

Decision No. 32390

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SAN GABRIEL VALLEY WATER SERVICE
to purchase and E. H. MCHANN and
J. E. LAYCOOK, a co-partnership doing
business under the name of MCHANN &
LAYCOOK DOMESTIC WATER SYSTEM to sell
a certain public utility water system
situated in the County of Los Angeles,
State of California, and of
SAN GABRIEL VALLEY WATER SERVICE, a
corporation, to purchase and
INDIO WATER COMPANY, LTD., a corporation,
to sell all of its public utility water
system situated in the County of
Riverside, State of California, and of
SAN GABRIEL VALLEY WATER SERVICE to
issue, sell and deliver \$120,000 princi-
pal amount of its First Mortgage Bonds,
and to issue and deliver 1200 shares of
its capital stock in payment for said
properties.

ORIGINAL

Application No. 21250

R. E. Nicholson, for San Gabriel Valley Water Service.

C. F. Culver, for Baldwin Park County Water District.

Lloyd E. Keiser, for Roy E. Rankin.

M. I. Church, for Pico County Water District.

WAKEFIELD, COMMISSIONER:

OPINION ON REOPENED PROCEEDING

The Commission in its Decision No. 29954, issued July 16, 1937, in the above entitled application, among other things, granted San Gabriel Valley Water Service, a corporation, a certificate of public convenience and necessity to operate a water system in that portion of Los Angeles County in the vicinity of El Monte, as more

particularly delineated upon a map marked Exhibit "2." Subsequently, petitions were filed by Baldwin Park County Water District* and Pico County Water District, both public corporations, asking that the proceeding be reopened on the grounds that a proper notice of hearing had not been given by San Gabriel Valley Water Service*; that Applicant has no franchise or permit to install mains in the public roads from the County of Los Angeles for all of the territory covered by the certificate; that certain areas covered by the certificate were within the boundaries and were being served by them, or would be served by the Districts upon demand. The petitions of the Districts ask that the Commission issue its Order excluding from Applicant's certificated territory all lands situate within their respective boundaries.

Roy E. Rankin owns and operates a public utility water system in a subdivided area east of El Monte and adjoining Applicant's service area. Mr. Rankin filed a petition for reopening of this case on the grounds that proper notice was not given of the hearing; that no showing was made of the water service rendered by the Rankin system operating within a portion of the certificated area granted applicant.

Public hearings in the reopened proceeding were held in Los Angeles before Commissioner Wakefield and also before Examiner James E. McCaffrey.

This matter involved the purchase by Applicant of certain water systems in the vicinity of El Monte, Los Angeles County, and another water system at Indio, Riverside County, authority to issue stocks and bonds, and a request for a certificate of public

Note: *Hereinafter reference to the following parties will be as set out below:

Baldwin Park County Water District, Baldwin District.
Pico County Water District, Pico District.
San Gabriel Valley Water Service, Applicant.

convenience and necessity to cover areas in the El Monte district that had not heretofore been served by the systems to be acquired. The title of the application, as set out above, covered the transfer of the properties but it did not refer to request for a certificate.

The evidence in the reopened proceeding shows that the Commission's notice of hearing set for the eighth day of July was not received by Applicant until July 6th, permitting Applicant but one day to publish the notice prior to hearing instead of four days as directed by the Secretary of the Commission.

The evidence presented at the original hearing of this case indicates that Applicant had applied to the Board of Supervisors of the County of Los Angeles for a franchise to cover the area for which a certificate had been requested from the Commission but at the time of the hearing the franchise had not as yet been granted. The Commission's Decision No. 29954 covers the certificate matter as follows:

"As shown by Exhibit "2" it is proposed to extend the service area. While no public witnesses were called to testify to the need for service by San Gabriel Valley Water Service in the area not now served by it, the record does show through the testimony of R. E. Nicholson that no public utility water company now is operating in the territory for which a certificate is requested by applicant; that there have been demands for service by residents in said territory and that applicant is willing and able to extend its lines to meet such demands and to give water service in the entire territory in which it seeks to operate. No protest was made at the hearings to applicant's request."

The Districts claim that they are public utilities and that the above referred to testimony submitted by witness Nicholson was not in accordance with the facts.

Baldwin District serves in and in the vicinity of the Town of Baldwin Park, situated adjacent to the northeast boundary of Applicant's service area. Pico District operates in and in the

vicinity of the Town of Pico, at the southwesterly boundary of Applicant's service area. Each District is duly organized with boundaries regularly established in accordance with the provisions of the County Water District Act.

Applicant's franchise, Ordinance 3063, covering an area in excess of 13,000 acres, had been obtained from the Board of Supervisors, but did not cover the entire area for which a certificate had been granted by the Commission, but there was excluded therefrom some 90 acres more or less of land within the boundaries of the Baldwin District and approximately 300 acres of land lying within the boundaries of Pico District. The franchise also excluded a triangular parcel of about 30 acres adjoining but outside the boundaries of the Baldwin District, being portions of lots 43 and 49 of El Monte Walnut Place Subdivision, situate north of Garvey Avenue.

The boundaries of the Baldwin District in the overlapped area were established by the County Board of Supervisors during the years 1936 and 1937 and franchises had been granted said District to operate therein, prior to the date applicant applied for its franchise. The Baldwin District has installed mains in all of the streets that have been constructed in the subdivided tracts within its boundaries and all residents therein demanding water are now being served. There are 57 consumers being furnished water by the Baldwin District in the overlapped section and the District is ready and willing to extend service therein upon demand in accordance with its rules and regulations. However, but approximately one-half of the 90 acres in the disputed overlapped area is now subdivided.

The Pico District was duly organized in 1926 and obtained a county franchise prior to the date applicant was granted a certificate. The overlap area in this instance consists of 300 acres,

Of which approximately 40 acres are subdivided. The Pico District has some mains installed in this disputed territory from which it serves 46 consumers, a large number of which reside along the main roads in the unsubdivided sections. This District also claims to be willing to extend its mains to serve any portion of the area within its boundaries upon demand in accordance with its rules and regulations. The evidence shows that no request for service in this section has been received by Applicant. R. H. Nicholson, President of Applicant, testified that he had no objections to excluding the territory actually served by Pico District but that he desired to retain the right to furnish water to the remaining unsubdivided lands. Mr. Nicholson further testified that a franchise from the County is not required to provide water service in any of the overlap areas because Applicant and its predecessors have almost exclusively made main extensions on private rights of way and also stated that at this time his Company was ready and willing to extend its facilities into the disputed areas upon demand for service. Applicant contended that its rates were substantially lower and its rules and regulations far more favorable to the water user than the similar regulations of the districts. The Baldwin District follows the practice of collecting a fifteen-dollar connection charge from new consumers, which sum is not refundable. Such connections are made free and at solely its expense by Applicant public utility. The evidence also shows that either District can invade Applicant's service area or can be compelled to by a majority vote of either the property owners or the residents therein. In the event the utility area is invaded by a District, Applicant contended that it would have no recourse in law to prevent such encroachment.

The evidence also shows that the Districts can serve outside of their legally established boundaries but representatives of the

two Districts testified that it was against the policy of their Boards of Directors to supply this class of consumers except as an accommodation or until such users could obtain water from some other source. It was admitted that a few outside consumers were being served by the Baldwin District on an accommodation basis at present and that these users were within Applicant's certificated area but that the District was willing to discontinue this service at any time Applicant provides a water supply for them. Another instance in which the Baldwin District serves outside its boundaries was brought about through its acquisition of a water system supplying consumers outside the District boundaries, resulting in a continued obligation to provide service to them.

The Baldwin District contends that Applicant's flat rates are too low and that eventually said Applicant will be compelled to have its rates increased which will eliminate the differential now existing therein. The possible parallelling of facilities and competition in service in the overlap area was considered against public interest and not justified under the conditions tending to produce a duplication in capital and operating expenditures by both parties. Applicant insisted that it had received requests for service within the boundaries of the Baldwin District but no specific properties were mentioned and no witnesses were produced to support such claims. Applicant, however, stands ready and willing to extend its mains into the overlapped areas upon demand for service.

After a consideration of the evidence submitted in connection with the overlapping areas within the two Districts, it is apparent that future consumers and subdividers in these areas would be able to obtain water service from Applicant at a considerably lower cost than from the Districts if the present rates of the Applicant and

of the Districts are maintained. It would not be in the public interest to deprive these future consumers of their right to choose the utility service that they would prefer when it is required. On the other hand, it would seem inappropriate to grant to the Applicant a certificate covering these overlapping territories at this time when it may well be that the future subdividers and consumers therein will prefer District service. Duplication of facilities and the increase of total cost of service might result therefrom. The overlapping territory in each of the Districts will therefore be excluded from Applicant's certificated territory, without prejudice, however, to the Applicant to renew its petition when any future subdividers or group of consumers shall request service from it. At that time the Commission will review the circumstances then obtaining and issue an appropriate order on such subsequent application as may be made.

Roy E. Rankin was granted a certificate of public convenience and necessity by the Commission in its Decision No. 29231, dated November 4, 1936, to serve a subdivided area of 100 acres and an unsubdivided area of 56 acres situated east of El Monte on the State Highway and adjoining the San Gabriel River, all set out on the map marked Exhibit "A" and attached to Application No. 20251. Although Mr. Rankin operates the distribution system serving some 125 consumers, yet he owns only the two pumping plants, the wells, services and meters. Title to the distribution mains is held by the owners of the two subdivisions now being served. It appears that operation of this water works has been conducted under a verbal understanding that the pipe lines would be acquired by Mr. Rankin either through gift or by purchase but no showing was made at the hearing that said pipe lines had been acquired or that

negotiations therefor had resulted in any definite arrangement for their acquisition.* Mr. Rankin testified that it was his understanding that Applicant's request for a certificate did not include some 180 acres of land adjoining the eastern boundaries of his service area lying westerly of Frazier Street, and for that reason he did not appear at the hearing of the matter to enter a protest. The map filed with the application did not include said 180 acres. Forty acres thereof are now being furnished water by a mutual water concern organized by the subdividers. Water is obtained from Rankin's plant through a master meter but delivered to the users at flat rates. Mr. Rankin asks the Commission to set aside the certificate granted Applicant in so far as it covers the said 180 acres of land and another parcel containing approximately 80 acres located south of Carvey Avenue, in order to permit him to apply for authority to serve these lands and thereby expand his present system to such an extent that his full time may be utilized in the operation thereof. He stated that he enjoyed the full confidence and could get the financial backing of the owners and subdividers of the above described lands and that proper arrangements could be made for piping the properties wherever service was required. In this connection Mr. Nicholson testified that one of the purposes of his request for a certificate was to cover territory not served by Applicant's predecessors and in which a demand had been or may be made for water service. He admitted that as originally filed the 180-acre tract of land referred to by Mr. Rankin was not delineated on the map of the territory for which a certificate was requested, said map being Page 12 of Exhibit "F" attached to the application, but stated that the application had been amended at the second hearing to include said 180-acre parcel and was set forth on a map marked Exhibit No. 2.

Note: * Subsequently, Mr. Rankin filed with the Commission a copy of a deed wherein Omart Investment Company quitclaimed to Roy E. Rankin all its rights, title and interest in and to all water pipe lines, connections and appurtenances, together with easements and rights of way across its properties situate in a 100-acre tract known as Barnes Farm Tract, Los Angeles County.

The territory in which the purported mutual company operates is within the certificated area granted Applicant but the subdivider refused to advance the cost of installing 4-inch and 6-inch mains as demanded by Applicant but insisted that nothing larger than 3-inch pipe be installed. The soil in this area is very sandy, requiring large quantities of water for irrigation purposes and large main capacity to provide proper service. While Applicant agreed to the exclusion from its certificated area of that portion of the lands which Mr. Rankin desires to serve and which are located south of West Garvey Avenue as outlined in pencil on the map marked Exhibit No. 2 consisting of approximately 80 acres, the map filed as Exhibit "H" by Applicant after the hearing showing thereupon the disputed service areas, actually and in fact excluded only the home property of Mr. Rankin consisting of but 6.55 acres.

Applicant has somewhat in excess of 13,000 acres within his present service area of which only a comparatively small proportion is being served at present. A comparison of the rates and classes of service rendered by Mr. Rankin indicates a substantial similarity to those of Applicant. It appears as a matter of equity that the tract of 180 acres situate west of West Frazier Avenue, as well as the 80-acre parcel lying south of West Garvey Avenue, the exclusion of which Applicant agreed to, should be eliminated from Applicant's service area and that Mr. Rankin should be permitted to apply for a certificate of public convenience and necessity to serve said lands.

The following form of Order is submitted:

O R D E R

The Commission, having issued its Order reopening the above entitled proceeding for the purpose of taking evidence concerning the boundaries of the area included in the certificate of public convenience and necessity therein granted Applicant, public

hearings having been held thereon, the matter having been submitted, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that Decision No. 29954 dated July 16, 1937, in so far as it affects the declaration and the granting of a certificate of public convenience and necessity to San Gabriel Valley Water Service, a corporation, as shown upon a map marked Exhibit No. 2, be and it is hereby modified to exclude therefrom the following lands:

(1) All the lands situate within the boundaries of the Baldwin Park County Water District and of the Pico County Water District, as at present constituted;

(2) That certain tract or parcel of land consisting of 180 acres, more or less, described as follows:

Beginning at the intersection of Power Line right of way and South Francisquito Avenue, thence southeasterly along the center line of said South Francisquito Avenue to its intersection with the center line of West Frazier Street, thence southwesterly along the center line of said West Frazier Street to its intersection with the center line of West Bess Avenue; thence northwesterly along the center line of said West Bess Avenue to its intersection with the Power Line right of way, thence northeasterly along the said Power Line right of way to the point of beginning.

(3) That certain tract or parcel of land consisting of 80 acres, more or less, described as follows:

Beginning at the intersection of the east bank of the San Gabriel River and West Garvey Avenue, thence easterly along the center line of West Garvey Avenue to a point 1,000 feet east of the intersection of said West Garvey Avenue and West Frazier Street, thence southerly to the north bank of Walnut Creek, thence westerly along said north bank of Walnut Creek to the east bank of San Gabriel River, thence northerly along east bank of said San Gabriel River to point of beginning.

For all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order are hereby approved and

ordered filed as the Opinion and Order of the Railroad Commission
of the State of California.

Dated at Los Angeles, California, this 26th day
of September, 1939.

Raymond
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J. J. Kelly
Justice J. Calver