

ORIGINAL

Decision No. 45365

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ray G. Isenberger and Frank Nutley,  
Complainants,

vs.

Case No. 5207

Pacific Gas and Electric Company,  
Defendant.

Ray G. Isenberger, in propria persona,  
and for complainants; Ralph W. DuVal  
and Frederick T. Searls, for defendant;  
G. Douglas Thompson, for Vacaville  
Chamber of Commerce.

O P I N I O N

Complainants Isenberger and Nutley, and seven others similarly situated, ask that defendant be required to extend the "present actual service area" of its Vacaville water system, pursuant to defendant's Rule and Regulation No. 15, Water Main Extensions, to include their premises and contemplated subdivisions located in an elevated area adjacent to Vine Avenue for a distance of approximately 6,000 feet north of the city limits of Vacaville. They also request that a construction company be permitted to build the water main and that "the defendant take over said main as per their policy, 'Rule and Regulation No. 15'."

Attached to the complaint is a copy of a purported agreement among the nine individuals which recites that they agree to pay their proportionate share of the cost of a water line from defendant's main to the northern end of Vine Avenue, provided such cost does not exceed \$1.55 per foot for 4-inch transite pipe and \$700 for booster facilities, alleged to be the sums bid by a contractor for the installation.

Defendant alleges, in substance, that complainants do not qualify for service under Rule and Regulation No. 15, since they are not within the company's "actual water service territory"<sup>(1)</sup> nor do their premises constitute a real estate subdivision, tract or housing project permitting construction of mains by a contractor as contemplated by the rule in such cases. Defendant further alleges that its water supply in Vacaville is no more than sufficient to meet the needs of customers "within its present service area" and therefore it has discontinued the practice of permitting persons outside such area to connect their own distribution systems to its mains, as had been done in a few instances in the past. Defendant also asserts that provision of an increased water supply to furnish adequate quantities of water for such additional connections to its Vacaville system would entail a large capital outlay with only an insignificant increase in gross revenues. Other defenses raised by the answer are that the complaint does not state facts sufficient to constitute a cause of action or complaint; that, under the circumstances, complainants are without lawful right to demand or receive service and the Commission is without lawful authority to require it.

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(1) Defendant claims that its obligation to render water service in and in the vicinity of Vacaville is limited to the areas indicated on a map filed with the Commission on April 26, 1950, as supplemented by a further map filed October 18, 1950. (P. G. & E. Co. Advice Nos. 31-W, 32-W.)

The case was submitted at a public hearing held November 9, 1950, at Vacaville before Examiner Gregory. Another complaint against the company, also relating to water service in the vicinity of Vacaville, was heard jointly with the instant case. The issues there raised were disposed of by a separate decision. (Decision No. 45312, January 30, 1951, Case No. 5227).

The evidence shows that in January, 1950, the residents along Vine Avenue met with complainant Isenberger to devise a plan to obtain water service from defendant in order to subdivide and sell their lands. Isenberger and Nutley, representing the group, then discussed the problem with the company's Vacaville officials, at first on the basis of connecting their own distribution lines to the company's main and receiving water through one meter, and two months later, after receiving a bid from a contractor to install a 6,000 foot 4-inch transite pipe line and booster facilities for \$9,300, on the basis of the contractor doing the work and the company taking over the line, as complainants believed was contemplated by paragraph (B) of the company's extension rule. These discussions, it appears, were purely preliminary. On April 26, 1950, the company filed with the Commission its Advice No. 31-W, with a map purporting to limit its service area in and in the vicinity of Vacaville, and at about that time the local officials informed complainants that nothing further would be done until a ruling could be secured from the Commission. A short time thereafter, at a meeting in San Francisco with company officials, complainants were informed that their request for service would be denied. This complaint followed.

The record shows that complainants' lands, ranging from about 5 to 35 acres per parcel, lie in hilly terrain along both sides of Vine Avenue at distances of from approximately 3,000 to 7,500 feet north of the northerly city limits of Vacaville.

Three of the nine complainants plan either to build homes or remodel existing structures. Most of them bought their land several years ago and would like to subdivide for residential purposes if assured of an adequate water supply, not now obtainable from wells. No subdivision plans, however, have yet matured. The evidence indicates that while complainants may be willing to advance the cost of construction of a water line and booster facilities, at least to the extent contemplated by the bid received by them early in 1950, there exists among them some difference of opinion as to assumption of responsibility for operating their own distribution facilities and for assuring payment of water bills among themselves or on behalf of others who might later become customers.

The evidence shows that the territory in which the company claims the right to render water service in and near Vacaville, with few exceptions, lies within the city limits. Counsel for defendant stated that while the company would give consideration to supplying water service to any annexed areas, it would also have to consider the effect of such expansion on the water supply available for present and prospective customers within the city. The record does not indicate whether or not the city has plans for annexation of the area in which complainants' lands are located.

A description of the facilities comprising defendant's Vacaville water system, the actual and estimated results of its operation, and an estimate of the cost of installation of a water pipe line and booster pump to serve complainants' premises, were placed in the record by operating officials of the company. These facilities include the original system, purchased from a predecessor in 1928; 5 producing wells located at distances varying from one-half mile to a mile and a half east of the city; approximately 80,000 feet of cast iron and transite transmission and distribution pipe ranging from 12 inches to 2 inches in diameter; and a 375,000 gallon steel

tank located on a hill in the town, used for peak storage, adjacent to which is a small pressure system to serve several customers in the immediate vicinity of the pressure tank.

The record shows that as the city has grown the company has experienced considerable difficulty in securing an adequate supply of water from its wells. The original wells were sunk to a depth of about 400 feet. Later wells are at a depth of about 700 feet. One of the original wells caved in and has been abandoned. Another well, located in a new field east of the original wells, discharges large quantities of sand. During several days of hot weather last summer, peak demands exceeded the total pumping capacity of all the wells and caused a drop of from 100,000 to 150,000 gallons in the main storage tank. The superintendent of the company's water systems testified he anticipated that further additions to the Vacaville system would have to be made in order to supply even the present service area.

Operating statements of the Vacaville water system for the years 1945-1949 and an estimated statement for 1950, summarized, indicate as follows:

(Defendant's Exhibit No. 4)

	<u>1945</u>	<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>
Operating Revenues	\$38,188.85	\$36,455.80	\$29,521.22	\$36,667.37	\$43,315.58
Operating Expenses	24,905.80	26,146.31	26,600.26	31,143.58	37,898.46
Net for Return	13,283.05	10,309.49	2,920.96	5,523.79	5,417.12
Fixed Capital	249,716.94	303,566.83	313,745.74	367,290.46	430,104.82
Rate of Return	5.3%	3.4%	.9%	1.5%	1.3%
Avg. Number of Customers	625	636	679	770	857
Avg. Revenue per Customer	\$36.40	\$40.52	\$39.03	\$38.69	\$41.31

(Defendant's Exhibit No. 5)

1950 Estimate

Operating Revenues (a)	\$ 46,000
Operating Expenses (b)	38,350
Net for Return	7,650
Cost of Properties Plus Working Capital	463,505
Rate of Return	1.65%

- (a) Nine months actual and 3 months estimated.  
 (b) Eight months actual and 4 months estimated.

Defendant's rate engineer estimated that the cost to the company of installing 6,000 feet of 4-inch transite pipe, a pumping plant, services and meters, to supply only the nine complainants would amount to \$20,957 at November, 1950 prices; that not more than \$400 annual revenue could be expected from the extension under present conditions; and that the estimated revenue would not be sufficient to cover operating costs let alone interest on the investment. Other evidence of record makes it clear that if the lands were subdivided and new residents should demand water, the installation contemplated by present cost estimates would require substantial enlargement.

Complainants contend, in essence, that defendant should not be permitted to circumscribe the territory in which it offers to supply water from its Vacaville system so as to deny service to

those who may be situated near the city but outside the company's purported service area. They maintain that they are entitled to have service along Vine Avenue, either by means of an enlargement of the company's presently claimed territorial limits and installation of a main, pumping plant, and individual services by the company, or, in the alternative, by means of facilities to be installed by a contractor, at their own expense but subject to the company's approval, to be connected to the company's main in Vacaville and with water to be supplied through one meter.

Defendant takes the position that by filing its Vacaville service area map as part of its published tariff schedules it has thereby placed a limit upon the territory in which it offers to supply water in that community and its environs; that its water supply is no more than sufficient to meet the needs of present and prospective customers within that area irrespective of whether it or complainants construct the requested facilities; that complainants do not qualify for service under any provision of Rule and Regulation No. 15 and especially not under paragraph (B) of the rule, relating to extensions to serve real estate subdivisions, tracts or housing projects; and, finally, that installation by the company, or by a contractor, of facilities of the size and scope envisaged by this record would be uneconomical for the company under present conditions and impracticable in any event if those conditions were to change as a result of complainants' plans to subdivide and sell their land.

We recognize that complainants are confronted with a perplexing problem, which stems not only from their geographical situation with reference to defendant's water system but also from the economic and physical facts of record which tend to limit defendant's ability to augment its water supply and extend its facilities to serve otherwise desirable customers. We are not to be understood as implying, however, that we consider the filing by defendant of its

Vacaville water service area map as a final or conclusive circumscription of the limits within which it is obligated to render water service in and in the vicinity of Vacaville. The limitations of the present record preclude any such definitive determination. Nor do we deem it necessary to a disposition of this case to pass upon the question of whether or not complainants qualify for water service under one or another of the provisions of defendant's extension rule, although the evidence in that connection suggests that they do not.

The Commission, on numerous occasions, has considered the question of extension of public utility water service to premises which lie close to existing facilities as well as to those located in more remote territory, and has uniformly applied the rule of reasonableness in reaching its determinations. In our opinion, there is no need to look for a different standard to apply to the facts of record here. Complainants stress that their primary purpose in seeking relief is to enable them to attract purchasers of lots who would otherwise not be interested unless assured of an adequate supply of water. Although some of the complainants who live on Vine Avenue appear to have had difficulty, at times, in securing from their wells all the water they desired for domestic purposes, the record indicates that such condition may be due, in part, to the general scarcity of water in the hilly area in which their lands are located and also to lack of adequate conservation of whatever water there may be. The record, however, is devoid of any evidence of what might be termed an emergency health problem due to lack of water in the area in question.

We have considered the evidence in this case and have reached the conclusion that it would be unreasonable, under the circumstances, to direct defendant to extend its facilities for a



distance of over a mile along Vine Avenue, as required in order to reach all of complainants' premises.

The complaint will be dismissed.

O R D E R

Public hearing having been held herein, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that the complaint herein be and it is hereby dismissed.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of February, 1951.

*[Signature]*  
*Justice F. C. [Signature]*  
*[Signature]*  
*[Signature]*  
Commissioners.