

ORIGINAL

Decision No. 51966

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAMES BRITTON and HELEN BRITTON;
his wife,
Complainants,

vs.

Case No. 5617

SAN JOSE WATER WORKS, a Corpo-
ration,
Defendant.

Victor J. O'Neill, for complainants.
McCutchen, Thomas, Matthews, Griffiths & Greene,
by Robert M. Brown, for defendant.
George F. Tinkler, for the Commission staff.

O P I N I O N

Nature of Proceeding

Complainants filed this complaint on February 2, 1955, after defendant's refusal, following written demands, to provide water service from its Almaden pipeline to their new dwelling at 20745 Almaden Road, Los Gatos, California, situated on Lot 4, Mountain Retreat Subdivision.

Defendant, by its answer, asserts that it provides only limited emergency service, subject to individual written arrangements, from its Almaden pipeline, more than 20,000 feet of which is only two inches in diameter; that by June, 1953, more persons were attached to that line than could be adequately served; that defendant has never undertaken a general public utility service obligation in the area occupied by complainants and that no such obligation could be undertaken without large capital investment. Defendant requests dismissal of the complaint.

Public Hearing

Public hearing was held at San Jose before Examiner John M. Gregory on April 11, 1955, at which time the case was submitted for decision.

The Almaden Pipeline

Defendant, at the request of Santa Clara County health authorities following contamination of the waters of Almaden Creek in 1947, assumed responsibility for limited emergency operation of the Almaden pipeline, which theretofore had been used by the county to sprinkle Almaden Road, but upon the road being paved and sprinkling discontinued was later used by several residents to transport water for domestic use. After defendant assumed the operation, service to these and other residents was rendered on a limited basis pursuant to written understandings which recited the difficult conditions of supply and distribution inhering in the old pipeline and the possibility of breakdowns and concluded with the statement, "Since my need for domestic water service is urgent, I shall appreciate receiving such service as you may be able to supply under the conditions as set forth above." Conditions of service from the Almaden pipeline are not included in defendant's tariffs on file with the Commission.

Defendant commenced operation of the Almaden pipeline in the summer of 1948, at which time approximately 110 premises were receiving water through the line. Thereafter, defendant improved the pipeline and permitted the attachment of such additional persons as could be served. By June, 1953, however, more persons had been connected than could be adequately served. The company thereupon refused to serve additional applicants along the line; however, it is serving customers occupying three lots as to which it had previously notified the California Real Estate Commissioner that it would

supply water. The company serves water to premises immediately north and south of complainants' lot. About 170 premises are now being served along the line, which is supplied with water from defendant's 6-inch main, terminating at Kooser Road near Robertsville on the north, supplemented by water from the so-called Black system at the southern end of the line.

The company has invested approximately \$42,000 for three pump stations, two 50,000-gallon reservoirs and pipe replacement in order to provide better service along the Almaden pipeline, which extends for a distance of approximately 8 miles. Company officials estimated that it would cost approximately \$400,000 for pumps, reservoirs and mains for adequate development of the Almaden Road portion of its system. Revenues from the Almaden line service amounted to \$7,584 in 1954. Maintenance and purification costs of this line exceed average system maintenance costs due to the poor condition of the piping. There is potential subdivision development in the area which ultimately will require additional water supply, at present available only from defendant's system.

Complainants' Position

Complainants purchased their lot in September, 1953, and thereafter commenced construction of a home. They were told by the seller of the lot and by neighbors that water was available from defendant, but they personally made no inquiry of the company, prior to commencing construction, regarding conditions of service. In August, 1954, they requested water service from the company, in writing, and sent a copy of the letter to the Commission. The company did not reply. In December, 1954, they made an informal written complaint to the Commission which was followed by this formal complaint.

Complainants' home was about 90 per cent complete as of the date of hearing and they were then still without water.

Defendant's Position

Defendant, as stated above, takes the position that it has not undertaken a general public utility obligation with respect to service from the Almaden pipeline, since it acquired the line under emergency conditions and is unable to render full and adequate service due to the poor conditions of supply and distribution in the area. Defendant, at the hearing, requested an order defining its obligations in connection with water service from the Almaden line. By way of amendment to its request for a definitive order, defendant suggested that the Commission might consider making an order limiting service to those who had applied for it, under the special conditions heretofore stated, prior to issuance of such order.

Summary and Conclusions

It is clear, on this record, that despite the company's refusal to acknowledge a full public utility obligation with respect to service from the Almaden-Black system, it, nevertheless, has permitted the connection of premises to that system before and since its alleged cut-off date of June, 1953. The evidence suggests, however, that some of the more recent connections may have been in the nature of reactivation of formerly dormant services, or meter changes on premises which had been continuously connected.

Although the conditions of service on this line are not included in defendant's tariff, it is supplying water to consumers and is charging them at its filed tariff rates for measured service.

Without undertaking to define the company's public utility obligations with respect to service along the Almaden line, which we do not deem necessary for the purpose of deciding this case, we are of the opinion that the conditions under which that service has been, or is to be, rendered should be clearly stated in the company's tariff schedules and that the tariff schedules should also contain a copy of the form of contract or understanding used by the company with relation to such service, as provided by Section IX of General Order No. 96.

If complainants are willing to accept service under the limited conditions offered by the company, the company should undertake to render service to them and to other individual applicants who may be similarly situated. We recognize, however, that the company's problem here is formidable and that it should not be expected to continue to offer service indefinitely even under present limitations. To require that, in the present state of the facilities available, would inevitably result in difficulties for both the company and its present consumers. The order to follow, therefore, will authorize the company to refuse service from its Almaden pipeline to any applicant who, prior to September 1, 1955, has not applied for service under the limited conditions offered by the company. The company, however, will be directed to serve complainants forthwith.

Should the company, in the future, be in a position to undertake unlimited public utility water service along its Almaden pipeline, it should make the appropriate tariff filing in accordance with the provisions of General Order No. 96.

O R D E R

Public hearing having been held in the instant proceeding, 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:

(1) San Jose Water Works, a corporation, defendant herein, shall, within thirty days after the effective date of this order, file in quadruplicate with this Commission in conformity with the provisions of General Order No. 96, the tariff attached to this order as Appendix A and, on not less than five days' notice to the public and to this Commission, make said tariff effective for all service rendered on and after the effective date of this order. Pending the filing of said tariff, however, defendant is directed to furnish water service to the premises at 20745 Almaden Road, Los Gatos.

(2) San Jose Water Works, a corporation, shall, within thirty days after the effective date of this order, file in quadruplicate, acceptable to the Commission and in accordance with Section IX of General Order No. 96, a copy of the general form of contract, arrangement or acknowledgment used, or to be used, together with a map showing the area for which the contract applies, in connection with water service rendered by defendant from its so-called "Almaden Pipeline", extending in a southerly direction approximately 8 miles from the junction of the San Jose-Almaden Road and Kooser Road to the vicinity of Almaden Pumping Station No. 3, in Santa Clara County.

(3) San Jose Water Works, a corporation, until it is in a position to undertake unlimited public utility water service from its Almaden pipeline, is authorized to refuse water service from said pipeline to any individual or other applicant who has not, prior to September 1, 1955, made written application to the company for service.

(4) San Jose Water Works, a corporation, shall within thirty days after the effective date of this order, file four copies of a tariff service area map acceptable to the Commission, showing the entire tariff service area including the area served by the "Almaden Pipeline", in conformity with the Commission's General Order No. 96. Such tariff service area map shall become effective upon five days' notice to the Commission and to the public after filing as hereinabove provided.

The effective date of this order, for the purpose of furnishing water service to the premises at 20745 Almaden Road, Los Gatos, as provided in ordering paragraph one above, shall be the date hereof. For all other purposes, the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of September, 1955.

[Signature]
 President

[Signature]

[Signature]

[Signature]

[Signature]
 Commissioners

APPENDIX A

Schedule No. 6

SERVICE TO CUSTOMERS ON
"ALMADEN PIPELINE"

APPLICABILITY

Applicable to service from the "Almaden Pipeline".

TERRITORY

Adjacent to the "Almaden Pipeline" which extends in a southerly direction approximately eight miles from the junction of the San Jose-Almaden Road and Kooser Road to the vicinity of Almaden Pumping Station No. 3, Santa Clara County.

RATES

The rates set forth in Schedule No. 1, General Metered Service, as in effect from time to time.

SPECIAL CONDITION

The conditions of service shall be governed by a written agreement, the general form of which is included in the tariff schedules.