

Decision No. 59306**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
TAHOE SOUTHSIDE WATER UTILITY, a
California corporation, for a cer-
tificate of public convenience and
necessity to extend its water system.

Application No. 40859

In the Matter of the Application of
PINEWOOD WATER COMPANY, a California
corporation, for a certificate of
public convenience and necessity to
extend its water system.

Application No. 40929

PINEWOOD WATER COMPANY,
a corporation,

Complainant

vs.

TAHOE SOUTHSIDE WATER UTILITY,
a corporation,

Defendant

Case No. 6251

Sherman C. Wilke, of Wilke, Fleury & Sapunor, for
Tahoe Southside Water Utility.
Scott Elder, for Pinewood Water Company.
Herman D. Jerrett, for Lakeside Park Association,
Inc.
John D. Reader, for the Commission staff.

O P I N I O N

These proceedings as amended, consolidated for hearing and decision, involve: (1) a request by Tahoe Southside Water Utility for a certificate to extend its water system to include the tier of lots on the west side of Laurel Avenue between Aspen Street and the State Line, in First Subdivision of Lakeside Park, west of U. S. Highway 50 at State Line, El Dorado County within which Southside presently provides water facilities and service to three motels; (2) a defensive request by Pinewood Water Company further to extend its certificated area (previously extended by a certificate granted by Decision No. 56386, dated March 17, 1958,

in Application No. 38510 and related proceedings) to the tier of lots on the west side of Laurel Avenue in which the three motels now served by Tahoe Southside are located, and also to Lot 3, Block I, First Subdivision of Lakeside Park; (3) a complaint by Pinewood, questioning the legality of Southside's extension of facilities and service into the disputed area; (4) a protest by Lakeside Park Association, Inc., which for many years has supplied water, at cost, for the "normal use" of such property owners in First Subdivision of Lakeside Park who may have joined the Association and paid the connection charges and water rates set by its Board of Directors, against intrusion by Southside's facilities, whether lawful or not, within any portion of said subdivision.

The case was submitted after hearings held on June 2 and 3, 1959, at Tahoe Valley, before Commissioner Theodore H. Jenner and Examiner John M. Gregory.

Section 1001 of the Public Utilities Code, under which both applicants seek their respective authority and the violation of which by Southside, in addition to its alleged disregard of the Commission's order in Decision No. 56386, has been charged in Pinewood's complaint, states in part as follows:

"No ... water corporation shall begin the construction of a line, plant, or system, or of any extension thereof, without first having obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction.

"This article shall not be construed to require any such corporation to secure such certificate for an extension ... into territory ... contiguous to its ... line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any

public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility, already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable."

About 1952, Southside, in response to a request by the Commissioners of Tahoe Valley Fire District, extended an 8-inch main along U. S. Highway 50 from Al Tahoe to the Bijou area. In 1953, it further extended this main to the Pentagon Tract, southeast of the junction of the Old County Road (Pioneer Trail) and U. S. Highway 50, between Bijou and State Line. In 1954, the main was extended to the State boundary and reduced to 6 inches in diameter from the Flamingo Motel to the State Line. In November, 1957, the utility completed an extension of 6-inch pipeline along State Line and Laurel Avenues in the First Subdivision of Lakeside Park.

In 1957, it installed new 18-inch and 24-inch steel intake main to a new diversion on Cold Creek at an elevation substantially higher than the existing reservoirs, with the object of increasing pressures in the State Line area for residential, commercial and fire protection services. Also, a one-million-gallon reservoir and settling basin at the upper diversion on Cold Creek was partially placed in service late in 1958 and was enlarged and completed in 1959, together with addition of new storage at the lower diversion, the latter mainly for standby purposes. Early in 1959, Southside completed a new 16-inch well at Al Tahoe having a capacity of about 1,400 gpm.

All of the foregoing installations and extensions, following acquisition and improvement by Frank Globin (whose water operation was incorporated in 1954 as Tahoe Southside Water Utility) of the Bijou Pines system adjoining his Al Tahoe service area to the northeast, along U. S. Highway 50 (Decision No. 44978, November 8, 1950, Applications Nos. 31743, 31761), appear to have been motivated, at least to some extent, by a desire to keep abreast, if not somewhat in advance, of the rising demand for water service and fire protection along the three-mile stretch of highway between his original system at Al Tahoe (acquired in 1925 from the hotel interests which constructed it about 1910) and the California-Nevada boundary line. The Commission will take official notice - if, indeed, the fact were not already emphasized in the records of other proceedings arising in this locality during the past 10 years or more - that the general area along U. S. Highway 50 from Myers through Tahoe Valley, Al Tahoe and Bijou to State Line, formerly comprising a series of isolated and primarily summer resort type communities along the south shore of Lake Tahoe, in recent years has experienced and is still undergoing transformation in the direction of year-round residential and commercial activity, with gaps between the communities, at least along the main highway, becoming narrower almost to the point of imperceptibility.

Many of the residents, as well as commercial establishments, in this area have their own source of water supply from wells. Also, from time to time, developers of subdivisions have installed pressure water systems for the domestic uses of summer or year-round residents, or for small motels or other establishments such as stores, service stations, professional offices and the like. With the phenomenal growth taking place during the last few years, however,

some of these smaller systems, designed for the most part for summer distribution of residential water with wells of limited capacity and small pipelines laid at shallow depths, have either had to replace or enlarge both source and distribution facilities, or, by joining with neighboring systems and developing additional financial resources, attempt to provide a more adequate response to the increasing demand than each might have been able to do alone.

A consolidation of the type just mentioned, the expanding activities of which, in the area extending from Ski Run Boulevard to State Line - especially from the intersection of Pioneer Trail and U. S. Highway 50 north to the State boundary and on both sides of the highway - have collided with Southside's "march north", is Pinewood Water Company, the complainant and one of the applicants herein. The many maps in the records of these and previous cases and in the tariff filings of both applicants present a graphic though somewhat uncertain record of the claims and counterclaims of the parties, including Lakeside Park Association, in the territory here sought to be served. A brief resume of the Pinewood development follows.

Pinewood Water Company, a corporation, in the summer of 1956, acquired the Cora B. Harding water system, which had a good supply of well water and which served the 75-lot Lakeside Lodge Subdivision west of the junction of Pioneer Trail and U. S. Highway 50, and two connected distribution systems east of the highway, along Pioneer Trail, owned by Louis Bartlett and Pinewood Water Company (then controlled by Bartlett), serving Pinewood Heights, Bartlett Triangle Tract and the contiguous subdivision of Pinewood Terrace from a low-producing well on Lot 20 of the Triangle Tract. (Decision No. 53329, July 10, 1956, Applications Nos. 37778, 37779) In 1950, when the Lakeside Lodge system was certificated (Decision No. 44979,

Application No. 31700), seven commercial establishments east of the highway, outside the tract, were being supplied with surplus water by Mrs. Harding through customer-owned lines crossing the highway and connected to the Lakeside Lodge system at a point two feet outside the northeasterly corner of Lot 75, which is adjacent to Park Avenue, the common boundary of First Subdivision of Lakeside Park and of Lakeside Lodge Subdivision.

Pinewood, after taking over the Harding and Bartlett systems, proceeded to improve and interconnect source and distribution facilities and to extend its service area until, following issuance of Decision No. 56386, it claimed the following territory:

"The unincorporated areas known as Pinewood Heights, Pinewood Terrace, Triangle Tract, Lakeside Lodge, and the vicinity adjacent thereto known as Bartlett Tract No. 1" (east of the highway opposite First Subdivision of Lakeside Park). "Pinewood Park, Pentagon Tract and vicinity, all located adjacent to U. S. Highway 50 on or near the south shore of Lake Tahoe, El Dorado County." (Tariff, Revised Cal. P.U.C. Sheet No. 105, effective June 14, 1958)

Subsequently, by Advice Letter No. 8, filed May 5, 1959, to be effective June 4, 1959, Pinewood filed a tariff service area map (Revised Cal. P.U.C. Sheet No. 111-W), indicating that it had extended its territory, presumably under a claim of statutory authority based on Section 1001 of the Public Utilities Code, to include subdivisions and undeveloped areas southeast of Paradise and Wildwood Avenues and Pioneer Trail to Lakeview Heights, Saddle and Keller Roads, and extending to the State boundary along a line projected northerly from the northeast corner of Pinewood Park (See also Exhibit 8).

Southside's expanding territorial claims - with the exception of the Bijou Pines certificate acquired in 1950 and, perhaps, of the authority assertedly conferred by Decision No. 56386, in 1958, which reserved seven Southside commercial customers in the State Line area from surrounding territory certificated to Pinewood by that decision - appear to have been grounded on the premise that the extensions of plant and service involved were either into contiguous, non-competitive territory, or were made within or to territory already served by it as necessary installations in the ordinary course of its business. Hence, as we understand the contention, there was no need to apply to the Commission for a certificate, since Globin's original offer to serve, when he acquired the Al Tahoe system in 1925-26 and at all times thereafter, has encompassed whatever territory might be included in the broad description, shown in his tariffs, "in and in the vicinity of Al Tahoe, El Dorado County".

The tariff map filed by Southside on February 16, 1957 (Original Cal. P.U.C. Sheet 47-W), purportedly in compliance with Decision No. 44320, issued in Application No. 31109 on June 20, 1950, and a later map (Revised Cal. P.U.C. Sheet No. 49-W), filed April 28, 1959, assertedly in response to Decision No. 56386, show generally the extent of Southside's claims with respect to service in the areas here considered.^{1/}

^{1/} In a recent consolidated proceeding involving conflicting requests by Southside and Tahoe Sierra Water Company for authority to extend service to certain subdivisions and undeveloped areas near Bijou, Southside was directed to revise its tariff map to conform to the authorization granted to Tahoe Sierra (Decision No. 58394, May 12, 1959, Applications Nos. 40430, 40533). The revised map has not yet been filed, due, perhaps, to the pendency of the instant proceeding.

Several references have been made in the preceding discussion to Decision No. 56386. Since the present case in some of its aspects, has evolved from that decision as well as from the events outlined above, it may be profitable here to examine the former proceeding to see, if possible, why the decision did not result in a termination of the argument. Also, the position of Lakeside Park Association, a former opponent of both Pinewood and Southside, seems in the current proceeding to have been modified in some manner not clearly indicated by the record.

The former proceeding, which resulted in Decision No. 56386,^{2/} was initiated by an application filed October 16, 1956 by Pinewood, pursuant to Section 1001 (Application No. 38510), for a certificate to extend its system to contiguous territory, including Bartlett Tract No. 1, fronting the east side of Highway 50 at State Line, and the first tier of lots in First Subdivision of Lakeside Park, fronting the west side of the highway opposite Bartlett Tract No. 1 and adjacent to Pinewood's Lakeside Lodge service area acquired a few months earlier from Cora B. Harding. At the time the application was filed, Southside was serving the La Baer Motel, on Lot 3, Block L, in the first tier of lots of First Subdivision of Lakeside Park, and six other commercial patrons

^{2/} Applications Nos. 38510, 39456; Case No. 5965; rehearing denied, Decision No. 56659, dated May 13, 1958; petition of Tahoe Southside for review by the Supreme Court of California, filed June 13, 1958, denied October 15, 1958 (S. F. No. 19979).

in the former Bartlett Tract No. 1.^{3/} Southside, by way of protest, filed an "Answer and Complaint" at the first hearing, held December 6, 1956, alleging that the territory sought by Pinewood "is now within the service area heretofore granted" to Southside, and requesting an order directing Pinewood "to desist from interfering or competing with the service, lines and system" of Southside. (The request for a cease and desist order, it seems, was withdrawn at that hearing.) On August 23 and October 1, 1957, Pinewood amended its application to request (in the second amendment) authority to extend its service to (1) Pinewood Park; (2) Pentagon Tract and the area adjacent to Pentagon and Triangle Tracts and bounded on its other sides by Wildwood, Paradise and Pine Grove Avenues and U. S. Highway 50; and (3) the whole of First Subdivision of Lakeside Park.

On August 16, 1957, Pinewood filed a complaint (Case No. 5965), alleging as unlawful Southside's extension of its system from Al Tahoe to State Line, along Highway 50; that the extension was made at a time when Pinewood's system was already constructed in its Lakeside and Pinewood tariff areas, astride Highway 50 near State Line, and that it bisected and injuriously affected the operation of the combined systems. Pinewood requested: (a) a cease and desist order against service from the alleged unlawful extension;

^{3/} The six, in addition to La Baer Motel, are: Cecil's Market, Seaton's Motel, Dr. Neff, Standard Stations, Inc., Blue Crystal Motel and Flamingo Motel. Also, since some time in 1958, service through the connection to Cecil's Market has been furnished to a motel, Tahoe Manor, constructed by the owner of Cecil's Market on his property.

(b) a division of lines, plants or systems as between the two utilities; (c) a temporary desist order against construction work by Southside in territory contiguous to Pinewood's service area pending decision on the complaint or until further order of the Commission. (The Commission did not issue such a temporary order.)

Defendant's answer alleged that its territory coincided with its tariff schedules and then effective tariff service area map (Cal. P.U.C. Sheet No. 47-W, effective February 20, 1957); that it needed no certificate to extend its system from Al Tahoe to State Line or to other portions of the area in the future; and that all of said area, except portions theretofore certificated to other utilities, was within its service area.

Despite the foregoing somewhat sweeping territorial claims, Southside, on October 5, 1957, filed an application under Section 1001 for a certificate to extend its system:

"to certain territory contiguous to the service area of applicant on the easterly side of U. S. Highway No. 50, said portion of said service area now comprising lots 1, 2 and 3 of Block L, lots 1, 2, 3, 4 and 5 of Block M, lot 3 of Block I, and portions of lots 6, 7 and 8 of Block J, all of First Subdivision of Lakeside Park ...; that the contiguous territory to which applicant desires to extend its service is all of the First Sub-division of Lakeside Park, except the area already included within the service area of applicant and Block H as delineated upon said subdivision."

A hearing on the three matters was held at Lake Tahoe on October 16, 1957 and the consolidated proceeding was submitted subject to the filing of written memoranda within 30 days thereafter. Lakeside Park Association, not notified of the earlier hearing in 1956, appeared and participated in the consolidated proceeding in opposition to the Southside application. Its representative stated, however, that the association did not object to public utility

service in the first tier of lots west of Highway 50, since "we have no pipelines on the highway" (Application No. 38510, etc., Tr. p. 105). Further, this witness stated, in answer to a question by counsel for Southside as to whether the association would object to a utility rendering service to the larger commercial establishments along the highway, "We have no facilities to serve them out there now" (Application No. 38510, etc., Tr. p. 106).

The record in the present case shows that by October 16, 1957, the date of the concluding hearing in Application No. 38510 and related matters, Southside had already negotiated and had accepted applications for water service from the owners of two motels (Ace High and Carriage House) to be constructed the following year on the west side of Laurel Avenue, fronting the rear of the first tier of lots in First Subdivision of Lakeside Park. Ace High Motel opened for business about November 1, 1958 and Carriage House about August 15, 1958. Decision No. 56386 became final by denial of the petition for review on October 15, 1958. Emergency service to Holiday Lodge was provided by Southside in February 1959, through a fire hose from a nearby hydrant across Laurel Avenue, when the Lodge's wells failed over the Washington's Birthday holiday. The hose connection was later replaced by 2-inch pipe installed by the owners of the Lodge at their expense and has since afforded standby water service in case of failure of the two Lodge wells.

Decision No. 56386, dated March 17, 1958, disposed of the issues in the former proceeding by granting Pinewood a certificate only: (a) for Bartlett Tract No. 1 and for the first tier of lots in First Subdivision of Lakeside Park, between the California-Nevada boundary and the northerly boundary of Pinewood's Lakeside Lodge service area; (b) for Pinewood Park (located east of the junction of Pioneer Trail and Highway 50); (c) for the area adjacent to Triangle Tract and bounded on its other sides by Wildwood and

Paradise Avenues and Pioneer Trail. The Commission denied Southside's application and also ordered that Southside be "restrained and ordered not to make any extensions or service connections within the certificated areas of complainant, including the areas in which Pinewood Water Company heretofore has been authorized to act as a water corporation, and also in the area hereinabove described in which Pinewood Water Company is authorized to render such service."

The opinion in that decision contains a finding and other statements as follows:

"Respecting the complaint of Pinewood Water Company against Tahoe Southside Water Utility, the Commission is of the opinion and, from the evidence of record, finds that the extension constructed by defendant, at least to the extent that it parallels, invades or extends beyond the certificated areas of complainant, is not an extension in the ordinary course of its business within the meaning of Section 1001 of the Public Utilities Code. However, the relief sought by complainant is equitable in its nature, and all considerations must be weighed by the Commission, including the equities in favor of defendant and all those, such as defendant's present customers" (the seven commercial establishments named in footnote 3, supra) "who would be affected by a Commission restraining order. Consequently, defendant will be restrained only against making additional extensions or service connections in the areas now or hereinafter [sic] to be certificated for service by complainant."

Southside, in its petition for rehearing, took exception, with respect to the certificate, only to the grant which included Bartlett Tract No. 1 and the first tier of lots in First Subdivision of Lakeside Park.

Viewing Decision No. 56386 in light both of the historical situation, the surface of which has only been scratched in the preceding discussion, and of the record in the instant proceeding,

we cannot say that the decision speaks with a precision which matches the complexity of the controversy or which sets at rest the claims and protests of the respective parties.

It is obvious, however, from a consideration of the authority granted to Pinewood by that decision, that the three motels on the west side of Laurel Avenue now connected to Southside's lines, whether considered as consumers or as recipients of standby service, are not located within the area, described in paragraph 1.(1)(b) of the order in that decision, to which Pinewood may lay claim under a specific certificated grant. Moreover, neither utility would appear to have a clear right, under Section 1001 of the Public Utilities Code, to extend its service into First Subdivision of Lakeside Park west of Laurel Avenue in the absence of specific authority to do so, as contemplated by the concluding sentence of Section 1001 and as here requested.

Based upon careful consideration of the contentions of the several parties and of the entire evidence of record the Commission finds as a fact that public convenience and necessity require that applicant Tahoe Southside Water Utility be authorized to serve water as a water corporation in the territory sought by it and that Application No. 40929, as amended, of Pinewood Water Company should be denied.

In regard to the complaint of Pinewood Water Company against Tahoe Southside Water Utility, after giving weight to the equities of all parties, including defendant's present customers, the Commission is of the opinion, and from the evidence of record, finds that defendant should be restrained against making any additional extensions or service connections in any areas lying northeasterly from North Road, and the extension thereof, to the

State Line and westerly from U. S. Highway No. 50 to Lake Tahoe, except within the area certificated to Southside by the order herein, or in the areas now certificated for service by complainant unless otherwise specifically authorized in an appropriate proceeding. In all other respects the Commission finds that the relief sought by Case No. 6251 should be denied.

The certificate hereinafter granted to Tahoe Southside Water Utility shall be subject to the following provision of law:

That the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

The above-entitled matters having been considered together upon the record herein, public hearings having been held, and said matters having been submitted and now being ready for decision,

IT IS ORDERED as follows:

1. That a certificate of public convenience and necessity is granted to Tahoe Southside Water Utility, a corporation, to acquire, construct and operate a public utility water system for the distribution and sale of water in El Dorado County located on the westerly side of U. S. Highway No. 50, Lots 6, 7, 8, 9, and 10 in Block K and Lots 6, 7, 8, 9 and 10 in Block J in the First Subdivision of Lakeside Park as set forth in Exhibit B attached to the Amendment to Application No. 40859.

2. That Tahoe Southside Water Utility be, and it is, authorized to apply, after the effective date of this order, its presently effective tariff schedules to the areas certificated herein.

3. That Tahoe Southside Water Utility, within thirty days after the effective date of this order, shall revise its presently filed tariff schedules, including tariff service area map, in accordance with the procedure prescribed in General Order No. 96, to provide for the application of said tariff schedules for water service in the area being certificated by this order. Such revised tariff schedules shall become effective upon five days' notice to the Commission and to the public after filing as hereinabove provided.

4. That Application No. 40929 is denied.

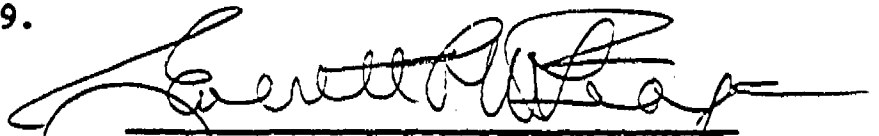
5. That Tahoe Southside Water Utility is hereby restrained and ordered not to begin or complete construction of any line, plant or system, or any extension thereof of any character, or of any connection to any consumer or other utility in any areas lying northeasterly from North Road, and the extension thereof, to the State Line and westerly from U. S. Highway No. 50 to Lake Tahoe, except within the area certificated to Tahoe Southside Water Utility by ordering paragraph 1 herein, or in the areas now certificated for service by complainant, unless otherwise specifically authorized in an appropriate proceeding.


6. That, except as herein specifically granted by ordering paragraph 5 hereof, the relief sought by Case No. 6251 is denied.


The Secretary is directed to cause a copy of this decision to be served upon defendant, Tahoe Southside Water Utility.

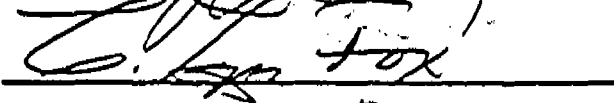
The effective date of this order shall be twenty days after the date hereof, except that as applied to the order restraining Tahoe Southside Water Utility, it shall be effective twenty days after service of a copy of this decision upon said defendant.

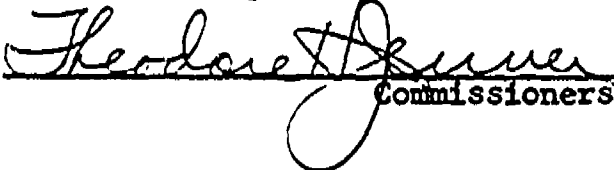
Dated at San Francisco, California, this 24th day of November, 1959.



President








Commissioners