

**ORIGINAL**

Decision No. 70837

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAN GABRIEL VALLEY WATER COMPANY, )  
 Complainant, )  
 vs. )  
 SUBURBAN WATER SYSTEMS, )  
 Defendant. )

Case No. 8399  
(Filed April 28, 1966)

Brobeck, Phleger & Harrison, by Robert N. Lowry, for complainant.  
Walker Rannon and Vern McNeese, for defendant.  
Jerry J. Levander, for the Commission staff.

O P I N I O N

San Gabriel Valley Water Company (San Gabriel) asks the Commission for an order permanently restraining Suburban Water Systems (Suburban) from serving water to Challenge-Cook Bros., Inc. (Challenge), a manufacturing concern, or to any person whomsoever in the area occupied by Challenge. San Gabriel also asked for, and received, a temporary restraining order, issued April 29, 1966 (Decision No. 70632), which restrained Suburban "from installing connections or other facilities for providing water services to Challenge-Cook Bros., Inc., within the area described in the complaint and in Exhibit A attached thereto until the Commission makes and files its decision herein or until the further order of the Commission." Suburban answered, alleging that the proposed service connection was in territory heretofore certificated to Suburban and that said connection would serve water to property partially

within Suburban's certificated area. Suburban requests a dismissal of the complaint.

The matter was heard before Examiner Robert Barnett on May 19, 1966, at Los Angeles, and was submitted on that date.

Challenge is building a manufacturing complex in the City of Industry on a parcel of land bounded on the north by the Los Angeles and Salt Lake Railroad tracks and on the south by Gale Avenue. The western boundary of the parcel runs congruous with a 12-inch water main of San Gabriel's for about 1,750 feet; the eastern boundary runs almost parallel to the western boundary, with the distance between the boundaries approximately 625 feet at Gale Avenue and approximately 800 feet at the railroad tracks. This parcel of land consists of portions of two lots; the eastern portion of Lot 14 and the western portion of Lot 9. The common boundary of Lots 9 and 14 runs from the railroad on the north to Gale Avenue on the south and approximately bisects the parcel. The Lot 14 section of the parcel is in San Gabriel's certificated service area and the Lot 9 section is in Suburban's certificated service area.

On February 23, 1954, the Commission issued Decision No. 49703 in Application No. 34947 (effective twenty days after February 23, 1954), wherein Suburban was certificated to serve water to an area which included Lot 9 and Lot 8 (a lot contiguous to Lot 9's easterly boundary). Suburban has never served Lot 9 or Lot 8.

On July 6, 1954, the Commission issued Decision No. 50251 in Application No. 35093, wherein San Gabriel was certificated to serve water to an area which included Lot 14 but which specifically excluded Lot 8 and Lot 9.

The testimony regarding water service to Lots 9 and 14 shows that on March 4, 1954, San Gabriel began serving water to Lot 9 from its water main located along the south side of Gale Avenue. This service has been in continuous use ever since. At first the water service was for agricultural use, with some domestic use, but this changed in November, 1965, when construction began on the west portion of Lot 9. At that time San Gabriel began serving construction water to that portion of the lot. The eastern portion of Lot 9 continues to receive agricultural and domestic service from San Gabriel. San Gabriel has continuously served Lot 14 since certification.

The controversy which is the subject matter of this complaint arose when Challenge requested water service from Suburban. Prior to its choice of Suburban, Challenge was receiving construction water, since February 18, 1966, from San Gabriel at a point on the Lot 9 portion of its property located in Suburban's certificated area. This point is served by a 2-inch service that is connected to a 3-inch main of San Gabriel's which runs down the south side of Gale Avenue in San Gabriel's territory. This is Challenge's present source of water.

The permanent water system on the property, constructed by Challenge's engineers, is designed to receive water at a point near Gale Avenue, located on the Lot 14 portion of the property, in San Gabriel's certificated territory (hereinafter referred to as the "design point"). Challenge negotiated for water service with both San Gabriel and Suburban. Relying on the advice of its engineers and fire insurance underwriters, Challenge chose to take service from Suburban. When Challenge and Suburban realized that

Challenge's water system was designed to take water at a point that lay in San Gabriel's territory and that it was too late to change the design of the system, Challenge made plans to run lines from the design point to a point in Suburban's territory (a distance of about 135 feet). At this time San Gabriel, recognizing that Suburban would, of necessity, be serving water to a property partially in San Gabriel's territory, brought this action. Our restraining order has prevented the construction of lines from the design point in San Gabriel's territory to a point in Suburban's territory.

San Gabriel proposes to serve Challenge at either the design point or at two other points within San Gabriel's certificated area. San Gabriel has a 12-inch main running down the westerly side of Challenge's property. This main is newly rebuilt and connects at Gale Avenue with a 6-inch main and a 3-inch main, both of which run along Gale Avenue in an easterly direction. San Gabriel proposes to serve either from its 6-inch main or its 12-inch main. It proposes domestic service at static pressure of 82 psi and, at the design point, fire flow service, at point of connection, of 1,830 gpm at 20 psi residual. It claims that its rates will be approximately \$150 per year less than Suburban's and that Challenge will save the cost of constructing lines from its design point to a point in Suburban's territory.

Suburban has an 8-inch main running along the northerly side of Gale Avenue to a point of connection with a Vallecito Water Company main located approximately 1,100 feet west of Challenge's property. This connection is manually operated at the present time but a valve could be installed to automatically permit

a flow of water from the Vallecito main to the Suburban main, if pressure in the Suburban main was reduced below a safe level. Suburban proposes to serve Challenge from its 8-inch main either at the design point or at a point in Suburban's certificated area and connected to the design point by Challenge's 135-foot lines described above. It proposes domestic service at a static pressure of 80 psi and fire flow service of 2,000 gpm at 20 psi residual.

#### Discussion

The main thrust of San Gabriel's argument is that its service to Lot 14 is pursuant to its certificate and its service to Lot 9 is pursuant to Public Utilities Code Section 1001 as an extension of its system into contiguous territory not theretofore served by a public utility of like character. San Gabriel claims that it was serving Lot 9 prior to the certification of that lot to Suburban in Decision No. 49703, as an extension in the ordinary course of business, and has continuously served that lot. By reason of the historical pattern of service to the area, and notwithstanding the superimposition of certification of Suburban to the area, San Gabriel claims that the equities of the situation gives it the right to serve. San Gabriel's argument in this regard is not convincing.

Assuming that San Gabriel had dedicated itself to serve Lot 9 as of March 4, 1954, even though its service began after our order granted a certificate to Suburban to serve Lot 9 (but prior to the effective date of that order), and even though we later specifically excluded Lot 9 from San Gabriel's certificated area, San Gabriel has not acquired the right, by such dedication, to prevent a consumer from taking service from another utility lawfully authorized to render service in the area in which the consumer is located.

Suburban has the duty to serve, to the reasonable limit of its facilities, all those who request service in its certificated area. (Brockmann v. Smithson Springs Water Co., 56 Cal. P.U.C. 28 (1957).) There is no legal action that can be taken by a public utility or by the Commission to force a consumer to continue to accept service from a public utility without his consent and after he has no use for the service. (Miller v. Railroad Comm., 9 Cal. 2d 190, 200 (1937); Re Village of Fox Point, 28 P.U.R. 3d 168, 170 (Wisc. 1959).)

These principles, applied to this case, give Challenge the right to demand service from Suburban, and Suburban has the duty to provide such service. This will result in Suburban's serving water to property located in San Gabriel's certificated area; but this result is unavoidable. No one suggests that we require Challenge to construct two independent water systems on its property.

The Commission staff representative proposed that the boundaries of the respective certificated areas of Suburban and San Gabriel be changed to place all of Challenge's property within the certificated area of the company that prevails in this litigation. Both Suburban and San Gabriel opposed this proposal. As the issue of modifying boundaries was not raised in the pleadings, we will not consider the staff proposal at this time. However, we recognize that the problem remains and might arise again in litigation over service rights in the easterly section of Lot 9 and in Lot 8. Both companies are admonished to resolve this problem before a conflict arises and report such resolution to the Commission. Application to the Commission should be made to resolve this problem if agreement cannot be reached.

Findings of Fact

1. The property of Challenge is partially within the certified service area of San Gabriel and partially within the certified service area of Suburban.

2. Suburban has been selected by Challenge to furnish water service to its property at a point in Suburban's certificated service area.

3. Suburban has the ability to adequately serve the property of Challenge without impairing its ability to serve other consumers within its certificated service area.

Based on the foregoing findings of fact, the Commission concludes that the temporary restraining order should be dissolved and the complaint should be dismissed.

O R D E R

IT IS ORDERED that the temporary restraining order heretofore issued is dissolved and the complaint is dismissed.

The effective date of the order dissolving the restraining order is the date hereof; the effective date of the order dismissing the complaint is twenty days after the date hereof.

Dated at San Francisco, California, this 14<sup>th</sup> day of JUNE, 1966.

Frederick B. Hallock  
President

John E. [unclear]

George F. [unclear]

Augustus [unclear]

William C. [unclear]  
Commissioners