

Decision No. 37499

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA WATER SERVICE COMPANY,
a corporation,
Complainant,

-vs-

NIELS SCHULTZ, doing business under
the fictitious name and style of
Millbrae Highlands Water Company,
Defendant.

ORIGINAL
Case No. 4702

In the Matter of the Application of

MILLBRAE HIGHLANDS WATER COMPANY,

For a certificate of public convenience
for extension of service to additional
territory.

First Supplemental Application
to Application No. 16214

McCutchen, Thomas, Matthew, Griffiths and Green,
by Scott Elder, for Complainant.

Gaylord and Gaylord, by Robert B. Gaylor,
for Defendant and Applicant.

BY THE COMMISSION:

O P I N I O N

In the above entitled complaint, California Water Service Company, a corporation, hereafter referred to as complainant, asks the Commission to issue an order requiring Niels Schultz, doing business as Millbrae Highlands Water Company, to cease and desist from constructing a water system in a tract of land known as Bayside Manor in the County of San Mateo until he obtains a certificate from the Commission, that present or future convenience and necessity require, or will require such construction.

Millbrae Highlands Water Company filed a first supplemental application to its original petition for a certificate of public convenience and necessity, filed January 8, 1930, to operate a water system in Millbrae Highlands, granted in Decision No. 22071, dated January 30, 1930. In this first supplemental application, Millbrae Highlands Water Company asks the Commission to grant it a certificate of public convenience and necessity authorizing it to extend its service into the said Bayside Manor and certain other adjoining and adjacent lands as more particularly delineated on a map attached to the first supplemental application herein.

A public hearing in these matters was held by Examiner William Stava at San Mateo. By stipulation the two proceedings were combined for hearing and for decision.

Complainant owns and operates, among some twenty other water systems in the State, a water property known as Lomita Park System, which serves a tract of land called Millbrae Manor adjoining the unincorporated town of Millbrae, San Mateo County. Water for the system is obtained from the San Francisco Water Department through two two-inch meter connections to the Department's 54-inch transmission main operating at 76 pounds pressure per square inch. The water is distributed throughout Millbrae Manor by mains varying from four to two inches in diameter.

Bayside Manor, which both parties seek to serve, is a subdivision located directly east of Millbrae Manor, but separated therefrom by the rights of way of the Southern Pacific Railroad and Market Street Railway Company. Although California Water Service Company has no certificate to serve in this territory, it contends that the subdivision is contiguous to its Millbrae Manor service area and that it is entitled to extend service thereto without certificate as provided in Section 50-a of the Public Utilities Act. Complainant further claims that an extension of facilities from its own Bayside Manor Tract would be the most practicable and economical plan from both construction and operating standpoints.

Applicant Niels Schultz owns and operates a water system under the fictitious firm name and style of Millbrae Highlands Water Company, serving a residential community covering some 280 acres of land which he originally subdivided. This real estate development is situated between El Camino Real and the Skyline Boulevard, directly west and across said El Camino Real from Millbrae Manor, now served by complainant. Millbrae Highlands Water Company obtains its entire water supply by purchase from the San Francisco Water Department at a pressure of 135 pounds per square inch from the Department's 44-inch San Andreas transmission main. Water is then distributed throughout the service area by mains that vary from eight to two inches in diameter.

Mr. Schultz also owns a parcel of land for which a certificate is now asked, lying across the El Camino Real from the Millbrae Highland Tract, extending from the said highway to the right of way of the Market Street Railway Company and adjoining the easterly boundaries of Millbrae Manor served by complainant.

One tract of land requested to be included in applicant's certificated area is a triangular parcel of land owned by the Bayside Company but under oral option to purchase by said Mr. Schultz and certain associates. This parcel is located at the southwest corner of Bayside Manor and adjacent to the said railroad rights of way. Two other parcels are situated between the El Camino Real and the said railroad rights of way, one is owned by Mr. Schultz and is used as a lumber yard, the other and adjoining parcel is owned by Mr. E. Helmig who operates the lumber mill.

At the time of the hearing, applicant had installed a six-inch main crossing the rights of way of the Southern Pacific Company and the Market Street Railway Company to Bayside Manor Tract, connection being made with the 48-inch transmission line of the San Francisco Water Department, operating at 110 pounds per square inch working pressure. Complainants herein sought to prevent the construction of this six-inch pipe line to the Bayside Manor Tract unless and until a certificate first be obtained from the Commission.

The evidence shows that Bayside Manor Tract is owned by the Bay Counties Homes Company, a corporation, of which Alvin Schultz, applicant's son, is the sole stockholder. It contains slightly less than forty acres and has been subdivided into 200 lots. It is proposed, at present, to construct a 100-unit Federal Housing Administration project on this tract for defense workers and for employees of the Pan-American Airways, whose headquarters are located at Mills Field. The buildings on the tract are to be erected by the Schultz Construction Company, a partnership, consisting of applicant and his sons, Alvin and Niels Schultz, Jr.

Mr. Niels Schultz testified that he had asked the local manager of California Water Service Company his costs and terms for an extension to serve the Bayside Manor Tract, but that the conditions, costs and refunding terms were so burdensome that he decided to install his own water system and thereupon obtained permission from the Federal Housing Authority for the construction of the water system and authority from the War Production Board to purchase the required materials. Although protest was made by complainant to both of these agencies, no action was taken by either.

Applicant testified that he was financing and building the extension as an individual and if a certificate is granted him, the extension will be transferred to his Millbrae Highlands system at actual cost, now estimated to be approximately \$9,000. On the other hand, if a certificate is not granted the Bayside Manor area very probably will join the Millbrae Utilities District which adjoins the tract on the south.

In support of the request for a certificate, applicant showed that the cost of water to consumers on his system is generally less than complainant's because he is able to maintain a schedule of low rates through purchasing large quantities of water from the San Francisco Water Department, thereby taking advantage of the lowest rate bracket of 10¢ per 100 cubic feet.

Representatives of the Millbrae Fire District and the Millbrae Fire Department testified that water systems of both utilities involved in these proceedings operated within their respective district but that they preferred Mr. Schultz's fire service because his fire hydrant rentals were lower and fire flows were larger. Fire Chief Lester Pallas testified that the constriction caused by the two-inch connections to San Francisco Water Department's transmission main, together with the smaller four-inch mains, resulted in unsatisfactory and sub-standard flows in the tract of not over 280 gallons per minute at the complainant's single hydrant in Bayside Manor Tract, whereas applicant's hydrants deliver 1,100 gallons per minute.

While Bayside Manor Tract has not yet been admitted to the Fire District, its representatives asked that applicant be given a certificate in order that Bayside Tract will be assured an adequate fire service at a lower cost to the District.

Mr. Carl F. Mau, Vice President of California Water Service Company, testified that his company is ready and willing to serve Bayside Manor subject to its existing war-time emergency extension rule and that his company would be willing to take over at cost any of the mains that had been installed by Mr. Schultz and pay for meters and services, etc., used in the extension.

The record shows that there is no doubt that either complainant or applicant could provide reasonable domestic service throughout the Bayside Manor Tract but Mr. Schultz can furnish a better and more dependable domestic service at a lower rate and at the same time provide a vastly superior fire service, owing to his larger distribution mains and connections to two of the San Francisco Water Department's mains with higher pressures than complainant's source of supply.

Complainant and applicant both claim to have a legal right to extend into Bayside Manor on the grounds that the tract is contiguous to the territory now being served by each party. In the light of the testimony presented in these proceedings it is difficult to determine whether either had an undisputed right to make the extension. In view of our conclusion that the facts of record justify the granting

applicant a certificate to occupy the territory in dispute, we must dismiss the complaint charging unlawful invasion of territory. We wish to make it clear, however, that although reaching such a conclusion in this case, we cannot condone a too frequent utility practice of making line extensions through the medium of a non-utility operator, without first presenting an application to the Commission for a certificate to enlarge its service area.

O R D E R

Application and complaint as entitled above having been filed with the Railroad Commission, a public hearing having been held thereon and the matters having been duly submitted, and the Commission now being fully advised in the premises,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the construction, maintenance and operation of a public utility water system by Niels Schultz operating under the fictitious firm name and style of Millbrae Highlands Water Company, in the County of San Mateo, in the tracts of land known as Bayside Manor, and in certain parcels of land owned by Niels Schultz, and a parcel of land belonging to E. Helmig, as such tracts and parcels are more particularly described in metes and bounds in Paragraph III of the First Supplemental Application herein and delineated upon the map, or plat, of the said various parcels of real property, attached to said First Supplemental Application and which is made a part of this Order by reference.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to Niels Schultz, doing business under the fictitious firm name and style of Millbrae Highlands Water Company, to construct, maintain and operate a public utility water system in said territory.

IT IS HEREBY FURTHER ORDERED that said Niels Schultz, doing business under the fictitious firm name and style of Millbrae Highlands Water Company, be and he is hereby authorized and directed to file in quadruplicate with the Railroad Commission, within thirty (30) days from the date of this Order, the schedule of

rates now in effect on the Millbrae Highlands Water System to become effective on the first day of December, 1944, throughout the entire certificated territory.

IT IS HEREBY FURTHER ORDERED that Niels Schultz, doing business under the fictitious firm name and style of Millbrae Highlands Water Company, be and he is hereby directed as follows:

1. Within thirty (30) days from the date of this Order, to submit to this Commission for its approval four sets of rules and regulations governing relations with his consumers, each set of which shall contain a suitable map or sketch drawn to an indicated scale upon a sheet 8 1/2 x 11 inches in size, delineating thereupon in distinctive markings the boundaries of his present service area, and the location thereof with reference to the surrounding territory; provided, however, that such map or sketch shall not thereby be considered by this Commission or any public body as a final or conclusive determination or establishment of the dedicated area of service or any portion thereof.
2. Within sixty (60) days from the date of this Order, to file with this Commission four copies of a comprehensive map, drawn to an indicated scale of not less than 600 feet to the inch, upon which shall be delineated by appropriate markings the various tracts in the territory for which the certificate is granted herein. This map should be reasonably accurate, show the source and date thereof, and include sufficient data to determine clearly and definitely the location of the various properties comprising the entire utility area of service; provided, however, that such map shall not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.

IT IS HEREBY FURTHER ORDERED that the effective date of this Order shall be twenty (20) days from and after the date hereof.

IT IS HEREBY FURTHER ORDERED that the above entitled complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 28th day of November, 1944.

Richard R. Baker
Justin J. Cameron
Francis R. Havens
Frank W. Owen

San J. Russell

COMMISSIONERS.