

Decision No. 91069

NOV 30 1979

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TIMOTHY J. CHRISTEN,  
Complainant,

vs.

CITIZENS UTILITIES COMPANY  
OF CALIFORNIA,  
Defendant.

Case No. 10510  
(Filed February 27, 1978)

Timothy J. Christen, for himself,  
complainant.  
Heller, Ehlman, White, & McAuliffe,  
by Paul Alexander, Attorney at Law,  
for defendant.  
Eugene M. Lill, for the Commission staff.

O P I N I O N

By this complaint, Timothy J. Christen (Christen) alleges that he should be considered a bona fide customer and not a real estate developer or builder in connection with a main extension by Citizens Utilities Company of California (Citizens) to furnish water service to two adjacent homes he has built for resale in Moss Beach and requests the Commission to so find. It is Citizens' position that he should be considered a builder or developer. The provisions of Citizens' Main Extensions Rule No. 15 (Rule 15) relating to advances and refunds would be more favorable to Christen if he is classified as a bona fide customer than if he is classified as a real estate developer or builder.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on June 16, 1978, on which date the matter was submitted. Evidence was presented by Christen and Citizens. A representative of the Commission staff assisted in the development of the record.

Background

The following undisputed facts are established by the record, and we find them to be such:

1. Christen is a licensed contractor and has been in the building and construction business for many years. He has constructed sixteen homes in the Moss Beach area (located approximately 12 miles south of San Francisco on State Highway 1) since 1970. Generally, he has completed two buildings per year. Most of the homes have three bedrooms and two baths, and are in the medium price range. With the exception of two homes he has retained for rental, the homes are sold to the public when completed. The last two homes he constructed are at 1016 and 1024 Pearl Street in Moss Beach. The area in which the two homes are located was subdivided in 1906 or 1907 into 25-foot lots. Current local building regulations now require a 50-foot frontage for a home. Each of the homes has, therefore, been built on two 25-foot lots. The lots are designated Nos. 24, 25, 26, and 27, Block 12, Marine View Terrace on the subdivision map and are all adjacent to each other.

2. By letter dated June 8, 1976, Christen requested water service from Citizens for the two home sites on Pearl Street. In its reply dated August 5, 1976, Citizens informed Christen that there was no water main on Pearl Street to serve the property and that upon negotiating a line extension agreement between him and the utility, water service would be provided. Christen then called the District Manager of Citizens' Montara District, in which Moss Beach is located, and asked him how two older houses built a number of years ago and located several lots away on the opposite side of the same block of Pearl Street received water service. The District Manager informed him that the water meters for these houses were at the rear of the property and that service was from a main on the next street over. Christen telephoned Citizens' Sacramento Office on March 2, 1977 and requested that a main extension agreement be drawn up for the two building sites. By letter dated March 2, 1977, the utility sent a main extension contract to Christen to be executed by him. The letter stated that an advance deposit in the amount of \$150 is required and that the developer must advance all funds for the construction of the water distribution system. Christen thereupon forwarded the \$150 initial

deposit to Citizens on March 10, 1977 and the balance of the advance of \$4,605 on April 14, 1977 for the extension. The main extension contract furnished Christen was a Form A contract which is for subdivisions, tracts, housing projects, industrial developments, or organized commercial districts. Because Christen did not feel he was a developer as stated in Citizens' letter of March 2, 1977, and that he did not come within any of the categories covered by the Form A contract, he did not execute the contract.

3. In latter April 1977, while installing sewer hook-ups for the two building sites, Christen uncovered a one-inch water main fronting the property. Christen contacted Citizens' local superintendent, who admitted that he knew the line was there, but stated that this line was not adequate to serve any additional customers and that the new six-inch main was required.

4. In 1973, Citizens had treated a main extension for another builder who was constructing two new homes in the Moss Beach area as an extension for an individual. The circumstances surrounding this extension were substantially similar to those herein.

5. Because of the disagreement between the parties regarding the main extension contract to be used, Christen requested that the money he had advanced to Citizens be returned. \$4,668 was returned by Citizens to Christen.

6. Christen contacted the Commission staff for its views on the matter. By letter dated May 10, 1977, the staff informed Christen that it was its opinion that he should be classified as a builder or tract developer, although he was not actually dividing a parcel of land. The letter emphasized that this was a staff opinion and that Commission decisions are issued only on formal matters before the Commission.

7. Because the parties could not agree on the status of Christen, the instant complaint was filed by Christen. They did agree, however, that the extension would be constructed and services connected and that the deposit specified in the Form A Main Extension Contract would again be made by Christen. All construction and connections have now been made, and Christen has sold the two homes. Further efforts by the parties to

reach a mutually agreeable settlement of the matter have not been successful.

Rule 15

Citizens has had its Rule 15 on file with the Commission for a number of years. This is a standard rule which was established by the Commission in 1960 for all water utilities. It was revised in 1969. The rule applies to all extensions of distribution mains, from the utility's basic production and transmission system or existing distribution system, to serve new customers subject to certain exceptions not involved herein. The rule provides that where construction is to be undertaken by the utility, which is the situation here, a main extension contract shall be executed by the utility and the applicant before the commencement of any construction. The rule divides applicants into two classes: (1) bona fide customer, or (2) real estate developer or builder. A bona fide customer is defined as a customer who has given satisfactory evidence that service will be reasonably permanent to the property which has been improved with a building of a permanent nature. A real estate developer or builder is defined as including any individual, association of individuals, partnership, or corporation that divides a parcel of land into two or more portions.

The following provisions of the rule apply to extensions to serve individuals who are bona fide customers: (1) when the total length of the main extension from the nearest existing utility facility is not in excess of 50 feet per service connection, the utility shall extend its water distribution mains to serve new bona fide customers at its own expense; (2) if the total length of the extension exceeds 50 feet per service connection, the applicant shall advance to the utility, before construction is commenced, the estimated reasonable cost of such extension based on the cost of a main not in excess of six inches in diameter for the excess over the 50 feet per connection, exclusive of the cost of service pipes, meter boxes, and meters; and (3) the money so advanced shall be refunded in cash, without interest, in payments equal to the adjusted construction cost of 50 feet of the extension for which the advance was made for each additional service connection to a new bona fide customer not previously served and refund payments shall be made within 180 days

of commencement of such new service, subject to the conditions that no refunds shall be made after 10 years from the date the main extension was completed and the total of the refunds shall not exceed the amount advanced.

The following provisions of the rule govern extensions to serve subdivisions, tracts, housing projects, industrial developments, or organized commercial districts, which would be for real estate developers or builders: (1) there are no free footage allowances; (2) any applicant for a main extension to serve a new subdivision, tract, housing project, industrial development, or organized commercial district shall advance to the utility before construction is commenced the estimated reasonable cost of the extension from the utility's nearest facility, including the cost of service connections but not meters, and the main shall be at least of sufficient size or capacity to serve the new customers and a reasonable estimate of the potential customers who might be served directly from the main extension without any additional extensions; (3) the amount advanced shall be repaid by the utility in cash, without interest, to the contract holder in payments equal to 22 percent of the revenue received from the new services only for a period of 20 years, and at the end of this period, any unrefunded balance shall be paid to the contract holder in five equal payments over the next five-year period.

#### Issues

The first issue for our consideration is whether the existing one-inch main was sufficient to furnish adequate service to the two building sites. Our answer is that it was not and that the six-inch main extension was reasonable. Having so determined, the next and major issue for our determination is whether, in applying Rule 15, Christen should be classified as a real estate developer or builder or as a bona fide customer. We are of the opinion that he should be classified as a builder.

#### Discussion

As to the first issue, it is apparent that the new six-inch main has the capability of meeting peak service demands by the two new buildings and by the two older buildings, as well as any additional buildings that might be constructed on the same block, and that the ability of the

existing one-inch main to adequately serve four separate buildings is extremely questionable at best. Citizens' decision to install the six-inch main was a reasonable and prudent determination, and no further discussion of this issue is necessary.

With respect to the second issue, Christen's occupation is obviously that of a builder. He purchased the two building sites on Pearl Street and has constructed a new home on each site. His purpose was to sell both homes which he has done. He has been engaged in this same activity in the Moss Beach area for a number of years. We recognize, as Christen has pointed out, that the definition of real estate developer or builder in Rule 15 refers to those who divide land. Since he does not divide land but has in fact combined two lots for each of the two building sites, it is his position that he does not come within the purview of this definition and that the definition of bona fide customer applies to his activities. We do not agree. It is to be noted that the definition of a real estate developer or builder is, to say the least, stated in very general terms. It reads as follows:

"A 'real estate developer' or 'builder', for the purposes of this rule, shall include any individual, association of individuals, partnership, or corporation that divides a parcel of land into two or more portions."  
(Emphasis added.)

The word, include, is not one of limitation but merely specifies particular categories or groups covered by the definition. The type of building activity in which Christen is engaged is neither specifically nor by inference excluded from the meaning of the term, builder, as used in the rule. It is apparent that the framers of the definition were concerned primarily with subdivision developments; however, if it had been their intent to exclude building activities, such as those engaged in by Christen, they would have refrained from using the word, include, in describing those who divide land. The definition of a bona fide customer in Rule 15, on the other hand, states as follows:

"A 'bona fide customer', for the purposes of this rule, shall be a customer (excluding any customer formerly served at the same location) who has given satisfactory evidence that service will be reasonably permanent to the property which has been improved with a building of a permanent nature, and to which service has commenced. The provision of service to a real estate developer

or builder, during the construction or development period, shall not establish him as a bona fide customer." (Emphasis added.)

The terms, property and building, in this definition are in the singular; whereas, Christen is concerned with multiple properties and buildings. Furthermore, from a reading of this definition and in particular the last sentence, it is apparent that the intent of this rule is to cover the situation where an individual either builds his own home or has it built for him. Christen's activities are those of a builder, and anyone engaged in such activities is subject to the main extension provisions of Rule 15 relating to builders. To hold otherwise would place a burden on existing customers to bear at least some of the cost of extending service to new customers generated by commercial real estate ventures.

As to the instance in which Citizens in the past treated a main extension for another builder under similar circumstances to those involved herein as an extension for a bona fide customer or individual, the witness for Citizens testified that this was an error on its part and that it now handles all main extensions similar to the one herein under the builder provisions of Rule 15 and not under the bona fide customer or individual provisions.

We are of the opinion that the relief requested in the complaint should be denied.

#### Findings of Fact

In addition to the seven findings of fact under Background on which there was no disagreement by the parties, we further find as follows:

8. The activity in which Christen is engaged is not included in the definition of a bona fide customer or individual as set forth in Citizens' Rule 15, and the main extension advance and refund provisions of the rule relating to bona fide customers and individuals are not applicable to the extension herein.

9. Although the activity in which Christen is engaged herein is not specifically listed in the definition of real estate developer or builder in Rule 15, it is, likewise, not excluded from the definition, and for the purposes of applying the main extension advance and refund provisions of the rule, those applying to a real estate developer or builder are applicable to the extension issue.

10. Citizens Form A Main Extension Contract covers extensions for real estate developers or builders as those terms are defined in Rule 15.

11. The use by Citizens of its Form A Main Extension Contract for the main extension for Christen in issue was proper.

12. To classify a builder and developer engaged in activities similar to those of Christen herein as an individual or bona fide customer for the purposes of applying the advance and refund provisions of Rule 15 would place a burden on existing customers to bear at least some of the cost of extending service to new customers generated by commercial real estate ventures.

Conclusion of Law

The relief requested in Case No. 10510 should be denied.

ORDER

IT IS ORDERED that the relief requested in Case No. 10510 is denied.

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

Dated NOV 30 1979, at San Francisco, California.

John E. Saxon  
President

James L. Stinson

Stephen W. Hoyle

John J. Smith

Samuel M. Quinn  
Commissioners