

DEC 12 1978

Decision No. 89724

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation )  
on the Commission's own motion of )  
Advice Letter No. 8, filed by )  
HILLVIEW ESTATES WATER COMPANY on )  
September 28, 1977. )

Case No. 10570  
(Filed May 16, 1978)

Sergius M. Boikan, Attorney at Law, for  
Linton and Eleanor Forrester, dba  
Hillview Estates Water Company,  
respondent.

John O. Jamison, Attorney at Law, for  
Sunnydale Subdivision, Madera County  
Maintenance District 22-C; James L.  
Patison, Attorney at Law, for Donald  
and Jane Williams and Developers  
Financial Corporation; Mark A. Wasser,  
Attorney at Law, Deputy County Counsel,  
for Madera County; and Edgar A. Wilkins,  
for Golden Oak Shopping Center and  
Maintenance District 22; interested  
parties.

Reginald H. Knaggs, for the Commission  
staff.

O P I N I O N

On September 28, 1977 Hillview Estates Water Company (Hillview), owned by Linton Forrester (Forrester) and Eleanor Forrester, filed Advice Letter No. 8<sup>1/</sup> requesting authority to carry out the terms and conditions of a main extension contract and loss reimbursement agreement. The Commission, being of the opinion that the effective date of the affected tariff sheets should be postponed, ordered an investigation into the reasonableness and propriety of Advice Letter No. 8.

Public hearing was held at Oakhurst on June 23, 1978 before Administrative Law Judge Banks.

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<sup>1/</sup> Applicant officially notified the Commission at this hearing that upon acquisition of several other water systems its name would be Hillview Water Company. The subject advice letter should therefore be referred to as Advice Letter No. 2 of Hillview Water Company.

By letter dated July 20, 1976, Hillview transmitted its Advice Letter No. 7 requesting approval of a main extension contract, a loss reimbursement agreement, and a transfer agreement entered into with Donald H. Williams and Jane Williams (Williams) covering the installation of facilities to service a 100-acre development known as The Junction in Madera County. The Junction area is to be interconnected with Hillview's Sunnydale Subdivision. This advice letter was formally filed with the Commission on November 22, 1976. By this advice letter, Hillview requested authority to deviate from the regular provisions of Rule 15 as provided in paragraph A.8, because the estimated water plant cost to service The Junction development was \$120,000<sup>2/</sup> and with an estimated customer growth rate of 10 percent per year, the revenue from the development could not meet the out-of-pocket costs for the first six years and would result in an accumulative loss of approximately \$20,000. Because Hillview was unwilling to assume the burden of making refunds under the regular provisions of its Rule 15, the subdivider agreed to provide a loss reimbursement fund amounting to \$100 per lot to cover the early years' operating losses. Also, since it was proposed that The Junction will be served under the same rate schedules as Hillview's Royal Oaks Subdivision, there is no question regarding a rate increase.

Staff review of Advice Letter No. 7 disclosed what was believed to be conflicting statements relative to the transfer agreement and advances for construction portions of the contract. Upon being informed of the staff's concern with Advice Letter No. 7, Hillview filed Advice Letter No. 8 on September 28, 1977. The new filing contained the recommended staff changes including the deletion of any refunds for advances.

Mr. Forrester testified at the hearing on behalf of Hillview. He stated that he and his wife are partners in Hillview; that operations began in 1958; that the Sunnydale Subdivision was added in 1966;

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2/ This amount was estimated by witness Morse to be in excess of \$400,000.

and that the Goldside Subdivision was added in 1972. In 1976 the following systems were purchased: Royal Oaks, Sierra Lakes, Coarsegold Highlands, and Raymond. Hillview presently has approximately 350 connections for its entire system. Forrester stated that he filed Advice Letter No. 8 on the recommendation of the Commission staff after the staff notified him that the Advice Letter No. 7 transfer agreement was not wholly consistent with the main extension contract and that the utility would be penalized by having to pay refunds on \$75,000 of advances. Forrester estimated that Hillview would have to provide an additional \$50,000 to institute service into The Junction area and that it would take \$350,000 to bring all of the subdivisions of Hillview up to proper operating conditions. In order to bring all systems up to proper operating conditions, Forrester stated he has applied for a \$348,000 loan pursuant to the California Safe Drinking Water Bond Act of 1976. On cross-examination Forrester refused to divulge how he would finance the necessary improvements if his estimate of \$50,000 to provide service to The Junction proved too low, and the loan of \$348,000 was not approved, but stated he had the necessary resources. He also stated that The Junction area and Sunnydale Subdivision are not connected, but that he has requested authority to serve the area in between and thus make the two areas contiguous.

Mr. Edgar Averill Wilkins testified on behalf of Sunnydale Subdivision and the Madera County Maintenance District 22-C.<sup>3/</sup> He stated that he owned some 12-1/2 acres within the area proposed to be serviced by Hillview; that he and others petitioned Madera County to form a county maintenance district for the purpose of providing water to The Junction and other surrounding areas; and that the district was formed because in his dealings with Forrester, he was of the opinion that Hillview was financially unable to provide service to the area. On cross-examination Mr. Wilkins stated that he owned 40 percent of the area within the area comprising the assessment district.

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<sup>3/</sup> The county of Madera on May 2, 1978 by Resolution No. MD 2278-18, formed Maintenance District 22-C to provide service to The Junction. None of the witnesses testifying could state with certainty when the district would be able to provide service.

Theodore N. Andrews, district engineer of the Sanitary Engineering Section, State Department of Health, testified regarding the Royal Oaks Subdivision of Hillview. He stated that the well serving this area is located adjacent to the Fresno River not too far from one of the pumping stations in the county sewer district; that the well was contaminated four or five years ago; that a chlorinator has been installed, but in his opinion it is marginal; that the water supplied to the Sunnydale Subdivision is contaminated which has required the State to impose a boil order; and that Hillview has been ordered to abandon the contaminated well in Sunnydale.<sup>4/</sup>

Albert Grote, county engineer-surveyor for Madera County, testified that several years ago an engineering study of the Sunnydale Subdivision and its environs was made which revealed that additional storage capacity was required to meet county requirements to service the area.

Mr. Douglas Freeman Pratt, director of the Environmental Health Department, county of Madera, testified that Hillview was having problems with the chlorinator working properly, but that it is now functioning and that the county is not issuing building permits in the Sunnydale Subdivision because of the health department's boil order.

Mrs. Julie Huntoon, a two-year resident of the Sunnydale Subdivision, testified that she had never been without water, but beginning in the winter of 1977-78 has had a problem with quality.

John Horn, appearing for Madera County Maintenance District 22-C, testified that he resided in Hillview Estates and that service was adequate until two months prior to the date of the hearing when it became salty and rank.

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<sup>4/</sup> The boil order issued by the State Department of Health was still in effect at the time of hearing.

Sam Kusic, a resident of Hidden Oaks which receives service from the Royal Oaks system, testified that service is "not too bad, but the water has an odor" and that he inspected the Royal Oaks system water tank and found that it had 18 inches of silt in the bottom. On cross-examination he stated that the inspection was prior to the Forrester's acquisition of the Royal Oaks system.

Mr. John Morse, president of Developers Financial Corporation (Developers), testified that Developers owns 82.49 acres of The Junction property; that it was acquired in May of 1978; that the proposed development was given approval by the county of Madera; that estimates received for the total cost to provide water service to his development would be in excess of \$400,000; that this cost factor influenced his decision to agree with other owners to form Maintenance District 22-C; and that the \$50,000 testified to by Forrester was inadequate to provide service to The Junction.

Finally, Mr. Morse stated that the final map of the proposed development has not been approved by the county and that Developers is the successor in interest to the ownership of the property known as The Junction and that Developers plans to turn water facilities over to the district in January 1979.

As stated in the order instituting investigation, the question is whether Advice Letter No. 8 is reasonable and proper.

It is the position of Hillview that pursuant to Section 455 of the Public Utilities Code advice letters not resulting in an increase in rates become effective on the expiration of 30 days from the date of filing unless suspended by the Commission. Since Advice Letter No. 8 is requesting authority to deviate from the main extension rule, it is the staff's opinion that it does require Commission approval.

Since we are of the opinion that Advice Letter No. 8 should be made effective, we will not address this position further. Rather, we will address the conditions under which Hillview may provide service including whether or not a loss reimbursement agreement should be required as a part of the contract.

The record herein is that Advice Letter No. 7 dated July 20, 1976 was filed with the Commission on November 22, 1976. It requested approval of deviations from main extension contracts and loss reimbursement agreements in order to provide water service for a 100-acre development known as The Junction. Following the staff's suggestion, Forrester filed an amended Advice Letter No. 8. Had Advice Letter No. 8 not been filed, Advice Letter No. 7 could have been considered to have become effective 30 days subsequent to its filing on November 22, 1976. However, since Advice Letter No. 8 was filed, the propriety and effectiveness of Advice Letter No. 7 are moot.

Advice Letter No. 8 dated July 20, 1976 was filed September 28, 1977 seeking the same deviations sought in Advice Letter No. 7, except that the main extension contract in Advice Letter No. 8 provides that the amount advanced by the subdivider shall not be subject to refund. As testified to by Forrester the refund provision was eliminated at the suggestion of the staff to enhance Hillview's financial stability, the inference being that with its acceptance, Advice Letter No. 8 would be approved.

During the hearing, there were a total of eight exhibits introduced. Exhibits 1, 2, 3, and 4 were sponsored by Forrester. Exhibit 1 is a map of the Sunnydale Subdivision, which Hillview is presently serving, and The Junction area proposed to be included in Hillview's service territory. Contrary to Forrester's statement at the hearing, it shows that The Junction area and Sunnydale Subdivision are contiguous.

Exhibit 2 is Advice Letter No. 7 with executed copies of the transfer agreement and the loss reimbursement agreement. It too shows the Sunnydale Subdivision and The Junction area to be contiguous with the \$100 per lot reimbursement fund.

Exhibit 3 is a contract between Forrester and Williams, wherein Hillview will provide water service to The Junction area that will exceed the service requirements and standards of the Commission, and any other governmental agencies having jurisdiction over water utilities.

Exhibit 4 is Advice Letter No. 8 with executed copies of the transfer agreement and the loss reimbursement agreement. As noted earlier, it is the same as Exhibit 2 except the refund provision for advances is eliminated.

These exhibits all show that Forrester is ready, willing, and able to provide service in The Junction area.

Exhibit 5 is a map of Maintenance District 22-C encompassing the area proposed by Forrester for which Hillview is to provide service.

Exhibit 6 is a cost analysis prepared for the Maintenance District 22-C entitled "Engineering Report, County of Madera" showing an estimated cost for the maintenance district of \$1,255,662.

Exhibit 7 is an interoffice staff memo to Commissioner Sturgeon introduced by Mr. Douglas Pratt, director of Environmental Health Department, county of Madera. Exhibit 7 relates to the problems the staff encountered in handling Hillview's advice letter filings.<sup>5/</sup> The contents relate to the procedural problems of Advice Letter No. 8 and is not relevant to the issue of its propriety and reasonableness.

Exhibit 8 is a map of The Junction development introduced by John Morse. It is the same as contained in Advice Letters Nos. 7 and 8.

Exhibits 5, 6, and 8 are related to the maintenance district formed by the interested parties and are not relevant to the propriety and reasonableness of Advice Letter No. 8.

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<sup>5/</sup> Mr. Pratt's sole purpose in testifying was to introduce Exhibit 7.

During the proceedings, questions were raised as to Forrester's financial capabilities to install the necessary facilities to service The Junction area. Under the provisions of Advice Letter No. 8, \$50,000 of the estimated \$400,000 testified to by John Morse would be provided by Forrester. Forrester has testified that he is financially able to raise that amount. The remaining \$350,000 would be advanced by the developer. If Maintenance District 22-C were to go into operation, the developer would be required to either advance the entire \$400,000 for the installation of facilities and then convey them to the district in a contribution, or assessment bonds would have to be issued with repayment by property owners within the assessed area with the facilities contributed to the district.

In addition, Forrester testified that he has made application for a State loan under the California Safe Drinking Water Bond Act of 1976 to bring all systems within Hillview's existing service area to proper operating conditions and that he is ready to invest an additional \$50,000 to provide service to The Junction. Advice Letter No. 8 was filed with the staff's recommended changes. While he declined to comment on where he would obtain the \$50,000 to provide service to The Junction area, Forrester testified that he has the resources and with the incorporation of several small systems into Hillview plus the addition and development of The Junction area, Hillview will acquire enough customers to maintain a viable utility.

With respect to the loss reimbursement agreement, this device has been implemented between developers and utilities in cases where either the development is considered to be speculative or where the developer and the owner of the utility are one and the same. Such an agreement offers a measure of protection to the utility and existing ratepayers by providing for payment of out-of-pocket expenditures from the funds accumulated. In the instant proceeding, we have a development that because of its general nature (i.e., shopping center, hospital, etc.) does not fall



within a speculative definition as does a subdivision in which lots are sold for building at some indefinite time in the future. Further, we have here a utility wherein the operator has<sup>6/</sup> indicated the intention to remain in the water utility business. Finally, the Forresters' operation of the water systems recently acquired and incorporated into Hillview has resulted in the Commission receiving fewer complaints from customers which indicates that service within the Hillview service area while being far from perfect has improved.

With respect to the interested parties' concern regarding service and the possibility of Hillview's being unable to provide adequate service in its other subdivisions should Advice Letter No. 8 be approved, we will require, as a condition to serving The Junction, that the Sunnydale Subdivision, Royal Oaks Subdivision, and The Junction be interconnected with an appropriate size main and that an adequate source of supply be developed to provide water for these areas subject to the requirements and approval of the State Department of Health. Prior to providing such service, Hillview should file plans for such interconnection with the Commission for approval.

We conclude that Advice Letter No. 8 is reasonable and should be approved with the deletion of the loss reimbursement agreement. A plan to interconnect The Junction area with the Sunnydale and Royal Oaks Subdivisions, and the development of an adequate source of supply should be filed for Commission approval.

While we determined herein that Advice Letter No. 8, as modified by the deletion of the loss reimbursement agreement, is reasonable and that Hillview may furnish water service to The Junction, we must point out that the parties are not precluded from pursuing plans to receive water service from Maintenance District 22-C.

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<sup>6/</sup> See Decision No. 85766 dated May 4, 1976 and Decision No. 86006 dated June 29, 1976 authorizing transfer of Coarsegold Highlands, Raymond, Royal Oaks, and Sierra Lakes Subdivisions to Forrester.

Findings

1. Hillview is a public utility, owned by Linton E. Forrester and Eleanor Forrester, providing water service in the county of Madera.

2. By Advice Letter No. 7 filed on November 22, 1976, Hillview indicated its intention to include The Junction area within its service area. Advice Letter No. 7 requested authority to deviate from the regular provisions of Rule 15 and approval of a main extension contract and a loss reimbursement agreement with the developer of The Junction area.

3. After review of Advice Letter No. 7 by the Commission staff, it was determined that it contained conflicting statements relative to transfer agreement and advances for construction.

4. On September 28, 1977 Hillview filed Advice Letter No. 8, which is identical to Advice Letter No. 7 except the main extension contract provides for the contribution rather than the advance of funds by the developer. The advice letter does not provide for a rate increase.

5. Hillview recently acquired several small water systems with the ultimate intent to operate them as one viable system.

6. The Forresters' purchase of said several small water utilities has resulted in the Commission's receiving fewer customer service complaints. Forrester has indicated his intent to remain in the water business.

7. Hillview has applied for a \$348,000 State loan pursuant to the California Safe Drinking Water Bond Act of 1976 to finance construction of facilities to improve service throughout Hillview's service area.

8. A minimum investment of \$50,000 would be necessary to finance construction of facilities to provide service to The Junction.

9. With Developers' contributions as provided for in this order Hillview should have the financial ability to furnish the necessary funds for construction of facilities to provide service to The Junction area.

10. The county of Madera on May 2, 1978 by Resolution No. MD 2278-18, formed Maintenance District 22-C to provide water

service within The Junction area. The date on which Maintenance District 22-C plans to initiate service to The Junction is not known at this time.

11. Approval of Advice Letter No. 8 for Hillview to provide service to The Junction area has no effect on the formation of Madera County Maintenance District 22-C or its intent to provide water service in the same area.

We conclude that Advice Letter No. 8 is reasonable and should be made effective subject to (1) Hillview's filing plans for the integration of The Junction, Sunnydale, and Royal Oaks Subdivisions, and (2) the understanding that applicant will not be permitted to be compensated for The Junction properties contributed by this developer in the event of their sale to a public entity. The Commission further concludes that Hillview should file plans to acquire an additional water supply with which to provide service to The Junction.

O R D E R

IT IS ORDERED that:

1. Advice Letter 2 of Hillview Water Company (Hillview) (see Footnote 1) shall be refiled to exclude the Loss Reimbursement provisions, to include up-to-date figures, and to become effective upon the filing of a plan for the interconnection of The Junction area with the Sunnydale and Royal Oaks Subdivisions which meets the minimum standards of General Order No. 103. Applicant must stipulate in the advice letter that it will not request compensation for The Junction facilities to be contributed by this developer in the event of their sale to a public entity.

2. Hillview shall file a plan to acquire additional capacity with which to provide service to The Junction area within ninety days after the effective date of this order.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of DECEMBER, 1978.

Rolant Bateman  
President

William S. Quinn Jr.

Verger L. Sturgeon

Richard D. Mavale

Clare L. Dedrick  
Commissioners