

ORIGINAL

Decision No. 44929

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF COVINA,  
a Municipal Corporation,

Complainant,

vs.

SAN JOSE HILLS WATER COMPANY,  
a Corporation,

Defendant.

Case No. 5230

Trent C. Anderson and Dailey S. Stafford, for complainant; Gordon E. Knapp, by Wyman C. Knapp, for defendant; Edgar Skelton, for San Gabriel Valley Water Company, interested party.

O P I N I O N

Complainant herein is a municipal corporation of the State of California, being a city of the sixth class. It maintains and operates a water system, supplying water to residents of the City of Covina, as well as to a service area outside the city limits, including certain parts of the County of Los Angeles and the City of West Covina.

The complaint alleges that in the service area of complainant there is a tract of approximately eighty (80) acres, bounded by Azusa Avenue on the east, Workman Avenue on the north, Lark Ellen Avenue on the west, and State Highway 99 on the south,

which tract of land has been subdivided into approximately 288 residential lots. While complainant has pipes in the area, they are not sufficiently large to serve the aforescribed tract, and, as a result of inquiries from the subdivider of the tract with respect to the possibilities of providing such service, complainant proceeded to place advertisements in the local newspaper for bids to install a ten-inch pipe to the subdivision. Shortly after the placing of such advertisements, defendant, a public utility water system, allegedly without authority from this Commission, commenced installation of pipes to connect the aforescribed tract to the water system of defendant.

Complainant requests that defendant be required to cease and desist such activities.

Defendant's answer admits the installation of pipes to the tract as alleged in the complaint, but contends that such extension is one contiguous to defendant's presently certificated system, and into territory not theretofore served by a public utility of like character.

A public hearing was held at Los Angeles on October 16, 1950, before Examiner Syphers, on which date evidence was adduced and the matter was submitted.

At the hearing evidence was presented by the superintendent of the water department of the City of Covina, describing the existing water facilities of the City of Covina in and around the tract in question. Exhibit 2 is a map showing the principal water mains and the size of the pipe used in the water system

of the City of Covina. Likewise, this exhibit shows the location of the present customers in and around the area constituting the tract here under consideration. The city has a four-inch main along Garvey Boulevard on the southerly side of the tract, two-inch mains along Lark Ellen Avenue and Azusa Avenue, the westerly and easterly sides of the tract, and a two-inch main on Rowland Avenue, the first street north of Workman Avenue which is the northerly boundary of the tract. However, it was conceded that these facilities are not adequate to provide satisfactory water service to this tract.

It is the proposal of the city to install a ten-inch main along Workman Avenue between Citrus Street and Azusa Avenue, and it is from this proposed main that the city intends to furnish service to the tract in question.

Exhibit 3 is a map showing the master plan of the proposed development of the water system of the City of Covina. This map was prepared in the early part of 1948, and one of the city's witnesses testified that it was contemplated in 1947. This map shows that the proposed ten-inch main along Workman Avenue is part of the master plan.

According to the testimony, representatives of the housing tract contacted representatives of the City of Covina with regard to water service on two occasions, the first being some time in or prior to June, 1950, and the second in July, 1950. As a result of these two meetings, the City of Covina advertised for bids to construct the ten-inch main, and placed a firm order for the necessary pipe. However, the president of

the Shaw Construction Company, which company is the subdivider of this tract, testified that the proposal of the City of Covina was not satisfactory, in that the construction company would be required to pay the cost of installing all pipes and connections within the tract, and, likewise, would be required to advance the cost of installing the ten-inch main. This latter cost, or part of it at least, presumably would be returned to the subdivider at some future date.

Because of these costs, the subdivider then made arrangements with the defendant company, which arrangements are set out in a contract, a copy of which was introduced in evidence as Exhibit 4. Under the terms of this contract the subdivider is to pay for the initial cost of installing the pipes and connections within the tract. However, this cost is to be refunded to the subdivider by the water company over a ten-year period.

The testimony further shows that the defendant, San Jose Hills Water Company, as a result of the contract with the subdivider, has installed eight-inch pipe between the nearest point in its existing water facilities and the corner of the tract here in question, at the intersection of Garvey Boulevard and Lark Ellen Avenue, a distance of approximately 2,100 feet, and also has continued this eight-inch pipe along Lark Ellen Avenue between Garvey Boulevard and Workman Avenue. Furthermore, there are now being installed six-inch mains within the tract. The subdivider has put up \$28,000 for the purpose of installing these mains in the tract, and the defendant water company has borne the cost of the eight-inch main.

Exhibit 5 is a map showing the service area of the defendant company, together with the extension now being made to the tract. This exhibit also shows the city limits of the City of Covina and the limits of the City of West Covina in the area concerned. It should be pointed out that the tract here under consideration is in the City of West Covina.

Exhibit 6 is another map showing the pipes which have been installed by the defendant company along Lark Ellen Avenue, and also the pipes which have been installed in the tract, together with a designation of the places where pipes are proposed to be installed.

Exhibit 7 is a comparison of the water rates in the West Covina area of the defendant company, and those of the City of Covina, an analysis of which shows that the charges of the City of Covina in this area are slightly higher than those of defendant company.

Additional testimony was presented by the mayor of West Covina, indicating that it was the desire of the City Council of that city to have the service of both complainant and defendant in the area, and Exhibit 8 is a copy of Ordinance No. 199 of the City of West Covina, granting a franchise to the defendant company to operate a water system within the city limits of that city. Further testimony indicated that the City Council of West Covina has extended or will extend the franchise areas of all water companies operating within the city to embrace the entire city of West Covina.

The defendant company presently conducts operations in the area concerned under Decision No. 40838, dated October 21, 1947, on Application No. 28412. It was admitted by all parties concerned that the defendant company has not received authority from this Commission to install the extension along Lark Ellen Avenue and to serve the tract here under consideration. However, it was contended by defendant that such authority is not necessary, under the provisions of Section 50 (a) of the Public Utilities Act of California, the pertinent portion of which states that a certificate of public convenience and necessity is not required for a utility to make an "extension into territory either within or without a city or county, or city or town, contiguous to its ... line, plant, or system, and not theretofore served by a public utility of like character ..."

After thoroughly considering all of the evidence in this case, we are of the opinion, and hereby find, that the defendant, San Jose Hills Water Company, does not have authority to extend its service into the tract in question. This tract cannot be considered as contiguous to the existing "line, plant, or system" of the defendant company. The distance between them at the nearest points is 2,100 feet. The intervening area is in no way connected with the tract and is entirely different, being agricultural, whereas there are now being constructed 287 houses on this eighty-acre tract.

While we are aware of the evidence and contentions of the parties in this case, we do not believe that this proceeding is the proper place to make a determination of the

respective merits of the services offered by defendant company and the City of Covina. If there be a need for the services of the defendant in the area here under consideration, such a need should be determined in a proper proceeding. That defendant is aware of this is shown by the testimony of defendant's president that an application for a certificate of convenience and necessity in the area is now being prepared. That there is an issue here is indicated by the contention of the City of Covina that it is ready, willing, and able to serve the area. The proceeding before us is one requesting a cease and desist order, and must necessarily be limited to a determination as to whether or not the defendant has properly entered the area. We believe it has not, and, therefore, the cease and desist order will be granted.

According to this record, the houses in the tract are now under construction and not occupied as yet. Therefore, it appears that no member of the public will be deprived of water service as a result of this holding.

O R D E R

A complaint and answer thereto having been duly filed, a public hearing having been held thereon, and the Commission being fully advised in the premises,

IT IS ORDERED that the San Jose Hills Water Company shall cease and desist, unless and until it secures from this Commission a certificate of convenience and necessity therefor, from constructing service extensions for the purpose of serving

water, or from furnishing water service in the following area:

The tract consisting of approximately eighty (80) acres in the City of West Covina bounded by Azusa Avenue on the east, Workman Avenue on the north, Lark Ellen Avenue on the west, and State Highway 99 (Garvey Avenue) on the south.

The secretary is directed to cause to be served upon the San Jose Hills Water Company a certified copy of this order.

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

Dated at Los Angeles, California, this 24<sup>th</sup> day of October, 1950.

R. Z. [Signature]  
Justus F. Querner  
[Signature]  
Harold H. [Signature]  
[Signature]  
COMMISSIONERS