

Decision No. 54184

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DALY WATER COMPANY, a California corporation,

Complainant,

vs.

CITIZENS DOMESTIC WATER COMPANY, a California corporation,

Defendant.

Case No. 5837

Best, Best & Krieger by James H. Krieger and Arthur L. Littleworth, for complainant.

Gray & Guy by Arthur D. Guy, Jr., for defendant.

Charles W. Drake for the Commission staff.

O P I N I O N

The above-entitled complaint was filed on October 22, 1956, by Daly Water Company, a mutual water company and a California corporation, which, on June 8, 1956, filed Application No. 38110 for a certificate of public convenience and necessity and the establishment of rates for water service in unincorporated territory, Riverside County. The complaint alleged that Citizens Domestic Water Company, a public utility water corporation under the jurisdiction of the Commission, intended to hook up its system to a water system constructed by Teitz Construction Company in Skylark Terrace Unit No. 1 in the area shown on the map, Exhibit No. 1, filed at the hearing.

By Decision No. 54018, dated October 30, 1956, in the instant-captioned matter, an Interim Order was issued ordering defendant, pending further order of the Commission, to immediately cease and desist and refrain from constructing any new water supply, transmission, or distribution facilities, or from constructing any additions to and extensions of any existing facilities within the proposed subdivision known as Skylark Terrace Unit No. 1.

Defendant answered the complaint, and filed, on November 9, 1956, a Motion to Dismiss.

A public hearing on this matter was held before Commissioner Rex Hardy and Examiner Stewart C. Warner on November 13, 1956, at Riverside. Said matter was consolidated with Application No. 38110 (supra). No evidence on said application was taken and that matter was continued to a date to be set. The complaint was submitted for decision, subject to the motion to dismiss.

Complainant alleged that it was a mutual water company; that on May 31, 1956, it had incorporated to furnish public utility water service in an area bounded on the east by Pierce Street, on the north by Magnolia Avenue, on the west by the Riverside City limits, and on the south by the Riverside Water Company canal; that on July 20, 1956, it had entered into a contract with Tietz Construction Company, under the terms of which complainant agreed to furnish water service in the proposed subdivision known as Skylark Terrace Unit No. 1 within its proposed service area; that Riverside Water Company, a mutual water company and the sole stock-

holder of complainant, agreed to furnish water for service by complainant to said subdivision; that defendant had offered to purchase complainant's assets; that complainant had not accepted defendant's offer; that Tietz had failed to carry out its contractual obligations and had negotiated with defendant to furnish water service to the Skylark subdivision.

Defendant answered by averring that its service area was immediately contiguous to Skylark Terrace Unit No. 1 across Magnolia Avenue on the north thereof, between Fillmore and Taylor Streets; and that the extension of its water system underneath Magnolia Avenue in the vicinity of Skylark Terrace was lawful and permitted by Section 1001 of the Public Utilities Code.

Evidence of Record

Evidence of record is the map, Exhibit No. 1, which delineates the areas described in the complaint, and oral testimony on behalf of each party. Complainant offered in evidence, copies of the letters, Exhibits A, B, C, D, E and F, attached to the application, a letter dated July 24, 1956, from Tietz Construction Company to complainant's counsel, and a letter dated October 30, 1956, from Southwest Water Company to Riverside Water Company. None of these documents was admitted. Each was ruled as not tending to prove that defendant acted or was acting unlawfully as to statute or in violation of Commission regulations.

Findings and Conclusions

There is no testimony or evidence that defendant acted or has acted unlawfully; nor that there is another existing utility

defacto in the proposed area of Skylark Terrace Unit No. 1; nor that defendant is unable or incapable of serving the proposed area; nor that public convenience and necessity did not require that defendant extend its water system to said area.

The Commission finds no cause for continuing its cease and desist order in Decision No. 54018, (supra); finds no cause of action in the complaint; and finds that the Motion to Dismiss should be granted.

The Commission finds, further, that the public interest requires that the effective date of the order which follows be its date.

O R D E R

Complaint as above entitled having been filed, a public hearing having been held, the matter having been submitted subject to a motion to dismiss, and the matter now being ready for decision,

IT IS HEREBY ORDERED as follows:

(1) That Decision No. 54018, dated October 30, 1956, be and it is rescinded, and that said decision is no longer in force and effect.

(2) That the complaint be and it is dismissed.

The effective date of this order shall be the date hereof.

Dated at Los Angeles, California,

this 4th day of DECEMBER, 1956.

[Signature]
President

[Signature]

[Signature]

[Signature]

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Commissioners