

Decision No. 82865

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
SAN JUAN SUBURBAN WATER DISTRICT,

Complainant,

vs.

CITIZENS UTILITIES COMPANY OF
CALIFORNIA, a California corporation,

Defendant.

Case No. 9609
(Filed August 28, 1973;
amended October 4, 1973)

Zane Vorhes, Inc., by Zane Vorhes, Attorney at Law,
for complainant.
William G. Fleckles, Attorney at Law, for defendant.
Cleo Allen, for the Commission staff.

O P I N I O N

Complainant is a California community services district operating in Sacramento and Placer Counties. It provides water at retail in some portions of its territory; near the area in question (Sperry Hills Subdivision) it provides water at wholesale to another district which retails it.

Citizens Utilities Company of California (defendant) is the successor by merger of the Lincoln Oaks Water Company. The complaint alleges that complainant was not notified in August of 1960 when Lincoln Oaks Water Company filed its Advice Letter No. 7 proposing an extension of the utility's service area to include new territory within the confines of its district.

Complainant prays for a cancellation of the service area extension which was permitted to become effective, without formal decision by the Commission, pursuant to General Order No. 96-Series.

The answer alleges that General Order No. 96-Series did not require notice of service area extensions until August 1965. The answer also alleges that representatives of complainant were informally notified of defendant's predecessor's intentions to extend. It is also alleged that defendant has in good faith invested substantial sums in the construction of water works facilities in the territory in question during a period of 13 years, without protest by complainant.

Hearing was held in Sacramento before Examiner Gilman on February 11, 1974. Defendant at the hearing renewed its motion to dismiss, which was taken under submission on the pleadings, on certain stipulations, and on the testimony of one witness.

Discussion

As set forth in the findings, defendant is now providing water service in the Sperry Hills Subdivision. The mains and supply facilities necessary to provide service were installed in late summer and early fall of 1973, pursuant to a main extension contract with the subdivider.

Before defendant had commenced constructing the Sperry Hills system, notice of its plans might have had some practical significance to complainant or to the other district potentially concerned. Either of them could have attempted to forestall defendant by offering the subdivider better terms or by seeking a Commission order against utility expansion. Now, however, either can seek to supplant defendant in Sperry Hills only by purchasing, condemning, or paralleling defendant's system. Neither lack of notice nor the continued existence of the advice letter in question would have any impact on complainant's right to condemn or purchase the Sperry Hills system.

System paralleling by a public agency can be expensive (§§ 1501-1506, Public Utilities Code); a paralleling public agency can be compelled to respond in damages. Therefore, rescinding the advice letter filing could be construed as a declaration that Sperry Hills is not in defendant's "service area"^{1/} and at least arguably give either public entity the right to construct a parallel water system without compensating defendant. We think such an outcome would frustrate the legislative policy underlying Sections 1501-1506 of the Public Utilities Code.

Findings

1. Advice Letter No. 7 was filed in accordance with the provisions of General Order No. 96-Series in effect at the time of filing.
2. Defendant has installed its facilities to serve the Sperry Hills Subdivision in accordance with its filed tariffs.

We conclude that complainant has shown no grounds for relief.

1/ Public Utilities Code Section 1503 states:

"The Legislature finds and declares that whenever a political subdivision constructs facilities to provide or extend water service, or provides or extends such service, to any service area of a private utility with the same type of service, such an act constitutes a taking of the property of the private utility for a public purpose to the extent that the private utility is injured by reason of any of its property employed in providing the water service being made inoperative, reduced in value or rendered useless to the private utility for the purpose of providing water service to the service area, and such taking shall be compensable under Section 14 of Article I of the Constitution of California."

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 15th
day of MAY 1, 1974.

William Symons President
[Signature]
[Signature]
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.