

ORIGINAL

Decision No. 40334

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
WASHINGTON WATER AND LIGHT COMPANY  
for a certificate of public convenience  
and necessity to furnish and supply  
water in certain unincorporated terri-  
tory in the County of Yolo, State of  
California.

Application No. 28306

Carl E. Rodegerdts for Applicant; Clyde W. Henry for West  
Sacramento Water Company; Walter C. Frame for West Sacramento  
Improvement Club, Inc.; Slack, Zook and Edwards, by L. V.  
Edwards, for West Sacramento Bond Holders Committee.

MITTELSTAEDT, Commissioner:

O P I N I O N

Applicant Washington Water and Light Company, a corporation, furnishes public utility water service in and near Broderick and Bryte in Yolo County. It requests a certificate authorizing service in adjoining territory in and near West Sacramento. That territory is now served by West Sacramento Water Company, operated by Clyde W. Henry. Because of alleged existing inadequate service, residents in West Sacramento requested applicant to extend its facilities and serve that area. A public hearing was held in Sacramento on May 2, 1947.

Since 1912 the Commission has consistently followed the policy of the law in this State advanced by the Constitution and the Public Utilities Act on the question of regulated monopoly and competition. Utilities have been protected from competition in the territory served by them when such utilities have rendered efficient ser-

vice at proper rates and have fulfilled adequately the duties which they owe to the public. (P. G. & E. Co. v. G. W. P. Co., 1 C.R.C. 203; Re Oro Elec. Corp., 2 C.R.C. 748.) However, the policy "applied by the Commission has never gone to the length of guaranteeing monopoly in all cases, but has at all times deemed the public interest as of paramount importance. It has announced that when an existing utility has fallen short of its full duty to the public, it will not necessarily be protected against competition, and that its activities before and at the time competition knocks at the door may be taken into consideration notwithstanding protestations of better behavior in the future." (San Diego & Coronado Ferry Co. v. Railroad Commission, 210 Cal. 504, 512.)

Mr. Henry, operator of the present water utility in West Sacramento and West Acres Subdivision, also owns the Friendly Acres Water Company near Redwood City, the Brisbane Water Company at Brisbane, the Klamath Water, Light & Power Company at Klamath, an electric utility plant at Covelo, all in California, as well as a utility plant in Gold Beach, Oregon.

The water system at West Sacramento, installed about 1910, was designed to supply the original residential subdivision of West Sacramento Land Company. Title to that water system, plus \$4,500 in cash, was acquired by Mr. Henry in 1938, upon his agreement to assume utility obligations, make necessary improvements, and render adequate service. At the hearing in the present proceeding, counsel for the Bond Holders Committee of West Sacramento Land Company stated that the 1938 agreement with Mr. Henry provided that in the event of the breach of certain covenants the system would revert to the Committee. Counsel stated further that the Committee had determined to give Mr. Henry a notice of forfeiture of his interest in

the equipment and water system and to demand that he return it to the Committee.

In 1939 Mr. Henry obtained a certificate of public convenience and necessity. (Dec. No. 31627, App. No. 22206.) The system now serves approximately 600 consumers, 594 of whom are charged a flat rate of \$1.50 monthly. This rate is based on the monthly minimum charge for a 5/8 x 3/4 inch meter, established by the 1939 decision. There are no established flat rate schedules. The area served is largely residential, and is a growing community.

On May 21, 1946 the Commission issued its decision in Re Henry, Decision No. 38982, Case No. 4819. That proceeding was an investigation on the Commission's own motion into the service and operations of the West Sacramento system. The decision therein found that Mr. Henry had not fulfilled the duties he owed to the public as a utility operator, ordered that certain specific physical improvements be made, and directed the filing of progress reports. The decision stated in part as follows:

"Mr. Henry stated further that he has arranged for a loan of \$50,000 to rehabilitate the system, which he is ready and willing to spend for such purpose immediately and that if additional funds are required he is also in a position to raise an additional \$50,000 loan. It is apparent, therefore, that Mr. Henry is in a financial position to make the necessary improvements without delay."

The decision of May 21, 1946 also noted that while it is not generally the Commission's policy to authorize the invasion of the territory of one public utility by another, the Commission may issue a new certificate should a presently certificated utility fail to provide required service.

Thereafter, the investigation proceeding was reopened to determine whether the decision of May 21, 1946 should be revoked, altered or amended, and to determine the extent to which service improvements

may have been made by Mr. Henry. Public hearing was held in the reopened proceeding, and on December 23, 1946 a second decision was issued in the investigation proceeding. (Re Henry, Dec. No. 39792, Case No. 4819.) The order portion of the first decision was vacated and set aside. Mr. Henry was again directed to install certain specific improvements, found to be necessary for the furnishing of adequate water service, and was directed to file written monthly progress reports.<sup>(1)</sup>

The second 1946 decision found that Mr. Henry was financially able to make the improvements there ordered, and that it would not be necessary to raise funds for that purpose from outside sources. Mr. Henry testified in the reopened proceeding that, although application had been made to the Reconstruction Finance Corporation for a \$50,000 loan, he had later decided to sell one of his other properties in order to obtain capital for improvement of the West Sacramento system.

"He testified that he has sold his interest in a utility plant in Gold Beach, Oregon, for \$95,000, to be paid to him not later than December 24, 1946. He intends to use as much of that money as may be necessary to improve the West Sacramento system so that it will furnish satisfactory ser-

(1) "The improvements which will be required by the order herein, and the estimated cost thereof, are summarized below:

<u>Item</u>	<u>Ex. 20</u>	<u>Cost</u>
Land for well near 17th and Vermont	Item 1	\$ 745.00
Well and pump near 17th and Vermont	Item 2-A	4,265.00
Connecting pipe line	Item 3	481.32
Main along Jefferson Boulevard	Item 4	3,937.94
Main along Capitol Avenue	Item 5	3,276.06
Cross-connecting pipe installations	Items 6, 7, 8, and 9A-9H	6,681.54
50,000-gallon elevated storage tank	Item 11	<u>17,700.00</u>
Total estimated cost		\$37,086.86"

vice, and no other obligation will be taken out of that money. It will not be necessary to raise funds from outside sources to make the needed improvements." (Dec. No. 39792, sheet 8.)

A number of consumers testified at the hearing in the present application proceeding. An officer of the West Sacramento Improvement Club, Inc., and a resident of West Acres for six years, testified that he had attended practically all meetings concerning the water system, had heard Mr. Henry make repeated promises before the Commission and before civic groups and has not seen any of those promises fulfilled. This witness testified that water pressure and quality has become worse since April of 1946 (first hearing in the investigation proceeding), and that he carries water for drinking purposes from Sacramento at least three times weekly. Mud and sand in the water prohibit flushing without dismantling of the mechanism of the water closet each time. Like conditions have existed for approximately six years.

The Chief of the West Sacramento Fire Department testified that water supply and pressure were entirely inadequate for fire protection. There are but three fire plugs in the entire district that will supply a 500-gallon pumper. Two of these plugs are within two blocks of each other, and the third is four blocks distant.

One witness testified that the evening before the hearing he had to shut off a water sprinkler for fifteen minutes in order to flush the toilet. This witness has purchased drinking water for years, and testified that the quality of water supplied by the existing utility has not improved, and that there is less water today than five years ago, there being more users.

A resident of West Acres testified that in the last two years pressure has increased but the quality of water has become worse, particularly in summer. This witness lives near a well which is cut

in during the warm months, but produces water having a bad taste and odor. Cumulative testimony was presented by other consumer witnesses

The manager of West Sacramento Land Company testified that since building was resumed following the war, approximately 140 new homes have been completed or are under construction. The witness hopes that several hundred new homes will be built in the area within the next eighteen months. However, the water situation has resulted in adverse publicity, and has caused some people to sell their homes and move out of the district.

Mr. Henry testified that he had complied with the orders of the Commission to the best of his ability, although "it is true we have been slow in fulfilling them and carrying them out." He testified that the sale of the plant at Gold Beach, Oregon, from which he expected to obtain \$95,000 in December of 1946, "has not been finished", although the "deal is completed", and he has received a substantial down payment, the balance being financed through the R.F.C.

As already stated, the Commission has issued two orders directing the installation of specified physical improvements. The first order was issued on May 21, 1946, and the second order on December 23, 1946. Mr. Henry was directed to file monthly progress reports. He testified that he has "complied in principle, the principle being the fact that wherever possible the reports have gone in on time, and all of the progress has been reported."

Both orders directed acquisition of a well site near 17th and Vermont Streets, drilling of a well, installation of a pump and approximately 400 feet of pipe line connecting the well with the system. Before the second hearing in the investigation proceeding, Mr. Henry had drilled such well, but had not installed the pump or the connecting line. At the hearing in the present proceeding it ap-

peared that a pump had been installed within the preceding two weeks, and approximately 260 feet of pipe laid from the well site through a private right of way and across Vermont Street, and a ditch had been dug and most of the pipe was on the ground to connect into the main on Jefferson Boulevard. Mr. Henry testified that a motor would be delivered within two weeks and that power service would be available within ten days. A Commission engineer who inspected the system on the afternoon before the hearing testified that no other work had been done and that no other material was on the ground.

The second order in the investigation proceeding, issued in December of 1946, directed Mr. Henry to place orders, within fifteen days after the effective date of that decision, for all material needed for the above and various other installations, such as mains and cross-connecting pipe lines. Mr. Henry was also directed to contract for the earliest possible installation of a 50,000-gallon steel tank. Mr. Henry testified in the present proceeding that that order was reasonably possible of fulfillment.

Washington Water and Light Company filed the present application for a certificate on March 26, 1947. The record shows that on April 8, 1947, Mr. Henry accepted a written letter proposal of the same date providing for the erection of a 50,000-gallon steel tank. That proposal states that the contractor believes it will require ten or eleven months to secure materials, fabricate, ship and erect. The record indicates that on March 10, 1947 Mr. Henry ordered 500 meters, although the Commission's order did not direct the installation of meters on residential users. The record also indicates that 2,500 feet of steel pipe was ordered on March 26, 1947.

The Board of Supervisors of Yolo County has revoked Mr. Henry's permit to use the streets. Mr. Henry testified that such action would not affect operation, stating that 99 per cent of the mains are

laid in rights of way and easements.

The record herein clearly shows that Mr. Henry has not rendered efficient service, has not fulfilled the duties which a utility owes to the public, has not been reasonably diligent in endeavoring to comply with Commission orders, and has not complied with such orders. Under these circumstances, the existing utility is not entitled to protection from competition.

Applicant Washington Water and Light Company has operated a water system in Broderick for about fifty years, and has a county franchise. In September of 1946 applicant obtained a certificate for the Broderick area, and in April of 1947 obtained a second certificate for a new system in the Bryte area.

Applicant has been requested to serve West Sacramento by the West Sacramento Improvement Club, the West Sacramento Land Company, and by numerous individuals. Applicant's President testified that materials were obtained and the new Bryte system installed in four months, and does not anticipate difficulty in obtaining materials and in constructing a system to serve the adjoining West Sacramento area.

Applicant's engineer, the representative of the firm which constructed the Bryte system, has made a preliminary study of the West Sacramento area, together with preliminary plans for a distribution system therein to be connected with applicant's Broderick system. He testified that work could be started in approximately sixty days and the system constructed within a reasonably short time at a cost of between \$50,000 and \$60,000. Applicant's engineer expressed the opinion that Mr. Henry's system is inadequate both in line size and in the method of distribution, and that it would be faster and cheaper to install a new system than to attempt acquisition and use



of any portion of the present system. A letter from a Sacramento bank, introduced in evidence, advises that the bank will grant applicant a loan of \$75,000, if and when needed, for installation of a water system in West Sacramento.

It appears that public interest will best be served by the issuance of a certificate authorizing applicant to operate a public utility water system in the area now served by Mr. Henry.

The certificate hereinafter issued is subject to the following provisions of law:

"That the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right."

The following order is recommended.

#### O R D E R

Application having been filed, public hearing thereon having been held, and based upon the findings contained in the foregoing opinion and upon the record herein,

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require and will require the construction, operation and maintenance of a public utility water system by Washington Water and Light Company, a corporation, in that certain unincorporated territory in Yolo County, generally known as West Sacramento, and as more particularly described in the application herein and delineated upon the map filed as Exhibit No. 1 in this proceeding.

IT IS HEREBY ORDERED as follows:

1. That a certificate of public convenience and necessity be and it is hereby issued to Washington Water and Light Company, a corporation, to construct, maintain and operate a public utility water system within the territory hereinabove described.

2. That the rates to be charged by applicant for water service in said area shall be the same as those established by Decision No. 8461 (App. No. 5494) and Decision No. 40170 (App. No. 28183), and appropriate rate filings shall be made at least five days before commencement of service.

3. That applicant, within sixty days after the date of this order, shall file a suitable map or sketch, drawn to an indicated scale upon a sheet  $8\frac{1}{2}$  x 11 inches in size, delineating thereon in distinctive markings the boundaries of its service area and the location thereof with reference to the immediate surrounding territory; provided, however, that such map or sketch shall not be considered as a final or conclusive determination or establishment of the dedicated area of service.

4. That applicant, within sixty days after the date of this order, shall file 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 territory to be served. 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 property comprising the entire area of service; provided, however, that such map shall not be considered as the final or conclusive determination or establishment of the dedicated area of service.

5. That applicant, before proceeding with the installation and construction of the proposed water system in the West Sacramento

area, shall submit a suitable map, drawn to an indicated scale, showing thereon the size, type and location of all proposed transmission and distribution mains, and wells; also height and capacity of proposed elevated storage or temporary steel pressure tanks.

The effective date of this order shall be the twentieth day after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Public Utilities Commission of the State of California:

Dated, at San Francisco, California, this 27<sup>th</sup> day of May, 1947.

Harold P. Kula  
Justus F. Cravens  
Leah L. Lowell  
R. J. Morrison  
Pennington Tatter  
Commissioners