

Decision No. 56159

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

H. R. Lichtman,)	
)	
Complainant)	
)	
vs.)	Case No. 5975
)	
C. E. Steidtmann,)	
)	
Defendant)	

H. R. Lichtman, complainant, in propria persona.

Croy L. Needham, for C. E. Steidtmann, defendant.

Clyde F. Norris, for the Commission staff.

O P I N I O N

Complaint

The above-entitled complaint was filed September 3, 1957, against C. E. Steidtmann, president of the Sobrante Water Company, requesting an order of the Commission directing that the utility file a corrected map of its service area, that the complainant's property be included within such service area, and that the defendant provide water service for the complainant at the location shown on the map of Monte Verde attached to the complaint.

The complaint alleges, in effect:

1. That on August 19, 1957, the defendant refused water service to complainant on the grounds that his property was outside the utility's service area.
2. That defendant's water main crosses a right-of-way owned by complainant at a place called the Six

Corners where it would be convenient and reasonable for defendant to provide service to complainant.

3. That it has been defendant's policy to extend mains beyond its service area and that the utility's current map is incorrect in that it does not include properties which are rightfully within its service area because of proximity to water mains.
4. That Monte Verde is surrounded by undeveloped agricultural land and has no source of water other than the defendant utility.
5. That complainant's land is bordered on three sides by properties served by the utility and that it should not arbitrarily be excluded from the utility's service area.

Answer

On October 16, 1957, the Sobrante Water Company, a California corporation, filed an answer requesting that the Commission deny the complainant's petition; and the case was heard on the predicate that such corporation, a public utility, was in fact the defendant. In brief, said defendant answers as follows:

1. Agrees that complainant was refused water service as alleged.
2. Admits there is a water transmission main at the Six Corners location, used primarily to supply a nearby storage tank, but denies that complainant has any fee interest in land or has more than an easement for the right-of-way at said location. Further denies that it would be convenient to serve complainant at such location, alleging that to place a meter on the easement would open the door for other requests to follow and thereby create problems and produce a haphazard system to the detriment of existing customers.
3. Denies that it is the utility's present policy to serve outside of its defined service area.
4. Agrees that Monte Verde is an undeveloped agricultural area but denies that no other source of water is available. Alleges that for some time complainant has been using rain water and hauling water, and that at one time he had a well on

property owned by him and which property is contiguous to his present holdings. Points out that complainant knew of lack of water supply when he constructed his present building which he uses as an office.

5. Agrees that complainant's property is adjacent to land within the utility's service area but states that service to complainant under any circumstances will be detrimental to other customers. Alleges that the utility is not financially or physically able to add customers other than within its service area.

Public Hearing

A public hearing on this matter was held before Examiner E. Ronald Foster in San Francisco on November 26, 1957, at which time evidence was adduced and the matter submitted for decision.

History of Utility

The initial portion of the water system was constructed in 1935 to serve a subdivided area in El Sobrante Rancho, located approximately two miles south of the town of Pinole in Contra Costa County. Public utility status was established by Decision No. 31615, dated January 3, 1939, in Case No. 4354. The owner of the system at that time was a Jean Naylor who was ordered to file rates, rules and regulations and a map outlining the area served.

Transfer of ownership from Naylor to Sobrante Water Company, a corporation organized in December, 1940, was authorized by Decision No. 33890, dated February 11, 1941, in Application No. 23876. The new owner was ordered to refile rates, rules and regulations, together with a map to indicate the boundaries of the area served. By Decision No. 35403 dated May 26, 1942, in Application No. 24986,

Sobrante Water Company was authorized to issue capital stock in addition to that authorized by Decision No. 33890, supra.

In Application No. 26040, Decision No. 37402 authorized the utility to file increased rates for water service and also required the filing of rules and regulations and a map delineating the boundaries of its present service area. Case No. 5109 concerning disputed bills and poor service was dismissed by Decision No. 43576 dated November 29, 1949.

By Decision No. 52085 dated October 18, 1955, in a consolidated proceeding involving Application No. 36574 and Cases No. 5580, No. 5581 and No. 5582, Sobrante Water Company was authorized to file increased rates designed to provide a rate of return of about 7.5 per cent on the basis of evidence introduced therein. The same decision, among other things, ordered the utility to file " ... a tariff service area map ... delineating thereupon in distinctive markings the boundaries of its present service area ...; provided, however, that such filing shall not be construed as a final or conclusive determination or establishment of the dedicated area of service or any portion thereof." Paragraph 6 of Decision No. 52085, supra, further ordered the water company to "... provide water service, as a public utility, in accordance with its applicable rates and rules in the so-called 'Monte-Verde' area, as contemplated in paragraph 6 of chapter 12 of said Exhibit 1." The said exhibit was a staff report on the results of operation of Sobrante Water Company, in which paragraph 6 of chapter 12 reads as follows:

"It appears that the company has extended public utility water service beyond its initial service area

by the installation of a 2-inch main into the Monte Verde area. By such action the company has obligated itself to serve water to all applicants for service whose properties are adjacent to this 2-inch main in accordance with its filed rules."

A review of the above-mentioned decisions does not reveal that any definition of a certificated or dedicated area of service has ever been determined by this Commission otherwise than by the acceptance for filing of the tariff service area maps with the usual provision that such filing was not to be "construed as a final or conclusive determination or establishment of the dedicated area of service or any portion thereof." Furthermore, an examination of the several maps filed by the utility reveals successive expansions in the service areas indicated thereon and the last one, filed April 23, 1956, embraces about one-half of Monte Verde but does not include the property of complainant concerned herein.

Description of the System

Since 1941 all water furnished by the utility to its customers has been purchased from the East Bay Municipal Utility District and supplied through a 1-1/2-inch meter located at the junction of the district's main with the utility's 2-inch main on Sobrante Avenue. Water thus purchased is distributed to about 105 customers through some 15,500 feet of mains, approximately 57 per cent of which consist of 1-1/2- and 2-inch pipe and the balance of 3/4-, 1-, and 1-1/4-inch pipe.

Over half of the utility's customers in the lower portion of the system are supplied at pressures afforded by the district's large concrete tank located nearby. The utility has forty thousand

gallons of storage capacity located in the upper elevations of the system, from which the remaining customers are supplied directly by gravity. Water is elevated to the 30,000-gallon tank by means of two 3 h.p. centrifugal pumps in parallel, controlled by a float switch at the tank. A small, manually controlled, booster pump transmits water through a 2-inch line from the 30,000-gallon tank, passing through Six Corners, to one of the 5,000-gallon tanks. All of the utility's storage tanks are located in Monte Verde, a 75-acre tract with rolling terrain.

Nature of Evidence

The annual report for the year 1956 filed with the Commission by Sobrante Water Company is included in the record of this proceeding by reference and also the report on the results of operation of Sobrante Water Company received in evidence as Exhibit No. 1 in Application No. 36574, et al, supra, with particular reference to charts 1-A and 1-B and chapters 10 and 12 therein.

The map of Monte Verde attached to the complaint shows the location of certain facilities of Sobrante Water Company, the existence of which was not contradicted by defendant's representative. On another map, introduced by complainant as Exhibit No. 1, the boundaries of the service area are outlined as defined by the utility on its tariff service area map filed with the Commission on April 23, 1956. Both maps show the roads and property lines in Monte Verde from which the proximity of the utility's facilities may be determined.

Complainant testified, and defendant admitted, that service is being rendered to one Ingroff whose property is outside of the

most recently filed service area boundary. Complainant further testified that in May, 1954, defendant offered to serve him with water for a certain sum of money and that having refused that offer, on April 7, 1956, defendant again offered to serve him with water if he would pay for certain pipelines. The latter offer was likewise refused and thereafter the utility filed its map of the tariff service area showing complainant's property outside of the boundaries thereof. The terms of the offers were not definite but involved sums in the nature of \$300 or \$400, which complainant considered exorbitant. As to whether the amount to be advanced was to be an outright donation or refundable was not discussed, according to complainant.

Complainant described his property as a parcel of land consisting of 3.8 acres, bounded on the northwest by Snake Lane, on the east by Rudo Road, and on the northeast by property of one Cameron who receives water service from the utility through a meter located at the junction of Snake Lane, Rudo Road and other thoroughfares, which junction is the place called Six Corners where complainant has requested his meter be located also. It is about 400 feet measured along Rudo Road from the nearest corner of complainant's property to Six Corners and it is about 1,300 feet from Six Corners along Rudo Road to the existing building on the southeast portion of his property. The elevation of said building is about 40 feet lower than that at Six Corners which in turn is about 25 feet lower than the 5,000-gallon storage tank located at the intersection of lines indicating property belonging to St. Clair, Steidtmann, Day and Ingroff, making a total difference in elevation of about 65 feet, equivalent to a static pressure of about 28 pounds per square inch.

According to the testimony of defendant's representative, water service to complainant's property is opposed on the following grounds:

- (1) That complainant's property is outside the utility's service area.
- (2) That it has become the utility's policy not to seek new customers outside of its service area, because of shortage of working capital and that it would be unfair to the utility's present customers to go outside of the specified area and spend capital which might be used to improve or maintain adequate service within the area.
- (3) That it is undesirable to install a meter at a point 1,300 feet from a customer's residence and it is difficult to render satisfactory service through a small pipeline such as the customer might install for that distance on his private property or right-of-way.
- (4) That when a meter is set at a considerable distance from the residence, even though on the customer's property, the utility faces another problem when the customer's property is further subdivided and a portion sold, thus leaving the meter on property not owned by the customer being served through that meter. Also, the utility has experienced damage by malicious mischief where meters are located at points remote from residences.
- (5) That service by the utility is taxed to the limit of its system at this time and if extensions are made beyond the boundaries of the service area the entire system would need a larger setup to serve the customers properly and that the utility is operating on a limited budget and has no provision for such enlargements of the mains involved.
- (6) That the complainant's proposed location of the meter at Six Corners is not on land owned by complainant but is a right-of-way which simulates a public street, but where a meter should not and cannot be located.

Defendant's representative further testified that if the utility were to set any meter for complainant, the preferred location would be directly in front of his house. He also recommended that

any line laid from Six Corners along Rudo Road to serve complainant's property should be two-inch diameter pipe.

The record in this proceeding shows that there is nothing to prevent complainant from subdividing his property into one-acre homesites as permitted by the County zoning laws. No water service is presently being rendered to the comparatively large acreage properties, shown variously on the maps as belonging to Jaure or to Blake and Miller, lying east of Rudo Road and directly across that road from complainant's property, which might also be subdivided into one-acre homesites. A water main laid along Rudo Road could be utilized to serve future customers located on both sides thereof, in addition to complainant's present building.

The record further shows that defendant is cognizant of the provisions of the utility's rules on file with the Commission, with particular reference to Rule No. 15, Main Extensions, and Rule No. 16, Service Connections, Meters, and Customer's Facilities. Under cross-examination and in response to questions asked of the defendant's representative by the examiner, it was admitted that the utility is obligated to make extensions in accordance with its filed water main extension rule; that the utility could obtain the same sort of right-of-way for a pipeline laid in or along Rudo Road as it has in other roads in this area; that there is no physical difficulty in carrying out such an arrangement, except possible detriment to other customers; that the utility has added customers to its system from time to time; and that as a public utility, there exists a responsibility to furnish water service to people dependent thereon, even though it may involve some capital outlay on the part of the utility.

Findings and Conclusions

The Commission is not impressed with the validity of the defendant's basic reason for refusing water service to complainant, namely that his property lies outside of the utility's service area. Neither is the Commission convinced that there is any reason, physical or financial, why such service cannot be rendered by the utility.

In view of all the evidence before us in this proceeding, the Commission finds as a fact and concludes that complainant's property in Monte Verde is within the area which defendant and the water company of which he is president are dedicated to serve with water; that it would be unreasonable and contrary to good water works practice to require the water utility to install a meter for complainant at the proposed location called Six Corners to measure the water that would be supplied through a private line to complainant's property some 400 feet or more distant from said meter; and that Sobrante Water Company may reasonably be required to render water service to the property of complainant in accordance with the provisions of its rules filed with this Commission, with particular reference to its main extension rule, except that under the circumstances found to exist herein it would be unreasonable to require complainant to advance the cost of any portion of a water main in excess of two inches in diameter. However, this does not relieve the utility from installing the main extension in accordance with the requirements of the Commission's General Order No. 103. ✓ ✓ ✓

The Commission further finds as a fact and concludes that it is reasonable that complainant should be required to advance to the utility a portion of the estimated cost of extending the water

main required to serve complainant's property in accordance with the utility's filed rule covering such extensions.

The order which follows will require the water utility company of which defendant is the president to provide water service to complainant's property in accordance with the above findings of fact.

O R D E R

Complaint of H. R. Lichtman against C. E. Steidtmann, president of Sobrante Water Company, and answer thereto having been filed, a public hearing having been held, the matter having been submitted and now being ready for decision based upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that within thirty days after complainant shall have made due application and shall have advanced the required amount of money to a proper representative of Sobrante Water Company, the said utility shall extend domestic water service to complainant at whatever point on complainant's property on Rudo Road in Monte Verde said complainant may designate, such extension of service to be in accordance with the provisions of the utility's Rules No. 15-B and No. 16 now on file with this Commission; provided, however, that the complainant shall not be required to advance the cost of any portion of a water main in excess of two inches in diameter.

IT IS FURTHER ORDERED:

1. That Sobrante Water Company shall notify this Commission in writing within ten days after complainant has made application

for water service and advanced the required amount of money to the Sobrante Water Company as specified in the foregoing paragraph of this order, including such details as the location selected for the meter, the length of main extension involved and the amount of money advanced.

2. That Sobrante Water Company shall notify this Commission when the main extension and customer's service and meter to serve complainant have been installed and placed in operation, within ten days thereafter, which notice shall include such details as the location of the meter, the length of main extension installed and the actual cost thereof, and the date when service was first made available to complainant through the completed installation.

3. That, except to the extent of the relief granted in the immediately preceding paragraphs of this order, the complaint herein be and it is dismissed.

The effective date of this order shall be twenty days after service by registered mail of a copy of this decision on defendant at his place of business as such address is shown on the records of this Commission.

Dated at San Francisco, California, this 28th day of January, 1958.

[Signature]
 President

[Signature]

[Signature]

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 Commissioners