

ORIGINAL

Decision No. 71760

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension and Investigation on the Commission's own motion of the tariff sheets filed by Advice Letter No. 268 of California Water Service Company; and In the Matter of the Investigation on the Commission's own motion into boundary conflicts between the Salinas District of CALIFORNIA WATER SERVICE COMPANY and ALCO WATER SERVICE.

Case No. 8360
(Filed March 8, 1966)

Investigation on the Commission's own motion into the operations, tariffs, practices and service of ALISAL WATER CORPORATION, doing business as Alco Water Service.

Case No. 8433
(Filed June 1, 1966)

- Arthur G. Atteridge; Graham, James & Rolph, by Boris H. Lakusta, for Alisal Water Corporation, respondent.
- McCutchen, Doyle, Brown, Trautman & Enersen, by A. Crawford Greene, Jr., for California Water Service Company, respondent.
- J. Frederic Ching, for Hartnell College;
- Royal B. Burnett, for Williams Sisters Heirs; C. H. Haller, for Acacia Park Water & Improvement Association, interested parties.
- Clyde F. Norris, for the Commission staff.

O P I N I O N

On February 14, 1966, California Water Service Company¹ filed, by its Advice Letter No. 268, certain tariff sheets for the rendering of service to the Salinas Municipal Airport. The airport appeared to be almost entirely outside of the service area of California Water Service Company and partly within the service area of Alisal Water Corporation² as such areas were delineated on the

¹ Hereinafter sometimes referred to as "California."

² Hereinafter sometimes referred to as "Alco."

respective tariff service area maps in effect at the time. Alco protested California's filing. Examination of the maps also disclosed other service area conflicts between the two utilities. The Commission therefore suspended California's filing and instituted an investigation (Case No. 8360) to determine whether the tariff sheets filed by Advice Letter No. 268 are unreasonable or unlawful in any particular and to resolve any service area boundary conflicts between the two utilities. Public hearing in the matter was held on May 25, 1966, at Salinas, and continued to a date to be set.

On June 1, 1966, the Commission instituted an investigation (Case No. 8433) into the operations, tariffs, practices and services of Alco, primarily for the purpose of determining whether Alco had violated Section 1001 of the Public Utilities Code in extending into noncontiguous territory or had filed maps covering territory in which there is no request or demand for service.

Public hearing in the two matters was held before Examiner Emerson on July 11, 1966, at Salinas. The matters were submitted upon receipt of late-filed exhibits, the last of which was received on August 15, 1966, and are now ready for decision.

The primary dispute between the two utilities arose over service to the Salinas Airport. The airport was owned and constructed by the United States and sold to the City of Salinas following the close of World War II. The City rents portions of the airport to certain tenants and operates a municipal golf course within the airport boundaries. From the days of wartime usage by the United States until November 1965, the airport had its own water supply and distribution system. Such system, originally installed as a wartime measure and supplied from four wells, deteriorated with

the passage of time and in 1965 the City sought to dispose of it by inviting public bids for its sale. Both Alco and California submitted bids and although the dollar amount of Alco's bid was "several thousand dollars" higher, the City of Salinas awarded the sale contract to California. California took over control of the water facilities, with the exception of a well and an irrigation system for the golf course which the City retains, on November 1, 1965. The water distribution facilities within the airport consist essentially of mains along Airport and Skyway Boulevards and a relatively small network of mains in the vicinity of Jeffery, Anderson, Mortensen and Mercer Streets within the administration area of the airport. The system serves approximately 25 tenants of the City. California tied this system into its own by extending its main from the intersection of Airport Boulevard and Terven Avenue (to the south of the airport) and by a tie-in main along East Alisal Road between Skyway Boulevard and John Street (to the west of the airport).

Exhibit No. 4 in this proceeding presents a chronology of water systems in Salinas from January 1959 to the present time. With respect to the airport, this exhibit shows that as of January 1, 1959, California served or held itself out to serve up to the southerly and westerly boundaries of the airport, while Alco served or held itself out to serve up to the northerly boundary of the airport along East Alisal Road.³ Such situation prevailed until approximately October 26, 1962, when Alco filed a new tariff service area map by which it held itself out to serve a major portion of the airport, including the airport administration area.⁴ On December 11,

³ Exhibit No. 4, Plate 7.

⁴ Exhibit No. 4, Plate 14.

1962, California filed a tariff service area map, expanding its area up to the present northwest boundary of the airport so as to include the Los Padres tracts.⁵ These two filings appear to have established an agreed upon common boundary between California and Alco for the northwesterly section of the airport,⁶ although in this proceeding California's witness testified that at the time of California's filing, Alco's earlier filing was not known to it. In any event, as the result of these two filings, Alco's tariff service area maps since October 26, 1962, have shown that it holds itself out to serve a major portion of the airport while California's maps have shown no holding out to serve any portion of the airport (until its filing of February 14, 1966, which latter filing now stands suspended).

With respect to the airport, Alco's present position is that, even though it is within Alco's filed territory, California should be permitted to serve that part of the airport where the facilities exist which California purchased from the City. With respect to presently undeveloped portions of the airport, Alco's position is that California has no right or claim to serve them and that any designation as to which utility may in the future serve them must depend on those future circumstances affecting public convenience and necessity which will provide the Commission with facts sufficient to enable it to determine which utility should provide the service.

California's position respecting the airport is that it has not only the right but the obligation to serve it, the latter arising from the conditions of sale and contract documents⁷ by which

⁵ Exhibit No. 4, Plate 16.

⁶ California's advice letter for December 11, 1962, states, in part, "The boundary as shown is a mutually agreed boundary between the two companies."

⁷ Copies of which are in Exhibit No. 5.

it purchased the airport system from the City. California claims that, at the insistence of the City, the purchaser had to agree that it would serve all of the airport area as future development might occur. It arrives at such conclusion from its interpretation of the following quoted paragraphs of the purchase agreement.

"Subject to the provisions of this agreement, Buyer agrees, following the Closing Date, to include the Airport in its Salinas service area and to undertake the distribution of water to all customers at the Airport then served by the Airport system at the rates and in accordance with the rules of Buyer now in force in its Salinas system or that may from time to time be lawfully established therein."⁸ And

"City is the owner and operator of a water system (the 'Airport system') serving customers in and about the area of the Salinas Municipal Airport, said area being known as the 'Airport' and being more particularly delineated on the map attached hereto as Exhibit A and by this reference made a part hereof;"⁹

In our view, this document may be interpreted as requiring the buyer to include within its service area no more than the distribution facilities used to supply "all customers at the Airport then served by the Airport system" as well as the interpretation placed upon it by California. In any event, however, the providing of public utility water service is, by law, a matter of public convenience and necessity within the exclusive jurisdiction of this Commission. Neither the City by its "finding" that a particular utility will best serve the city¹⁰ nor the utility by its private "agreement" may avoid a final determination by this Commission as to what the public convenience and necessity require or may in the future require.¹¹

⁸ Paragraph 17 of Section A5, Page A10, Purchase Agreement.

⁹ Paragraph 1 of the Recitals of Section A5, Page A6, Purchase Agreement.

¹⁰ Resolution No. 5683 (N.C.S.), Exhibit No. 3 in this proceeding.

¹¹ Interestingly enough, the document also includes the following provision: "This agreement shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may from time to time direct in the exercise of its jurisdiction."

Plans for future development of the airport are not in this record but it appears from the various maps that are in evidence that presently unserved portions may in the future be so developed that either California or Alco may be in a position to serve them. In view of the fact that Alco has for about four years held itself out to serve the major portion of the airport we find it to be fair and reasonable to allow California to extend its system only to the west of the presently existing airport system and to restrict both California and Alco from serving the balance of the airport until upon application and a proper showing as to public convenience and necessity this Commission may authorize the extension of either of their water systems into the remaining portions of the airport.

The East Campus of Hartnell College lies between the airport property and East Alisal Road on a parcel of land of about 160 to 180 acres. Except for a 2-inch service connection maintained on a standby basis by Alco for many years, it operates its own water supply. The property may be said to face both East Alisal Road and Bardin Road, in both of which Alco has distribution mains, with private roadways entering from East Alisal Road. The college desires to be included within the service area of neither utility although a major portion of the property has been included within Alco's service areas for the past five years. It seems readily apparent from a study of the maps in this record, that if public utility service is to be used on this property, ~~that~~ such service could be provided most economically from the existing water mains of Alco. We find it to be fair and reasonable to include the property within the tariff service area of Alco.

Lying to the east of Sherwood Lane and to the north of Williams Road lies a tract of land of approximately 468 acres,

known in this record as the lands of the William~~X~~ Sisters heirs, 1016 which Alco has included in its tariff service area since July 1961. The original property comprised 508.14 acres, approximately 40 of which, lying in the southwest corner, are now occupied by Alisal High School. Alco serves the high school. Future development of the remaining 468 acres is not now known, but the owners desire that they not be foreclosed from developing their own subdivision water supply should they so desire. Although it presently appears that this property should logically be served from Alco's system, it would be premature if an attempted final determination were to be made at this time. This matter should await a knowledge of subdivision plans and a showing as to public convenience and necessity before inclusion in any utility tariff service area.

Alco's tariff service area map includes an area totally served by the water system of Acacia Park Water & Improvement Association. The Association has operated as a mutual water company since 1936 and serves all lots within an area bounded by East Market Street, Williams Road, East Alisal Road and Towt Street. The Association protests the inclusion of this area within the service area of any public utility. We find that no public utility water company should include it within its service area.

Other common boundary problems between California and Alco concern (1) property owned by the Methodist Church, bordered by Sanborn Road, Oregon Street and Laurel Drive, (2) the Laurel Heights subdivision, and (3) an area through Carr Lake Bottom, including the Panzierra property.

The Church property was determined during the hearing to be properly within Alco's service area, is in fact being served by Alco, and hence is not now in question. The Laurel Heights problem

arises from lack of precision in defining the limits of the area treated in this Commission's Decision No. 70197. The precise boundary is delineated on Exhibit B attached to Application No. 47872 and should be followed by both California and Alco.

What we are terming the Carr Lake Bottom area is difficult of description because it seems to have no clearly defined natural boundaries. In general, it is a dry lake, with lengthy, meandering and ill-defined water ways and shallow gullies feeding it. At times it is devoted to agriculture. At other times it is heavily flooded. Generally, it may be said to be uninhabitable. It lies between the two utilities, southeasterly of the county hospital some of whose land is within the Bottom. On portions of higher grounds are some buildings and one or more residences which Alco presently serves. As a common boundary, California suggests the city limit line which follows the hospital property line. Alco suggests an arbitrary straight line through the area, such line being unrelated to either property or city limit lines. When viewed in the field, the only well defined object appears to be an electric transmission tower line which traverses the general area. Such a tower line would appear to have some advantages as a boundary line. It is located on a right of way on which ordinarily no permanent buildings may be erected and normally residences or other buildings, when placed near it, face away from it so that utility services approach but do not enter the right of way. It is clearly visible and is long lived, a permanent fixture. In view of the expansion of city limit lines commonly experienced in this state, the tower line, we believe, will be an appropriate and more permanent dividing line between these utilities.

As shown on Exhibit No. 22, the Panzierra ranch lies along the southerly side of East Laurel Drive, east of Natividad Road, within the Carr Lake Bottom. Access to the ranch was at one time only by a private lane from Natividad Road, a road along which California's predecessor had water mains. With the extension of East Laurel Drive from Natividad Road to Sanborn Road, the ranch property for the first time obtained a major frontage on a public thoroughfare. About one-half of the distance along East Laurel Drive, between Sanborn and Natividad Roads, lies within Alco's present territory. Alco has a main in East Laurel Drive and is to extend the same to within a short distance of the Panzierra property in order to serve the new Laurel Heights subdivision. Panzierra has applied to Alco for water service to the ranch property. Since at least 1958 the major portion of the ranch has been within California's claimed territory.¹² California has no main in East Laurel Drive although it intends to install a transmission main in such road in the future in order to form an additional tie-line between portions of its overall water system. It could, at such future time, serve the ranch property from such line. We are of the opinion that the dispute over this territory may be resolved fairly by including the Panzierra ranch within Alco's service area if the service connection to supply the property is made from East Laurel Drive easterly of the electric transmission line, hereinabove discussed. If the service connection is to be established westerly of said electric transmission line, the ranch property should be included within California's service area. Since the rules of each utility generally provide that no more than one service connection

¹² Exhibit No. 4, Plate I.

will be established to any single premise, the ultimate disposition of this problem will be determined by the location at which the Panzierra property desires to receive service.

The evidence indicates that many of the territorial conflicts between the two water systems may have arisen because of carelessness in preparing tariff service area maps and in some instances in their checking by the Commission staff. Exhibit No. 4 rather clearly brings to light more than seven years of overlapping service area claims and, we believe, demonstrates the necessity for adjoining or even near-by utilities to cooperatively and earnestly strive to resolve boundary problems before disputes make formal action necessary. Ideally, each should advise the other of its proposed boundary changes prior to making new filings with the Commission.

In view of the evidence, the Commission finds and concludes that it is fair and reasonable to Alco and California and is in the public interest to require these two utilities to file new tariff service area maps for their Salinas water systems so as to eliminate present conflicting boundaries and territorial claims in accordance with the following order.

O R D E R

IT IS ORDERED as follows:

1. The tariff sheets filed on February 14, 1966, by Advice Letter No. 268 of California Water Service Company are hereby permanently suspended.
2. Within thirty days of the effective date of this order California Water Service Company and Alisal Water Corporation shall file with this Commission tariff service area maps of their

respective Salinas service areas revised to clearly show thereon the following features:

- a. A common boundary line consisting of the centerline of Pacific Gas and Electric Company's electric transmission tower line between the easterly boundary of the Williams Ranch extended and the Laurel Heights subdivision.
- b. Inclusion within Alco's service area of the Laurel Heights subdivision and adjoining areas as delineated by the red line on Exhibit B attached to Application No. 47872, with the outer limits thereof constituting the common boundary line.
- c. A common boundary line from the intersection of the aforesaid red line with Oregon Street along the centerline of Oregon Street to its intersection with the rear property line of the properties facing the north side of Sanborn Road and southeasterly along such rear property lines to their intersection with the centerline of Kentucky Avenue extended; thence southeasterly along said centerline of Kentucky Avenue to its intersection with Towt Street; thence southwesterly along the centerline of Towt Street to its intersection with East Market Street.
- d. The exclusion of the area bounded by East Market Street, Towt Street, East Alisal Road, and Williams Road from the service areas of either utility.
- e. A boundary line for California Water Service Company commencing at the intersection of the centerlines of East Market Street and Towt Street and running southwesterly along the centerline of Towt Street to the centerline of East Alisal Road and thence easterly along the centerline of East Alisal Road to a point 500 feet easterly of Skyway Boulevard; thence southeasterly, parallel to and 500 feet distant from said Skyway Boulevard to a point 100 feet southeasterly of the intersection of Skyway Boulevard and Mortensen Avenue; thence southwesterly, parallel to and 100 feet distant from Mortensen Avenue and the extension thereof to an intersection with the Reclamation District No. 1665 Canal and thence southeasterly along said canal.
- f. A boundary line for Alisal Water Corporation commencing at the intersection of the centerlines of East Market Street and Towt Street and running easterly along East Market Street to Williams Road; thence southwesterly along Williams Road to East Alisal Road; thence easterly along East Alisal Road

to the westerly property line of the parcel or parcels known as "Hartnell A & M" and thence along said westerly property line to its intersection with Bardin Road.

3. Except upon further order of this Commission, neither California Water Service Company nor Alisal Water Corporation shall extend public utility water service facilities into that area lying between that boundary line described in paragraph 2.e, above, and the westerly property line of the parcel or parcels known as "Hartnell A & M."

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

Dated at San Francisco, California, this 27th day of DECEMBER, 1966.

[Signature] President
George E. Brewer
[Signature]

Commissioners

Commissioner Frederick E. Holoboff, ~~_____~~, did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.