

Decision No. 54340

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CHARLES G. SAWYER,  
 Complainant,  
 v.  
 CALIFORNIA WATER & TELEPHONE  
 COMPANY, a California Corporation,  
 Defendant.

Case No. 5596

Investigation on the Commission's  
 own motion into the main extension  
 practices, operations, contracts,  
 and changes of the Monterey Division  
 of California Water & Telephone  
 Company, a public utility water  
 corporation.

Case No. 5606

(PETITION FOR REHEARING)

Claude N. Rosenberg, of Bacigalupi,  
Elkus & Salinger, for petitioner.  
Boris H. Lakusta and Cyril M. Saroyan,  
 amici curiae, for the Commission  
 staff.

ORDER DENYING REHEARING

The Commission granted oral argument on the petition filed by California Water & Telephone Company for rehearing, following issuance of Decision No. 53661, dated August 29, 1956, in the above-entitled proceedings. The argument was held at San Francisco on November 5, 1956, before Commissioner Matthew J. Dooley and Examiner John M. Gregory.

The Commission, in its decision, concluded, among other matters, that the record supported a finding that the utility, by execution of a main extension agreement on July 8, 1949 with Sawyer, owner of the Victorine Ranch in Monterey County and

developer of Yankee Point Acres Subdivision No. 1 (a 23-acre tract in the northern portion of the ranch), had thereby "dedicated" its service to the entire ranch, comprising some 1,146 acres of land located south of Carmel Highlands along Coast Highway No. 1.

The Commission, in reaching the conclusion it did with respect to "dedication", also held that evidence which showed that petitioner serves water, as a public utility, through facilities constructed by Sawyer in 1949 in Yankee Point Acres No. 1 to a residence located on the Victorine Ranch south of that tract, and evidence that it also serves water to two houses on the Victorine Ranch owned by Joe Victorine, Jr., pursuant to a contract for accommodation water service, supported that conclusion. The Victorine contract was never formally approved by the Commission. In its opinion (Decision No. 53661) the statement was inadvertently made that the record did not show the existence of such a contract. It comprises a portion of Exhibit 54.

Petitioner asserts that the record does not support the finding of dedication to serve presently unserved areas in the Victorine Ranch. If there was no dedication, so the argument goes, petitioner was under no obligation to serve the balance of the ranch and was likewise under no obligation to comply with its main extension rule or the provisions of General Order No. 96, Section X, requiring prior authority to deviate from the rule, in the making of agreements for water service in that area. Petitioner concedes that by institution of service to Yankee Point Acres No. 1 it had dedicated its service to that 23-acre tract.

Petitioner also urges that the Commission erred in modifying, by its order, the terms of a so-called "compromise agreement" with Sawyer, dated May 21, 1956, which purports to amend the 1949 contract. Sawyer filed the compromise agreement

with a request for dismissal of his complaint contingent upon unconditional approval of the amended agreement by the Commission. The essential terms of the 1949 and 1956 instruments are set forth in the opinion.

Generally, the 1956 agreement provides for removal of bottlenecks in the utility's eight-inch main serving Carmel Highlands and for connection of the enlarged main to the eight-inch main installed by Sawyer in 1949 from the Yankee Point Acres No. 1 distribution system a distance of a few hundred feet northerly along State Highway No. 1 to its intersection with Sonoma Road, in Carmel Highlands. Sawyer, in the compromise agreement, undertook to pay petitioner \$24,000 for such installations, without adjustment to the actual or reasonable cost of the construction. In other respects, the 1956 agreement reaffirms the 1949 contract, except that it omits the reference, contained in the 1949 contract, to the Commission's power to modify such agreement in the exercise of its jurisdiction.

The Commission, in its decision, concluded that Sawyer was required to advance the cost of installation of only 560 feet of eight-inch pipe to make the connection, in accordance with the utility's existing Rule and Regulation 19, par. C. That rule requires that the subdivider shall "advance to the utility before construction is commenced the estimated reasonable cost of installation of the mains, from the nearest existing main at least equal in size to the main required to serve such development, ...." Removal of bottlenecks in the pipeline upstream from the connection was conceived by the Commission to be the obligation of the utility in providing adequate service for consumers being served from that main.

Petitioner contends, as we understand the position, that, not having dedicated its service to the balance of the Victorine Ranch, neither the 1949 agreement nor the compromise agreement which purports to amend it is subject to scrutiny or modification by the Commission, but that our only function in the matter is to approve or reject such agreements in toto. The inconsistency of that position is apparent. Petitioner has steadfastly maintained that the Commission has no jurisdiction whatsoever over contracts for service outside of acknowledged service areas, and that our jurisdiction over such service attaches only when the installations called for by such contracts have been completed and the service made available to consumers. Petitioner's admission of jurisdiction to approve or reject such agreements presupposes their prior submission by the utility to the Commission. Petitioner's argument on this point has no merit.

We affirm the conclusions reached in Decision No. 53661 that, in extending water service beyond acknowledged service areas, a utility may not disregard its filed tariff rules and regulations, and that if the arrangements for such extensions call for deviations from such rules, the utility must first secure appropriate authority to enter into them, in accordance with the requirements of Section X of General Order No. 96.

On the question of dedication, it is not for petitioner to say when and under what conditions a dedication of water or service has been made, since, as we view the authorities, that question is a mixed one of law and fact, which, if the issue be raised, it is within the province of this Commission to determine, at least in the first instance.

The record here, on that issue, has persuaded us that defendant, by its acts, by statements made by its officials to

Sawyer as the owner of the Victorine Ranch properties, and by its amended agreement with Sawyer, all as related more fully in the opinion, has openly avowed its willingness to serve Sawyer's properties and has actually served consumers on those properties outside its admittedly dedicated Yankee Point Acres No. 1 service area.

The question of the terms and conditions under which such service will be extended to other portions of the 1,146-acre Victorine Ranch has no bearing on the question of dedication. Those terms and conditions, if not in accordance with the company's extension rule (as is provided in the amended contract with respect to portions of the ranch above and below the 600-foot contour), must of necessity be submitted to the Commission for approval, modification or rejection, prior to entering upon any construction in connection with such extensions, as provided by General Order No. 96, and, under certain conditions, by the extension rule itself.

For the foregoing reasons, IT IS ORDERED that the petition for rehearing filed herein respecting Decision No. 5366I be and it hereby is denied.

Dated at San Francisco, California, this 28<sup>th</sup> day of DECEMBER, 1956.

E. N. Mitchell  
President  
Ray W. Williams  
Walter A. Dooler  
H. H. Kautz  
Commissioners

Commissioner C. Lynn Fox, being necessarily absent, did not participate in the disposition of this proceeding.