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Decision 04-10-007 October 7, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Investigation on the Commission's Own Motion into the Operations, Practices, Rates and Charges of the Hillview Water Company, Inc., a corporation, and Roger L. Forrester, the principal shareholder and president.	Investigation 97-07-018 (Filed July 16, 1997)

OPINION GRANTING PETITION TO MODIFY DECISION 01-10-025

Summary

We grant the unopposed petition for modification of Decision (D.) 01-10-025 filed on behalf of Dr. Kenneth Wright (Petitioner), a customer of Hillview Water Company Inc. (Hillview). Petitioner is the owner of two parcels of land within Hillview's service territory. One is subject to a moratorium on new service connections ordered by D.01-10-025; the other is not subject to the moratorium. We authorize Hillview to transfer the exemption between the parcels, since the transfer will have no adverse effect on the water supply.

Rule 47

Rule 47 of the Commission's Rules of Practice and Procedure (Rules) governs petitions for modification of a prior Commission decision. As relevant here, Rule 47 requires a petitioner who was not a party to the underlying proceeding to explain how the petitioner is affected, why the petitioner did not file the petition within one year of the effective date of the decision at issue, and what change in the decision is being sought. Any factual allegations must be

supported with specific citations to the record or to matters that may be officially noticed; allegations of new or changed facts must be supported by appropriate declaration.

D.01-10-025

D.01-10-025 approves a settlement between Hillview and the Commission's Office or Ratepayer Advocates that resolves the general rate case issues then pending and imposes a moratorium on new water connections. The decision's Ordering Paragraphs 6 and 7, which are pertinent to the matters raised by the petition, state:

> 6. The revised Schedule No. 1 of Hillview Water Company's tariff for Metered Service … shall be filed by Hillview immediately. This revised tariff shall be effectively immediately and shall bar connections 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 nay new service which was actually connected on or after April 16, 2001.
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> 7. Hillview shall file an Advice Letter with the Commission to rescind the moratorium established under the preceding paragraph at such time as it obtains an adequate supply that meets all primary drinking water standards, as certified by the California Department of Health Services. (D.01-10-025, Ordering Paragraphs 6, 7.)

Discussion

Petitioner explains, by declaration attached to the Petition, that he owns real property (APN 064-071-007 and APN 064-071-008) which had an application for water service on file with Hillview prior to April 16, 2001. This real property, currently zoned for commercial use (the commercial parcel), is exempt from the moratorium ordered by Ordering Paragraph 6 of D.01-10-025, because the application for water service predates the decision. Petitioner also owns real

property (APN 065-062-033), currently zoned for residential use (the residential parcel), which is not exempt from the moratorium.

According to Petitioner, the residential parcel was listed for sale at the time D.01-10-025 issued. A potential buyer, who has entered into a written purchase agreement, is attempting to obtain a conditional use permit from the County of Madera in order to develop the residential parcel as a church, but must first establish that the parcel has water service. Petitioner states that after the application for a conditional use permit was filed, he discovered that Hillview had no record of any application for water service for the residential parcel. Thus, Petitioner now seeks to transfer the moratorium exemption from the commercial parcel to the residential parcel so that the sale may go forward.

Addressing the procedural requirements of Rule 47, Petitioner states that because he thought a water service application for the residential parcel had been filed with Hillview, there was no reason for him to participate in the proceeding underlying D.01-10-025. Likewise, there was no reason for him to take any formal action prior to filing this Petition, which he did upon the recommendation of the Commission's Water Division (Water Division).

The critical, factual issue before us is whether transfer of the moratorium exemption from the commercial parcel to the residential parcel will have an adverse effect on Hillview's limited water supply. On this point, Petitioner offers the expert opinion of Michael Taylor (Taylor), a Registered Professional Civil Engineer whom Petitioner employed to analyze the impact of the proposed transfer. Taylor's declaration and his April 30, 2004 letter to Hillview and to Fred L. Curry of Water Division conclude that the transfer will have no adverse impact and may result in lower water usage than were the commercial property

to be developed, as it could be, since it is exempt from the moratorium. Both documents are attached to the Petition.

Taylor's letter explains that the commercial zoning applicable to the commercial parcel permits operations (such as restaurants, professional office space, and general retail uses), which may have water consumption levels approaching 100,000 gallons per acre per day. Taylor states that the transfer of the water moratorium exemption from Petitioner's commercial parcel to his residential parcel "would not increase water demands imposed on Hillview Water Company. The actual water use of the church may be significantly less than the commercial property." (Taylor letter, p. 1.) The letter expressly recognizes that if the transfer occurs, the commercial property "will no longer be able to receive water service until the moratorium is lifted." (*Id.*, p. 2.)

Taylor's analysis supports Petitioner's request since it establishes that transfer of the moratorium exemption from the commercial parcel to the residential parcel will not increase water demands upon Hillview beyond the grandfathered, commercial allowance Petitioner already holds. The transfer simply will allow development of a substitute parcel, provided that the County approves the necessary conditional use permit. As the transfer will leave Petitioner's commercial parcel without pre-April 16, 2001 water connection rights and, thus, will place it under the moratorium, no net adverse impact on the water supply will result.

Finally, the Petition notes that on another occasion, Water Division staff ministerially approved the transfer of a moratorium exemption between two like parcels (both zoned commercial) owned by a single individual. While Petitioner's parcels are not zoned alike, the Petition establishes that, in this situation, the zoning difference is immaterial. Because the Petition shows that

the proposed transfer will result in no net adverse impact on Hillview's water supply, given the existing exemptions to the moratorium, we should approve the Petition and modify D.01-10-025 to permit the requested transfer. Our approval, based upon the facts presented by the Petition, therefore must be limited to those facts. Thus, if the County declines to issue the conditional use permit authorizing development of the residential parcel as a church, the transfer should be rescinded.

Status of Proceeding

Ordering Paragraph 6 of D.03-09-072, which resolved all then-outstanding issues in this proceeding except for certain specified compliance matters, provides:

> Investigation 97-07-018 will be closed upon the respondents' filing of a general rate case application. All compliance issues, including all the reconciliation of accounts and the refund report, shall be addressed in the general rate case.

On July 19, 2004, Hillview filed the required general rate case as Application 04-07-042. Since today's decision fully resolves the Petition, there is no reason for this proceeding to remain open, and it should be closed.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day period for public review and comment is being waived.

Procedural Background

Petitioner filed this petition on July 26, 2004. No protests or responses were filed.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Taylor's analysis establishes that transfer of the moratorium exemption from the commercial parcel to the residential parcel will not increase water demands upon Hillview beyond the grandfathered, commercial allowance Petitioner already holds.

2. Transfer of the moratorium exemption will leave Petitioner's commercial parcel without pre-April 16, 2001 water connection rights and, thus, will place it under the moratorium.

3. There is no known opposition to granting the authorization requested.

4. All conditions precedent to closing this proceeding have been met.

Conclusions of Law

1. The Petition meets the procedural requirements of Rule 47.

2. The requested transfer of the moratorium exemption from Petitioner's commercial parcel to his residential parcel is not adverse to the public interest.

3. The Commission's approval, which is based upon the facts presented by the Petition, is limited to those facts; therefore, if the County declines to issue the conditional use permit authorizing development of the residential parcel as a church, the transfer should be rescinded.

4. This proceeding should be closed.

5. This decision should be effective today in order to clarify the legal rights and obligations of all concerned and provide the certainty necessary to permit the County to consider the zoning matter before it.

O R D E R

IT IS ORDERED that:

1. The July 26, 2004 Petition for Modification of Decision (D.) 01-10-025 is granted, as follows:

   (a) Hillview Water Company, Inc. (Hillview) may transfer the exemption from the moratorium on new water connections, imposed by D.01-10-025, from the parcel identified as APN 064-071-007 and APN 064-071-008 (the commercial parcel), which had an application for water service on file with Hillview prior to April 16, 2001, to the parcel identified as APN 065-062-033 (the residential parcel), which did not have an application for water service on file with Hillview as of April 16, 2001.

   (b) Upon the transfer of the exemption from the commercial parcel to the residential parcel, the commercial parcel shall be subject to the moratorium on new water connections, as provided in Ordering Paragraphs 6 and 7 of D.01-10-025.

   (c) Hillview shall rescind the transfer of the exemption from the commercial parcel to the residential parcel if the County of Madera does not grant the conditional use permit for the residential parcel, as further described in the body of this decision.

2. Pursuant to Rule 72 of the Commission's Rules of Practice and Procedure, the record developed in this proceeding is fully available for consideration as necessary in Application 04-07-042, Hillview's pending general rate case proceeding.

3. This proceeding is closed.

This order is effective today.

Dated October 7, 2004, at San Francisco, California.

MICHAEL R. PEEVEY

President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners