Decision No. 45950

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

HILLIS HUBBARD, Complainant,	)	
vs.	)	Case No. 5261
CALIFORNIA WATER SERVICE CO., Defendant.	)	

Hillis Hubbard, in propria persona;
McCutchen, Thomas, Matthew, Griffiths & Greene, by G. A. Blackstone and Robert M. Brown, for defendant.

O P I N I O N

Complainant owns and operates a water distribution system in Devonshire Hills, San Mateo County, serving some 12 users located in about 300 acres of hilly terrain approximately one mile west of defendant's existing facilities in San Carlos. He requests an order directing defendant to supply water to these premises, as well as to his own property in the area, now served by him allegedly as an accommodation.

Defendant, by its answer and also by a motion made at the hearing, asks that the complaint be dismissed. Defendant asserts that it has not undertaken to serve within the area in question, that no consumer in the area has ever made application for service in accordance with defendant's rules and regulations, and that the cost of furnishing such service would greatly exceed prospective revenues. Defendant further alleges that complainant himself is rendering a public utility water service.

The case was submitted at a public hearing held before Examiner Gregory at San Carlos on May 21, 1951.

The record shows that California Water Service Company, in 1940, acquired the water system formerly operated by Sierra Water Service Company in and near San Carlos, the service area of which, according to a map filed in that proceeding, extended westward to include the locality in which service is now requested. (43 CRC 161) A portion of the order in that proceeding reads as follows:

> "IT IS HEREBY FURTHER ORDERED that California Water Service Company shall, . . . extend water service to the area for which it is herein granted a certificate of public convenience and necessity at the rates and subject to the rules and regulations governing service by California Water Service Company in the Town of San Carlos" (43 CRC at p. 164)

Defendant's water main extension rule (Rule and Regulation No. 19) sets forth the conditions under which the company will undertake to extend its facilities to serve various classes of consumers. In general, the rule provides for extensions to serve one or more applicants; for extensions to serve subdivisions, tracts or housing projects; and for exceptional cases, when application of the provisions of the rule appears impracticable or unjust to either party. In the latter case, the company or the applicant may refer the matter to the Commission for special ruling, or for the approval of special conditions mutually agreed upon. Extensions in excess of a free footage allowance of 100 feet require an advance deposit by the applicant of the estimated installed cost of the necessary facilities. The deposit is refundable under other provisions of the rule.

The complaint does not allege, and the evidence fails to show, that complainant or any of the dozen users in the locality served by his facilities has ever made application to the company for water service in accordance with its applicable rules and regulations on file with the Commission. Complainant's own testimony is to the effect that he desires to be rid of his water distribution facilities and that he has not asked the company to extend service in any manner except by means of acquiring and operating his system. The company takes the position, in addition

to its other defenses, that it cannot be forced to accept complainant's system and that it would not take it in any event since the installations and their locations do not conform to its standards.

It is clear that this case is one falling within the provisions of Rule and Regulation No. 19 having to do with unusual circumstances, and we will therefore proceed to examine the matter upon its merits.

The evidence shows that, since February 28, 1941, defendant has supplied water through a single meter, at a point near its 50,000 gallon concrete reservoir on Club Road, to a succession of individuals, culminating with complainant, who in turn have used the water for a variety of purposes in the area west of defendant's present facilities, including the locality in question here. The first of such consumers was the Devonshire Country Club. From the close of 1942 to July, 1945, the United States Army occupied the area for use as a war dog-training center, reconstructed the distribution facilities, and received water service from defendant through a 3-inch meter at a point about 33 feet west of the westerly end of the Club Drive reservoir. Between July 27, 1945, and the present time, except for a short period prior to 1948, complainant, who owns a 21-acre dude ranch in the area but who has lived on his ranch in Shasta County for the past three years, has undertaken to supply water to the premises of his neighbors by means of the facilities reconstructed by the Army. All water service is metered and there are two meters on the premises owned by complainant.

Prior to selling his dude ranch and water system in 1947 or 1948, complainant made no charge for water nor did the new owner for the first year or so. In 1950, complainant reacquired the

property and continued to supply water to the dozen or so residents on the ridge who had established homes there during the past four years, some in reconverted barracks formerly occupied by the Army. An arrangement has been in effect among the users and complainant for proration of the water and power bills on the basis of usage of water.

The record shows that in 1947 complainant discussed informally with the Commission's staff the problem of water service in the locality in question and that, in September, 1950, after repossessing his properties, he filed an application seeking a certificate of public convenience and necessity to sell water to his neighbors. The application was later dismissed without prejudice at applicant's request. (Dec. No. 45310, Jan. 30, 1951, Appl. No. 31791.) Again, in February, 1951, shortly after filing the instant complaint, complainant mailed to the company a request for service on behalf of himself and the other users. The evidence does not reveal what disposition the company may have made of the request, although it could be inferred that its position would be no different from that assumed in its answer to the formal complaint.

Testimony from the company's vice president indicates that while no request for service in accordance with Rule and Regulation No. 19 has been received from any one located in the area in question, preliminary discussions have been had between the company and an adjacent landowner concerning a subdivision development on his property north of the locality in which complainant and his neighbors now seek service.

Complainant's facilities consist of a booster pump, operated by a 50 horsepower motor, and a pump house on Club Drive; approximately 11,000 feet of transmission and distribution pipe ranging from 6 inches to 3 inches in diameter; a 25,000-gallon

elevated wooden tank on the ridge together with connected valves, fittings and other appurtenances. Service to all but three premises along the ridge is made from the line leading up to the 25,000-gallon tank. The other three premises, consisting of two residences and a dance hall, are served from a line leading from the tank. Most of the 3,850 feet of 6-inch pipe from the booster facilities on Club Drive to the 25,000-gallon tank on the ridge lies across open country. Complainant testified he possessed a written, unrecorded easement for a right of way to cross the intervening land.

The evidence establishes that defendant has not rendered water service west of its Club Drive reservoir, which is located at an elevation of 556 feet, except to complainant and his predecessors at a master meter. The ground level of complainant's elevated tank is 840 feet. The terrain between the two elevations is rough and steep. The area on the ridge is fairly flat, and is confined on the west by properties of the San Francisco Water Department and on the north and south by the Valerga lands. Valerga is the individual who has had discussions with defendant concerning a subdivision on his property north of the ridge.

Defendant estimated that it would cost about $6,000 to provide the facilities considered by it to be adequate to bring water from the present western terminus of its system to complainant's elevated tank. The average monthly billing for service to complainant at the Club Drive meter is approximately $32. Estimated monthly billings to individual consumers, if the company were to render service directly, would amount to a minimum of $1.65 per consumer at the present San Carlos system rate, or a total estimated monthly revenue of about $17 based upon present usage. The total cost per month of providing service, including depreciation, was

estimated to be $80. There appears to be little prospect in the near future of general residential development in the area in question, aside from the nearby subdivision which is still in the stage of rough plans.

Defendant's counsel, arguing the motion to dismiss, urged the Commission to consider and apply the rule of reasonableness in the disposition of this complaint. He also stressed the failure of complainant and the other property owners to follow the company's rules and regulations in their attempts to secure water service. He further stated that the company would be willing to extend service, in accordance with its filed rules and regulations, to any one within the service area shown on the map in evidence.

Complainant frankly stated that he wanted to be rid of his water system and would sell it for whatever price might be mutually agreed upon. He did not follow through with his application for a certificate, he said, because he became convinced that such a small scale, independent operation by him of a public utility would entail too great a financial burden.

Based upon the facts set forth above, we conclude that this record will not support an order granting to complainant the relief he seeks.

Should persons now receiving water service through Hubbard's facilities desire to be served directly by the California Water Service Company, the filed rules of the utility set forth the procedure under which such service may be obtained. If such applications are received, the company may then be in a position to consider acquisition of complainant's system.

O R D E R

A public hearing having been held upon the complaint of Hillis Hubbard herein, evidence and argument having been received and considered, the matter having been submitted for decision and the Commission now being fully advised,

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

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

Dated at San Francisco, California, this 17th day of July, 1951.

Commissioners.