

Decision No. 59725

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
WEST PALM SPRINGS WATER CO., a corpo-
ration, for authority to issue stock
and acquire and operate a public
utility water system, and for a
certificate of public convenience and
necessity therefor.

Application No. 40491
(Amended)

Richard L. Wells, of Gibson, Dunn & Crutcher, for
applicant.
Best, Best & Krieger, by Richard Edsall and John H.
Bernard, for All American Investment Corp.,
interested party.
A. L. Gielegem and D. B. Steger, for the Commission
staff.

OPINION ON REHEARING

By Decision No. 58490, dated May 22, 1959, in Application No. 40491, this Commission granted to the West Palm Springs Water Co. a certificate of public convenience and necessity to acquire, construct and operate domestic public utility water service in those portions of Sections 5 and 8, Township 3 South, Range 3 East, S.B.B. &M., known as San Gorgonio Pass Nos. 1, 2, 3, and 4, Riverside County, California.

Under date of June 10, 1959, a petition for rehearing was filed by the West Palm Springs Water Co. and as a result thereof, this Commission issued an order granting rehearing on July 14, 1959.

This rehearing was held on October 15, 1959, in Los Angeles before Examiner Grant E. Syphers at which time evidence was adduced and the matter submitted subject to the filing of briefs. The

parties now have advised that no briefs will be filed and the matter is ready for decision.

The testimony presented at the rehearing indicates that there are three issues involved. The first concerns the installation of certain admittedly substandard facilities; the second concerns whether or not any additional area should be certificated to applicant, and the third issue relates to whether or not deviation from the main extension rule should be permitted.

Decision No. 58490, supra, ordered the West Palm Springs Water Co. "to correct the pipe line installations" of certain substandard facilities in San Geronio Pass Units Nos. 3 and 4. There is no dispute on this record but that in these units some of the pipe is of a lighter gauge than required by General Order No. 103 of this Commission and is in further violation of that same General Order in that it is unwrapped; also, large sections of the pipe are of reconditioned tubing. Decision No. 58490, supra, directed applicant to replace these installations with pipe which would meet the requirements of the General Order. Additional evidence produced by the applicant at the rehearing did not dispute the fact that these pipe installations were substandard, but it did tend to show that this pipe has a remaining useful life of at least ten years and that it would be uneconomic to take it out until it has been used for the major part of this useful life.

Furthermore, on this issue the applicant contends that this substandard pipe was installed by the subdivider.

Witnesses for the All American Investment Corp., the subdivider concerned, presented testimony to the effect that these

pipes were purchased from the Kelly Pipe Company pursuant to instructions received from applicant's engineer.

Other testimony presented by applicant showed that the engineer concerned was not authorized to act for applicant in this matter and did not have any part in the purchase of material from the Kelly Pipe Company nor in supervising the installation thereof.

In the light of these facts we now find that while this pipe does not meet the technical requirements of General Order No. 103, nevertheless it is adequate to provide service for at least ten years in the future. The testimony in this regard was undisputed. Therefore, in the ensuing order we will permit this pipe to remain in use for a limited time but will require the applicant to submit a program of replacement thereof acceptable to this Commission, said program to include the financial means whereby such replacement will be accomplished.

While we are aware of applicant's contentions to the effect that it should not be required to replace these substandard facilities, the evidence does disclose that these facilities are part of the applicant's utility system and that the subdivider did rely somewhat upon applicant's ostensible agents in making the installations. Therefore, we find that it is the duty of this utility to submit an acceptable program to replace this pipe, taking into consideration that it now has a remaining useful life of no greater than approximately ten years.

Concerning the second issue in these proceedings relating to the certificated area, the evidence discloses that the applicant did request a certificate for a large area containing approximately 3,200 acres consisting of Sections 5, 7, 8, and a portion of Section

9, in Township 3 South, Range 3 East, a portion of Section 32 in Township 2 South, Range 3 East, and Section 1 in Township 3 South, Range 2 East, S.B.B.&M. The certificate actually granted was limited to those portions of Sections 5 and 8, Township 3 South, Range 3 East, known as San Gorgonio Pass Nos. 1, 2, 3, and 4. In an amendment to the application, filed on October 9, 1959, and considered in these proceedings, the applicant requests additional territory to serve an area known as West Palm Estates No. 1 consisting of 52 lots located on approximately 20 acres of land.

In opposition to this proposal, the All American Investment Corp. took the position that the applicant should be granted a certificate to serve all of the area originally asked for in the application and that water service should be provided to this area prior to the time any service is provided to West Palm Estates No. 1. Testimony was presented to show that All American Investment Corp. has conducted subdividing activities in Units 1 to 7 in San Gorgonio Pass and Units 1 and 2 of West Palm Springs Village. This company presented witnesses and testified that it has sold land in all of these subdivisions upon the representation that water would be served by the applicant. As a result of Decision No. 58490, the Real Estate Commissioner now requires the All American Investment Corp. to advise any prospective purchasers of land that water is not available. This advice must be given except in those areas to which applicant was granted a certificate by Decision No. 58490. It should be noted, however, that applicant has not yet exercised said certificate, nor has it filed tariffs under which service would be furnished.

The All American Investment Corp. also testified that the water rights to the land it holds have been transferred to the applicant company. The applicant testified that it is willing to serve this land upon the condition that the Commission grant it a certificate therefor and condition the certificate against requiring applicant to replace the presently existing substandard pipe. The applicant has no objection to a certificate requiring a replacement of this pipe by someone other than applicant, but it does not believe that the utility should do this.

Likewise, the applicant in its request for a certificate wants a deviation from the main extension rule.

In short, this is an issue wherein the water utility seeks a certificate in all of the area requested but wants the All American Investment Corp. (the subdivider) to install the facilities without the benefit of the main extension rule.

A consideration of the evidence in this respect shows that, while there is no problem as to the adequacy of water supply for the area heretofore certificated, additional supplies will have to be developed for the additional area requested.

The water company admitted that it is economically unable to bear the cost of backup facilities sufficient to serve the entire area and for this reason it requests a deviation from the main extension rule.

Upon this state of the record we do not believe it advisable to grant a certificate in any areas other than those authorized by Decision No. 58490. This utility has made commitments to the All American Investment Corp. upon which that company has

relied. The utility now is attempting to meet these commitments by asking for a certificate in all of the area concerned but it is financially unable at this time to accept this responsibility. Upon this state of the record we do not believe it advisable to permit the utility to extend into West Palm Estates No. 1 under a deviation from the main extension rule. Likewise, we do not deem it advisable to grant a certificate for the entire area. Apparently this utility is reaching the limit of its present financial ability in endeavoring to serve the territory authorized by Decision No. 58490, supra.

The foregoing discussion also pertains to the third issue and we now find that the request for a deviation from the main extension rule should be denied.

ORDER ON REHEARING

Application as above entitled having been filed, public hearings having been held thereon, the Commission being fully advised in the premises and having made the foregoing findings, and good cause appearing,

IT IS ORDERED that Decision No. 58490, dated May 22, 1959, in Application No. 40491, be, and it hereby is, affirmed except as hereinafter modified.

Paragraph (3) of the order of the foregoing decision is hereby amended to read as follows:

Applicant shall submit to this Commission a program to replace the pipe-line installations in all subdivisions except San Geronio Pass Nos. 1 and 2 and the line from well No. 1 so that these installations shall comply with the requirements of General Order No. 103. Said program shall take into effect the findings

herein that these pipe-line installations are adequate to provide service for no longer than approximately ten years in the future and shall include the financial means whereby such replacement program will be accomplished. Said program shall also consist of a description of the pipe, its estimated remaining life, and the provisions being made to provide for replacement thereof on a continuing basis prior to the end of the present useful remaining life and in any event for complete replacement by not later than December 31, 1970.

In all other respects the provisions of Decision No. 58490 shall be in full force and effect.

The effective date of this order shall be the date upon which this Commission shall have found acceptable the program submitted by West Palm Springs Water Co. for replacement of its substandard facilities referred to in the opinion herein and pursuant to Ordering Paragraph (3) above.

Dated at San Francisco, California, this 29th day of February, 1960.

[Signature] President
[Signature]
[Signature]
[Signature] Commissioners

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