

ORIGINALDecision No. 63969

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORCUTT TOWN WATER COMPANY, a
California corporation,

Complainant,

vs.

MIRAFLORES WATER COMPANY
and/or
OAK KNOLL WATER COMPANY,

Defendants.

Case No. 7319
(Filed April 17, 1962)

Investigation into the operations and
practices of MIRAFLORES WATER COMPANY
INCORPORATED; OAK KNOLL WATER COMPANY
INCORPORATED; MINSON COMPANY, a
limited partnership; ALTON L. PABST;
RUSSELL K. MELTON; L. D. MINOR; and
STUART A. BARTLESON.

Case No. 7322
(Filed April 24, 1962)

In the Matter of the Application of
ORCUTT TOWN WATER COMPANY, a
California corporation, for authority
to extend its certificated area, and
to establish rates for water service
in the extended territory so
requested for certification.

Application No. 44357
(Filed April 17, 1962;
Amended May 24, 1962)

Lloyd E. Somogyi, for Orcutt Town Water Company,
applicant and complainant.

Robert L. Trapp, for Miraflores Water Company
Incorporated, Oak Knoll Water Company Incorporated,
Minson Company, Alton L. Pabst, Russell K. Melton,
L. D. Minor and Stuart A. Bartleson, defendants
and respondents.

Cyril M. Saroyan and Donald B. Steger, for the
Commission staff.

O P I N I O N

Orcutt Town Water Company by its present application, as
amended, seeks a certificate of public convenience and necessity for

territory, composed of seven adjoining areas in Santa Barbara County, lying generally south of Clark Avenue and west of Bradley Road near the town of Orcutt.^{1/} The areas are substantially those for which certification was sought by applicant in 1960.^{2/}

The primary source of supply for applicant's system is approximately 1,280 feet westerly of the west boundary of Tract No. 10031, Santa Barbara County, which tract is within the territory in which applicant holds itself out to provide water service and for which it has sought certification. Orcutt Town Water Company, noting that some other water purveyor was proceeding to establish water service to said tract, filed a complaint with the Commission claiming, in essence, that such activity was unlawful and constituted invasion of its territory. Under the circumstances alleged in the complaint, the Public Utilities Code provides that the Commission may issue a cease and desist order pending decision in the matter. Such an order was issued against defendants and respondents herein on April 24, 1962.^{3/}

Contemporaneously with the issuance of the cease and desist order, the Commission, on its own motion, instituted an investigation into the operations and practices of Miraflores Water Company Incorporated, Oak Knoll Water Company Incorporated and certain named individuals associated with said companies.

The matters were consolidated for hearing and public hearing thereon was held before Examiner F. Everett Emerson on

1/ The specific areas are delineated on Exhibit No. 23 in this proceeding.

2/ See Application No. 41815 in which Decision No. 60872 was issued October 11, 1960.

3/ Decision No. 63599.

May 22, 23 and 24, 1962, at Santa Maria. An extensive record has been made respecting the certificate application and the complaint matter. In these respects the evidence is sufficiently complete to permit of their disposition at this time, a particularly desirable situation in view of the fact that the subdivider of Tract 10081 is awaiting establishment of water service to said tract. The investigatory matter, being incomplete, will be the subject of additional public hearing.

Orcutt Town Water Company is presently providing water service to approximately 460 customers in the Orcutt area. Its primary source of supply is located in the northeasterly corner of Mission Highlands Subdivision in which the utility now serves about 72 customers and to which, with the approval of this Commission, it extended its system in the normal course of business during the year 1960. An additional 70 customers will be served in this subdivision during the year 1962. Lying directly to the south of the first unit of Mission Highlands Subdivision is a second unit^{4/} of about 110 lots which will be developed by the same interests who have developed the first unit of the subdivision.

Adjoining Mission Highlands Subdivision on its easterly boundary and on a portion of its northerly boundary is a presently undeveloped parcel commonly known as "Eames property"^{5/} for which a subdivision into about 220 residential lots is anticipated. Bordering the Eames property and extending easterly to Bradley Road

^{4/} These two units of development are delineated "Area 4" and "Area 3", respectively, on Exhibit No. 23.

^{5/} Delineated on Exhibit No. 23 as "Area 2".

is located Tract 10081 in which 115 residential lots are located and in which construction of homes is now in progress.^{6/}

Applicant's primary source of supply lies in approximately the geographical center of the four parcels thus far described.

Applicant has also regularly established service to three parcels, lying between the Orcutt townsite and Mission Highlands Subdivision, in which nine service connections exist and in which an additional 103 prospective customers may be served. Applicant seeks to have these areas included in its certificated area.

In summary, Orcutt Town Water Company now serves approximately 460 customers and in this proceeding holds itself out to serve an additional 618 customers in the territory for which it seeks a certificate of public convenience and necessity.

Applicant's system, including the source of supply, is designed for the eventual serving of approximately 1,000 residential customers. Estimates concerning plant required to take on the prospective 618 additional customers specify 15,750 feet of new 6-inch and 17,450 feet of new 8-inch mains, a new well and additional storage facilities at an estimated total cost of \$179,257. Applicant, through the resources of its officers and advance payments in aid of construction, can adequately finance such construction.

Defendant, Miraflores Water Company Incorporated, is a public utility water corporation which holds a certificate of public convenience and necessity issued by this Commission in 1957 for service to a parcel of about 48 acres in size lying on the easterly side of Orcutt Road about midway between Lakeview and Foster Roads

^{6/} Delineated on Exhibit No. 23 as "Area 1"; model homes are on display therein.

and about 1½ miles north of the Orcutt townsite. It has established water service to or in numerous other parcels. In its expansion, and allegedly under the pressure of urgent and repeated requests by the officials of Vandenberg Air Force Base for housing facilities, it has either extended its lines into or has established entirely new water systems within areas which were non-contiguous to its lawfully served areas. It has thus acted in violation of the provisions of the Public Utilities Code. The full extent of its unlawful operations is not yet revealed; however, the evidence is abundantly clear that in the instance which gave rise to the complaint herein, this utility has ignored normal and lawful extension practices and has leapt forward into areas in which, absent authority from this Commission, it has no legal right to be. Its later closing of the gaps and integration of the various parts into one system in no way alter the plain facts of unlawful operation.

In the specific situation leading to the complaint of Orcutt Town, it appears that in approximately September 1958, Minson Company, operated and managed by L. D. Minor and Stewart A. Bartleson, a developer of real estate subdivisions, undertook the development of about 120 acres of land, lying to the northeast of the intersection of Clark Avenue and Bradley Road, into homesites. Such area is commonly known as the Oak Knoll Subdivision and officially as Tract No. 10004, Santa Barbara County. A corporation called Oak Knoll Water Company Incorporated was formed and these two persons with one Robert L. Karnes were named as its first Board of Directors. Miraflores was engaged to develop a well and water distribution system for the tract. At the time, the tract was about one mile distant from any water system properties of Miraflores.

The officers of Oak Knoll and Miraflores in 1958 arrived at an arrangement, not yet reduced to writing, whereby the costs of the facilities were put up by Oak Knoll, revenues were received and recorded by Oak Knoll, Miraflores operated the system as if it were its own and assumed source of supply costs, crediting such cost against the distribution system put in by Miraflores. By these and other means, the subdividers of Oak Knoll Subdivision had a water system in their tract; Miraflores had a new, although unlawful, area of operations; Oak Knoll Water Company Incorporated remained no more than a "dummy" or paper corporation with no legal right to conduct public utility operations; the provisions of Miraflores' main extension rule had been contravened; until approximately January 1962 the accounting records of neither Oak Knoll nor Miraflores could separately disclose the full relationship between the companies; and, it must be supposed, since in fact its fulfillment was attempted, Miraflores could then further extend "its" system into additional areas "in the normal course of business" without benefit of either a certificate or a contiguous area from which to extend. Miraflores then installed a main in Bradley Road south of Clark Avenue and "stubbed in" two mains to Tract No. 10081, at which time Orcutt Town Water Company filed its complaint.

In view of the evidence, the Commission finds and concludes (1) that public convenience and necessity require and will require that Orcutt Town Water Company, Incorporated, render public utility water service in the full area requested, (2) that the cease and desist order heretofore issued against Miraflores Water Company Incorporated and others should now be made permanent, and (3) that investigation into the affairs of respondents, as contemplated by the Commission's order instituting investigation, be continued.

The certificate issued herein is subject to the 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

Based upon the evidence and the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED as follows:

1. A certificate of public convenience and necessity is hereby granted Orcutt Town Water Company, Incorporated, to operate as a public utility water corporation within the areas in Santa Barbara County delineated on Exhibit No. 23 in this proceeding and thereon designated as Areas Nos. 1 to 7 inclusive.
2. Orcutt Town Water Company, Incorporated, shall file in quadruplicate with this Commission, within thirty days after the effective date of this order and in conformity with the provisions of General Order No. 96-A, tariffs and service area maps revised to include the areas for which the above certificate has been issued.
3. Miraflores Water Company Incorporated, and Oak Knoll Water Company, a corporation, and their officers, agents and employees shall refrain from constructing any water supply, transmission, or distribution facilities, or from constructing any additions to or extensions of any such existing facilities, within or for service to any portion of the areas hereinabove described and for which the

above certificate has been issued to Orcutt Town Water Company, Incorporated.

4. Case No. 7322, being an investigation on the Commission's own motion, is hereby continued and public hearing in such investigation shall be held before such Commissioner or Examiner and at such time and place as may hereafter be designated.

The Secretary is directed to cause a copy of this order to be served by registered mail upon each of the respondents, and to cause appropriate notice of hearing to be mailed to the same at least ten days before the hearing.

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

Dated at San Francisco, California, this 10th day of July, 1962.

George J. Hoover
President
John P. ...
...
...
Fredrick B. ...
Commissioners