

ORIGINAL

Decision No. 56572

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CALIFORNIA WATER SERVICE COMPANY, a)
 corporation, for an order authorizing)
 (1) the sale, and transfer to East Bay)
 Municipal Utility District, of public)
 utility property in the City of Walnut)
 Creek, Contra Costa County, and (2) the)
 discontinuance of service by Applicant)
 in certain territory in the City of)
 Walnut Creek, Contra Costa County.)

Application No. 39803

McCutchen, Thomas, Matthew, Griffiths &
 Greene, by Robert Minge Brown, for
 California Water Service Co.
John B. Reilley, for East Bay Municipal
 Utility District.
John A. Neiedly, City Attorney, for City
 of Walnut Creek.
Verner R. Muth, for the Commission staff.

O P I N I O N

California Water Service Company, a public utility, and East Bay Municipal Utility District, jointly, have requested authorization for the company to sell and transfer to the district certain water pipes, services and appurtenances described in the application and used by the company to supply water service along Andrea Drive, in the City of Walnut Creek. The transfer will be made in accordance with the terms and conditions of an agreement between the company, the district and the city, dated January 15, 1958, a copy of which is attached to the application as Exhibit A thereof, for a stated price for said facilities of \$3,649.00.

The company has also requested authorization to discontinue all service on Andrea Drive which it is now furnishing and to withdraw from public utility service whenever the district undertakes service in the area in the City of Walnut Creek described in paragraph (9) of the application. That area includes Lots 1 through 11, El Encino Subdivision Unit No. 1, and Lots 12, 18, 19, 20, 21, 22, 23 and 25, El Encino Subdivision No. 2, Contra Costa County, all of which lots are located along Andrea Drive west of San Miguel Drive within the City of Walnut Creek.

The City of Walnut Creek has appeared in this proceeding and has requested that the Commission provide, in its order to be issued herein, a requirement as contemplated by the provisions of paragraph 12 of the Agreement of January 15, 1958 for the payment of the fair and equitable proportion of cost of providing East Bay Municipal Utility District service as shall not have been paid by any property in the area, described above, in which the company seeks to withdraw service.

The application was submitted at a public hearing held March 20, 1958, at Walnut Creek, before Examiner John M. Gregory.

During the past few years the City of Walnut Creek has become annexed to the East Bay Municipal Utility District, which has acquired the city's distribution system and certain facilities of California Water Service Company^{1/} in areas later annexed to the city.

<u>1/</u>	<u>Decision No.</u>	<u>Date Issued</u>	<u>Application No.</u>
	49688	February 16, 1954	35060
	51238	March 21, 1955	36712
	56118	January 21, 1958	39464

In the instant proceeding, two consumers on Andrea Drive, which is within the district, objected to contributing their pro rata share, under a voluntary property owners' contribution arrangement, of the cost of acquisition of the company's facilities or installation of new facilities by the district, which, the record indicates, would amount to about \$324 for the property owner who appeared and testified at the hearing, one Harold Compasso. The alternative to this voluntary contribution system would have been the establishment by the city of an assessment district for this small area, at a minimum estimated cost of \$2,000.

In order to expedite the acquisition of facilities and eventual inauguration of service by the district, the city has contributed the sums charged to these two non-contributing properties. The city asserts that unconscionable hardship would be imposed on contributing owners and the city if the non-contributing properties were to receive district service without paying their pro rata share of the cost, and that the system of voluntary contributions would have to be abandoned in other areas when a similar problem might arise.

The city urges, therefore, that since small assessment districts are expensive and impracticable, a system of required contributions from non-contributing properties, at the time of provision of district service, should be established by the Commission in its order herein to avoid the possibility of unnecessary and

expensive duplication of the company's service through installation of parallel facilities by the district. Otherwise, the city has indicated its intention to terminate the agreement with the company and the district.

The protesting property owner, Compasso, testified, in effect, that he had experienced pressure drops in his service in the past; that existing pipes of the company had been "holding that pressure"; that he thought he would obtain district service at lower rates, and that he wanted to know what the "saving" would amount to. He agreed to discuss the subject of his pro rata contribution further with the parties involved. The record indicates that a contribution of \$324.04, at 6% interest, would be retired in 8 years as the result of differences in existing company and district rates for his service.

We find from the evidence that the proposed transfer of facilities on Andrea Drive, in the City of Walnut Creek, by the company to the district, and the discontinuance and withdrawal of public utility service by the company in said area upon undertaking of service therein by the district, are not adverse to the public interest. The application, accordingly, should be granted.

The record shows that there are no extension agreements or consumers' deposits outstanding in connection with the company's service on Andrea Drive. It will, therefore, be unnecessary to include in our order the usual provision relating to refund of such advances or deposits prior to the effective date of transfer.

The city's request for inclusion in our order of a provision "as shall require payment of the fair and equitable proportion of cost of providing East Bay Municipal District service as shall not have been paid by any property in the area for which service is sought to be abandoned," touches upon a matter over which we exercise no regulatory jurisdiction in proceedings of this character. Upon discontinuance of the company's service on Andrea Drive, a substitute service will be provided by the district in that area, which will be available to those for whom the city has advanced to the district their pro rata share of the cost of acquisition of the company's facilities or installation of those of the district. Such service, after withdrawal of the company's service, will, of necessity, be available only in accordance with rates, rules and regulations of the district, over which we are not permitted to exercise authority. If the city has advanced monies to the district on behalf of these non-contributing properties and in the interest of expediting the district's program, this Commission is not the proper tribunal in which to secure their repayment. Nor, in our opinion, may we properly include in our order, either as a condition of our authorization to the company or of rendition of service by the district, a requirement that prospective consumers of the district contribute their pro rata, or any part, of the cost of providing service by the district.

If the action we take here is not considered by the city to be responsive to its request, we can only say that, in our

opinion, to comply with the city's suggestion would most certainly lead us into error. The city's request, therefore, must and will be denied.

The order to follow will confer authority upon the company to sell and transfer to the district its facilities on Andrea Drive and to discontinue and withdraw public utility service therein in accordance with the terms and conditions of the tri-party agreement of January 15, 1958. Such action shall not be construed to be a finding of the value of the property herein authorized to be transferred.

O R D E R

Public hearing having been held herein, the application having been submitted for decision, the Commission now being fully advised and basing its order on the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that:

1. California Water Service Company, a corporation, may, on or after the effective date hereof and on or before July 31, 1958, sell and transfer its public utility system facilities located within the City of Walnut Creek which are described in the application herein to East Bay Municipal Utility District, at and for the price set forth in the application.
2. California Water Service Company shall, within thirty days thereafter, notify this Commission in writing of the completion of the property transfer herein authorized.
3. California Water Service Company is authorized to withdraw from public utility water service within the area in which its facilities are herein authorized to be

transferred, as of the actual date of delivery of said facilities to East Bay Municipal Utility District, or as of the actual date of availability to consumers in said area of water service by said district, whichever date is earlier.

- 4. The request of the City of Walnut Creek, that the Commission include in its order herein a requirement for payment of the fair and equitable cost of providing East Bay Municipal Utility District service as shall not have been paid by any property in the area in which California Water Service Company seeks herein to withdraw service, is denied.

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

Dated at San Francisco, California, this 22nd day of April, 1958.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners