

Decision No. 41682

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

ORIGINAL

Case No. 4685

C. F. Culver, for Complainant;  
Paul Overton, for Defendant.

OPINION ON REHEARING

The Commission in its Decision No. 40928 issued November 12, 1947, ordered Park Water Company, defendant herein, to cease and desist from the sale and distribution of water within Tract No. 13091, Los Angeles County, said tract being within the certificated area of Clara Street Water Company, complainant herein.

Defendant filed a petition for rehearing, alleging:

(a) that the Commission is without jurisdiction to make and enforce said order because the defendant has the right, under Section 50(a) of the Public Utilities Act, to extend into said tract since it is contiguous to defendant's system and has never been served by any other public utility of like character; (b) that under Section 50(b) of said Act, defendant is not required to secure a certificate under the facts established by the record in this proceeding; (c) that no showing of convenience and necessity is required of defendant as a condition to service of water to and in the tract; (d) that complainant has no exclusive right to serve water to and in said tract; (e) that water service by defendant in and to said tract does not preclude complainant from undertaking similar service; (f & g) that defendant's property is taken without due process of law, and defendant is denied equal protection of the laws guaranteed to it by the Fourteenth Amendment to

the Constitution of the United States; and (h) that irreparable injury and damage has occurred to said defendant by reason of said Commission's decision and order.

The Commission considered the petition and granted defendant a rehearing in the proceeding, which was held before Examiner Stava, in Los Angeles.

The facts developed in the original hearing are briefly as follows: Complainant is engaged in the business of distributing and selling water for domestic use within a certificated territory having an area of 310 acres, near the town of Downey, Los Angeles County. Defendant also is engaged in selling and distributing water and operates within a 760-acre certificated territory, which adjoins complainant's service area for approximately 3,000 feet along the common boundary, Paramount Boulevard. Both service areas are partially subdivided, and each contains unsubdivided parcels of land within which water distribution facilities have not yet been installed. One of these parcels, consisting of 18½ acres is located within complainant's territory and fronts on Paramount Boulevard. It is owned and was subdivided as Tract No. 13091 by S. V. Hunsaker, a realtor and developer of land. He refused the offer of complainant to install distribution mains and serve the tract, but contracted with Los Angeles Decomposed Granite Company, a corporation, to install therein the necessary water pipe lines, said company being owned and operated by the same interests as defendant. Mr. Hunsaker desired defendant to supply water service on the tract and had a connection made to its facilities when the pipe installation was completed. He is the owner of the pipe system in the tract but is willing to sell it to defendant, and defendant is ready and willing to acquire the system and operate it in connection with its properties across Paramount Boulevard.

Mr. H. H. Wheeler, president of defendant, was not able to be present at the original hearing but testified at the rehearing of

the matter. In connection with defendant's extension policy, Mr. Wheeler stated new mains were installed in undeveloped territory in order to keep ahead of the service demand and provide water to residents within its certificated area who are unable to advance the necessary funds to finance the extensions. In order to serve a group of people living at and near the end of Leeds Street, approximately 400 feet easterly of Paramount Boulevard, defendant during March, 1947, extended a mile of six- and eight-inch cast iron main westerly along Imperial Highway from its Well No. 1A. These people were being inadequately served by a local resident upon an accommodation basis and together with the Commission's representatives, had asked defendant to serve this area. At a later date Well No. 1B was drilled in said area and the old mains were replaced with new cast iron pipes. At first, only four consumers were served, but at present some 24 are furnished water from and along this extension. In March, 1947 a further extension of six-inch cast iron main was made for the 400 feet westerly along Leeds Street to Paramount Boulevard and thence northerly along said boulevard for 1,800 feet to Orange Street. This street is located opposite the southerly boundary of Tract No. 13091. Mr. Wheeler stated that this installation was made in response to a request for water service by residents along Paramount Boulevard and at and near its intersection with Orange Street, and included also Mr. Hunsaker's request to serve his property. At this time there are only seven customers being served from the extension, four being located on Leeds Street and three on Paramount Boulevard, one of these latter being the service to Tract No. 13091. There are five other residents along the line that desire service in the future, and they have given a right of way for the extension through their property in order to have water available when their individual wells failed to supply their respective premises. Mr. Wheeler further stated that these extensions exceeded the allowance of 100 feet of main per consumer

provided by defendant's rules governing extensions, which rules are claimed to be permissive only; and that the entire extension was made in the normal course of business to: first, supply the inadequately served territory in and in the vicinity of the easterly end of Leeds Street; secondly, to meet the request for service along Paramount Boulevard and Orange Street; and lastly, to provide a main for circulation purposes.

Mr. Wheeler, who is also president of Los Angeles Decomposed Granite Company, testified that an agreement had been entered into by and between his company and Mr. Hunsaker, providing for development and improvement of the tract. This agreement covered the grading of streets, construction of curbs and gutters, installing sewers and cast iron water mains. He stated that defendant was not mentioned in said agreement.

Mr. Wheeler stated further that defendant was supplying water service to several consumers located within complainant's certificated territory, but no objection was ever made to this service. However, he admitted that these consumers were located at a considerable distance from complainant's water mains but were in the immediate vicinity of defendant's pipe lines. He further stated that Downey County Water District, a publicly-owned and operated utility, had installed its mains within a subdivision adjoining Tract No. 13091, but complainant had made no objection to the invasion of its territory by that utility. He felt that complainant was not consistent in its objections to invasion of its territory. However, he also admitted that the District invaded other public utility territories and often paralleled their mains. He showed that the District was presently serving several disconnected areas within defendant's certificated territory, but that defendant's main along Paramount Boulevard to Orange Street crossed a section of the District's territory although no District residents were being served from it.

Mr. Hunsaker testified that he acquired the tract property in January, 1946, and filed and recorded the map thereof in October, 1947. He had planned to erect dwellings acceptable for financing through Federal Housing Administration, but this agency required the installation of cast iron or transite mains in the distribution system. Either class of pipe was difficult to obtain during 1947. It appears that Mr. Wheeler had on hand cast iron pipe and installed it in the tract although he could have used it elsewhere. Mr. Hunsaker feels that he has a right to decide which utility will serve his own property and desires to have defendant furnish the water service. He definitely objects to forming a mutual organization, or having complainant supply water to the tract. He still retains the ownership of the pipe lines and all easements for utility rights of way throughout the tract. At present there are five or six houses under construction on the property and Mr. Hunsaker has filed application to erect 15 or 20 additional homes, but has not as yet received approval of the project. Water is being supplied from defendant's pipe line on Paramount Boulevard through a meter located within the boundaries of its certificated area.

Mr. Donald Dimmit, superintendent for complainant, again submitted an offer to acquire the system in the tract and serve water therein in accordance with complainant's rules and regulations. He stated that complainant has not objected to the Downey County Water District serving the tract adjoining Mr. Hunsaker's property, for the reason that said District for the past 20 years had served a portion thereof, fronting on Paramount Boulevard. He further stated that the streets in this tract were laid out in such a manner that complainant could not enter the tract with its mains from Rives Avenue except through private rights of way through and across narrow lots, and complainant did not consider it a good policy to attempt to use any portion of the small lots for installing and maintaining its mains.

Defendant relies on Section 50(a) of the Public Utilities Act for authority to extend its facilities into complainant's certificated territory, contending that said territory is contiguous to defendant's system and that the property in dispute has not been served by another utility. Defendant gives no consideration to the fact that this area now is certificated nor of complainant's ability to provide adequate service therein. If defendant's contention should prevail, the establishing of service areas by this Commission would become meaningless and futile. Regulation would be transferred from this Commission to the whim or caprice of a utility and its prospective customers. A fair interpretation of Section 50(a) leads to the conclusion that a reasonable discretion, under the law, resides in this Commission to determine, under the facts, whether or not a territory sought to be invaded is "served by a utility of like character."

No showing was made in this record that complainant's service is of such a poor quality that would warrant this Commission granting defendant a certificate to serve complainant's territory. While a certificate does not give a utility an exclusive right to serve a particular area, yet it does protect such territory to the extent that good service is provided at reasonable rates. To permit the unlimited and unauthorized invasion of certificated territory by other utilities merely for the reason that the lands are contiguous and not being then actually and physically served, would result in curtailment of investments in utility properties, confusion and uncertainty in design of facilities, would retard expansion of utility systems into new territory and result in the supplying of inferior service. The granting of authority to a utility to invade an adjoining or contiguous service area without a showing of public convenience and necessity would be inconsistent with the principle of regulation in the public interest.

The record also shows that defendant does not own any facilities in said Tract No. 13091. The facilities located therein are owned

by the subdivider and owner of the property. He still has a choice of water utility service for the tract at his disposal that includes extension by complainant, formation of a mutual organization, or having the tract included within the boundaries of Downey County Water District, which serves the territory adjoining the northerly boundaries of Tract No. 13091.

From the evidence, we hereby find as a fact that the public interest does not require that defendant be permitted to serve Tract No. 13091. Therefore, it follows that the Commission's Decision No. 40928 ordering defendant to cease and desist from selling and distributing water within said tract should be reaffirmed.

O R D E R

A petition having been filed by Park Water Company, a corporation, asking for a rehearing in the above-entitled proceeding, the Commission having considered the petition and granted the request, a rehearing having been held thereon, the matter having again been submitted, and the Commission now being fully informed in the premises,

IT IS HEREBY ORDERED that the Commission's Decision No. 40928, issued November 12, 1947, be and it is hereby re-affirmed.

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

Dated at San Francisco, California, this 8th day of June, 1948.

R. B. Zimmerman  
Justice F. C. Cramer  
James H. Russell  
Harold T. Hulse  
Herbert P. Potter  
Commissioners.