

ORIGINAL

Decision No. 42494

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
WHITTIER WATER COMPANY, a corporation,
for a certificate of public convenience
and necessity to operate a public
utility water corporation business.

Application No. 30375

In the Matter of the Application of
SAN GABRIEL VALLEY WATER COMPANY, a
corporation, for a certificate of public
convenience and necessity to serve an
unincorporated territory located south-
westerly of the city limits of Whittier,
Los Angeles County.

Application No. 30408

GORDON, KNAPP & HENNESSY by WYMAN C. KNAPP for petitioner,
Whittier Water Company.

R. H. NICHOLSON and FARIES & McDOWELL by McINTYRE FARIES
for San Gabriel Valley Water Company.

OPINION AFTER FURTHER HEARING

The Commission's Decision No. 43244, rendered in the above matters on August 23, 1949, determined the respective service rights of the two applicants. On September 26, 1949, Whittier Water Company filed a petition requesting a re-opening of these matters, asking that the certificate of public convenience and necessity granted to San Gabriel Valley Water Company to serve three tracts designated as Tracts 15741, 15377, and 15650 be revoked and authority now be given to petitioner Whittier Water Company to serve said tracts. In response to said petition the Commission on October 4, 1949, ordered a reopening of their respective applications, and a public hearing was held upon such reopened proceedings before Examiner Rowe at Los Angeles, California, on Tuesday, October 18, 1949, when oral and documentary evidence was received and the matter submitted for decision.

The petition of Whittier Water Company alleges that subsequent to the Commission's Decision 43244, the San Gabriel Valley Water Company had refused to extend its service to the three tracts mentioned. It declares that in Tract 15741, a water distribution pipe system had been constructed by Whittier Development Company and Albert Gersten, or either of them, and that San Gabriel Valley Water Company refused to take over the distribution system so constructed except upon certain conditions which are alleged to be unreasonable.

The facts developed at the hearing on reopening relate primarily to Tract No. 15741. No construction has been begun in Tracts 15377 and 15650. Houses have been constructed in Tract 15741, and apparently there is now or soon will be a need for water service within that tract. That tract is being developed by Mr. Albert Gersten, President of the Whittier Development Company. It appears that Gersten was aware of the Commission's interim order of June 28, 1949 in Decision No. 43058, declaring that the two applicant utilities were expected to refrain from making any substantial extensions in overlapping territory pending a decision on their applications. Nevertheless, as he considered the restraining order to run against the water utilities only, he entered into a contract with Edward C. Losch to lay a system of mains within the tract, and had the Garner Construction Company install service lines. Most of such work was completed September 1st. Gersten then requested San Gabriel Valley Water Company to accept such pipe distribution facilities under this utility's extension subdivision rule No. 19, a rule which provides for the future refund of the amount of money expended for the installation of a subdivision extension. Thereupon San Gabriel Valley Water Company, by letter of September 1, 1949, advised the Whittier Development Company that it could not comply with that request except upon the condition that some of the facilities in place be opened up for inspection and some different type or size of water mains be substituted for those installed by the subdivider. The record shows that San Gabriel Valley Water Company thereafter offered to connect with the installed pipe system, it offering and suggesting that any dispute as to the amount it would be obligated to refund

to the subdivider be subject to review by the Public Utilities Commission as is provided by its extension rule.

The Commission is here called upon to determine only whether good cause appears for the granting of the petition of Whittier Water Company asking that Decision No. 43244, granting a certificate to San Gabriel Valley Water Company to serve the three tracts mentioned, should now be rescinded and a certificate granted to the petitioner. It is evident that the controversy arising between San Gabriel Valley Water Company and the subdivider of these tracts is not a matter affecting the rights of petitioner, Whittier Water Company. Therefore, its petition should be denied.

It would be inappropriate in this proceeding for the Commission to determine whether the water distribution facilities which have already been installed in Tract 15741 are of such standard of construction as would justify or require San Gabriel Valley Water Company to accept those facilities under its extension rule. Nevertheless, the Commission expects San Gabriel Valley Water Company to make every effort to obtain the use of the installed facilities so that water service to consumers can be afforded immediately, and if a dispute arises as to the amount of the refund due the subdivider under the extension rule, that question may be submitted to the Commission in appropriate manner. San Gabriel Valley Water Company will be expected promptly to advise the Commission whether or not the subdivider consents to such an arrangement, whereupon the Commission can take such further action as may be required.

O R D E R

After full consideration of the record made in the reopened proceeding in these matters, it being found that no good reason has been shown for a modification of Decision No. 43244 on Applications 30375 and 30408,

IT IS HEREBY ORDERED that said Decision No. 43244 be and hereby is affirmed and that the petition of Whittier Water Company, requesting a modification of said decision, be and hereby is denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 1st day of November, 1949.

R. E. Indurain

Justin J. Cullen

John H. Luce

Harold P. Kile

Penelope Pottier

Commissioners.