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ORIGINAL

Decision No. 90313 MAY 22 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the suspension and investigation on the Commission's own motion of tariff filed by Advice Letter No. 29 of Bakman Water Company.	))))	Case No. 10524 (Filed March 21, 1978)

William G. Fleckles, Attorney at Law, for Bakman Water Company, respondent.
James A. McKelvey, City Attorney, by Wayne N. Witchez, Assistant City Attorney, for City of Fresno, protestant.
Floyd K. Anderson, for Fresno County Waterworks District 26, and Robert K. Hillison, Attorney at Law, for Westcal, Inc., interested parties.

INTERIM OPINION

Respondent Bakman Water Company (Bakman) is a public utility water company serving approximately 1,400 customers in areas located within and in proximity to the eastern city limits of the city of Fresno (Fresno).

Westcal, Inc. (Westcal) is a corporation currently engaged in building tract homes in the Fresno area. Westcal proposes to build a residential subdivision on a 140-acre parcel which is located southwest of the intersection of Belmont and Fowler Avenues on the east side of Fresno. The Westcal property is not presently within the service area of Bakman; however, Bakman's service area is contiguous with the southwest corner of said property.

In January 1978 Mrs. Karen McCaffrey, president of Westcal, wrote to Bakman requesting that it provide water service to the property Westcal plans to subdivide and improve with housing units. Mr. Richard Bakman, Bakman's general manager, responded affirmatively to Mrs. McCaffrey's request. On January 25, 1978, Bakman wrote Westcal advising the developer that Bakman would provide water service to the proposed Belmont-Fowler project subject to the conditions that the utility would furnish the wells, pumps, and tanks needed to serve the area at its expense and that Westcal would contribute all pipelines, fire hydrants, valves, and connecting facilities. Westcal approved these conditions and on February 13, 1978, Bakman sent its Advice Letter No. 29 to the Commission that it intended to extend its service area to the proposed Belmont-Fowler subdivision.

In compliance with General Order No. 96-A Bakman mailed copies of the Advice Letter and related tariff schedules to Fresno, Fresno County Waterworks District No. 26 (District), and the Fresno County Local Agency Formation Commission (LAFCO).

On February 22, 1978, LAFCO adopted a resolution protesting the extension of Bakman's service area as requested by Bakman and promptly sent its resolution of protest to the Commission. At this time LAFCO was considering requests that the Belmont-Fowler parcel be annexed by Fresno, and LAFCO's approval of such annexation, if given, might include a designation of the water entity which would supply the annexed area.[1/]

1/ See Knox-Nisbet Act, Sections 54773 et seq. of the Government Code and, for a discussion of its application, City of Ceres v City of Modesto (1969) 274 CA 2d 545. Specifically, District is located adjacent to Bakman and is extensively contiguous with the Belmont-Fowler parcel. LAFCO's resolution of protest is pertinent and states, in part, as follows:

(Continued)

In his letter of transmittal to the Commission of LAFCO's resolution of protest, LAFCO's executive officer stated that the staff of LAFCO, looking at all possibilities, had recommended that if the parcel is developed, District is the logical provider of water service based on capability and proximity of service lines and mains.

A resolution of protest, virtually identical to the LAFCO resolution, was passed by the Board of Supervisors of Fresno County sitting as the governing body of District on February 28, 1978.[2/]

On March 7, 1978, by Resolution No. 78-85 the City Council of Fresno also protested Bakman's Advice Letter No. 29 on the following grounds:

"1. The subject extension area is within the city's sphere of influence and by virtue of Council approval of Urban Growth Management Application No. 040 (Feb. 14, 1978) is to be served, upon development, by an extension of the City's water system.

"2. If the area included in the City's proposed Belmont-Fowler No. 3 District Reorganization is approved by LAFCO, but conditioned upon District No. 26 water service, that water service designation would be more reasonable and feasible than the proposal included in said Advice Letter No. 29."

1/ (Continued)

"...the Fresno Local Agency Formation Commission has presently under consideration an annexation of the same territory to the City of Fresno (RO-77-37), such annexation to be for the purpose of providing City services and control including community water service; and

"...water service by the City of Fresno would require extension of water transmission mains in excess of one mile and water service by Bakman Water Company is contiguous only at one point and would require extension of water main across Fancher Creek along the south edge of the subject territory; and

"...the Commission is giving consideration to the adjacent services provided by Country Waterworks District No. 26 instead of City water service, ..."

2/ The District's resolution was evidently not sent to the Commission but was introduced into evidence at the hearing on motion of Fresno. As District's representative took no position in this case, the Commission must assume that it declines to extend service to the area in issue.

On March 21, 1978, the Commission suspended Advice Letter No. 29 and instituted an investigation which directed that a hearing be held to determine the propriety of the tariff sheets accompanying Bakman's advice letter.

On May 22, 1978, LAFCO passed its Resolution No. RO-77-37 approving the proposed annexation of the area including the Belmont-Fowler tract by Fresno without designating any of the three potential water suppliers as a condition of annexation. This action was followed by further consideration by LAFCO of water service in the Belmont-Fowler area, and the Commission was notified by letter dated June 30, 1978, that LAFCO had determined not to amend its resolution approving annexation so as to add conditions related to which water agency should provide water service. In the same communication, LAFCO notified the Commission that its resolution of protest of the Bakman service area extension was rescinded.

Having secured approval by LAFCO, Fresno initiated formal annexation proceedings on May 30, 1978, and completed annexation on July 11, 1978.

Fresno remaining as the only protestant, the duly noticed public hearing was held in this case in Fresno on July 13, 1978, the matter being submitted for decision on September 25, 1978.

We have concluded that Bakman should be allowed to proceed to extend its service area to include the Belmont-Fowler tract and, in doing so, we have resolved the three issues in this case in favor of Bakman. These are:

1. Must the Commission accept as a fact that Fresno will deny Bakman's application for a municipal franchise prior to official action by the municipality upon an application for such franchise by Bakman? Answer: No.

2. Do the water supply requirements of Fresno, which are more stringent than those adopted by the Commission, apply to the extension of the Bakman service area? Answer: No.

3. Does public convenience and necessity justify the lifting of the Commission's suspension of Advice Letter No. 29? Answer: Yes, on condition.

We discuss these issues in numerical order.

The Franchise Issue

In its brief, Fresno puts the franchise issue as follows:

> "In the present case, applicant is attempting to extend its service to a territory annexed to the City of Fresno without the latter's consent. The appearance of the City objecting to the extension by applicant shows that the City does not consent and that the City will withhold a franchise to applicant."

In support of its position, Fresno cites City of San Diego v Otay Municipal Water District (1962) 200 CA 2d 672, wherein the court stated at page 680 that "the water district may not deliver water to the city without the latter's consent..."

Fresno is a charter city, as is San Diego, and its charter empowers it to grant or deny franchises to persons, firms, or corporations furnishing utility services of all types, including water, to the city or its inhabitants. (Section 1300, Fresno Charter.) No franchise is required if Fresno serves itself. (Section 1300, Fresno Charter.) A franchise grant may be made subject to terms and conditions imposed by the city council, may not extend for a longer term than 50 years, and Fresno reserves the right to acquire the property of the grantee either by purchase or by exercise of the right of eminent domain. (Sections 1300-1303, Fresno Charter.)

Fresno's legal posture is described in Rivera v City of Fresno (1971) 6 Cal 3d 132, 135:

> "The City of Fresno operates under a charter which contains 'home rule' provisions authorized by the Constitution. (Cal. Const., art. XI, § 5; formerly § § 6, 8, subd. (j).) Accordingly, the city is empowered to exercise full control over its municipal affairs, unaffected by general laws on the same subject matters and subject only to limitations found in the Constitution and the city charter. (Citing cases.)"

City of San Diego v Otay Municipal Water District, supra, held that a water district, a portion of the territory of which had been annexed to San Diego, could not furnish water to the area encompassed by the city without the latter's consent as provided in the city's charter. The court there cited and relied upon San Ysidro Irr. Distr. v Superior Court (1961) 56 Cal 2d 708, which applied the same rule with respect to the San Diego charter to an irrigation district, quoting Section 811, Code of Civil Procedure which authorizes a municipal corporation to maintain an action against any person who usurps, intrudes into, or unlawfully holds or exercises any franchise, or portion thereof, within the territory of said municipal corporation and which is of a kind that is within the jurisdiction of such board or body to grant or withhold.

We have no quarrel with the authorities and statute to which we are referred by Fresno. But we cannot accept as an accomplished fact that "the City will withhold a franchise to applicant" as no application therefor has yet been made, and we are here governed by Section 1003 of the Public Utilities Code, which provides as follows:

> "If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will, upon application, under such rules as it prescribes, issue the desired certificate upon such terms and conditions as it designates, after the public utility has obtained the

> contemplated franchise or permit. Upon the presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate."

We know that Bakman will require a franchise from Fresno to serve the area in issue for it is a right or privilege which is essential to the performance of the purpose of the grantee, and which is and can be granted by the sovereignty alone. (Copt-Air v City of San Diego (1971) 15 CA 3d 984, 988.) We know, too, that it is a settled rule that where a grant of such franchise by the municipality is not, by its terms, made an exclusive franchise, and the city in which it is to be exercised is not, by the law or ordinance granting it, forbidden or prevented from competing, that a city may establish its own works for the same purpose and engage in the same public service within the city, although it may thereby injure, or practically destroy, the business of the holder of such franchise. (Clark v Los Angeles (1911) 160 Cal 30, 39.)

The question whether any such franchise shall be given to anyone is, notwithstanding the presentation of the application, solely with such legislative body, to be determined by it in its discretion. (McGinnis v Mayor & Common Council of San Jose (1908) 153 Cal 711, 714.)

Neither the Constitution nor the Fresno charter requires Fresno to extend water service to the tract in issue. (People ex. rel. City of Downey v Downey County Water Dist. (1962) 202 CA 2d 786.) We note that Fresno cooperated and participated in the LAFCO hearings seemingly conceding that LAFCO might select any proper water purveyor to serve the Belmont-Fowler tract. We reserve our opinion as to whether a municipality serving water to its residents in competition with other public and private entities can deny a franchise to a public utility under this Commission's jurisdiction which has established in public hearings that it can better serve a particular proposed development than can the local municipal water purveyor.

We do not accept as a fact that Fresno will deny an application to it by Bakman for a municipal franchise. We assume, rather, that Fresno will consider such request when made by Bakman, upon considerations germane to the application.

The Water Supply Requirements Issue

At the hearing it developed that the water supply requirements adopted by Fresno for domestic water systems are such that, unless otherwise approved by the city engineer, each such system must have a capacity of providing five gallons per minute per service plus fire flow in order to meet city design standards. (See Section III A.1, "Standard Specifications for Construction of Water Facilities" adopted by Fresno in 1975.) On the other hand, this Commission's General Order No. 103 provides that a flat rate system serving an area such as that proposed would be adequate if it could provide a flow of one gallon per minute per residential service.

The issue is thus raised as to whether Fresno can impose higher standards on a public utility water company serving customers within its boundaries than are fixed by this Commission's General Order. The issue is a critical one in this proceeding as Bakman has made it clear that its willingness to serve water to the proposed subdivision is contingent upon its meeting Commission criteria only. If some other standard is to be imposed, both Bakman and Westcal wish to consider the alternatives available to them before proceeding.

This Commission has exclusive jurisdiction to determine and fix the standards for water service to be followed by public utilities, and standards set by local authorities which conflict with those established by this Commission are generally inapplicable to regulated utilities.

Article XII, Section 8 of the California Constitution (formerly part of Constitution Article XII, Section 23) declares:

> "A city, county or other public body may not regulate matters over which the Legislature grants power to the Commission..." (Emphasis added.)

It is accordingly clear that this Commission has regulatory authority over Bakman and all other public utility water companies operating in this state, and that such power includes authority to adopt rules governing the design and construction of the waterworks facilities operated by the water utilities subject to its jurisdiction.

In subparagraph 4 of Section III of the Commission's General Order No. 103 the Commission has declared that:

> "The utility may make use of the Water Supply Requirements Chart (Chart 1) appended hereto and made a part of these Minimum Standards for average requirements of service."

Although the development proposed by Westcal is only in the preliminary stages both Westcal and Fresno have assumed that the maximum number of residential units which can be built on the property will approximate 500. The Water Supply Requirements Chart in General Order No. 103 prescribes that a flat rate water system serving 500 customers must provide a supply of between 250 and 400 gallons, i.e., approximately .5 to 1.0 gallon per minute per service.

The instant case is not one of first impression. The effects to be given the constitutional prohibition now found in Article XII, Section 8, where local government attempts to impose local standards upon water suppliers have received earlier consideration.

In California Water and Telephone Co. v County of Los Angeles (1967) 253 CA 2d 16, the county of Los Angeles enacted a "Water Ordinance" (Ordinance) for the purpose of promoting a minimum level of flow for fire protection. Under the Ordinance, all persons who supplied domestic water to more than one customer were required to obtain a "Water Utility Certificate of Registration" or a "Water Utility Authorization" as a condition to the construction of any portion of a water system. The "Certificate of Registration" was a form filed with the county engineer containing an agreement by the purveyor to abide by the terms of the Ordinance. The "Water Utility Authorization" was obtained by filing an application with the

Waterworks and Utility Division of the office of the county engineer which included plans and specifications for the proposed water facility. The engineer was given authority to promulgate material standards and construction standards to which applicants were required to adhere. The Ordinance also contained detailed requirements for the service, design, and construction of water facilities. The California Water Association, on behalf of the California Water and Telephone Company, and all other investor-owned public utilities serving within the unincorporated areas of Los Angeles County, brought suit to test the constitutionality of the Ordinance. Contestants argued that the Ordinance could not constitutionally apply to regulated utilities because the State had fully occupied the field of regulation of public utilities by virtue of Article XII, Section 23 of the California Constitution, and the California Public Utilities Code. They contended they were entitled to a declaration that the Ordinance was unconstitutional as applied to public utilities. The county claimed that the Ordinance was a valid exercise of its police power and did not extend into an area fully occupied by general law and was not in conflict therewith. The court held that, as applied to the utilities, the Ordinance conflicted with general law and related to matters which were of statewide rather than local concern. The opinion of the court states in part as follows:

> "Pursuant to Section 23, Article XII, the Legislature adopted the Public Utilities Act, in which it delegated to the Public Utilities Commission the power to 'supervise and regulate every public utility in the State, and [to] do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.' (Public Utilities Code, Section 701.) Article III of division 1 of the Public Utilities Act (Public Utilities Code, Sections 761-773) contains detailed provisions relating to the equipment and facilities of public utilities. . . .

> "The Commission has promulgated rules governing water service including standards for design and construction, as for example, General Order No. 103, adopted June 12, 1956, containing comprehensive specifications for water systems and facilities...
>
> "No profound exegesis of the contents of the Water Ordinance and the utilities manual and of the contents of the cited sections of the Public Utilities Code and the Commission's regulations promulgated pursuant thereto is necessary to conclude that the Water Ordinance as applied to respondents conflicts with general law. Although the wording of both sets of legislation is not identical, the subject matter which is covered by each is substantially identical.
>
> "Moreover, the construction, design, operation and maintenance of public water utilities is a matter of statewide concern. Of course, the County is vitally interested in the adequacy of water supply available for fire protection. But the interest is not so parochial. All of the citizens of the complex of communities within the County of Los Angeles and in the neighboring counties are affected by the adequacy of water supply, not only for fire protection, but also for other domestic and industrial uses. Under such circumstances, the control of these aspects of water utilities is not a municipal affair subject to a checkerboard of regulations by local governments." (Emphasis added.)

Although the California Water and Telephone case, supra, arose because of local attempts to regulate fire flows, it is clear that the court therein determined that regulations affecting the water supply standards of public utilities are matters preempted by the state and reserved to this Commission.

Apart from the insight provided by that decision, an interpretation of the language of General Order No. 103 itself leads to the conclusion that the Commission does not intend that there should be a checkerboard of local regulations affecting the domestic water supplied by regulated utilities in the various areas throughout the state. Contrast, for example, the provisions of General Order No. 103 dealing with fire flow requirements and those dealing with

domestic supply. Section VIII of General Order No. 103 deals specifically with "fire protection standards". The standards prescribed therein are stated as "minimum levels of water service which the utility shall provide and are not intended to preclude any governmental agency from setting higher standards in any area subject to its jurisdiction".. (Emphasis added.) It is apparent that the Commission has effectually adopted whatever local standards for fire protection in excess of the Commission minimum are set by local fire protection authorities. On the other hand, domestic water supply requirements are set forth in Section III, subparagraph 4 by express reference to the Water Supply Requirements Chart made a part of the General Order. There is no suggestion in Section III, subparagraph 4, that the Commission has adopted local standards for domestic services.

No reason has been shown which would justify requiring Bakman to depart from General Order No. 103 standards in order to serve new customers in the proposed development simply because that area has been annexed to Fresno.

The Public Convenience and Necessity Issue

This is a case where Bakman is requesting the Commission to approve its request to extend service to a proposed subdivision located within the corporate boundaries of Fresno.

Fresno operates, and has operated, its own water system within its corporate boundaries for many years and alleges that it stands ready, willing, and able to serve the proposed subdivision. It is on this basis that Fresno objects to the application of Bakman. A duly constituted governmental agency, in the absence of complaint, must be assumed to be properly serving its customers in the area, and Bakman must sustain the burden of proof that Fresno is either unable or unwilling to serve water in the area in issue. (San Gabriel Valley Water Company (1951) 50 CPUC 406, 409.) Further, in a service extension case such as this, we must consider all practical alternative suppliers. (Ventura County Waterworks Dist. v PUC (1964) 61 Cal 2d 462.)

In our discussion, it should be borne in mind that annexation of the area in question by Fresno has just taken place and no firm plans as to the amount of demand, number and size of the lots, and requirements of a water system in the area has been established.

In determining whether to permit a utility to extend its service area to include previously unserved territory, the Commission makes the same kind of inquiries whether the request is protested or not.

For example, Suburban Water Systems (Suburban) applied to the Commission for authority to serve a 67-lot tract located within the city of Covina (City). The City's water supervisor protested the application on the grounds the area had been recently annexed and the City had employed outside consultants to engineer a master plan for its Water Department which included water service to the tract. (The similarity between that case and the instant case is apparent.) A Commission staff witness attested to the ability of the utility to provide service to the area. His report noted that (as here) no development was yet under way in the area and the developer planned to wait for the Commission's authorization to the utility before beginning work on the project. The record showed that (as here) Suburban had been providing water to areas within the City for some time and that (as here) it had facilities immediately adjacent to the proposed area from which to extend service. The Commission disregarded the City's protest and concluded that under all the circumstances it would not be in the public interest to refuse to grant the utility's request. (Suburban Water Systems (1963) 61 CPUC 474.)

When deciding which of two competing utilities should be permitted to serve a new area, the Commission considers the following factors:

1. The financial soundness and managerial ability of the utility;
2. The adequacy of its water supply;
3. The adequacy and cost of the proposed new system;
4. Utilization of the new system in providing additional facilities for the existing system;
5. The proximity of the new area to the logical operating territory of the utility;
6. The level of rates to be charged new customers; and
7. The preference of the developer.

(San Gabriel Valley Water Co. and Suburban Water Systems (1969) 69 CPUC 339.)

Since no logical reason appears why the same criteria should not be weighed by the Commission where the utility's rival is a public agency rather than another public utility, we will examine the record in light of the several listed standards.

(a) Financial Soundness and Managerial Ability

Bakman's financial soundness has not been questioned. That it has been in operation since 1948 attests to the fiscal integrity of the enterprise.

The record confirms the high level of management of Bakman. The evidence showed that during the entire 30-year history of that company, there has never been a complaint filed with this Commission regarding the adequacy of Bakman's supply or pressure.

On the other hand, Fresno is the larger system with 70,000 water customers. Yet there is no evidence in the record indicating how effectively the city is serving those customers. We are simply asked to presume that a duly constituted state agency, in the absence of complaint (of which we have no knowledge), must be assumed to be properly serving its customers. (San Gabriel Valley Water Co. (1951) 50 CPUC 406, 409.)

The reputation of Bakman was described on the record as "impeccable". Indeed, Westcal's witness testified that among her reasons for asking for service from Bakman was that "we have only heard the best remarks about Bakman Water Company. [W]e felt that we would be doing a service to our customers if it were served by the Bakman Water Company."

(b) Adequacy of Water Supply

Mr. Bakman testified that in 1975 respondent installed a well within its present service area south of the Belmont-Fowler property which was designed not only to supply Bakman's existing customers, but which has the capacity to supply needs in the new area. The capacity of the 1975 well is 2,800 gallons per minute sustained flow. It meets General Order No. 103 domestic standards to 500 units plus 1,500 gallons per minute for fire flow.

The record shows that Fresno has no source of supply in the immediate proximity of the Belmont-Fowler property. The nearest Fresno well is located at a point 1 to 1-1/2 miles removed from the proposed development, requiring a main extension of equivalent length.

Fresno's witness testified that in his opinion the main line extension could be avoided by locating a well within the subdivision. Yet either alternative seems certain to result in substantially higher costs than those of a contiguous supplier ready to serve.

(c) Comparative Costs of Providing Additional Facilities

The record does not permit the Commission to make an informed determination of what the actual costs of providing the new facilities would be if the Belmont-Fowler area is served by Bakman or by Fresno. The final development plans for the area have not been formulated. However, the fact that the Commission cannot precisely cost out a water system in the initial stages of a proposed development does not mean it will automatically refuse a utility's request to extend into a new area. As pointed out, Bakman's service area is contiguous to the Belmont-Fowler property, whereas Fresno service will involve the investment needed to run a line 1 to 1-1/2 miles to interconnect the new territory to Fresno's existing pipelines.

(d) Utilization of the New System in Providing Additional Facilities for the Existing System

As stated in Bakman's Advice Letter No. 29, "The pipelines in this new area will be interconnected with the existing lines of this Utility." It is clear, therefore, that if growth in the new area ever reaches the point where a new well might have to be drilled there, the interconnection of pipes between the new system and the old system will permit water from a Belmont-Fowler well to meet emergency needs in the area served by Bakman's present system.

Fresno's witness testified to the possibility of intertieing Fresno service within Belmont-Fowler with facilities of District, another contiguous water system. He said such interties would permit Fresno to take advantage of the production of a new well developed by District to meet fire flows and to support domestic flows within Belmont-Fowler. He also agreed that he knew of nothing which would prevent District from making its supply of water available on an emergency standby basis to any purveyor, including Bakman. Therefore, the interconnection between the present and proposed systems could provide access to District water should the need arise in Bakman's present system.

(e) Proximity of the New Area to the Logical Operating Area Of the Utility

Bakman's present service area is contiguous to Belmont-Fowler. Interconnection with that area can easily be made by a creek crossing. In contrast, the only contiguity between Belmont-Fowler and the balance of Fresno is by means of a strip of incorporated land running east along Belmont Avenue which bypasses the service area of District.

Fresno's witness testified at some length that the Westcal property is considered by Fresno as territory within its sphere of influence under the City's Urban Growth Management policy. Yet the record shows that LAFCO first approved District as the preferred supplier of water and ultimately determined to remain in a neutral position.

(f) Level of Rates

Respondent is providing domestic flat-rate service at a cost of $5.30 per month for premises up to 14,000 square feet in size. In comparison, Fresno would charge $7.00 per month to serve premises of equal size plus an extra $1.50 for swimming pools. Because the ultimate lot size has not been determined, however, the record is not complete as to which of the competing prospective purveyors would make the lowest monthly charge. Initial costs, however, clearly are lower with Bakman.

(g) The Preference of the Developer

Westcal did not seek its water service from Fresno in this instance. Westcal is constructing another residential subdivision adjoining the intersection of Belmont and Clovis Avenues within Fresno. When Westcal applied to Fresno for service to that subdivision some time ago, Fresno opted not to serve the area.

Westcal anticipates that, if Fresno serves the area, Westcal will be required to bear all capital costs of the water service delivery system, including costs of installing new sources of supply. In contrast, Bakman has advised the developer that Bakman will furnish all wells, pumps, and tanks needed to serve the area. The impact upon the water user from this difference in financing can be forecasted. Under Fresno operation the developer would have to advance the cost of any new source of supply, which it would pass along immediately to buyers at the time of sale. Under service by Bakman, that cost would be borne by Bakman and only charged back to customers over an extended period in the form of allowances for depreciation and return on investment included in regulated reasonable rates. Therefore, apart from its desire to obtain Bakman's caliber of service for its customers, the developer's desire to avoid initially financing the cost of any new source of supply is a preference which produces a result that is most consistent with the best interest of the public who purchase homes in the tract and use water service therein.

Summary

The evidence that we have discussed leads us to conclude that public convenience and necessity will best be served by lifting the suspension of Bakman's Advice Letter No. 29 on condition that it obtain a franchise from Fresno.

Fresno's disinclination to serve the developer when earlier requested to do so, its position throughout the LAFCO proceedings, its distance from the proposed development, and other factors shown on the record, convince us that Fresno's desire is to have the area in issue served by District and not by Fresno. As Fresno states, if Bakman serves the subject area, Fresno will someday have to buy the system at considerable cost. Thus, we find Fresno to be both unwilling and unable to render a proper water service to the proposed development.

Findings of Fact

1. Bakman, a public utility, filed its Advice Letter No. 29 with the Commission on February 13, 1978, wherein it requested authority to extend its service into a contiguous area to be developed as a tract of homes.

2. Objection to Advice Letter No. 29 was made but not filed with the Commission by the Fresno County Board of Supervisors sitting as the governing body of District, another water system contiguous to the proposed tract development.

3. Objection to Advice Letter No. 29 was made and filed with the Commission by LAFCO which had assumed jurisdiction of the annexation of the proposed tract area to Fresno for the purpose, among others, of specifying the water system which would supply the area to be annexed.

4. LAFCO approved the annexation of the area in issue and withdrew its protest of Advice Letter No. 29 in favor of a neutral position.

5. Fresno made and filed an objection to Advice Letter No. 29 on the ground that Fresno should render water service to the proposed development or, if not, then District should render the service.

6. Due notice of the hearing was given and Fresno was the only protestant.

7. As Bakman requires a franchise from Fresno, the Commission's order herein must be preliminary.

8. The water supply requirements of Fresno are more stringent than those of the Commission's General Order No. 103.

9. Bakman is financially sound, is excellently managed, has adequate water supplies, will provide the lowest initial capital costs to be borne by the customers, will utilize the proposed extension to benefit its existing customers as well as new customers, is contiguous to the new area, has a level of rates which cannot at this time be said to be more or less favorable than those of the protestant, and is preferred by the developer.

10. Fresno and other public entities operate, and have operated, water systems in Fresno for years; we presume they are properly serving their customers.

11. Bakman is ready, willing, and able to serve the Belmont-Fowler tract in Fresno, and it is the most qualified of the alternative suppliers which elect to serve the area.

12. Fresno is not ready, willing, and able to serve the Belmont-Fowler tract.

Conclusions of Law

1. As Bakman requires a franchise from Fresno, this order should be interim.

2. Supply standards, other than those for fire flow, of General Order No. 103 prevail over more stringent requirements of Fresno for utilities under the jurisdiction of this Commission.

3. Removing the suspension of Bakman's Advice Letter No. 29 is appropriate.

INTERIM ORDER

IT IS ORDERED that upon application and upon presentation to the Commission of satisfactory evidence that Bakman Water Company has obtained the franchise or permit necessary to extend its service area to include the Belmont-Fowler tract, suspension of Advice Letter No. 29 shall be terminated by further order of the Commission.

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

Dated at San Francisco, California, this 22nd day of MAY, 1979.

John E. Bryson
President

Vernon L. Sharp

Richard D. Gravelle

Claire T. Dedrick

Commissioners