

**ORIGINAL**

Decision No. 50891

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROLAND C. PIERCE, )  
 )  
 vs. Complainant, )  
 )  
 POMONA VALLEY WATER COMPANY, a )  
 corporation, and PAUL GREENING, )  
 )  
 Defendants. )

Case No. 5550

RICHARD S. MILLER, )  
 )  
 vs. Complainant, )  
 )  
 POMONA VALLEY WATER COMPANY, a )  
 corporation, and PAUL GREENING, )  
 )  
 Defendants. )

Case No. 5551

David J. Keily, and Gordon, Knapp & Gill by  
Hugh Gordon, attorneys, for complainants.  
Harold E. Prudhon, attorney, for defendants.  
Roy E. Sutherland, for the Commission staff.

O P I N I O N

Roland C. Pierce,<sup>1/</sup> an individual, owner and subdivider of Tract No. 3193, San Bernardino County, and Richard S. Miller,<sup>2/</sup> an individual, and consumer, filed the above-entitled complaints on May 24, 1954 against Pomona Valley Water Company, a corporation, and Paul Greening, the majority stockholder and operator of the defendant corporation.

Public hearings in these matters were held on a consolidated record before Examiner Stewart C. Warner on October 18 and

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<sup>1/</sup> Hereinafter referred to as Pierce.  
<sup>2/</sup> Hereinafter referred to as Miller.

19, 1954 at Los Angeles. The matter was submitted on the latter date subject to the filing and receipt of briefs on or before November 19, 1954, and subject to a motion by defendants that Paul Greening be eliminated as defendant.

Ruling on the Motion to Eliminate Paul Greening as a Defendant.

The record shows that defendant Paul Greening acquired all of the stock of Pomona Valley Water Company<sup>3/</sup> from its former proprietor and operator, Mrs. Clara Blum Bartlett, in June 1953. There are no other stockholders and the record discloses no stockholders' liability by which Paul Greening should be named as a defendant party to these proceedings. No evidence supports any personal liability of Greening for the matters and things in said complaints alleged. The complaints will be dismissed as to the defendant, Paul Greening.

ALLEGATIONS AND RELIEF PRAYED FOR

Allegations of Complainant Pierce

The complainant Pierce alleges as follows:

1. That on or about January 13, 1947 he purchased what is now known as Tract No. 3193;<sup>4/</sup> which is immediately adjacent, and contiguous on the south, to the service area of the company.

2. That he deposited in escrow<sup>5/</sup> a letter<sup>6/</sup> from the company's predecessor in interest signed by Gordon Bell as trustee in which Bell assured Pierce that Tract No. 3193 was within the company's service area and in which Bell promised and agreed to provide water service to any lot owner.

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<sup>3/</sup> Hereinafter referred to as the company.

<sup>4/</sup> Exhibits Nos. 2 and 10 are maps of Tract No. 3193 containing 60 lots, and Exhibit No. 8 is a photostatic copy of a grant deed dated January 22, 1947 from Gordon Bell, et al., to Pierce and his wife covering said tract.

<sup>5/</sup> Exhibit No. 4 is a photostatic copy of escrow instructions in Escrow No. 48594-S and description dated January 13, 1947.

<sup>6/</sup> Exhibit No. 3 is a photostatic copy of a letter dated January 22, 1947 from Pomona Valley Resort Co. (Water Dept.) to Pierce from Gordon Bell, Trustee, together with a postscript to Pioneer Title Insurance and Trust Co., San Bernardino, California, signed by Roland C. Pierce and Mrs. Alice Pierce.

3. That in reliance upon Bell's assurance and promise, Pierce subdivided Tract No. 3193 into residential lots.

4. That on or about August 11, 1947 Pierce was orally advised and promised by Bell that if he, Pierce, would install a certain specified water system within the tract, Bell, acting for Pomona Valley Resort Company, Water Department,<sup>7/</sup> an association, would accept the water system as part of its water system and would maintain said system and provide public utility water service through its pipelines.

5. That in reliance upon Bell's oral promises, Pierce caused a water system<sup>8/</sup> to be installed, and that it was accepted by Bell on or about September 10, 1947 as part of the utility's water system.

6. That in or about April, 1949, the company's predecessor in interest commenced to provide public utility water service to one Richard S. Miller, purchaser and owner of Lot 27 in Tract No. 3193, and that such service has been provided continuously since that time.

7. That the company has failed to maintain the water system in the tract pursuant to its promise so to do and has allowed the water system in the tract to fall into a condition of disrepair, making it impossible for the company to provide proper public utility water service thereto.

8. That the company refuses to provide water service to lots in the tract other than Lot 27, and that it has announced that it will not provide public utility water service to lots in the tract other than Lot 27, unless Fierce at his own expense replaces the

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<sup>7/</sup> A predecessor of defendant.

<sup>8/</sup> Exhibit No. 9 is a copy of an agreement dated August 14, 1947 between Ray Sanders Co. and Pierce covering the installation by said company of the proposed water system.

present system of pipes in the tract and transfers the title thereto to the company.

9. That Pierce is the owner of substantially all of the remaining lots in Tract No. 3193,<sup>9/</sup> but that due to the condition of the water system therein prospective purchasers of Pierce's lots have refused and continue to refuse to purchase said lots.

Allegations of Complainant Miller

The complainant Miller alleges as follows:

1. That early in the year 1948 Miller became interested in purchasing Lot 27, Tract No. 3193, and inquired of the prospective vendor with respect to public utility water service to said lot and was shown a report of the State of California Division of Real Estate<sup>10/</sup> dated January 12, 1948 which indicated that the predecessor of the company was authorized to and would provide water service to any lot in Tract No. 3193 pursuant to the tariffs, rules and regulations then on file with this Commission, and that at that time water pipes connected to the company's predecessor in interest were laid in the public streets adjacent to Lot 27 through which the company's water was circulating.

2. That in reliance upon this report Miller purchased Lot 27 and applied to the company's predecessor for water service and the connection was made in or about April, 1949. Thereafter the company or its predecessors have provided Miller with public utility water service through its system of pipes in Tract No. 3193 at the rates and charges on file with this Commission.

3. That from April, 1949, to November, 1953, the company supplied water to Miller at a flat rate charge, and that on or about November 17, 1953 the company installed a meter on Lot 27 and thereafter charged Miller at the metered service rates. In

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<sup>9/</sup> Lot 33 has been sold by Pierce to a Mrs. Edwards (Tr. 134).  
<sup>10/</sup> Exhibit No. 7.

December, 1953, the company removed the meter from Miller's lot and installed it at a point outside of Tract No. 3193 at a considerable distance from Miller's premises.

4. That the company's water system in Tract No. 3193 is in such a condition of disrepair that it allows water to leak therefrom after it has passed through the meter but at points and places on the company's easement upon Miller's property, and that, as a result of the location of the meter, Miller has been required to pay for quantities of water not used or consumed by him.

5. That Revised Cal. P.U.C. Sheet No. 5-W of the company's tariffs provides that the consumer may elect metered water service but that Miller as a consumer does wish and elect to continue to receive the water at meter rates.

Relief Prayed For

Pierce requests an order requiring the company to repair and maintain its water pipes in Tract No. 3193 and to provide public utility water service to any and all persons in said tract who request the same.

Miller requests an order requiring the company to replace its meter upon Lot 27, and thereafter to continue to provide him public utility water service pursuant to the company's rates, charges, rules and regulations on file with this Commission.

EVIDENCE OF RECORD

The evidence of record includes two volumes of testimony comprising 248 pages and 13 exhibits. By stipulation, all prior applications and cases pertaining to the company or its predecessors and the testimony and exhibits of record in all proceedings therein were incorporated in the record in the instant proceedings by reference. Also the active, canceled, and superseded rates, rules and regulations of the company and its predecessors were incorporated in the record by reference.

General Information

Pomona Valley Water Company's predecessor, the Don Lugo Corporation, was declared to be a public utility corporation by Decision No. 37803, dated April 17, 1945, in Application No. 25834 and Case No. 4683 (45 C.R.C. 699). Thereafter, in 1946, Gordon Bell and associates acquired the water system properties and subsequently, in 1949, transferred them to Melville Rogers and his wife who, in turn, transferred them in 1951 to Clara Blum Bartlett, who formed the Pomona Valley Water Company and transferred the assets thereto in 1952. As noted hereinbefore, Paul Greening acquired the stock of the company in the summer of 1953.

Description of the Company's Water System

The present water system serves between 310 and 325 consumers in five tracts,<sup>11/</sup> not including Tract No. 3193. The total number of lots in the five tracts served is between 1,000 and 1,100.<sup>12/</sup>

After acquiring the stock of the company in 1953, Mr. Greening expended approximately \$95,000 for new pipeline installations and the replacement of the pump in the Pellissier well, the company's present source of water supply. These installations completely rehabilitated the company's water system and source of water supply, increased operating pressures throughout the water system to between 55 and 75 pounds per square inch, and practically removed poor service conditions which for many years had been brought to the Commission's attention, and which had resulted in numerous orders and actions by the Commission for the relief thereof.

The record shows that the Pellissier well, together with the operation of the hydropneumatic tanks, now provides the company's

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<sup>11/</sup> Tracts Nos. 1932, 2557, 2562, 2650 and 2576.

<sup>12/</sup> Exhibit No. 1 is a map showing the area served by the company.

present consumers with an adequate water supply at satisfactory operating pressures. The record further shows that an emergency source of supply is available from Rolling Ridge Ranch (owned by Greening) which supplied the company with water, without charge, during the period of the rehabilitation of the water system.

Discovery of the Water System in Tract No. 3193 and Miller's Water Service Connection by Mr. Greening

Mr. Greening testified that when he purchased the company's stock from Mrs. Bartlett he was unaware of the existence of any water system in Tract No. 3193, of any connection by the company thereto, or of any service to Richard Miller therein. He further testified that it was during the reconstruction of the water system that his workmen had discovered the connection to Tract No. 3193 at the southwest end of Los Serranos Road. No connection to the water system was found at or in the vicinity of the northeast end of said road. When the connection to the water system in Tract No. 3193 was discovered by him in November, 1953, and along with such discovery the service to Miller, he ordered the transfer of the meter from Miller's lot to a point outside the tract and within the company's service area.

Condition of the Water System in Tract No. 3193

The record shows that the water system in Tract No. 3193 is in poor condition and leaking badly. It is evident that adequate public utility water service through said system could not be rendered by the company.

Transfer of Title to the Pierce Water System to the Company or its Predecessors is not Indicated

The record does not indicate that any transfer of title to the water system in Tract No. 3193 or transfer of the easements to the properties in which the pipelines were laid was ever effected by Pierce to the company or its predecessors.

No Written Contract for the Installation of Water Mains According to the Company's Rules Pertaining to Subdividers' Water Mains Extensions Was Ever Executed

The record shows that no written contract was ever executed for the installation of pipelines in the tract, other than between Pierce and a pipeline contractor, or for the turning over of the water system to the company according to the company's then-filed rules and regulations. No contract was ever effected for outlining the refund terms by the company to Pierce for the acquisition of the Pierce water system in Tract No. 3193.

No Written Application for Water Service Was Ever Made to the Company by Pierce

The company's rules and regulations on file with the Commission in 1947 provided that applications for water service should be in writing. They also provided that refunds to subdividers should be on a footage basis rather than as a percentage of revenue which, the record shows, was the oral arrangement between Bell and Pierce. No such written application was ever made to the company by Pierce. ✓

No Application for Commission Approval of any Contract Between the Company and Pierce was Made

No application was ever made to the Commission for approval of any contract, either oral or in writing, between the company and Pierce. The company's then-filed rules provided that any contract which would deviate from the utility's regularly filed rules and regulations required Commission approval.

There is no Written Authority for Gordon Bell to Represent the Utility Either as Trustee or as Manager or to Commit the Utility to the Furnishing of Water Service to the Pierce Tract

The record shows that Gordon Bell made a representation to Pierce as "trustee" for a trusteeship which did not exist, and there is no written authority in the record authorizing Bell to



commit the utility to the furnishing of water service to Tract No. 3193. When the filing of such written authority was ordered it could not be produced.

Commission Records Do Not Indicate that the Water System Installation Costs in the Pierce Tract Were Included in Fixed Capital in the proceedings in Application No. 32463

It does not appear from available Commission records that the water system installation costs in the Pierce Tract were included in fixed capital of the company as of December 31, 1950 in the rate increase proceeding in Application No. 32463 which resulted in Decision No. 46181 dated September 11, 1951.

Public Utility Water Service Has Been Rendered to Miller Since 1949 and Monthly Bills Have Been Mailed to a P. O. Box Address

The record shows that the company has rendered public utility water service to Miller since 1949, and that water bills have been regularly mailed to Miller at a post office box. The record shows in Exhibit No. 5 that Miller's outstanding water bill as of the date of the hearings was \$283.84 and that one month's bill was \$87.68, all unpaid.

The Amount of Water Passing Through the Company's Meter for Miller's Service Has Been Excessive Considering Miller's Water Demands

It is not disputed that the amount of water passing through Miller's meter has been excessive when Miller's water demands for his household and on his premises have been considered. It is evident that leaks in the pipelines leading from the location of the company's meter to Miller's property, a distance of about 700 feet, have caused the meter to register excessive amounts of water usage.

FINDINGS AND CONCLUSIONS

Findings in Case No. 5550 (Pierce)

With respect to Case No. 5550, the Commission finds that although the utility's predecessors or a representative thereof may have made some oral commitments in 1947 for the furnishing of water service to Tract No. 3193, for the acceptance of a water system pipeline installation therein, and for the refunding of the costs of such installation to Pierce, such commitments were never confirmed in writing, were at variance with the utility's rules and regulations on file with the Commission at that time, and were never offered for approval to or approved by the Commission.

The Commission finds no evidence that title to the water system in Tract No. 3193 and easements for its installations has in fact ever rested with Pomona Valley Water Company or its predecessors in interest. Nor is there any evidence that any of the fixed capital costs of said water system have ever been entered on the company's books of account, either for purposes of sale or rate base or for any other purpose.

The Commission finds no just cause for requiring the company to replace and maintain the Pierce water system and finds further that to so require the company would not be in the public interest.

Based on this record, the Commission finds that at no time has the company or its predecessors in interest held itself out in writing according to its authorized rules and regulations to furnish public utility water service to the Pierce tract, other than to Lot 27 thereof upon the written application of the owner of said lot.

Conclusion Re Pierce Complaint

No valid grounds for complaint by Pierce against the company appear, and the complaint will be dismissed by the order which follows.

Findings in Case No. 5551 (Miller)

With respect to Case No. 5551, it is evident and the Commission finds that the company has furnished public utility water service to the complainant Miller since 1949 and accepted a written application for water service from him in that year. Having commenced rendering such service it cannot now cease as long as service is desired to be continued to Lot 27, Tract No. 3193.

Conclusion Re Miller Complaint

While the company's presently filed rules and regulations for water service extensions may not so provide, nevertheless equity dictates that, in view of the peculiar circumstances attendant to the initial water service connection to Miller's property, the utility should continue to furnish Miller water service in reasonable quantities. Further, the utility should estimate Miller's past due water bills on a normal usage basis and adjust said bills accordingly.

O R D E R

Complaints against Pomona Valley Water Company, a public utility water corporation, and Paul Greening, an individual, sole stockholder and operator of said corporation, having been filed by Roland C. Pierce, owner and subdivider of Tract No. 3193, San Bernardino County, and Richard S. Miller, an individual water service consumer, public hearings having been held, the matter having been submitted and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that the complaints naming Paul Greening as defendant be dismissed as to him.

IT IS HEREBY ORDERED that the complaint of Roland C. Pierce against Pomona Valley Water Company, defendant, be and it is dismissed.

IT IS HEREBY FURTHER ORDERED as follows:

1. That defendant Pomona Valley Water Company shall continue to provide public utility water service to Lot 27, Tract 3193, in accordance with its filed tariff schedules.
2. That defendant Pomona Valley Water Company:
  - a. Shall adjust Richard S. Miller's water bills for the months during which his bills were predicated upon a meter located outside Tract 3193 and not in the immediate proximity of his premises, in accordance with the procedure provided for adjustment of bills for nonregistering meters contained in Paragraph B 3 of Rule and Regulation No. 17 of the utility's filed tariff schedules.
  - b. Is directed to serve upon complainant Richard S. Miller and file with this Commission in this proceeding within thirty days after the effective date hereof a REPORT and PROPOSED BILL ADJUSTMENT setting forth the details of such proposed adjustment and requesting approval thereof by Supplemental Order.

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

Dated at San Francisco, California, this 21<sup>st</sup> day of DECEMBER, 1954.

*Arthur E. Miller*  
President

*Justus J. Casner*

*Benjamin D. Pottel*

*Deane Higgins*

*Paul L. Winter*  
Commissioners