

ORIGINAL

Decision No. ~~40579~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ENES WATER COMPANY, a corporation,
for a certificate of public convenience
and necessity to operate a public utility
service west of Pittsburg, Contra Costa
County.

Application No. 28461.

Thomas F. Fraga, for Applicant.
Martin E. Rothenberg, for Protestant,
Orbisonia Water Company.
Ralph H. Wight, for Harriet O. Webb,
Protestant.

O P I N I O N

Enes Water Company, a corporation, engaged in distributing and selling water in and in the vicinity of a subdivided area known as Enos Ambrose Subdivision, located approximately 3½ miles west of the City of Pittsburg, Contra Costa County, asks the Commission to grant it a certificate of public convenience and necessity to furnish public utility water service in an adjoining territory located east of its present service area boundaries. This district includes a subdivided portion of Orbisonia Heights and Bel-Air Tract now served by Orbisonia Water Company, a corporation. Applicant has been requested to enter and serve water in the Orbisonia Company's territory and has entered into an agreement with 189 consumers residing therein to provide their premises with an adequate water supply. These consumers have petitioned the Commission to grant applicant a certificate to supply water in these above mentioned tracts.

A public hearing was held in this proceeding in Pittsburg.

Counsel for Orbisonia Water Company asked that this matter be dismissed on the ground that the application did not contain the information required in a proceeding of this nature, as set forth in the California Administrative Code Title 20, Public Utilities. While the application as filed did not fully and

completely set forth all the information indicated in the code, nevertheless necessary and sufficient evidence was presented at the hearing for the purposes of this proceeding and the motion to dismiss, therefore, will be denied.

Applicant was granted a certificate by the Commission in its Decision No. 27194, July 9, 1934, to serve the Enos Ambrose Subdivision. The service area comprises approximately 80 acres. This utility's water supply now is obtained from the Contra Costa County Water District, which operates the Contra Costa Canal of the Central Valley Project under agreement with the United States Bureau of Reclamation. The water is passed through rapid sand filters and chlorinated. Storage is provided by a 127,000-gallon tank. The distribution system consists of approximately 20,000 feet of mains ranging from 1½ to 6 inches in diameter. There are 202 customers served, all at metered rates. One consumer is a housing project which shelters 86 families. The fixed capital as of December 31, 1946, totalled \$41,607. The operating revenues for the year were \$9,264 and the operating expenses were shown as \$9,083, resulting in a net revenue of \$181.

The meter rates in effect were established by the Commission in the above referred to Decision No. 27194. The rate schedule provides for a monthly minimum charge of \$1.75, and allows the use of 500 cubic feet of water. Excess use is reduced through two blocks to 15 cents per 100 cubic feet for all use over 1,000 cubic feet.

Mr. Bernard E. Enos, secretary-treasurer of Enos Water Company, testified that the continuously inadequate service supplied by the Orbisonia Water Company had resulted in repeated requests and also demands from customers and consumer organizations that he extend his water system into the territory and furnish them with proper water service. In order to determine the full extent of the demand, he caused a contract to be drawn wherein his Company agreed to supply water throughout the two tracts, and the signatory residents agreed to take the service, provided the Commission would grant applicant the authority to enter and furnish water. This agreement was circulated by certain residents of the tracts and 189 water users out of the 280 served signed the agreement. Mr. Enos stated that he

desired to expand and operate upon a larger scale in order to promote a more economic and efficient business; to this end he had at various times unsuccessfully attempted to purchase the Orbisonia system. Mr. Enes also has received requests for water service in a subdivided tract called Bella Monte, and also in the adjacent subdivision of Home Acres. These tracts are sparsely settled at present, the residents obtaining water from individual wells. Mr. Enes considers that this entire general area will be rapidly developed and will require public utility water service within a relatively short period. For this reason he has included within his proposed service area not only the presently subdivided tracts but also certain intervening lands, a considerable portion of which is owned by members of his family.

Mr. Enes's plan for serving the Orbisonia area is to install therein a new filter plant having a 130,000-gallon settling basin, with a capacity of 250 g.p.m.. Water will be obtained from the Contra Costa Water District canal, treated, and stored in a 500,000-gallon storage tank. This arrangement will provide an independent source of water at the end of each system, available to both when interconnected.

Mr. Enes also plans to replace existing inadequate Orbisonia Company mains with six and two-inch pipe lines. A pipe manufacturer now holds for him 15,800 feet of 6-inch and 4,000 feet of 2-inch pipe, together with sufficient pipe and fittings for 300 service connections. The larger sized mains are designed to provide fire protection not presently available, and to care for future demand.

The estimated cost of these facilities installed follows:

Filter Plant and Pumping Plant.....	\$8,550
Settling Basin.....	12,000
Storage Tank.....	10,000
Pipe Lines and Services.....	<u>25,824</u>

Total..... \$56,374

Mr. Enes states that he has arranged for the materials required and their installation, that the filter plant can be installed and placed in operation in 45 days, the storage tank and pipe lines in 90 days. Arrangements have been made for a loan of \$50,000 by the American Trust Company, corroborated by a representative of said bank.

A number of consumers testified that the water service they have been and still are receiving, particularly during the summer months, was wholly inadequate. These witnesses, some of whom have been residents of Bel-Air Tract for seven years, testified that water was off every day during the summer for periods of two to thirteen consecutive hours, and that this condition had existed through the last three summers, without any effort on the part of the Company to remedy the conditions. During such interruptions in service it was impossible to flush toilets or wash clothes. Complaint was made that millworkers returning home from work have not had sufficient water for baths. Consumers were forced to fill buckets and bathtubs with water at night to have any available during the day; lawns could be sprinkled only when water was available at night. Many customers are forced to haul water home from outside sources. Consumers testified that Mr. Cupp, the manager and part owner of the system, had other interests and seldom could be located to register complaints of the failure of water supply, and that his many promises to improve the service had never been fulfilled in any respect.

A petition, signed by 80 customers of Bel-Air Tract, was presented by a witness, wherein, the Commission was asked for permission to purchase water from some other source of supply which could assure adequate service. In the petition it was alleged that the Orbisonia system furnished only an insufficient supply of water, that such water as was served was excessively hard and distasteful with an unpleasant odor, and that in certain portions of the tract the water contained large quantities of sand. It was alleged further that for some years last past, from about the first of June until October, the service has been and still is continuously interrupted, the water being off frequently daily from 8:00 A.M. until 9:00 P.M. This condition is claimed to have existed for four years, and, in spite of the promises of relief on the part of Mr. Cupp, president of the Company, has continued to grow steadily worse. This petition, dated November 26, 1946, originally had been mailed to the Commission for filing as a formal complaint, but had been returned because of certain defects as to form, and, therefore, was presented by its proponents at this time as germane to the issues in this proceeding.

The witnesses in support of this petition testified that the users in the tract were wholly disgusted and thoroughly dissatisfied with the inexcusable lack of water and that, after trying unsuccessfully for over three years to prevail upon Mr. Cupp to provide good service, they are now determined to obtain water from a dependable and continuous source and request that the Enes-Water Company be given the opportunity to serve them as soon as possible.

Mr. Thomas M. McMarrow, sanitarian for Contra Costa County Board of Health, testified that the County Board had received numerous complaints during the summer periods from consumers of the Orbisonia Water Company, complaining of insufficient water to flush toilets, wash dishes and clothes, and for bathing purposes. This inspector personally made two investigations, in one case finding in a complainant's home the water off with unwashed dishes and clothes, and no water for toilet flushing. Mr. McMarrow stated that such conditions constituted a private health menace and one that could become serious if general and long standing in any community.

Attention was directed by those petitioning for service from applicant to the Commission's Decision No. 39146, dated June 25, 1946, wherein Orbisonia Water Company was granted authority to mortgage its plant for \$30,000 to obtain funds to install a filter plant and replace small-sized mains with large mains, and otherwise improve its distribution and storage facilities. Petitioners testified that no such improvements have been made other than a recent installation of a temporary steel tank which had helped the distressed conditions but very slightly.

Orbisonia Water Company obtains water from three wells, discharging directly into the mains. Storage is provided by two small tanks having a combined capacity of 49,000 gallons. The two interconnected distribution systems contain 12,565 feet of pipe from one inch to four inches in diameter. There are 280 customers served, largely at flat rates. The Company reports its fixed capital as of December 31, 1946, to be \$21,089. The operating revenues for the year total \$6,906 and the operating expenses for the same period as \$6,603, resulting in a net revenues of \$303.

Mr. Elmer L. Cupp, president of the Orbisonia Water Company, conceded that water service was bad, which he attributed to the flat rate operation and insufficient storage. He testified that on hot days the consumers use all of the water pumped, which combined with limited storage, results in the interruptions of service. He stated that the system originally was not properly installed and now requires complete rehabilitation with larger mains, additional storage facilities, and an adequate water supply. According to Mr. Cupp the present wells produce 270 g.p.m. of water, normally sufficient to supply the customers. However, the wells discharge a considerable amount of sand, the meters get clogged so that now it is necessary to deliver water to all the customers on a flat rate basis. He realized that service had been poor, and in 1946 made an attempt to correct the condition. He admitted that the system should be rebuilt and stated that he now plans the installation of larger mains, a filter plant, settling basins and a storage tank; and in behalf of his Company applied for and obtained from the Commission in June of 1946, authority to borrow \$30,000 on a deed of trust to make the planned improvements.

Mr. Cupp claims that installation of the major improvements was prevented through failure of Mr. Enes to agree to sell to him at a fair price the only land available for the filter plant site. This land is owned or controlled by Mr. Enes, or members of his family. Mr. Cupp further stated that as a solution to the water problem in this area he offered to buy all of the Enes water properties but could arrive at no mutual agreement. Mr. Enes denied all obstructive tactics. It appears, however, that Mr. Cupp has now arranged for the purchase of a filter plant site of 2.9 acres and has placed \$3,250 in escrow for this purpose. He stated that the following list of facilities and estimated costs thereof would be added from the proceeds of the note authorized in Decision No. 39146:

<u>Item</u>	<u>Cost</u>
Filtration plant (250 g.p.m.).....	\$ 7,000
250,000-gallon storage tank.....	4,500
2,000 feet of 6-inch connecting main.....	3,500
40,000-gallon settling tank.....	1,702
Building for filter plant.....	2,000
Two parcels of land, 1 acre each.....	1,000
Financing and miscellaneous.....	1,500
	<u>\$21,202</u>

Mr. Frank J. Hollander, engaged in the loan business, testified that he had arranged the \$30,000 loan authorized by the Commission and now is in control of disbursement of said funds, \$4,710 of which has been expended to date. This expenditure covered the escrow payment of \$3,250 for the filter plant land, \$280 for a booster pump and \$1,198 for installation of the temporary 50,000-gallon storage tank.

Review of the record in this proceeding shows that for a period of several years last past, no serious attempt has ever been made by Mr. Cupp to provide a satisfactory water service to his consumers. Mr. Cupp has failed to install the improvements repeatedly recommended to him by the engineers of this Commission and likewise has delayed and failed to fulfill promises made to his consumers to remedy the intolerable lack of water service provided through his system. No attempt even has been made to install proper sized mains, which would have provided a fair measure of relief, although the testimony shows that the pipe was readily available. It is evident that satisfactory service can best be obtained by permitting Enes Water Company to install the facilities necessary to this end. This Company will not only be able to supply water of better quality and of adequate amount, but will be in a position to install a system of distribution mains to provide service throughout the areas included in the application. As Mr. Enes controls much of the undeveloped areas contiguous to the Orbisonia Water Company system, it does not appear possible for the latter company to expand its existing service area nor will it be possible to develop a dependable supply of water from underground sources, but it will require a considerable expenditure of money to provide a supply from the Contra Costa Canal. Mr. Enes possesses a franchise granted by the County of Contra Costa covering the areas he now serves and states that he can secure authority for maintenance of facilities in all the highways included in this application. Inasmuch as a reconstruction of the Orbisonia system would be necessary if consumers presently attached to this system are to receive at all adequate service and Enes appears to be ready to purchase such of the existing facilities as can be utilized, the Commission is of the

opinion that the granting of a certificate to Enes to include the territory now supplied by Orbisonia Water Company would not result in serious financial loss to this latter company.

The Orbisonia Water Company should not be compelled to make further expenditures for the installation of the new facilities contemplated when it was authorized to incur the indebtedness above referred to, and Enes will be expected to cause a release of the agreement to purchase lands for a pump and filter site.

The Commission, therefore, finds that public convenience and necessity requires the granting to applicant of a certificate to operate a public utility water system in the area now served by Orbisonia Water Company, and also in the additional territory as requested, excepting, however, that portion referred to as Poinsietta Land Company Tract.

Objection was made to the inclusion of the Poinsietta Land Company Tract within applicant's certificated area upon the ground that said tract is partially served by a water system owned by Harriet O. Webb, who recently filed an application with the Commission, asking for a certificate of public convenience and necessity to operate a public utility water system in this tract. The tract has an approximate area of 60 acres, and at present is sparsely settled. The record shows that Mrs. Webb's application was not filed in time to be set down for hearing with the present proceeding. Under the circumstances, the territory covered by the Poinsietta Land Company Tract and an adjoining parcel of land, as outlined in green on Exhibit No. 6, will be excluded from the requested service area.

The certificate hereinafter issued is subject to the following provision 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."

ORDER

Application having been filed as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being fully advised in the premises,

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 Enes Water Company, a corporation, in that certain unincorporated territory in Contra Costa County, lying approximately three miles southwesterly from the City of Pittsburg and

delimited upon a map filed as Exhibit No. 6, in this proceeding, excepting therefrom, however, the territory marked Poinsettia Land Company, together with the adjoining parcel of land, all as outlined in green on said Exhibit No. 6, which exhibit is made a part of this order by reference.

IT IS HEREBY ORDERED as follows:

1. That a certificate of public convenience and necessity be and it is hereby issued to Enes Water Company, a corporation, to construct, maintain and operate a public utility water system within the territory described above;
2. That the rates to be charged by Enes Water Company for water service in said territory shall be the same as those established by Decision No. 27194, dated July 9, 1934, and appropriate rate filings shall be made at least five days before the commencement of service in any portion of said territory;
3. That Enes Water Company, a corporation, within sixty (60) days after the effective date of this Order, shall file four sets of maps drawn to an indicated scale, about 8½ x 11 inches in size, indicating the service area and 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 other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof;
4. That Enes Water Company, a corporation, within sixty (60) days from the effective date of this Order, shall 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 territory presently 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 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;
5. That before proceeding with the installation and construction of the proposed water system in the territory above described, Enes Water Company shall submit a suitable map, drawn to an indicated scale, showing thereon the size, type, location of all proposed transmission and distribution mains, filter plant, settling basins and storage tank; and
6. That within ninety (90) days from the effective date of this Order, Enes Water Company shall file a certified copy of a franchise granted by Contra Costa County to install, repair, maintain and operate water mains and pipes in, on, under, across and through public highways and roads within the above certificated territory.

The effective date of this Order shall be twenty (20) days after the date hereof.

Dated at San Francisco California, this 29th day of July, 1947.

Harold Hill
Justice F. Quinn
Earl H. Quill

Commissioners.