

ORIGINAL

Decision No. 45278

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
SAN GABRIEL VALLEY WATER COMPANY for)	Supplemental
a certificate of public convenience)	Application No. 30617
and necessity in territory adjacent)	To reopen and amend
to its Whittier District.)	Decision No. 43857.

McIntyre Faries and Edgar Skelton, for applicant.
Kenneth K. Wright, for Pico County Water District, protestant.

O P I N I O N

By this supplemental application, dated June 16, 1950, San Gabriel Valley Water Company seeks to reopen proceedings in Application No. 30617, and set aside Decision No. 43857 as it pertains to Tract No. 15662, and also requests a certificate of public convenience and necessity authorizing it to operate as a public utility water corporation in said Tract No. 15662 and in Tract No. 16534 and Tract No. 16765. By Decision No. 44555 the Commission denied the supplemental application in so far as it pertains to Tract No. 15662.

With regard to the request for a certificate authorizing extensions of service to Tracts Nos. 16534 and 16765, said Decision No. 44555, dated July 18, 1950, contains a statement that such request is consistent with Decision No. 43857. As a consequence, the matter was set for hearing as to said latter two tracts.

Public hearing was held in Los Angeles before Examiner Rowe, on August 22, 1950. Evidence, both oral and documentary, was adduced and the matter was duly submitted for decision.

The land constituting, as well as that surrounding, Tracts Nos. 16534 and 16765, has, for several years, been the subject of recurring litigation between applicant and Pico County Water District in matters pending before the Commission, whereby applicant has attempted from time to time to serve portions of this area. It was stipulated by the parties at the hearing that Tract No. 16534 and Tract No. 16765 are located within the boundaries of the district, as determined by Commission decision rendered in 1939⁽¹⁾. Both tracts constitute territory now being partially served by Pico County Water District. The district's general manager and secretary testified that two residences are now being served, and have been served in Tract 16534 for the last eighteen years. Likewise, in Tract No. 16765 the district is now, and has been for sixteen years, serving three residences with domestic water.

By Decision No. 43302, dated September 13, 1949, in Case No. 4989, on complaint of Pico County Water District, applicant herein was ordered to cease, desist, and refrain, unless and until it secures a certificate of public convenience and necessity therefor, from serving lands in the 1939 district boundaries, with certain exceptions not here pertinent.

(1) Decision No. 32390, dated September 26, 1939, on Application No. 21250.

The land now embodied in Tracts Nos. 16534 and 16765 was sought to be served by San Gabriel Valley Water Company in the original Application No. 30617. By Decision No. 43857, rendered February 21, 1950, applicant was granted a certificate which authorized service within the boundaries of the district as to all land which the district was not then serving. As to all land within the district which was then being served with water by said district, applicant's request for a certificate was denied.

Since the rendition of said Decision No. 43857 there have been no material physical changes in this area. The only noteworthy change is that the land constituting these tracts has been sold to new owners for purposes of subdivision. Fairfield Homes, Inc. has acquired Tract No. 16534. A representative of that corporation testified that he had dealt with applicant in other areas, that the relationship with the San Gabriel Valley Water Company had been pleasant, and that he wished to have it serve his company in said tract also. However, this witness conceded that his primary concern was that of obtaining efficient water service to the homes in said tract.

A witness, representing the Melita Corporation, purchaser of Tract No. 16765, also expressed a preference for applicant's water service. He described his reluctance in dealing with the protestant district, and gave for his reason the fact that he had been unable to get the president of the district to release an easement for water pipes over the

tract which the president personally owned. This gentleman admitted that he had made no money offer for the requested release. The principal relevant objection expressed by this witness to dealing with the district was that the district required a deposit of \$10,047 for constructing water facilities in the tract, while applicant had offered to make the installation for approximately \$5,490. This gentleman, however, conceded that he had made no inquiry and had no knowledge of what type of pipe or material was proposed to be used by either applicant or the district. From testimony of other witnesses it appears that applicant was bidding on steel pipe and the district on transite pipe. Both, under their rules, would refund the deposit to the subdivider over a ten-year period out of revenues from the tract, applicant at the rate of 35% of such revenues and the district at the rate of 65% of such revenues.

This apparent disparity in costs cannot be given conclusive weight by the Commission in view of the fact that the Melita Corporation has not even investigated the materials to be used in order to determine whether the offer of the district is improper. Had the subdivider, after investigating the matter of proper costs of installation, requested reasonable and proper modifications of the district's offer, and been improperly refused relief by the district, a quite different situation would be presented. As it is, however, the Commission, upon the present record, is not in a position to determine that the district's treatment of Melita Corporation is other than proper.

Pico County Water District is a duly constituted public agency of the State of California, created to carry out the public purpose of distributing and selling water therein. The district presently has a four-inch main adjoining each of said two tracts, and proposes to install an additional six-inch main along Durfee Avenue to supplement the available water in this area. This installation is to be made with the district's own funds. Its determination of the kind, size, and quality of pipes required for serving customers in, and leading to, these tracts, and of the reasonable cost thereof, is presumed to be a proper exercise of its official duty in the absence of a clear showing to the contrary. No such showing has been made in this record.

The Commission is of the opinion that the mere preference of subdividers, who never expect to be customers of the water company, to deal with applicant instead of with the district, is, standing alone, an insufficient basis for the Commission to authorize the invasion of, and competition with, a public agency of the state, created for this express purpose upon the affirmative vote of the electors therein. In said Decision No. 43857 this Commission stated that conflicts for territory to be served by water utilities cannot be in the public interest when duplicating facilities and inferior service may result. This appears especially true where, as in this supplemental proceeding, applicant seeks, by means of a certificate of public convenience and necessity, to duplicate or supplant the existing water facilities of a duly constituted

state agency which, in the absence of complaint, must be assumed to be properly serving its customers in the area.

In territory such as that now under consideration, where lands within the boundaries of the district are presently being served by it, a privately owned public utility corporation, in order to receive a certificate of public convenience and necessity, must sustain the burden of proof that the district is either unable or unwilling to render a proper water service therein. Such showing has not been made in this proceeding. The application of San Gabriel Valley Water Company for a certificate authorizing it to serve water as a public utility in Tracts Nos. 16765 and 16534 will, therefore, be denied.

In view of our conclusions just stated, it becomes unnecessary to determine whether, as the district asserts, applicant, by its alleged violation of the Commission's restraining order in Decision No. 43302, dated September 13, 1949, in continuing to serve water to customers in Tract No. 15662, known as the Towar Subdivision, has lost all right to request relief from any other restraining provisions of such decision.

O R D E R

Public hearing having been held in the above-entitled proceeding, the matter having been duly submitted, the Commission being fully advised in the premises and having found the facts to be as set forth in the opinion hereinabove, and finding that the public convenience and necessity do not

require the issuance of a certificate of public convenience and necessity to applicant as requested,

IT IS HEREBY ORDERED that the supplemental application of the San Gabriel Valley Water Company, requesting the issuance of a certificate of public convenience and necessity to operate as a public utility water corporation within Tracts Nos. 16765 and 16534, be, and the same hereby is, denied.

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

Dated at San Francisco, California, this 16th day of January, 1950.

R. B. Anderson
Justus C. Green
Harold P. Hills
Herbert D. Pottel
COMMISSIONERS