

Decision 93205 JUN 16 1981**ORIGINAL**

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. 26 of Big Basin Water Company, Big Basin in Santa Cruz County.

(I&S)
Case 10994
(Filed June 2, 1981)

O P I N I O N

Big Basin Water Company (BBWC), on May 5, 1981, by Advice Letter 26, filed tariff sheets for extending service to an area not previously served. The area is contiguous to BBWC's Big Basin service area and encompasses the proposed development known as Units 2 and 3 of Galleon Heights (Units 2 and 3). Two interim protests were received (1) from the San Lorenzo Valley Water District (SLVWD) alleging that the proposed development was within its boundaries; and (2) from Santa Cruz Local Agency Formation Commission (LAFCO) requesting that the Commission take no action on the utility's request until LAFCO's comments were provided to the Commission sometime after its next scheduled meeting on June 3, 1981. Units 2 and 3 are presently within SLVWD's boundaries and that agency is, as a result, concerned that it might be liable for providing water service to Units 2 and 3 should an emergency arise or should BBWC default on its obligations. Thus, to avoid that responsibility, SLVWD seeks LAFCO approval of a deannexation of those properties from its service territory.

The Commission, on June 2, 1981, issued an Order of Suspension and Investigation of Advice Letter 26.

Advice Letter 26 is an integral part of a complicated number of proceedings before State and local agencies which have involved about twelve years of litigation in both State and Federal courts. There were seven days of hearings before Administrative Law Judge Fraser during March and April 1981, on the following consolidated matters:

1. Case 10725 (C.10725), filed March 2, 1979. Complainants, Big Basin Water Protection Association (WPA), requested an order of the Commission which would prohibit any further service connections until the Commission is assured there will be an adequate water supply.
2. Application 60139 (A.60139), filed December 8, 1980. Big Basin Water Company requested authorization to execute and perform contracts for water service.

The State Department of Health Services (DHS) and two developers, Galleon Properties, Inc. (Galleon) and Nagilluc, Inc. (Nagilluc), are intervenors in C.10725 and A.60139.

With the Commission staff acting as a mediator, a Stipulation as to Facts and Recommendations (stipulation) was entered into resolving the concerns of each party. Under the terms of the stipulation, Galleon and Nagilluc would donate substantial capital and facilities, including a new source of supply, to BBWC and would guarantee adequate water supplies or else would waive their rights to construct any new homes which would overtax BBWC's system. In return, DHS and WPA agreed to withdraw their opposition to the provision of service by BBWC to Galleon's and Nagilluc's properties. As its part in this arrangement, staff agreed to process a BBWC advice letter filing permitting BBWC to provide water service to Units 2 and 3. Subsequently, Advice Letter 26 was filed on May 5, 1981.

Alvin Pak, the assigned staff attorney in C.10725 and A.60139, attended the meeting of the Board of Directors of SLVWD on May 6, 1981. Mr. Pak was told by the Board that they do not oppose BBWC extending or providing service to Units 2 and 3, i.e., they had no desire to serve those properties. The Board advised Mr. Pak that it only wanted the Commission to delay granting BBWC permission to serve Units 2 and 3 until after LAFCO acted upon SLVWD's request for the deannexation. The Board of Directors adopted a motion to withdraw SLVWD's protest to the advice letter if the Commission were to approve the advice letter subject to a condition, viz., that the new service territory map not be effective until LAFCO's action to deannex Units 2 and 3 from SLVWD's boundaries was completed. The Board unanimously adopted a resolution requesting LAFCO to act "expeditiously and with all due speed" with respect to its request for a deannexation of Units 2 and 3.

Mr. Pak also attended the meeting of the Commissioners of LAFCO on June 3, 1981. The Commissioners declined to vote on the deannexation, and the LAFCO staff was directed to make a study of the effects that deannexation would have on SLVWD. That report will be submitted to the Commissioners at LAFCO's next meeting on July 1, 1981. LAFCO informed Mr. Pak that it was not opposed to BBWC serving Units 2 and 3. However, they too did not want the Commission to act until they themselves acted upon the deannexation. They refused to advise Mr. Pak as to when that might be; however, each Commissioner individually assured him that since SLVWD was in favor of the deannexation, they fully expected the deannexation to be approved in deference to the desires of SLVWD. LAFCO passed a resolution withdrawing their protest subject to the same condition SLVWD proposed.

The protests by SLVWD and LAFCO do not appear to have substance. Neither is opposed to BBWC extending service to Units 2 and 3, the subject matter of the pending advice letter. Neither wants a hearing during which their opposition to the advice letter would be considered. Both merely want the Commission to delay acting until LAFCO acts upon the deannexation of Units 2 and 3 from SLVWD, which, given the public on-the-record attitudes of the members of the SLVWD Board of Directors and the Commissioners of LAFCO, may be considered as a fait accompli.

Time is an extremely critical factor in resolving the water supply problems of Big Basin Water Company. Galleon received a tentative subdivision map (TSM) to construct homes in Units 2 and 3 more than ten years ago. By operation of law, the TSM for Unit 2 expires on June 24, 1981, and the TSM for Unit 3 expires on August 11, 1981. The only matter preventing the finalization of these TSMs has been Galleon's inability to convince the County Board of Supervisors that adequate water service exists for Units 2 and 3. Approval of the advice letter would allow the Unit 2 TSM to clear this final hurdle and permit Galleon to fulfill its obligations under the above-mentioned stipulation. Any failure to receive a final subdivision map on or before June 24, 1981, due to any uncertainty in obtaining water service for Unit 2, would relieve Galleon of providing the numerous improvements guaranteed to BBWC at no cost under the staff-initiated stipulation. This would leave BBWC and its ratepayers back in the situation of fall water rationing and return DHS, WPA, BBWC, Galleon, Nagilluc, and the Commission staff to the courtroom.

The Commission's Hydraulic Branch and the Legal Division have reviewed the protests by SLVWD and LAFCO and conclude that Case 10994 should be dismissed. We agree with the staff. Although we try to accommodate the protests to advice letter filings,

especially where such protests are filed by government agencies, the long-term solution to Big Basin Water Company's water supply problems is dependent upon the approval of Advice Letter 26 prior to June 24, 1981.

Findings of Fact

1. Big Basin Water Company is a water utility operating under the jurisdiction of this Commission.
2. Big Basin Water Company requests approval, by the filing of Advice Letter 26, to extend water service to Units 2 and 3 of Galleon Heights in a contiguous area.
3. The requested additional service area is within the service boundary of San Lorenzo Valley Water District.
4. San Lorenzo Valley Water District has no desire to furnish water service to Units 2 and 3 of Galleon Heights.
5. San Lorenzo Valley Water District stated that they do not oppose the extension or provision of water service to Units 2 and 3 of Galleon Heights by Big Basin Water Company.
6. Santa Cruz Local Agency Formation Commission has stated that it does not oppose the extension of water service to Units 2 and 3 of Galleon Heights by Big Basin Water Company.
7. The tentative subdivision map to construct homes in Unit 2 of Galleon Heights will expire on June 24, 1981.
8. Any failure to receive a final subdivision map on or before June 24, 1981, due to any uncertainty in obtaining water service for Unit 2, will relieve Galleon Properties, Inc. of its obligations in the Stipulation as to Facts and Recommendations in Case 10725 and Application 60139.
9. Advice Letter 26 was suspended by Case 10994 to permit the Santa Cruz Local Agency Formation Commission to consider the matter at its June 3, 1981 meeting.

10. LAPCO is expected to consider the matter further at its next scheduled meeting on July 1, 1981.

11. There is no reason to continue the suspension of Advice Letter 26.

Conclusions of Law

1. A public hearing is not necessary.
2. Case 10994 should be dismissed.
3. Notice of the following order did not appear on the Commission's public agenda as required by the Government Code. This matter is an unforeseen emergency in that if Advice Letter 26 does not become effective before June 24, 1981, Galleon Properties, Inc. is no longer under a written obligation to transfer the ownership of a well and other plant facilities to Big Basin Water Company. The customers of Big Basin Water Company would then be denied an additional source of water supply necessary to eliminate the chronic water shortages of the late summer and early fall months.

O R D E R

IT IS ORDERED that:

1. Case 10994 is hereby dismissed without prejudice.
2. The effective date of the tariff sheets filed by Big Basin Water Company under Advice Letter 26 on May 5, 1981 is June 16, 1981.

The Executive Director of the Commission is directed to cause a certified copy of this order to be served upon Big Basin Water Company, the San Lorenzo Valley Water District and the Santa Cruz Local Agency Formation Commission, and to mail a copy to all the parties of record in Case 10725 and Application 60139.

This order is effective today.

Dated JUN 16 1981, at San Francisco, California.

John E. Byrne President
Richard H. ...
Samuel ...
Robert ...
Presume ... Commissioners