

Decision 99-05-009 May 13, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

George W. Goldthorpe, as general partner of Goldthorpe Partnership for an exemption from the Moratorium on new water service connections in the Montara-Moss Beach District as set out in D.86-05-078.

Application 98-04-065
(Filed April 29, 1998)

ORIGINAL

Robert J. MacDonald, Attorney at Law, and George M. Goldthorpe, M.D., applicant.

E. Garth Black, Attorney at Law, for Citizens Utilities Company of California, respondent.

Peter G. Fairchild, Attorney at Law, for Ratepayer Representation Branch, Water Division, intervenor.

OPINION

1. Summary

George W. Goldthorpe, general partner of the Goldthorpe Partnership, seeks an exemption from the Commission-imposed moratorium on new water connections in the Montara-Moss Beach District of Citizens Utilities Company of California in order to construct new homes. The supply of water in this district continues to be inadequate, and the applicant has not justified an exception for the proposed construction. The application is denied.

2. Nature of Application

Applicant previously operated a child care center on the Moss Beach property. The center closed in 1981. Water service to the property was discontinued at that time, but a 1½-inch service line and meter remain in place at the property.

In July 1997, applicant applied to Citizens Utilities to reinstate water service to the Moss Beach property to serve four or five new homes that applicant proposed to build there. Citizens Utilities responded that it was unable to provide water service because of a moratorium on new connections imposed by this Commission in 1986. On April 29, 1998, Goldthorpe filed this application for an exemption from the moratorium.

A prehearing conference was conducted on September 2, 1998, before Commissioner Duque and the assigned administrative law judge (ALJ). An evidentiary hearing was conducted on December 1, 1998. Briefs were filed by all parties by February 17, 1999, at which time this application was deemed submitted for decision.

3. Grounds for Exemption

The moratorium on new connections in the Montara-Moss Beach District dates from a series of orders by this Commission beginning in 1976 and confirmed in 1986 in Decision (D.) 86-05-078, 21 CPUC2d 235. The 1986 order responded to an application by Citizens Utilities, pursuant to Pub. Util. Code § 2708, in which the utility stated that it had reached the limit of its capacity to supply water in the district. The district has about 1,600 connections.

Because Citizens has not acquired meaningful new sources of water for the Montara-Moss Beach District, the Commission has kept the moratorium in effect in various decisions since 1986. Most recently, in D.97-12-097, 1997 Cal. PUC LEXIS 1138, the Commission approved the utility's master plan update for improving the system. The Commission also took note of a pending Department of Water Resources study on water resources in the Montara area. The Commission directed Citizens to file an application within five months of receiving the study to deal with recommendations, if any, for new sources of water. The Department of Water Resources has not yet completed its study.

The moratorium that was put in place in 1986 contained limited exceptions for then-pending projects. It also provided that

"The moratorium shall not apply to owners of real property who are customers of CUCC on or before the date of this order, or their successors in interest, if any change in the use of their property will not increase their demand upon the system." (21 CPUC2d at 250-51, Ordering Paragraph 3.)

Applicant relies on this exception. Applicant argues that since its property was served by Citizens until 1981, and since water service for the new homes is unlikely in applicant's view to exceed the prior use (water service for a child care center serving approximately 80 children), the request falls within the exception contemplated by the Commission.

Goldthorpe, a medical doctor, testified that his situation also reflects the "extraordinary circumstances" that the Commission stated would be necessary in its consideration of any exemption. (21 CPUC2d at 251, Ordering Paragraph 6.) He introduced a letter from the County of San Mateo, dated January 12, 1993, stating that the county had been informed by Citizens that the water account at the property in 1981 "is still valid." Relying on this representation, Goldthorpe said, his partnership spent approximately \$35,000 to proceed with his construction plans.

4. Positions of Other Parties

Lawrence J. D'Addio, general manager of water utility operations for Citizens, testified that Citizens Utilities is bound by the terms of the moratorium to deny Goldthorpe's request for service. As to the strain on the system in granting the request, he testified that "Four more connections are not going to kill us, as long as they don't open the door for another forty or fifty, because that would." (Transcript, p. 19.) He further testified that he is aware of only one former customer with a meter larger than 5/8th of an inch, and seven former

customers previously served by 5/8-inch meters. Citizens asserts that the Commission must determine the merits of the Goldthorpe application "consistent with the intent of D.86-05-078 and in a manner that insures the treatment of all customers on a consistent basis." (Citizens' Response dated June 12, 1998, p. 2.)

The Ratepayer Representation Branch of the Water Division opposes the application on grounds that Goldthorpe has not met his burden of showing an undue hardship and has not shown that the proposed new water service would be the equivalent of prior water service to the property. Branch notes that Ordering Paragraph 1 of D.86-05-078 limits new connections to "prospective customers to whom [Citizens] has issued water service commitments on or before the date of this order." (21 CPUC2d at 250.) Branch states that Goldthorpe had relinquished water service five years before the decision was issued.

5. Discussion

Applicant has the burden of proof in justifying an exception to the moratorium imposed on this troubled water system. As shown by a series of Commission decisions over the past 25 years, that burden is a heavy one. (See, e.g., Petition of Taylor (1991) 42 CPUC2d 10.)

In 1976, in D. 86193, 80 CPUC 297, the Commission found that water supplies for this district were inadequate. It imposed a moratorium on new connections, ordered a well testing program, and directed Citizens to acquire new well sources capable of producing an additional 200 gallons per minute. In a series of intervening orders between 1976 and 1986, as new wells were placed in service and others failed or produced only minimal results, the Commission continued to apply limited moratoriums. In 1986, with 1,569 connections (400 more than in 1976), Citizens was still unable to locate new well sources capable of the additional 200 gallons per minute ordered in 1976. With certain exceptions, a

moratorium was continued. It is still in effect today. As the Commission stated after extensive examinations in 1992:

"The record obtained indicated that despite years of effort and 15 hydrological reports, Citizens had difficulty in trying to attain the 1976 ordered 200 [gallons per minute] increase in well supplied water, partially ascribable to the period's drought, but also experienced repeated water quality degradation and possibly was violating fire flow standards." (D.97-12-097, 1997 Cal. PUC LEXIS 1138, *6.)¹

In the company's recent general rate case, the Commission accepted an updated Water System Master Plan addressing many of the service problems in the Montara District. The Commission also ordered the company to file an application addressing any new sources of water within five months of completion of the Department of Water Resources Hydrological Study of the Montara Area. As of February 1999, the hydrological study had not been issued.

Applicant argues that he should be exempt from the 1986 moratorium because he is a former customer of Citizens and an existing 1½-inch line on his property could be used to restore water service. However, a close reading of D.86-05-078 shows that the exemption for "customers of [Citizens] on or before the date of this order" refers to those "who have commitments from [Citizens] to provide water service as of the date of this order...." (21 CPUC2d at 248.)

¹ This general rate case decision, issued on December 16, 1997, describes in detail the exhaustive efforts to secure new sources of water to serve the Montara District. The district, serving the unincorporated communities of Montara, Marine View, Parallone City, Moss Beach, and adjacent areas in San Mateo County, is 20 miles south of San Francisco. It occupies a narrow strip of land adjacent to the Pacific Ocean with elevation variations from nearly sea level to 450 feet, with six pressure zones in the system. (D.97-12-097, 1997 Cal. PUC LEXIS 1138.)

Specifically, the exemption was intended to protect the interests of individuals whose applications for service connections had been approved by the company at the time of the moratorium order. Applicant is not part of that group.

Similarly, applicant has not shown extraordinary circumstances justifying an exemption from the moratorium. Applicant had a valid account with Citizens in 1981. San Mateo County had approved construction of the new homes in 1992. Applicant spent \$35,000 in preparation for construction of the new homes. None of these facts, however, relieved the partnership from the responsibility of determining, from Citizens, that the Goldthorpe property could receive new water service regardless of the moratorium. At all relevant times, the Commission's determination remained in effect that an insufficient supply of water was available to allow a new customer to increase demand on the system. Moreover, as noted by Branch, applicant has not shown that the change in the use of the property will not increase the demand upon the system. (21 CPUC2d at 251, Ordering Paragraph 3.)

In D.97-12-097, we directed Citizens to file an application within five months of receiving the Montara hydrological report of the Department of Water Resources. It is our hope, obviously, that the report will suggest a means by which Citizens can increase its supply of water and ease the moratorium on new service for applicant and others in the Montara-Moss Beach District. Until such relief becomes available, however, the moratorium remains in place and precludes the relief requested here. Accordingly, the application must be denied.

In Resolution ALJ 176-2993 dated May 21, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings would be necessary. As noted, a hearing was conducted. It is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2993.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Citizens and ORA commented in support of the proposed decision; applicant did not file comments.

Findings of Fact

1. Applicant seeks to build up to five new homes on 2.3 acres of property in Moss Beach.

2. Applicant previously operated a child care center on the property, but the center closed in 1981.

3. A water service line and meter remain in place at the property, but water service was discontinued by applicant in 1981.

4. In July 1997, applicant applied to Citizens Utilities to reinstate water service to the Moss Beach property.

5. Citizens Utilities stated that it was unable to reinstate water service to the property because of a moratorium on new connections imposed by this Commission in D.86-05-078.

6. The moratorium on new connections was ordered pursuant to Pub. Util. Code § 2708 because the utility had reached the limit of its capacity to supply water in the district.

7. The 1986 moratorium contains limited exceptions for new service based on extraordinary circumstances or on the utility's prior commitments to provide service.

8. Applicant in 1993 received approval to build the new homes from the San Mateo County Planning Department, based in part on the county's understanding that applicant's account with Citizens Utilities was valid.

9. In the parlance of Citizens Utilities, an account is "valid" if it exists in the utility's records.

10. The Goldthorpe Partnership has spent approximately \$35,000 preparing for construction of the new homes in Moss Beach.

11. The Department of Water Resources is conducting a hydrological study of the Montara area intended to show, among other things, whether new sources of water are available for the community.

Conclusions of Law

1. The exemption for certain customers of Citizens Utilities in the 1986 moratorium applied to those who had received approval for new water connections at the time the moratorium was imposed.

2. Applicant was not among those who had received approval for new water connections in 1986.

3. Applicant knew or should have known that an insufficient supply of water was available in Moss Beach to allow a new customer to increase demand on the system.

4. Applicant has not shown extraordinary circumstances justifying an exemption from the moratorium.

O R D E R

IT IS ORDERED that:

1. The application of George W. Goldthorpe, as general partner of Goldthorpe Partnership, for an exemption from the moratorium on new water service connections in the Montara-Moss Beach District of Citizens Utilities Company of California is denied.

A.98-04-065 ALJ/GEW/eap

2. Application 98-04-065 is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners