

Decision 99-12-004 December 2, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Gary Skowron and Patricia Skowron, 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 99-09-028  
(Filed September 16, 1999)

Gary Skowron and Patricia Skowron, applicants.  
E. Garth Black, Attorney at Law, for Citizens Utilities  
Company of California, respondent.  
Peter G. Fairchild, Attorney at Law, Ratepayer  
Representation Branch, Water Division,  
intervenor.

**OPINION**

**1. Summary**

Gary Skowron and Patricia Skowron, owners of a home in Moss Beach, California, where a well apparently is going dry, seek an exemption from the Commission-imposed moratorium on new water connections in the Montara-Moss Beach District of Citizens Utilities Company of California (Citizens). The supply of water in this district continues to be inadequate, and applicants' showing of economic hardship does not justify the kind of broad-based exemption to the moratorium that would result. The application is denied.

**2. Nature of Application**

Applicants bought their Moss Beach house in July 1997, having moved to California from Arizona. They state that they were unaware at the time that a private well serving the property had declined in production from about

3 gallons per minute in 1992 to less than 1 gallon per minute today. A well test on August 18, 1999, showed production at 0.13 gallons per minute.

Applicants state that they first became aware of the problem in June 1999. At that time they put the house up for sale so that they could relocate to Michigan to be with Mrs. Skowron's sister, who is seriously ill. A required well test showed the reduced production, and the Skowrons invested more than \$5,000 in a new pump and chemical treatments. Production has continued to decline. Applicants state that they have been told by three well developers that the small aquifer serving the well is not recharging, and that the well is likely to go dry in the near future.

In view of this, applicants asked to connect to the Citizens water system. Citizens responded that it was unable to provide service because of the moratorium on new connections imposed by this Commission in 1986. On September 16, 1999, the Skowrons filed this application for an exemption from the moratorium.

Because the Skowrons were to leave soon for Michigan, an expedited hearing was held on September 30, 1999. Both Gary Skowron and Patricia Skowron testified in support of the application. A Citizens executive testified in opposition. The Ratepayer Representation Branch of the Commission's Water Division (Branch) also opposed. Parties waived briefs, and the case was deemed submitted for Commission decision at the close of hearing.

### **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, 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 sources 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 filed a preliminary report but has not yet made the study final.

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

"A prospective customer may seek an exemption from [the moratorium] by filing a petition for exemption in this proceeding. The petition shall comply with the Rules of Practice and Procedure and shall show what extraordinary circumstances require an exemption." (21 CPUC2d at 251, Ordering Paragraph 6.)

Applicants rely on this provision of the moratorium decision. They argue that, to their knowledge, this is the only private well in the area that is going dry, and therefore granting an exemption under these circumstances is not likely to set a precedent. Moreover, a family emergency requires their move from the state, and they are unable to sell their house if it does not have a reliable source of water. If an exemption is not granted, they say that they will have no choice but to permit foreclosure, since the house will not be suitable for habitation.

On cross-examination, Mr. Skowron stated that he and his wife intend to take legal action against the real estate brokers and previous owners of the home

for what the Skowrons believe was lack of disclosure about the well. In response to questions from Branch, Mr. Skowron stated that the couple bought the house in 1997 for \$369,000, that the outstanding mortgage is \$345,000, but that outstanding home equity loans amount to about \$40,000. They have an offer on the home of \$519,000 – provided there is a dependable source of water.

Mr. Skowron acknowledged that a well inspector told him that the well now is producing between 100 and 200 gallons of water per day, which may for the time being be sufficient for a two-person household, assuming an average use of 75 gallons per day per person.

#### **4. Positions of Other Parties**

Rod Jordan, finance and regulatory manager for Citizens, testified that the company is bound by the terms of the moratorium to deny applicants' request for service. He stated that while the company is sympathetic to the problem facing the Skowrons, an exemption here would open the door to many similar requests. He stated that there are approximately 200 private wells in the area now, along with some 700 buildable lots. He stated that owners of those properties could probably make an argument that they too are entitled to water service hookup for compelling economic reasons. As it has done in the past, Citizens asserts that the Commission must determine the merits of this application consistent with the intent of D.86-05-078 and in a manner that ensures consistent treatment of all customers. (See, In re Goldthorpe, D.99-05-009, slip op. at 4.)

Jordan testified that Citizens serves the district with 10 wells and one surface-water source (Montara Creek). Two wells were temporarily taken out of service earlier this year for treatment of contaminants. Jordan said that, as part of the company's master plan developed at Commission direction, Citizens has sought new sources of water from other purveyors, including the Coastside

Water District and the City of San Francisco. Those efforts thus far have been unsuccessful.

Branch presented no witness, but it argued in summation that the exemption sought here – providing a property owner with a connection in order to permit sale of the property – would be so sweeping that virtually any property owner could claim an exemption, thus undoing the moratorium. As to economic hardship, Branch states that applicants have little or no equity to lose if the house is foreclosed, and they appear to have a cause of action for damages against the prior owners or realtors if the Skowrons were misled about the condition of the well.

## **5. Discussion**

Applicant has the burden of proof in justifying an exemption 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 Decision (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.)<sup>1</sup>

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-Moss Beach 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. The hydrological study was issued in draft form in January 1999, but a final report had not been issued at the time of hearing.

Applicants have not shown extraordinary circumstances that justify an exemption from the moratorium. Clearly, they will incur hardship if they are unable to sell their house because of an inadequate water supply. As noted by Branch, however, applicants believe that they have a cause of action for any damages because of lack of disclosure when they bought their house two years ago. The evidence shows that records were available at the time showing a steady decline in productivity of the private well since 1992. Moreover, as

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<sup>1</sup> 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, Farallone 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.)

Branch also notes, applicants have little or no equity in the home. The well continues to produce some water, and a sale to someone willing to wait out the moratorium does not seem impossible.

We are particularly concerned with the precedent that would be set in permitting an exemption for this type of economic hardship. Private wells serve some 200 properties in the area, and some of these wells will experience problems for which relief like that sought here could be requested. Contrary to applicants' belief, wells in the area do go dry. The Commission dealt with such a case in Petition of Carrin (1992) 46 CPUC2d 77, where a Montara resident sought a temporary connection from Citizens because her well had gone dry.<sup>2</sup>

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 that the report will suggest a means by which Citizens can increase its supply of water and ease the moratorium on new service for applicants 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 176-3024 dated October 7, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings would be necessary. As noted, a hearing was

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<sup>2</sup> In Petition of Carrin, the Commission granted a temporary exemption, with severe restrictions on water use, after a showing that petitioner was a single mother with six handicapped children, ranging in age from 5 to 9, whose need for a dependable source of water was critical to their health.

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 administrative law judge 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. Comments were filed only by Citizens, which asked that the proposed decision be adopted without change.

### **Findings of Fact**

1. Applicants face a family medical emergency that compels them to move from California to Michigan.
2. The production of the private well serving applicants' property in Moss Beach, has been declining, and well developers have told applicants that the well is likely to go dry in the near future.
3. Citizens denied applicants' request for a connection because of a moratorium on new connections imposed in this district in 1986.
4. 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.
5. The 1986 moratorium contains a limited exception for new service based on extraordinary circumstances.
6. Applicants have a prospective buyer for their house in Moss Beach, but the buyer is unwilling to proceed unless the house has a dependable source of water.
7. Applicants purchased their house in 1997. They have little or no equity in the property.

8. Applicants believe they have a legal cause of action against the previous owners of the house, and the realtors involved, for alleged lack of disclosure of the condition of the well.

9. 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.

10. Applicants' petition is opposed by Citizens and by Branch on grounds, among others, that an exemption for the type of economic hardship shown here would open the door to similar requests by others.

### **Conclusions of Law**

1. Applicants knew or should have known in 1997 that an insufficient supply of water was available in Moss Beach to allow them to obtain a water connection from Citizens.

2. Applicants knew or should have known in 1997 that the production of the private well on the property was declining.

3. Applicants have not shown extraordinary circumstances justifying an exemption from the moratorium.

**ORDER**

**IT IS ORDERED** that:

1. The application of Gary Skowron and Patricia Skowron 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.
2. Application 99-09-028 is closed.

This order is effective today.

Dated December 2, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners