 10173
(Filed September 15, 1976;
amended January 17, 1977)

ORDER PROVIDING FOR VARIANCE FROM
REQUIREMENTS OF ORDERING PARAGRAPH
NO. 4 OF DECISION NO. 86807

Preliminary

This is a complaint by Samuel Urcis and Dory Urcis (complainants) against California-American Water Company (Cal-Am). Complainants request that Cal-Am be ordered to provide water service to complainants' lot at the northeast corner of San Antonio and 7th Avenues, in the city of Carmel-By-The-Sea (Carmel).

Cal-Am, in compliance with Ordering Paragraph 4 of this Commission's Decision No. 84527 dated June 10, 1975 in Application No. 53653 and Case No. 9530, has refused to extend service to complainants' property.

In Decision No. 84527, the Commission found, among other things, that:

"Cal-Am's Monterey District has reached the limit of its capacity to supply water and, except as provided in the order that follows, no further consumers can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have heretofore been supplied by the corporation."

and in Ordering Paragraph 4, pursuant to Section 2708 of the Public Utilities Code, ordered:

"Until otherwise permitted by further order of this Commission, California-American Water Company shall not provide water to new service connections within its Monterey Peninsula District, other than those in municipally sponsored redevelopment or renewal projects, unless, prior to the effective date of this order, a valid building permit has been issued."

The opinion in Decision No. 84527 contains a description of the events and conditions that caused the Commission to impose the service restriction.

After a petition for rehearing which stayed the order in Decision No. 84527, the order was made effective with a minor modification on July 15, 1975 by Decision No. 84683.

Background

According to the complaint, complainants purchased their lot in October of 1973, at which time Mr. Urcis took a temporary work assignment in Houston, Texas. In September of 1974 complainants engaged a building designer who proceeded with the design of their planned residence. Although substantial progress on the design had been made by June of 1975, complainants had not applied for a building permit. After the issuance of Decision No. 84527 on June 10, 1975, complainants were advised of the building ban by their building designer and they directed the designer to file an application on their behalf with Cal-Am for water service. This

application was filed on June 19, 1975 but Cal-Am, following a first-come-first-serve procedure for processing service applications received after June 10, did not effect a service connection to complainants' lot before the July 15 effective date of the connection ban.

Modification of Connection Ban

In Decision No. 86807 dated January 5, 1977 in Case No. 9530, the Commission, by Ordering Paragraph 4, modified the connection ban to authorize and direct Cal-Am, commencing at such a time as Los Padres Reservoir should be filled to overflow, to accept applications for water service from individual owners of record of lots which were, on the effective date of the decision, zoned for single residential use. Service was conditioned upon applicants' signing a declaration that outside landscaping would not be irrigated and construction on a dwelling would be started within 90 days. The lifting of the ban was limited, by paragraphs 1 and 2 of Appendix C of the order, to those local governmental units that had adopted effective enforceable ordinances requiring the use of water-saving devices in new or reconstructed buildings.^{1/}

Carmel has not enacted such a water conservation ordinance and the connection ban still is effective within the corporate limits of that municipality.

By the amendment to their complaint, filed on January 17, 1977, complainants state that they have obtained an extension to their building permit but upon expiration of the extension they would be required to apply for a new building permit with the attendant procedures, fees, and other costs, including the inflationary effects on construction costs. The time left on the current permit is such that, should Carmel proceed diligently to adopt an acceptable water conservation ordinance, complainants' permit would have expired by the time such an ordinance could become

^{1/} On January 14, 1977 Cal-Am filed a petition for rehearing of Decision No. 86807 and the effective date of the decision has been stayed.

effective. Complainants say that this situation would further compound the many hardships that complainants have endured since June of 1975.

Complainants agree that they will sign an affidavit that they will accept any water conservation measures which may be suggested or required by the Commission.

Discussion

In Appendix B of Decision No. 86807 we listed the proceedings before this Commission that related to Case No. 9530, the investigation of the Monterey Peninsula water situation. Of those complaints relating to service for individual owners of single lots of record zoned for single residential use, complainants are the only ones not provided with some measure of relief by Decision No. 86807.

Considering the facts set out in this opinion, and specifically that complainants applied for water service prior to the July 15 effective date of Decision No. 84527 and filed this formal complaint with this Commission well in advance of the January 4, 1977 date of Decision No. 86807, the Commission believes that complainants request should be granted. For the reasons stated in our consideration of modification of the connection ban in Decision No. 86807, we believe that allowing a variance in this instance would not injuriously withdraw the water supply wholly or in part from those heretofore supplied by Cal-Am's Monterey District.

As mentioned in Decision No. 86807, neither the Commission nor Cal-Am are in a position to verify the installation of low water use devices. The use of affidavits is hardly the equivalent to the effect of a conscientious building inspector. We will grant this variance, allowing complainants' property to be served under the conditions set out in Ordering Paragraph 4 of Decision No. 86807, when such ordering paragraph becomes effective, and further conditioned upon complainants' submitting, to Cal-Am, an affidavit stating that they will comply with the requirements of Ordinance

No. 2181 of the county of Monterey (the Monterey County water conservation ordinance effective in the unincorporated area of the Peninsula). The granting of this variance in this unique situation shall not be considered to be a precedent for granting similar relief in other somewhat different situations.

Findings

1. Complainants' property is located in the city of Carmel-By-The-Sea in Cal-Am's Monterey District.
2. Since Carmel has not adopted a water ordinance acceptable to this Commission, complainants are not eligible, according to Decision No. 86807, to receive water service to their property.
3. Complainants applied to Cal-Am for water service on June 19, 1975, before the effective date of the connection ban.
4. Complainants filed their original complaint in this proceeding on September 15, 1976, over three months prior to the issuance of Decision No. 86807.
5. The limited extension of water service to complainants' property in accordance with the terms and conditions set out in the order that follows will not injuriously withdraw the water wholly or in part from those who heretofore have been supplied by Cal-Am's Monterey District.

Conclusion

Complainants should be granted a variance from the provisions of Ordering Paragraph 4 and paragraphs 1 and 2 of Appendix C of Decision No. 86807 to the extent set forth in the order below.

O R D E R

IT IS ORDERED that California American Water Company, upon receipt of an affidavit by which Samuel and Dory Urcis undertake to comply with the requirements of Ordinance No. 2181 of the county of Monterey, is authorized and directed, at such time as Ordering Paragraph 4 of Decision No. 86807 becomes effective, to accept the

application of Samuel and Dory Urcis for water service to their property described as Lot 20, Block S, Carmel Addition No. 8, at the northeast corner of San Antonio and 7th Avenues, Carmel-By-The-Sea, subject to the conditions set forth in paragraphs 3 through 7 of Appendix C to Decision No. 86807.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of MARCH, 1977.

Robert Bateman
President
William J. ...
Yernon ...
Robert D. ...
Commissioners