

Decision No. 62884

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROY AGEE,

Complainant,

vs.

Case No. 7140

APPLE VALLEY RANCHOS  
WATER COMPANY,

Defendant.

Roy Agee, in propria persona.  
Ball, Hunt and Hart, by Donald B. Caffray,  
for the defendant.  
Jerry J. Levander, for the Commission staff.

O P I N I O N

Roy Agee filed the complaint herein on June 23, 1961. Therein he seeks an order from this Commission that the defendant, Apple Valley Ranchos Water Co. (sued as Apple Valley Ranchos Water Company), be required to extend water service to his property in Apple Valley, California.

On July 5, 1961, the defendant filed a statement of defects and a request for a dismissal of the complaint. The request was denied and, on July 24, 1961, the defendant filed its answer to the complaint in which it alleges that the complainant's property is outside of the certificated area of defendant and that "defendant has not extended its service and does not intend to extend its service so as to include land owned by defendant (sic)."

Public hearings on the complaint were held in Los Angeles before Examiner Kent C. Rogers on September 14 and October 11, 1961. At the conclusion of the latter day of hearing, the matter was submitted. It is ready for decision.

The complainant testified that he lives in Wilmington, California; that he has a five-acre tract of land on which there is a two-bedroom house at 15776 Rancheries Road in Apple Valley, California; that his daughter and son-in-law reside thereat; that this property is in Section 7, T5N, R3W, S.B.B.&M., San Bernardino County; that defendant water company has water lines on the north side of complainant's property and along the east side thereof; that the line on the north side is approximately 300 feet from complainant's house; and that the water company has refused to extend service to his property. The complainant further testified that he constructed the Apple Valley house in 1948, at which time he asked the president of the water company, Mr. Bass, to furnish him water; that he got no results; that in 1949 he drilled a well on his property; that in 1950 he sold 45 acres of property to the Apple Valley Building and Development Company; that in 1955 he had a chance to do some building on his remaining five acres; that he and a prospective builder went to see Mr. Bass in person to have him extend water service to his property; that Mr. Bass said he could not do it because the land was out of his service area; that the well began to fail; that early in 1961 he contacted a drilling company relative to having the well drilled deeper and the driller said it was useless; and that thereupon complainant capped the well. The complainant further testified that early in June 1961 he went to Mr. Bass'

office to see about getting water; that Mr. Bass, president of the water company, suggested they return when a Mr. Northon of the water company was available; that another man came over and said, "You will have to write Mr. Bass a letter."; that complainant stated he did not want to do business with Mr. Bass, but wanted to do business with the water company; and that the man said, "You will have to go through Mr. Bass."

The complainant further stated that he thereupon prepared a letter to Mr. Bass and mailed a copy to the Commission; that he took the letter in person and delivered it to Mr. Northon in the water company's office; that Mr. Northon said, "I'll see that Mr. Bass gets this."; that complainant said he would be back and that Mr. Northon said, "I will write you a letter."; that this was on a Friday or Saturday; that complainant returned to the office of the water company on the following Monday to see Mr. Bass; that he saw Mr. Northon and Mr. Bass and asked them if they were going to furnish him with water and Mr. Bass said, "No, I won't tell you I won't give you water."; that complainant stated he would have to go to the Commission; and that Mr. Bass said, "Go ahead, go to the Commission(er)."

The sole defense of the defendant was that it has never provided service to the area which includes the complainant's property and that it never intended to and did not include said land in its service area.

The Commission's records show the following:

On January 31, 1947, defendant, a California corporation,

filed an application for a certificate of public convenience and necessity to serve certain territory in San Bernardino County, including property in the Apple Valley area (Application No. 28187). The certificate requested therein was for authority to serve all of Sections 16, 17, 18, 21, 22, and 28 and portions of Sections 19, 20, 27, and 15, and the south one-half each of Sections 7, 8, and 9, T5N, R3W, S.B.B.&M.

Complainant's property is in Section 7 and is immediately north of this requested service area. The decision in Application No. 28187, Decision No. 40424, dated June 17, 1947, granted to defendant authority to construct, maintain, and operate a public utility water system in the area comprising 5,840 acres, more or less, located in Sections 7, 8, 9, etc., T5N, R3W, S.B.B.&M., San Bernardino County. There was no restriction in said certificate against extending service outside the certificated area. Thereafter, and prior to November 3, 1958, defendant extended service to contiguous areas surrounding complainant's property. On March 17, 1958, it filed a tariff sheet, Sheet No. 8-W, showing service in Section 7, excluding complainant's property. This filing was rejected and was replaced on August 13, 1958, with a tariff sheet, Sheet No. 44-W, which included Section 1, R4W, and Section 6, R3W, immediately north of complainant's property, but excluded complainant's property. On September 29, 1958, defendant filed Tariff Sheet No. 50-W, canceling the prior sheet and still excluding complainant's property, but showing it almost entirely surrounded by the service area.

On November 3, 1958, defendant filed Application No. 40521 for authority to extend service to noncontiguous tracts of land.

Therein, after reciting the original certificated authority, defendant alleges that it "has since extended its service into contiguous territory as shown on maps now on file with the Public Utilities Commission." The application further alleges, "A copy of the latest map showing the entire area into which applicant has extended its service is attached hereto and marked Exhibit A." Exhibit A attached to the application shows the service area as including the majority of Section 1, R4W, a portion of Section 6, and all of Section 7, R3W, including the complainant's property. By Decision No. 58248, dated April 7, 1959, in said application defendant was authorized to serve as requested.

On April 29, 1959, defendant filed Tariff Sheet No. 57-W showing the extended area, but excluding complainant's property. Thereafter, it filed on June 17, 1959, Tariff Sheet No. 61-W; on September 30, 1959, Tariff Sheet No. 66-W; on February 19, 1960, Tariff Sheet No. 68-W, which was rejected; and on March 21, 1960, Tariff Sheet No. 70-W, each of which included the complainant's property as part of the service area.

On May 31, 1960, the defendant filed a service area map excluding the complainant's territory. This filing was rejected by the Commission.

On June 23, 1960, the defendant filed another tariff service area map, Tariff Sheet No. 74-W, which specifically included the complainant's property as part of the service area. This map, as do prior maps, specifically excludes from the service area other parcels of land entirely surrounded by the service area.

On September 2, 1960, defendant attempted to file further amended Tariff Sheet No. 76-W which would have excluded complainant's property. This filing was rejected and on March 23, 1961, defendant filed revised service area maps, Tariff Sheet No. 81-W, which purports to exclude complainant's property from the service area. The letter of transmittal, Advice Letter No. 16, dated August 21, 1960, with which the last previously rejected maps, including Tariff Sheet No. 76-W, were presented to the Commission, recites, among other things, "The areas omitted from Section 6 and Section 7 are areas that were erroneously reported to the Commission on Advice Letter No. 9. At that time, with our freehand method of coloring in the service area of the water company, a new clerk failed to note that this area was not included in our service area and the error has been carried forward with each subsequent advice letter. Service has never been rendered in this area and as shown on the enclosed map it is extremely mountainous and water service to the area would be difficult, if not impossible, with our existing facilities."

The only reason ever given by defendant for excluding any portion of Section 7 was that it was hilly (Advice Letter No. 16, filed on September 2, 1960 and rejected by the Commission). Prior to that time, defendant had blown hot and cold concerning the inclusion of all of Section 7, but on five occasions filed tariff area service maps with this Commission showing that it served all of Section 7. The last of such maps became effective on July 23, 1960 (Tariff Sheet No. 74-W), and no modification of this service area was made until April 22, 1961, the effective date of revised tariff area maps which excluded complainant's property (Advice Letter No. 17, Tariff Sheet No. 81-W).

One of the original copartners, whose system and assets were acquired by the defendant corporation, namely B. J. Westlund, became the secretary of the defendant corporation and as such signed all but the last service area map and advice letter herein referred to.

Upon the record herein, we find as facts:

1. That defendant is a public utility water company.
2. That defendant has dedicated its service as a public utility water company to furnish domestic water to consumers in all of Section 7, T5N, R3W, S.B.B.&M., San Bernardino County, California.
3. That complainant's property is in Section 7, T5N, R3W, S.B.B.&M., San Bernardino County, California.

From the foregoing findings of fact, we conclude that defendant should amend certain of its tariff sheets to include in its service area all of Section 7, T5N, R3W, S.B.B.&M., San Bernardino County, California, and should extend service to complainant pursuant to its filed tariffs from its nearest existing water main.

#### O R D E R

The Commission having made the foregoing findings of fact and conclusions of law and based on said findings and conclusions,  
IT IS ORDERED:

1. That within thirty days after the effective date hereof, Apple Valley Ranchos Water Co. shall revise in conformity with General Order No. 96 and in a manner acceptable to this Commission, such of its tariff sheets, including tariff service area maps, as are necessary to show that it provides service to all of Section 7, T5N, R3W, S.B.B.&M., San Bernardino County, California. Such revised

tariff sheets shall become effective upon five days' notice to the public and to this Commission after filing as hereinabove provided.

2. That if complainant, Roy Agee, shall file a request with the defendant, Apple Valley Ranchos Water Co., for water service at 15776 Rancheries Road, Apple Valley, California, said water company shall provide such service within thirty days after the filing of said request. The service so provided shall be from the nearest existing main of the water company and all construction, costs and charges shall be in accordance with defendant's rates and rules lawfully on file with this Commission.

The effective date of this order shall be twenty days after service on the defendant, Apple Valley Ranchos Water Co.

Dated at Los Angeles, California, this 5<sup>th</sup> day of December, 1961.

[Signature]  
President

[Signature]

Frederick B. Hohlhoff

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\_\_\_\_\_ Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.