

Decision No. 42960

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PARK WATER COMPANY, a corporation,
for a Certificate of Public Convenience
and Necessity to Furnish Water Service
to Tracts No. 14201 and No. 14918
within the County of Los Angeles.

Application No. 29207

Paul Overton, for applicant;
Kenneth Wright and C. F. Culver,
For Baldwin Park County Water District.

OPINION ON REOPENED PROCEEDING

The Commission in its Decision No. 41611, issued May 18, 1948, granted Park Water Company, a corporation, a certificate of public convenience and necessity to operate a public utility water system in Tracts Nos. 14201 and 14918, and in an unsubdivided ten-acre parcel of land adjoining the southern boundary of Tract No. 14918.

Baldwin Park County Water District, a public corporation, petitioned the Commission asking that the said Decision No. 41611 be vacated, and the proceeding be reopened for further hearing, on the grounds that the territory covered by the certificate is located within the boundaries of the District, and that it had not been notified of the hearing and given an opportunity to appear and oppose the application. The petition further alleges that the company's statement in its application that no other water service is available in the territory, for which a certificate is requested, except that supplied by applicant's system, is untrue and misleading, since it had knowledge of the District's operation in that area as disclosed by the correspondence between the company, the District, and the Commission, concerning water

service in the disputed territory. The Commission was asked to reopen the matter for further hearing, as the District is ready, willing, and able to supply water service to the area involved herein.

The Commission, after considering the petition, ordered the proceeding to be reopened for the purpose of determining whether said Decision No. 41611 should be rescinded, altered or amended in any particular.

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

The territory involved has a total area of 45 acres. Tracts Nos. 14201 and 14918 have an area of 35 acres and have been subdivided into 202 lots, and at present there are 112 completed dwellings in Tract No. 14201, and 68 under construction in Tract No. 14918. It is proposed to erect a multiple housing project of 100 units on the ten-acre tract.

The water system was installed by Mr. H. Trueman Browne, owner and developer of the property. The Park Water Company, a corporation, and applicant herein, was asked by Mr. Browne to acquire the system and operate it as a public utility. Water is obtained from a 16-inch well, 290 feet deep, equipped with an electrically driven deep well turbine, and discharged into a 10,000-gallon steel pressure tank, automatically controlled. The water is distributed through 6,784 feet of cast iron main varying from four to eight inches in diameter. There are approximately 100 customers being served at present under flat rates. The actual cost of the system is reported as \$18,721.

Witnesses for the District testified that its service area includes approximately 2,500 acres; that the disputed territory is located within its boundaries; that it has eight and ten-inch mains installed along Los Angeles Street which is the northerly boundary of Tract No. 14201, and that water service is supplied to customers in

Tract No. 14498 which adjoins the west boundary of Tract No. 14201. These witnesses further testified that during May, 1947, Mr. Browne inquired at the District's office for terms and conditions for installing a water system in Tracts Nos. 14201 and 14918, and he was informed that the rules provided that he advance the cost of the main installation, and that this sum would be subject to refund during the last five years of a seven-year period on the basis of 25% of the gross revenues obtained from the service supplied on the two tracts, but at no time would the refund exceed the sum deposited. Maps of the subdivision were furnished the District by Mr. Browne, an estimate of cost of the system was prepared by the District and submitted to him. The District was asked to make the installation and it forwarded an agreement covering the project, which, however, was not returned by Mr. Browne; a letter was mailed to the Division of Real Estate that water would be supplied to the subdivision; bids were asked for the construction of the distribution system that consisted of steel pipe; and later a contract for the pipe installation was awarded to a construction firm at a total cost of approximately \$17,000. Installation of services and meters would have resulted in additional cost of \$25 each, for a 5/8-inch service and meter and \$30 each, for a 3/4-inch service and meter, and thereby would have increased the cost of the extension at least \$5,000 for the 200 projected houses in the two tracts.

The record shows that after receiving this information, Mr. Browne and his associates asked for a more liberal refund, or a reduction in the sum required to be advanced, but they were informed that all applicants for extensions were treated alike and that no exception would be made in this instance. However, on December 8, 1948, the District's board of directors liberalized the extension rule to provide for a 25% refund of the gross revenues for a ten-year period or

until the sum advanced had been refunded. These witnesses stated that the District's entire distribution system consisted of steel pipe, which was giving very satisfactory service; that they had no conversations with Mr. Browne or his associates concerning the installation of cast iron pipe, as the District had no pipe of this material in its system, and consequently had no fittings or facilities for handling it; and that they were not familiar with the Federal Housing Authority requirement for cast iron pipe in projects financed by that agency.

The District's rates were stated to provide for a monthly minimum charge of \$1.25 for 5/8-inch meter and \$1.50 for 3/4-inch meter, and an allowance of 1,250 and 1,500 cubic feet of water, respectively. The quantity rates provided for a charge of ten cents per 100 cubic feet, for the first 3,000 cubic feet, and five cents per 100 cubic feet for all use over 3,000 cubic feet.

The District's witnesses further stated that during December, 1947, they learned that the Park Water Company was extending its domestic water service into the two tracts, and an informal complaint was filed with this Commission on behalf of the District, protesting the extension into its territory, on the ground that it was unauthorized, as the Park Company had no certificate to operate within the territory, and therefore should not be permitted to operate without fully conforming to the requirements of law. During January, 1948, the Commission was again informed of the extension and the construction in progress of the water in the two tracts by Park Water Company.

The record shows that in reply to the Commission's letter concerning the extension, Mr. H. H. Wheeler, president of Park Water Company, informed one of the Commission's staff by telephone that his company did not serve in the area as alleged by the District, but that it was his understanding that a mutual water company would provide the service. This information was transmitted to the District, but its

witnesses stated that they had no knowledge of the filing of the application on March 25, 1948, or of the hearing of the matter and therefore they had had no opportunity to protest the granting of a certificate. These witnesses claimed that they learned of the proceeding only after the Commission's decision was issued.

A petition signed by 102 of 106 customers receiving service on the two tracts was presented by Mr. Hans Wittenbrook, one of the residents of the tract. The petition asked the Commission to permit Park Water Company to continue the service, as the District's or any other water utility service was not desired and that Mr. Wittenbrook be permitted to represent the petitioners at the hearing of the reopened proceeding. Mr. Wittenbrook testified that he had purchased a home and had been a resident in Tract No. 14201 for the past seven months, and during that period had received water service from Park Water Company; and that he and other petitioners were very satisfied and happy over the water service. He stated that the company service was desired as it was adequate and a satisfactory quality of water was being delivered; also that the company was under the jurisdiction of this Commission, and that it was possible to refer complaints, if any developed, to an impartial umpire. He further stated that he had formerly resided in the town of Baldwin Park and received water from the District, which had been very unsatisfactory, in that rusty and dirty water had been delivered, and the condition was not corrected until after several months' protests. He also had been charged and was compelled to pay for water used on the premises based on the same months' use of the previous year, because the meter was out of order and although he and his family had been out of town during that month. He claimed that the District representatives were discourteous when he protested the charges, that his complaint was arbitrarily decided on a take-it and like-it basis, and that similar treatment was accorded other customers who complained of the charges or of the service.

In reply to Mr. Wittenbrook's testimony, Mr. Farris, the District's manager, stated that its representatives had had difficulty in handling Mr. Wittenbrook's claims and contentions.

Mr. Trueman Browne, owner of the land and subdivider of three tracts, testified that he had built several thousand houses during the ten years last past under Federal Housing Authority regulations, and that generally cast iron water pipe was a standard requirement for housing projects financed by this agency, except during the war period, when some relaxation was made effective because sufficient cast iron pipe was not always available to meet the demand. He further testified that the contract given him by the District for piping the tracts would have resulted in a net cost of \$18,000, plus extra costs for overhead and inspection expense, which would have produced a probable total gross cost of \$20,000 for the distribution system, and an additional expenditure of \$5,000 would have been necessary to provide for the installation of 200 meters and services. He claimed that he did not request the District to ask for bids for the construction of the pipe lines, but did ask for a tentative estimate as cast iron pipe was still difficult to obtain in the open market, except on a long-time delivery. He estimated that the refunds from the revenues on the basis presented by the District would produce a return of only \$6,000 from the \$25,000 advanced. He thereupon considered the possibility of organizing a mutual water company and making the pipe installation himself. However, he discovered that the Los Angeles Decomposed Granite Company, a corporation engaged in the business of installing streets, sidewalks and pipe lines, had cast iron pipe available, that it could be purchased and installed at a less cost than the steel pipe as estimated by the District, that the Park Water Company, which is owned and controlled by the same interests, would acquire the system at cost and thereby provide for the refund of the entire investment in the water

system, and that it would supply water on a flat rate basis, which he considered would be an aid in promoting the sale of property in the subdivisions. He thereafter obtained a letter from this company dated August 5, 1947, addressed to the Real Estate Commission, stating that it would serve Tract No. 14201, which, at that time, included Tract No. 14918. Mr. Browne stated he felt justified in having the Park Company acquire the system as he recovered the actual cost of the system in cash, and obtained a flat rate water service for the residents of the tract.

Mr. H. H. Wheeler, president of Park Water Company, and also of the Los Angeles Decomposed Granite Company, testified that he had written the letter to the Real Estate Commission after he had had conversations with Mr. Browne relative to taking over the system after it was installed, said letter indicating what action his company would take in the future. As there was a considerable interval between the date of writing of the letter and its delivery, Mr. Wheeler was informed that Mr. Browne intended to and would form a mutual water organization to furnish the service if Park Water Company did not take over the system. The witness also stated that Mr. Browne and his associates constructed the system, paid the power bills, while Park Water Company operated the system and rendered the service to a few houses on the tracts without cost until it was granted a certificate by the Commission.

In connection with the statement in the application that no other water service was available on the tracts, Mr. Wheeler stated that it was a true statement, although he knew that there were three water systems operating in the general vicinity, one of which was the District, but that he did not know its boundaries or whether or not the tracts were included. He also stated that his company had its certificated area in another territory invaded by a county water district without any notice.

Mr. James F. Wilson, one of the Commission's engineers, stated that he had made an investigation of the tracts to be served and in his report set forth that water service was being supplied by the District on two sides of the tracts. He had not informed the District of the Park Water Company filing, or of the hearing in the matter, as that function was handled by the Commission's secretary. He concluded that the failure to notify the District of the proceeding was due entirely to an oversight on the part of the Commission's staff.

The testimony presented herein indicates that Mr. Browne attempted to obtain the installation of the water system at the least cost, and under the most advantageous refund terms, and also to construct the system of cast iron pipe, and thereby conform to the requirements of the Federal Housing Administration. The record shows that the District did not make cast iron pipe installations; that it could not have obtained an early delivery of that class of pipe; that the District's amendment of its rule extending the refund period on extensions from five to ten years was made after the pipe lines had been installed in the tracts and apparently after arrangements had been made for Park Water Company to take over the system; and that the flat rate service being supplied in the tract is advantageous to the customers, who have expressed a definite approval of the service and flat rates, as compared with measured rates and service supplied by the District. It is therefore concluded that the extension into the two tracts as finally consummated was a distinct advantage to the customers being served, as well as to the subdivider, and that therefore it is in the public interest that the certificate granted Park Water Company in the Commission's Decision No. 41611, heretofore issued in this proceeding, be reaffirmed. However, it must be understood that the Commission by this action does not approve of the Park Water Company's failure to state that the territory involved herein was located within the District's boundaries. The

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Commission should be informed if any possible invasion of another water service area is involved, in order that the party affected may be notified and that it may appear and protest the granting of a certificate if it so desires.

O R D E R

A petition having been filed by Baldwin Park County Water District asking the Commission to vacate its Decision No. 41611, in the above-entitled proceeding, and for an order reopening the matter, and the Commission having issued its order reopening said proceeding for further hearing, a public hearing having been held thereon, the reopened matter having been duly submitted and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that the Commission's Decision No. 41611 heretofore rendered in this matter be and it is hereby reaffirmed.

The effective date of the order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 7th day of

June, 1949.

R. B. Montgomery

James H. Farrell

Harold P. Kille

Samuel H. Potter
Commissioners.