

Decision 06-09-024 September 7, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Douglas J. Massongill and Sherri L.
Massongill,
Complainants,

vs.

Hillview Water Company, Inc.,
Defendant.

Case 05-10-002
(Filed October 3, 2005)

**ORDER MODIFYING DECISION (D.) 06-03-003 AND DENYING
REHEARING OF D.06-03-003 AS MODIFIED**

I. INTRODUCTION

In this Order we dispose of the application for rehearing of Decision (D.) 06-03-003 (“Decision”) filed by Douglas and Sherri Massongill (“Applicants” or “Massongills”).

Douglas and Sherri Massongill filed an Expedited Complaint on October 3, 1995 contending that Hillview Water Company, Inc. (“Hillview”) erroneously interpreted Public Utilities Code sections 2708 through 2711 in advising them that a 1.64 acre parcel of land they own near Oakhurst, California is subject to the moratorium on new service connections ordered by D.01-10-025. (See *Investigation on the Commission’s own Motion into the Operations, Practices, Rates and Charges of Hillview Water Company, Inc.*, (“*Re Investigation of Hillview I*”) [D.01-10-025] (2001) Cal.P.U.C.LEXIS 970.) Applicants asked the Commission to order Hillview to serve their parcel. (See C.05-10-002; see also D.06-03-003.)

The moratorium ordered in D.01-10-025 (“moratorium”) responded to serious supply problems in the Oakhurst-Sierra Lakes area attributable to a generally constrained water supply, made worse by the need to reduce pumping due to high levels of uranium in some wells. In D.01-01-025, we found that Hillview has effectively reached the limit of its capacity to supply water, and that no further customers can be supplied from Hillview’s existing system without injuriously withdrawing the supply wholly or in part from existing customers. (See *Re Investigation of Hillview I* [D.01-10-025], *supra*, Finding of Fact Nos. 6 and 9.) The moratorium ordered in D.01-10-025 bars “connection of new service to any customer who did not have an application on file with Hillview as of April 16, 2001.” (See *Re Investigation of Hillview I* [D.01-10-025], *supra*, at p. 11.)

Hillview has applied for a loan from the Safe Drinking Water State Revolving Fund (“SDWRF”) to finance certain infrastructure improvements, including the drilling of some new wells to replace existing wells that are contaminated with uranium. We issued D.05-07-029 in Hillview’s recent general rate case, and noted that the loan had been approved but not yet funded, and that Hillview has no means to abate the moratorium ordered by D.01-10-025. (See *Investigation on the Commission’s Own Motion into the Operations, Practices, Rates and Charges of Hillview Water Company, Inc.* (“*Re Investigation of Hillview II*”) [D.06-01-005] 2006 Cal.P.U.C.LEXIS 12.) In D.06-01-005, we modified the moratorium, and a limited exception was provided to those who develop additional sources of supply adequate (1) to serve the additional demand that the person or entity proposed to add in the Oakhurst-Sierra Lakes Service Area, and (2) yield a surplus for the benefit of the utility. (See *Re Investigation of Hillview II* [D.06-01-005], *supra*, at pp. 12-13.)

Applicants contend the property received domestic water service from August 1998 until November 1998, when service was stopped at the request of the prior owners. (See Exhibit B, pp. 1-2; see also Exhibit E, p. 2; see also D.06-03-003, p. 3.) No structures have been built on the property, though it was graded for a house pad. (See Applicants Responses to ALJ Ruling; see also D.06-03-003, p. 4.) No

application to reinstate service was on file before the moratorium took effect. The previous owners reapplied for water service in July 2003, and after the property was sold, the Massongill's were substituted as the Applicants. (See D.06-03-003, p. 3.) Applicants' application for service is #19 on the moratorium waiting list.

In D.06-03-003, we denied the complaint against Hillview. Among other things, the Commission determined that the fact that the undeveloped parcel briefly had water service in 1998 (until cancelled by the prior owners) does not qualify the property for an exemption from the moratorium. (See D.06-03-003, p. 1.)

Applicants filed a timely application for rehearing. The rehearing issues center on our determination that Applicants do not qualify for an exemption from the moratorium under section 2711 as a territory or consumer once served by the corporation. Specifically, they challenge the Decision on the grounds that: (1) the Decision is not supported by the findings; (2) the findings are not supported by the substantial evidence; and (3) the Decision violates their rights under Public Utilities Code section 2711 and under the Constitution of the State of California and the United States Constitution. (See Rehearing App., p. 1.) Applicants also request a rehearing with a new Administrative Law Judge. (See Rehearing App., p. 3.)

We have carefully considered each and every argument raised in the application for rehearing and are of the opinion that the Decision should be modified as we set forth today. We further modify pages 5, 6, 7 and 9, and Conclusion of Law No. 3 to correct typographical errors.¹ Rehearing of the Decision, as modified, is denied.

¹ Specifically, in the Decision, the Administrative Law Judge quotes language from Pub. Util. Code section 2708, but inadvertently refers to the quoted language as section 2710.

II. DISCUSSION

A. Adequacy of Findings and Conclusions

Applicants contend that the Decision is not supported by findings. Specifically, they contend that Public Utilities Code section 1705 requires that the Decision contain “separately stated findings of fact and conclusions of law on all issues material to the order or decision,” and that the Decision is “woefully deficient in this regard.” (See Rehearing App., p. 1.) They further allege that they have proven that they are exempt from the moratorium given that Public Utilities Code section 2711 does not apply to territories or consumers once served by the corporation. (See Rehearing App., p. 1.) Applicants further claim that although the Decision defined the word “consumer,” D.06-03-003 fails to address or consider the words “or territories which have once been served” under 2711, and essentially ignores language in section 2711. (See Rehearing App., p. 1.) Applicants also request that the words “territory” or “once served” be reviewed and considered in an attempt to clarify the intent of the legislature when adopting 2711. (See Attachment 1, p. 3.) These claims lack merit.

First, findings of fact and conclusions of law must be based on the evidence in the proceeding. Contrary to Applicants’ contention, the record contains sufficient evidence for its findings and conclusion of law consistent with Public Utilities Code section 1705. Section 1705 does not require the Commission to make express legal and factual findings for each and every issue or sub-issue raised by a party. The California Supreme Court has observed that findings of fact and conclusions of law by the Commission are intended to assist the court in ascertaining the principles relied on by the Commission so that a court may determine whether the Commission acted arbitrarily. In fact, section 1705 only requires sufficient findings and conclusions in order to assist the parties in preparing for rehearing or court review. (*Southern California Edison Company* [D.04-02-028] 2004 Cal.P.U.C.LEXIS 19, at *11-12; see also *California Manufacturers Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 251, 258-259.) D.06-03-006 amply complies with these requirements.

Moreover, our conclusion that the fact that the undeveloped property briefly had water service in 1998 (until cancelled by the prior owners) does not qualify the property owner for an exemption from the moratorium is consistent with the Commission's authority, and is supported by the record evidence. Specifically, under Public Utilities Code section 2708, the Commission can impose a moratorium which would prevent the utility from furnishing water to any new or additional consumers until the order is vacated or modified by the Commission. Section 2708 states:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, finds that any water company which is a public utility operating within this State has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by the corporation, the Commission may order and require that no such corporation shall furnish water to any new or additional consumers until the order is vacated or modified by the Commission. The Commission, after hearing upon its own motion or upon complaint, may also require any such water company to allow additional consumers to be served when it appears that service to additional consumers will not injuriously withdraw that supply wholly or in part from those who theretofore had been supplied by such public utility.

We ordered a moratorium on new or additional customers of the utility as a necessary measure to address the acute water quality and supply problem. (See *Re Investigation of Hillview I* [D.01-10-025], *supra*, at pp. 6-7.) The moratorium ordered in D.01-10-025 was instituted on new connections until the California Department of Health Services (DHS) determines that Hillview has an adequate water supply. The provision was included to address the presence of uranium in certain of Hillview's wells at a level that exceeds DHS' standards, a problem that can only be remedied by limiting the water pumped from those wells, which has put a strain on Hillview's already marginal total supply. (See *Re Investigation of Hillview I* [D.01-10-025], *supra*, at pp. 6-7.) In the Decision, we reviewed these facts and denied Applicants

request for an exemption to the moratorium, which is consistent with the facts and our authority under section 2708.

In addition, we have interpreted section 2708 to permit a water company to hook up new customers² only after the needs of existing customers are met. Once the needs of existing customers are met, the Commission, under the second sentence of section 2708, can consider requests such as Applicants by prospective customers for service from utilities currently subject to moratoriums on new connections. (See *In the Matter of the Application of Citizens Utilities Company of California for an Order Pursuant to California Public Utilities Code section 2708 Restricting the Addition of Customers to be Furnished with Water Services in its Montara-Moss Beach District* (“*Re Citizens*”) [D.89-12-020] (1989) 34 Cal.P.U.C.2d 84; see also *Re Investigation of Hillview II* [D.06-01-005], *supra*, at p. 12.) However, this exemption is discretionary,³ and the facts as set forth in the record would not support such a result. In fact, in D.01-10-025 we made the finding that no further consumers of water can be supplied from Hillview’s existing system without injuriously withdrawing the supply wholly or in part from customers who have heretofore been supplied by Hillview. (See *Re Investigation of Hillview I* [D.01-10-025], *supra*, at p. 9.)⁴

² Applicants contend that they are not new customers, but those who have been previously served by Hillview. (See Rehearing App., p. 2.) This claim is without merit given that both a new customer and a customer who seek to reinstate service would have the same effect on the system. That is, providing service to either class of customer would place a new demand on the system that did not exist prior to the date the moratorium was imposed.

³ The only way a prospective customer could obtain water service during the moratorium would be to file an application for an exemption or a complaint, which the Commission would then grant or deny on a case-by-case-basis. (See *Re Citizens* [D.86-05-078] (1986) 21 Cal.P.U.C.2d 235.)

⁴ Finding of Fact No. 5 states: “During the summer months Hillview’s water supply exceeds DHS’ primary drinking water standard for uranium when its Sierra Lakes Well No. 4 is online.” Finding of Fact No. 6 says: “Without the supply from Sierra Lakes Well No. 4, Hillview would have inadequate reliable supply to meet the needs of its existing customers.” Finding of Fact No.7 states: “There is presently no substitute available source to replace the supply from Sierra Lakes Well No. 4.” Finding of Fact No. 8 says: “By reason of the aforementioned facts Hillview has effectively reached the limit of its capacity to supply water.”

To date, Hillview has been unable to increase its supply and thus, the supply constraint has not eased. (See D.06-03-003, pp. 5-6.)⁵ In fact, there has been no evidence presented to the Commission that these facts have changed. The Decision is reasonable given the lack of convincing evidence presented by Applicants which would support a deviation from the moratorium. While Hillview has the option to file an advice letter to vacate the moratorium if and when they maintain an adequate supply meeting DHS requirements, Hillview has not filed any such advice letter. (See *Re Investigation of Hillview I* [D.01-10-025], *supra*, at p. 9.) The moratorium remains in place, which precludes the relief requested.

Second, the moratorium ordered in D.01-10-025 contains limited exceptions, and states, in part:

This revised tariff shall be effective immediately, and shall bar connection of new service to any customer who did not have an application on file with Hillview as of April 16, 2001, the date of the settlement adopted herein. This paragraph shall not be construed to require cessation of any new service which was actually connected on or after April 16, 2001. (See D.01-10-025, Ordering Paragraph 6.)

This exception was intended to protect the interests of individuals whose applications for service or service connection commitments had been on file with the company at the time of the moratorium order. Applicants are not a part of that group. Their request for reinstatement of service does not fall within the exception contemplated by D.01-10-025 because they did not file an application to reinstate service until July 29, 2003, two years after the date the moratorium took effect.⁶ (See D.06-03-003, Finding of Fact No. 2.) The Decision further acknowledges that the

⁵ D.05-07-029, which issued in Hillview's recent general rate case, noted that the SDWRF loan which would finance infrastructure improvements had been approved but not yet funded. Thus, Hillview has had no means to abate the moratorium ordered by D.01-10-025. (See *Re Investigation of Hillview II* [D.06-01-005], *supra*, at p. 4.)

⁶ The application for service was made by Al Davis, the former owners of the property. After the property was sold, the Massongill's were substituted as the Applicants. (See D.06-03-003, p. 3.)

Commission would approve an exception to the moratorium to those who (1) agree to drill a new well capable of yielding more than enough water for their own needs and (2) to make the surplus supply available to Hillview. (See D.06-03-003, p. 6, citing *Re Investigation of Hillview II* [D.06-01-005], *supra*, at. pp 13-14.) D.06-03-003 does not preclude Applicants from utilizing this narrow exception.

Third, our conclusion that Applicants do not qualify for an exemption from the moratorium is consistent with Commission practice and is supported by the record. For example, the Commission has previously rejected applications for an exemption to a Commission-imposed moratorium on water connections for individuals who applied to reinstate service. (See *Re Goldthorpe* [D.99-05-099] (1999) 86 Cal.P.U.C.2d 217.)⁷

Fourth, Applicant did not meet its burden in support of an exemption from the moratorium. Applicant has the burden of proof in justifying an exception to the moratorium, and as shown by a series of Commission decisions over the past 25 years, that burden is a heavy one. (See *Re Goldthorpe* [D.99-05-099], *supra*, citing *Petition of Taylor* [D.91-11-050] (1991) 42 Cal.P.U.C.2d 10.) Applicant, however, failed to present any compelling reasons which would support the Commission changing its mind. In fact, we found Applicants claim that they qualify for an exemption under section 2711, unconvincing, and stated, “the Commission has interpreted consumers to mean that moratorium should not apply to those actually using water, and while the parcel indisputably had a water hook up in 1998, the property has not actually been using water since 1998.” (See D.06-03-003, p. 10.) We further noted in D.06-03-003

⁷ The Commission has, however, permitted exemptions from a moratorium when the utility had issued water service commitments but who had not yet been connected to the system. The Commission balanced the equities of their situation, given that they had water service commitment letters from the utility as opposed to the prospective customers who had only filed applications for service but had not yet received commitments from the utility. These individuals were given priority for service in the order those commitments were issued. Second priority was given to those, who (like the Massongill's) have applied to receive water service commitments, but have been prevented from obtaining a commitment because of a Commission ordered moratorium. (See *Re Citizens* [D.86-05-078], *supra*, at p. 13.) Like the Massongill's, these prospective customers who filed applications but to whom the utility had not issued water service commitments were placed on a first-come, first-served list. Applicant does not currently have a water service commitment letter, and as in *Re Citizens*, should await its turn on the list.

that “had the Legislature intended that it meant consumers to include others than those actually using water the Legislature would have written the statute differently.” (See *Re California-American Water Company* [D.86807] (1977) 81 Cal.P.U.C. 204.) We determined that the term “consumers” should not be interpreted any differently in section 2711 since both statutes were enacted through passage of the same legislation in 1951 (Stats. 1951, Ch. 764) and have remained in the Code, unchanged, since that time. (See D.06-03-003, p. 8.) Moreover, Applicants offered no authority in support of its contention that service for three months in 1998 entitles them to reinstatement of service 5 years later (regardless of a moratorium imposed in the interim), and entitles them to bypass others on the waiting list who also applied for service. Thus, Applicants failed to meet its burden and provide convincing evidence which would support an exception to the moratorium.

Fifth, contrary to Applicants claim, the exemption outlined in section 2711 does not apply. Section 2711 states:

Section 2710 does not apply to territory or consumers which have once been served by the corporation. As between consumers who have been voluntarily admitted to participate by the corporation in its supply of water or required to be supplied by an order of the commission, in times of water shortage the corporation shall give no priority or preference but shall apportion its supply ratably among its consumers.

In fact, the exemption outlined in section 2711 refers to and pertains to a section 2710 situation.⁸ Section 2710 applies to the expansion of a utility’s service area situation, and seeks to protect existing customers from expansion when a water

⁸ For example, section 2710 states: “When it appears from (a) the statement required by Section 2709, (b) the articles of incorporation of any water corporation, or (c) any notice of appropriation of water required by law, that a water corporation has undertaken to supply more consumers or a greater number of acres than it can adequately supply, the commission may require the corporation to limit the number of consumers or acres of land which it has undertaken to supply or which is set out in its articles of incorporation or notices of appropriation to such a limited number of consumers or acres of land as the commission finds, after hearing, that the water corporation may adequately supply.” (See Pub. Util. Code section 2710.)

supply is insufficient.⁹ It does not, however, refer to a moratorium on domestic service issued pursuant to section 2708. In the Decision, we dealt with a moratorium issued pursuant to our authority under section 2708, not the expansion of a utility's service area under section 2710, and therefore the exception provided in Public Utilities Code section 2711 is inapplicable, and Applicant's argument is accordingly dismissed on this ground.¹⁰

Sixth, allowing Applicants reinstatement of service would disadvantage other individuals who are ahead of Applicants on the waiting list, and thus violate Public Utilities Code section 453. Specifically, Public Utilities Code section 453 does not allow any public utility "as to rates, charges, service, facilities, or in any other respect, [to] make or grant any preference or advantage to any corporation or person subject to any corporation or person to any prejudice or disadvantage." We have interpreted section 453 to prohibit utilities from treating a particular customer differently than other similarly situated customers.

Under section 453, all similarly situated prospective customers must be treated equally. As stated in the Decision, Applicants' application is #19 on the moratorium waiting list; any advantage to Applicants would disadvantage 18 other

⁹ In *Re PG&E* [D.92064] (1980) 4 Cal.P.U.C.2d 156, a case involving PG&E's expansion of its treated service area, the Commission noted, "the requirement to extend within a service area is a question of reasonableness to be decided by the Commission on a case-by-case review. The limitation of new customers is determined by the capability of the system. Even if the lands are within the service area, once the limit of the system has been reached, the Commission can prohibit the utility from selling to additional lands." Section 2710 was also addressed in *Re Grizzly Park Water Company* [D.77035] (1970) 71 Cal.P.U.C. 3, a case in which the utility asked the Commission for authority to extend water service beyond the limits of the water company's subdivision. Similarly, in *Re Aerial Acres Water System* [D.77161], *supra*, at p. 22, the Commission, under section 2710, imposed limits on the number of customers to be served until adequate additional water supply is available. See also *Re California-American Water Company* [D.86807], *supra*, (1977) 81 Cal.P.U.C. 204.

¹⁰ Further, Applicants contend that the Commission's reliance on *Re California-American Water Company* [D.86807] is misplaced given that the individuals in D.86807 were never previously served by the utility. This fact does not change the situation materially (see D.06-03-003, p. 10) because even if the prior owners were previously served (for 3 months in 1998), service has been discontinued to the property since 1998, and thus Applicants have not been consumers within the meaning of the sections 2708-2711 since that time. Applicants also claim that the fact that the original application for water service (1998) is being utilized to place this territory on the waiting list, qualifies them as consumers (See Rehearing App., p. 2.) For the reasons set forth above, this claim lacks merit. As of 1998, the original owners were no longer customers of Hillview.

applicants, as well as existing customers. (See D.06-03-003, p. 8.)¹¹ Also, allowing Applicants reinstatement would give rise to additional reinstatement of service to other similarly situated individuals. In fact, we are aware that at least one other application, #44, also seeks to reinstate service, which the owner had stopped in 1990 prior to the time the moratorium took effect. (See D.06-03-003, p. 4.) Although unfortunate, “this relief is equitable in its nature and all considerations must be weighed by the Commission, including the equities in favor of the party sought to be restrained and all those who will be affected by the order.” (*Kern County Land Company v. Railroad Commission* (1934) 2 Cal.2d 29.)

Notwithstanding the fact that there is no legal error, we add Findings of Fact and Conclusions of Law as set forth in the order.

B. Sufficiency of Evidence

Next, Applicant argues the findings are not supported by the substantial evidence. (See Rehearing App., p. 1.) Specifically, they contend that there is no evidence to support the Commission’s determination that they do not qualify as a consumer or territory once served under section 2711, nor is there evidence which would support the denial of their request for an exemption from the moratorium. (See Rehearing App., p. 2.) These claims lack merit.

Among the evidence in the record that supports our determination is the following: (1) the undeveloped parcel has had no service (not actually been using water) since 1998 (see Exhibit B); (2) Applicants acknowledge that the parcel lacked water service when they purchased it from the prior owner in 2005 (See D.06-03-003,

¹¹ Section 453 does not preclude a utility from making rational distinctions between different classes of customers. For example, it does not preclude a utility from treating industrial customers differently than residential customers, or treating prospective customers with their own water supplies differently than prospective customers with no water supplies. Prospective customers with water would be less likely to “injuriously withdraw the supply wholly or in part from those who theretofore had been supplied by such public utility” than would service to new customers lacking water sources. (See *Re Citizens* [D.89-12-020], *supra*, 34 Cal.P.U.C.2d 84.) Again, there is no difference in class between Applicant, a customer who seeks to reinstate service (or reconnect an unused line), and a prospective new customer. Allowing either an exception would place a new demand on the system that did not exist prior to the date the moratorium was imposed.

p. 3, Exhibits A and B); (3) the moratorium ordered in D.01-10-025 that is currently in place limits new service connections (see *Re Investigation of Hillview I* [D.01-10-025], Conclusion of Law No. 4.); (4) Applicants application to reinstate service water service was not on file prior to or at the time the moratorium took effect in 2001 (see Exhibits D and E); (5) Hillview has had no means to abate the moratorium ordered in D.01-10-025, and that the infrastructure improvement loan had been approved but not yet funded (see *Re Investigation of Hillview II* [D.06-01-005], *supra*, at p. 2); (6) service to property would constitute a new water demand on the already constrained system that did not exist at the time of the implementation of the moratorium (see Exhibit A; see also Hillview's Answer to ALJ's Request for Additional Information); and (7) service to Applicant would disadvantage 18 others (see Hillview's Response to ALJ Ruling.) Accordingly, there was evidence before us which justified the denial of an exemption from the moratorium. All recent Commission reviews of Hillview's water supply have shown that Hillview has an inadequate reliable supply to meet the needs of its existing customers. There has been no evidence presented to the Commission that these facts have changed and thus there is no basis on which Applicants request can be granted.

C. Constitution

Applicants contend that the Decision violates their rights under the Constitution of the State of California and the United States Constitution. (See Rehearing App., p.1.) They claim that preference to existing consumers, without the granting of water service to previously served territory would give rise to a separate enforceable cause of action in our favor without regard to our current status as a recipient of water services from Hillview. (See Attachment, p. 4.) They further allege that a denial of rehearing constitutes an unreasonable discrimination and a violation of such rights to equal protection. (See Rehearing App., p. 3.) These claims lack merit.

Specifically, Applicants fail to state what separate cause of action is or law they rely on, and thus have failed to meet the specificity requirement required under Public Utilities Code section 1732 and the allegation is dismissed on that

ground. Moreover, the Commission itself cannot declare a statute unconstitutional. (See Cal. Const. art. III, § 3.5.)

Notwithstanding the fact, the Decision does not give preference to existing customers. Instead, applications for service are based on a first-come-first-served basis on the date the application was filed. By contrast, granting Applicants request and giving preferential treatment to a previously served customer would violate the language of section 453. The impact upon Applicant is not discriminatory. Unfortunate circumstances do not reach the level of discrimination under the law. In fact, the moratorium impacts other similarly situated individuals. Giving preference to the Massongill's over other individuals would constitute discrimination in violation of the law.

D. Request for Reassignment

Given that we deny rehearing of D.06-03-003, Applicants request for rehearing with a new Administrative Law Judge is moot.¹²

III. CONCLUSION

For the reasons stated above, we add Findings of Fact and Conclusions of Law to further support the determinations made in the Decision. We further modify pages 5, 6, 7, and 9, and Conclusion of Law No. 3 to correct typographical errors. Rehearing of the Decision, as modified, is denied.

THEREFORE IT IS ORDERED that:

1. Decision (D.) 06-03-003 is modified as follows:
 - a. Finding of Fact No. 4 is added as follows:

A moratorium on new service connections was imposed in D.01-10-025.
 - b. Finding of Fact No. 5 is added as follows:

¹² We note that rehearing applications are not handled by the Administrative Law Judge.

The exemption for certain customers of Hillview in the 2001 moratorium applied to those who have applications for new service on file with Hillview as of April 16, 2001.

- c. Finding of Fact No. 6 is added as follows:

To date, Hillview has been unable to increase its supply and thus the supply constraint has not eased.

- d. Finding of Fact No. 7 is added as follows:

Hillview has applied for a loan from the Safe Drinking Water State Revolving Fund (“SDWRF”) to finance certain infrastructure improvements, including the drilling of some new wells to replace existing wells that are contaminated with uranium. D.05-07-029, which issued in Hillview’s recent general rate case, noted that the loan had been approved but not yet funded, and that Hillview has no means to abate the moratorium ordered by D.01-10-025.

- e. Finding of Fact No. 8 is added as follows:

At least one other application, #44, also seeks to reinstate service, which the owner had stopped in 1990 prior to the time the moratorium took effect.

- f. Conclusion of Law No. 3 is deleted and is replaced with the

following:

In declining to serve Complainants’ parcel, Hillview has acted in conformity with D.01-10-025 and its tariff, and has interpreted and applied Pub. Util. Code §§ 2708 and §§ 2711 reasonably.

- g. On page 5, paragraph 3, the sentence beginning with “the controlling statute...” is deleted, and is replaced with the following:

The controlling statute, Pub. Util. Code § 2708, sets out the framework for ordering a moratorium and establishing any variances.

- h. On page 6, paragraph 3, the sentence beginning with “Complainants argue, however, . . .” is deleted and is replaced with the following:

Complainants argue, however, that they should not be viewed as new customers but rather as “those who

theretofore had been supplied” under § 2708 or as “consumers which have once been served by the corporation” under Pub. Util. Code § 2711.

i. On page 7, paragraph 2, the sentence beginning with “Owners of undeveloped property. . .” is deleted and is replaced with the following:

Owners of undeveloped property who wished to build argued that all lots within the utility’s dedicated service territory should be considered as existing consumers under Pub. Util. Code § 2708.

j. On page 9, paragraph 2, the sentence beginning with “With respect to D.86807” is deleted and is replaced with:

With respect to D.86807, in which the Commission interpreted “consumers” for the purpose of Pub. Util. Code § 2708 to mean those actually using water, Complainants seek to distinguish their situation.

2. Rehearing of D.06-03-003, as modified herein, is denied.
3. This proceeding is closed.

This order is effective today.

Dated September 7, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
RACHELLE B. CHONG
Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.