ORIGINAL

Decision No. 34373

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PARK WATER COMPANY, for a certificate of public convenience and necessity to furnish and supply water in certain unincorporated areas contiguous to its present service areas.	Application No. 23621

Paul Overton, for Applicant.

John F. McCarthy, for F. H. Uehling Water System, Protestant.

H. J. Kessler, for Highway Manor Tract, Protestant.

D. F. Urschel, for Lynwood Gardens Mutual Water Company, Interested Party.

Edward F. Wehrle, for East Bell Land Company, Protestant.

CRAEMER, COMMISSIONER:

O P I N I O N

The Park Water Company operates several domestic water systems within non-contiguous areas of Los Angeles County between the cities of Los Angeles and Long Beach. By this application it seeks authority to serve ten other unincorporated areas recently subdivided for residential purposes.

These additional service areas are described in the application by their subdivision numbers, they being designated as recorded Tracts Nos. 11090, 11514, 11724, 12050, 12068, 12187, 11992,

12276, 12035, and 11998. Amendments were offered at the time of hearing, however, to eliminate Tract No. 12035, and to add a part of Tract No. 12295, as well as an unsubdivided area of ten acres lying east of Tract No. 11998. There are approximately 246 acres included in all.

The applicant corporation is controlled by the same interests that have undertaken the development and sale of these lands for residential purposes. Complete water systems have already been installed in all except two of the tracts, and it appeared at the hearing that services had already been connected to more than 400 newly erected residences. Its water supply is ample for all prospective needs, being obtained either from old wells formerly used for irrigation of the land or from wells recently drilled.

Two protests were presented to the granting of the application in full. The East Bell Land and Water Company objected to the inclusion of Tract No. 12295, but this objection was withdrawn when applicant offered to eliminate that part consisting of lots 1 to 25, inclusive. The F. H. Uehling Water System protested the granting of a certificate covering any part of Tract No. 11992. The facts underlying the latter protest require some explanation.

In 1931 Mr. Uehling was granted a certificate of sufficient scope to cover not only his immediate real estate developments but also certain other unsubdivided areas, including that here in question. He had obtained a franchise from the county authorities limited to the then existing public streets. The land which now comprises Tract No. 11992 was more recently acquired by interests closely associated with applicant water company, and, before under-

taking its subdivision, they deeded to applicant what purports to be an exclusive right or easement to lay water mains throughout. A map delineating the newly dedicated streets was then recorded. As before noted, applicant began at once the construction of a water distribution system. Uehling's existing system adjoins this tract on three sides. His water supply appears ample to permit the extension of service to the tract, and his filed rate schedules are no higher than those applied by the applicant company.

Mr. Uehling's protest is rested upon the claim that applicant has unlawfully invaded his rightful service area. It is contended that a certificate from this Commission, as well as a franchise issued by the County of Los Angeles, were prerequisites to the lawful construction of a water system within Tract No. 11992. In reply, applicant asserts that the easements it acquired by deed before the land was subdivided relieved it from the obligation of obtaining any franchise or consent of the local authorities permitting it to occupy the newly dedicated streets.

The above summarized facts sufficiently reveal the legal and equitable issues presented. The Commission is called upon to give effect to the provision contained in Section 50(c) of the Public Utilities Act declaring that every applicant for a certificate shall furnish such evidence as the Commission may require to show that he has "received the required consent, franchise or permit" of the local governmental body. It does not appear that the applicant has been advised by the County of Los Angeles that a franchise is in fact demanded. What the applicant asserts is a legal right to lay and maintain its water facilities within this tract, even an exclu-

sive right, regardless of the position taken by the county authorities. The protesting utility, on the other hand, although it too lacks a franchise to occupy the streets in this particular area, offers now to apply to the County for the right to extend its mains therein.

The Commission has never viewed the provisions of Section 50(c) as requiring every applicant for a certificate to show his possession of a franchise or other consent formally issued by the local governmental bodies. Although this section contemplates that the Commission as a matter of procedure should require each applicant to make sufficient representation as to his legal right to occupy the public ways, it is evident that the Commission is not empowered finally to determine that question. Recognition must be given to judicial decisions holding that such a legal right may exist independently of any franchise or other consent formally granted. In the light of such decisions, the Commission repeatedly has stated that a subdivider of land who has reserved to himself or others the easements necessary to lay and maintain water pipes in the highways he dedicates to public use is under no obligation to obtain a franchise for the use of those ways. So, when an applicant represents this to be the fact, and it does not appear that the local governmental body takes a contrary position, it has been the practice of the Commission to grant a certificate if a need for the new service be shown. We see no reason why we should depart from that precedent today. Such action is not to be taken as a determination that the utility thus certificated does in fact possess sufficient legal right to occupy the public ways, but

merely that a sufficient showing has been made to satisfy the procedural requirements of the Act.

The water company which is the applicant here has presented evidence to show that possession of a county franchise is not a prerequisite for occupancy of the streets within the areas it desires to serve, a showing which we must deem sufficient to satisfy all procedural requirements and to permit the Commission to consider the application upon its merits. The protestant further argues, however, that applicant may not lawfully claim an exclusive right to occupy those streets, as the terms of its easements provide, the protestant contending that he may not be denied the privilege of extending his system into this same area. But this too is not a question which the Commission may decide. It will be sufficient to state merely that we doubt the power of any land-owner to so circumscribe either this Commission or the local governmental body in determining what utility shall be permitted to maintain and operate utility facilities. Hence, we shall here proceed to consider the merits of the instant application for a certificate upon the assumption that we are free to choose between the applicant and the existing certificate holder.

It is axiomatic that a certificate granted by the Commission is not exclusive. The certificate given to Mr. Uehling a number of years ago permitting him to render water service within an area considerably broader than his intended subdivision development should not have been construed as securing to him for all time the exclusive right to occupy the whole of that area. Since that certificate was given, there have been a number of subdivision develop-

ments within that area to which he has not extended his water facilities. He does not now express a willingness to serve any of the tracts covered by this application except Tract No. 11992. The applicant company, on the other hand, has offered to assume the full utility obligation of extending its system to serve the newly subdivided areas which its affiliated interests are continuously developing. Those interests have done everything in their power to secure to applicant the right to render water service within those areas. Although the preference expressed by the owner of the land should not control the Commission's action, it is an important factor to be considered. It is our judgment that applicant has made a sufficient showing to justify the granting in full of its application as amended.

O R D E R

A public hearing having been had upon the application of Park Water Company and the matter submitted, and it being found as a fact that public convenience and necessity so require, therefore,

IT IS ORDERED that a certificate be and hereby is granted to Park Water Company, a corporation, for the operation of a public utility water system within those certain areas of the County of Los Angeles referred to in its application, as amended, and as more particularly shown on the recorded subdivision tract maps thereof, as follows:

Tracts Nos. 11090, 11514, 11724, 12050, 12068, 12187, 12276, 11992, 11998, and 12295 except lots 1 to 25, inclusive, and also an area of about ten acres lying east of Tract No. 11998 bounded

by Gage and Garfield Avenues and Pacific Electric Railway Company's line.

IT IS FURTHER ORDERED that Park Water Company shall file appropriate amendments to its tariff schedules to provide for the service of water to the areas covered by the certificate herein granted at the rates applicable within its existing service areas and under the rules and regulations relating thereto.

The effective date of this Order shall be the twentieth (20th) day after the date hereof.

Dated, San Francisco, California, this 1st day of July, 1941.