

ORIGINAL

Decision No. 40928

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLARA STREET WATER COMPANY, a corporation,	Complainant,
vs	
PARK WATER COMPANY, a corporation,	Defendant.

Case No. 4885

C. F. Culver, for Complainant.

Paul Overton, for Defendant.

O P I N I O N

Clara Street Water Company, a corporation, engaged in the business of distributing and selling water within a partially subdivided area one mile southwest of the unincorporated town of Downey, Los Angeles County, asks the Commission to restrain the Park Water Company, a corporation, from serving water in Tract No. 13091 which is located within complainant's certificated territory.

Complainant alleges that it was granted a certificate by the Commission to operate a public utility water system within a specified territory that includes Tract No. 13091; that it has installed water production and distribution facilities of sufficient capacity to serve the demand for water within its service area; that defendant, Park Water Company, serves Tract No. 11797 which is contiguous to complainant's territory and has commenced the construction of a pipe line of sufficient capacity to serve said Tract No. 13091 along Paramount Boulevard, which is the common boundary line between the two service areas; and, that complainant is informed and believes that said defendant intends to invade and serve said Tract No. 13091 without first obtaining a certificate of public convenience and necessity from this Commission.

In its answer, defendant company alleges that it was requested by the owner of Tract No. 13091 to install a distribution system therein for the reason that complainant was unable to provide reasonable or adequate service to meet the requirement for water in the tract; that said tract is contiguous to defendant's service area and therefore it has a right under Section 50(a) of the Public Utilities Act to serve the tract; and, that the granting to complainant of a certificate to supply water in said area was merely permissive and does not give it an exclusive right to supply water in the undeveloped portions of the territory. The Commission therefore is asked to deny complainant's request.

A public hearing in this proceeding was held before Examiner Stava in Los Angeles.

The Commission in its Decision No. 32208, issued August 1, 1939, granted complainant a certificate of public convenience and necessity to operate a public utility water system within a 310-acre area near the town of Downey. Complainant thereafter proceeded to install a water system to serve the built-up section thereof and continuously has supplied water within the certificated area upon demand.

Complainant's rate schedules provide for both flat and meter charges. The flat rates provide for a monthly charge of \$1.25 for each residence, including a lot of 1/4-acre or less. The meter rate provides for a monthly minimum charge of \$1.25 with an allowance of 800 cubic feet of water, or 15 cents per 100 cubic feet. Excess use is reduced to seven cents per 100 cubic feet for all use over 1,000 cubic feet.

The Commission in its Decision No. 30620, dated February 14, 1938, granted defendant a certificate to operate a water system within a 760-acre area which adjoins complainant's certificated territory for approximately 3,000 feet along the common boundary, Paramount Boulevard. Defendant has both flat and meter rate schedules. The flat rate provides for a monthly charge of \$1.50 for a single family unit or single lot not in excess of 7,500 square feet. The meter rate provides for \$1.50 minimum monthly charge with an allowance of 1,000 cubic feet.

Excess use is reduced through four blocks to 7½ cents for 100 cubic feet for all use over 300,000 cubic feet.

During the latter part of 1946, Mr. S. V. Hunsaker commenced to subdivide a tract of land containing 18½ acres situated wholly within complainant's service area and fronting on Paramount Boulevard. Mr. Donald E. Dimmitt, manager of complainant company, interviewed Mr. Hunsaker and attempted to arrange for his company to pipe the tract but was informed that another company would serve it. Subsequently a distribution system was installed in the tract by the Los Angeles Decomposed Granite Company, a corporation operated and controlled by the same interests as defendant corporation.

Mr. Dimmitt testified that he had designed complainant's system to serve the entire area covered by the company's certificate, that 6-inch mains had been installed along the northwesterly boundary of Tract No. 13091, and, that another 6-inch main was constructed connecting with a 4-inch main along the southwesterly boundary of said tract. He stated that normally a 4-inch main would have supplied adequate water service but that the 6-inch main was installed to provide the additional capacity required to meet the demands of the territory when fully developed. Mr. Dimmitt further testified that complainant has two wells in the general vicinity which produce sufficient water to meet all demands within Tract No. 13091. Complainant is ready and willing to take over the pipe system in Tract No. 13091 in accordance with the terms and conditions set out in its rules and regulations.

Mr. S. V. Hunsaker, owner of Tract No. 13091, testified that he would not choose complainant to serve his subdivision because this company had in the past provided inadequate service to many of its consumers. For this reason Mr. Hunsaker stated that he preferred defendant's service and if compelled to take water from complainant's system, he would form a mutual organization to take over his water properties. The subdivider further testified that when he discussed with Mr. Dimmitt the piping of his tract, he specified cast iron pipe which complainant

did not have available, or any such pipe installed in its own distribution system. Thereafter he entered into negotiations with the Los Angeles Decomposed Granite Company and entered into an agreement for the construction of all improvements on the tract which included a cast iron pipe distribution system.

Mr. Hunsaker stated that his tract is not yet recorded but that he intends to reserve easements and rights of way for utilities through the streets and private property throughout the entire tract, but will not grant complainant any right to the use thereof to install and operate pipe lines. This same practice of reserving utility rights of way and easements for utility uses in subdivisions is followed by Mr. H. H. Wheeler, president of defendant corporation, as well as president of the Los Angeles Decomposed Granite Company.

The record shows that complainant was duly granted a certificate of public convenience and necessity by this Commission to serve an area wholly including the land now subdivided as Tract No. 13091, at which time no objection was made to the inclusion of this property within the certificated territory. The record also shows that complainant has constructed adequate distribution facilities to extend service within this disputed tract upon demand and has ample water supply to meet the requirements at rates more advantageous to the consumers than defendant's charges. The record further shows that defendant company has no certificate of public convenience and necessity to service Tract No. 13091, nor any portion thereof. Furthermore, no showing has been made by or in behalf of defendant in this proceeding that either public convenience or necessity demands or requires that Park Water Company invade the duly certificated territory of complainant, Clara Street Water Company, which latter company is entitled to full protection against this intended and unlawful invasion of its rights. It is clear, therefore, that defendant, Park Water Company, should be ordered to cease and desist from the attempted sale and distribution of water within Tract No. 13091, Los Angeles County, and be ordered to refrain from any future sale and distribution of water therein.

ORDER

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

It appearing that Park Water Company, without authority from this Commission, intends to invade certain territory heretofore certificated by order of this Commission to Clara Street Water Company, to wit, Tract No. 13091, Los Angeles County, now, therefore,

IT IS HEREBY ORDERED that Park Water Company, a corporation, be and it is hereby ordered to cease and desist from the distribution and sale of water within Tract No. 13091, or any portion thereof, in the County of Los Angeles, and is hereby further ordered to refrain from all and any such distribution and sale of water within said Tract No. 13091, or any portion thereof, on and after the date of this Order.

Dated at San Francisco, California, this 12th day of November, 1947.

Harold P. Kule
Justin F. Green
Robert L. Lavelle
R. Z. Friedman
Commissioners.