ei

Decision No. 83426

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SUBURBAN WATER SYSTEMS, a California corporation, for Authority to Extend Public Utility Water Service under the Contiguous Extension Provisions of Section 1001 of the Public Utilities Code.	Application No. 54745 (Filed March 21, 1974)

George G. Grover, Attorney at Law, and Walker Hannon, For Suburban Water Systems, applicant.
Eugene T. Tanner, Sr., for La Habra Heights Mutual Water Co., protestant.
Robert C. Durkin, for the Commission staff.

O P I N I O N

Suburban Water Systems (Suburban), a California corporation, seeks to extend its service to two areas adjacent to one of its two existing service areas, which is located in the San Jose Hills vicinity, in or adjacent to the cities of West Covina, La Puente, Industry, and Glendora.

Suburban is restricted as to its extensions under Section 1001 of the Public Utilities Code by Decision No. 58716, which provides that no further extension shall be made without first applying for and receiving authorization to do so from the Commission (Ordering Paragraph 3).

Proposed Service to Area 1

"Area 1", as it was referred to in Exhibit "A" to the application, consists of certain residential subdivisions immediately to the south of the existing service area. Area 1 includes Tract No. 30524 and a portion of Tract No. 30525 in the county of Los Angeles.

During the planning and construction phases of Suburban's installations to service this area, Suburban believed that it was already within its service area. Later, Suburban ascertained that part of these tracts lay outside the service area. As a result of this error, service has commenced to some customers within the area already.

Originally, La Habra Heights Mutual Water Company (La Habra), which provides water to an area south of the existing service area of Suburban, protested the entire application, but then it withdrew its protest to the Area 1 extension. The applicant presented sufficient general evidence at the hearing held before Examiner Meaney at Los Angeles on May 13, 1974 to indicate that public convenience and necessity require granting the application as to this area. Since the only protest to this extension was withdrawn, a detailed discussion of the evidence regarding Area 1 is not necessary. The area will be considered part of Rate Areas 2 and 3 of Suburban, and no new tariffs are required to be filed.

Suburban's Proposal to Serve Area 2

This area consists of slightly less than 0.6 acres. A transmitter for the Coast Community College District's TV station KOCE and appurtenant buildings are located there. The college needs water for irrigation purposes and also for normal plumbing uses. At present the college receives its water by tank truck.

Suburban proposes to serve Area 2 from the same 1.5 million-gallon reservoir that serves Area 1. There is no question that there is adequate water supply to serve both areas from Suburban's facilities.

Service is available to Area 2 by way of a 16-inch main that is installed from the reservoir to one of the tracts in Area 1. No main extension would be necessary, although the necessary meters and valves would have to be attached.

During the hearing the question arose as to whether the property which is Area 2 is in fact contiguous to an area served by Suburban. Suburban's counsel stated that it was in fact contiguous to Suburban's own property, which Suburban, of course, served for its own needs such as irrigation. Suburban's counsel explained that it was the belief of Suburban that it was unnecessary to apply for a certificate to extend service to Suburban's own property. We agree that the restriction in Decision No. 58716 was not meant to prevent Suburban from serving itself on its own property; therefore, Area 2 may be considered contiguous to an area presently served by Suburban.

There are no fire flow requirements at present, but according to Mr. Hannon, Suburban's vice president, should the county require a fire hydrant in the future, there would be adequate facilities to serve any fire flow requirements that might be required.

The Protest to the Application

La Habra is a relatively large mutual water organization. The area which it serves is, very roughly, three miles from east to west and two miles from north to south. There are currently 1,550 customers. La Habra has developed a complete master plan for this area (Exhibit 3).

La Habra admits that it does not have an official service area in the sense that a public utility has a certified area, but states that Area 2 is within the northern boundary of its de facto service area, and urges the Commission to consider this in reaching a result in this case. La Habra feels that the Commission should not adopt a policy, simply because La Habra is not a public utility, of allowing the nearest public utility to come in and disrupt its overall master plan to serve the entire area.

Mr. Eugene T. Tanner, the manager of La Habra, testified in opposition to granting Suburban's application to serve Area 2. He stated that the mutual had long-standing plans to serve the general area in and around Area 2.

He explained that the nearest La Habra reservoir to Area 2 is Reservoir No. 8, which holds 500,000 gallons and has a bottom elevation of 1,132 feet. The nearest existing customers are approximately 1,500 feet south of Area 2.

The staff's report states that La Habra does not have operational water facilities at the site at this time. While this is true, Mr. Tanner pointed out that there is an 6-inch line from Reservoir No. 8 to roughly the boundary of Area 2. Fifty feet of this pipeline were inadvertently torn out, apparently by someone doing geological work. The witness stated it would be no problem to replace this 50 feet of pipe.

Mr. Tanner and the staff witness disputed the cost of properly serving Area 2 from Reservoir No. 8 because of differences of opinion as to the installation of a booster pump and the amount of pressure the pipe would hold.

An associate utilities engineer testified for the staff that in his opinion no adequate fire flow could be achieved by connecting the reservoir, which is approximately 1,500 feet distant, from Area 2. He explained that in his opinion, because of the size of the main and the fact that the water has to be pumped approximately 230 feet over a hill, the pressure generated would cause the main to burst. This opinion, he stated, is predicated upon a typical fire flow requirement for this type of area of 2,000 gallons per minute, this gallonage being computed on the basis of Los Angeles County Fire Department requirements.

The witness conceded that at present there is no fire flow requirement. He also conceded that as far as the actual water service to Area 2 is concerned, there would be no problem if the main were repaired and a proper booster pump were installed. The staff witness felt that fire flow could be achieved easily from Suburban's reservoir, since if Suburban's application were approved, a fire truck could use its pressure to pull the water out of the 16-inch line notwithstanding the fact that the reservoir level might be low at the time.

Mr. Tanner of La Habra disagreed with the staff witness' estimate of the amount of pressure that the pipe could hold. He pointed out that the manufacturer tests the pipe at 525 pounds and stated that, based upon past experience with it in supplying water at 300-foot lifts elsewhere in the mutual's service area, a booster pump could properly supply both Area 2 and the fire flow requirements.

Mr. Tanner pointed out that, because of the high point of the hill between the reservoir and Area 2, the college district would not have to use its storage tank at all nor buy its own booster pump; however, it appeared that in order to establish the service the college district would have to pay for the booster pump to be installed by the mutual. (No comparative cost figures were submitted as to whether it would cost more for the college district to buy a booster pump to install on its own property to maintain pressure from Suburban's reservoir, as against the cost of a booster pump to get the water from La Habra's reservoir to Area 2. This is also true regarding the necessity for a valve; that is, there were no comparative costs regarding the valve which might be necessary to prevent the water from backing out of the storage tank if Suburban serves the area and its reservoir is low, as against the type of valve, if any, which might be necessary because of health requirements if La Habra were to serve the area.)

Additional costs would be incurred by the college district if the mutual were to service it. It would be necessary for the college to purchase six shares of stock (one share per tenth of an acre for the area) at a maximum cost of $45 per share. Also there are occasional small assessments per share for maintaining the system (for example, $2 in October of 1963, $1.50 in February of 1974, and $1.50 in June of 1974).

The position of the mutual, in summary, is that although it might cost the college district slightly more to have mutual service, the water would always be under pressure and no storage tank would be necessary. La Habra's reasons for wishing to service the area, as previously stated, go beyond the service advantages it claims for Area 2 and also have to do with its desire to develop the general area in and around Area 2 to give it a better operational base. As its witness stated, he wished La Habra to service the entire vicinity of Area 2 so that there would be more money with which to operate the mutual.

Discussion

The decision in this case is not made easy by the fact that the Commission was presented with no hard cost estimates by anyone; however, the Commission believes that on balance the application should be granted.

It seems reasonably clear from a review of the record that either La Habra or the applicant could serve the property satisfactorily. We reject the staff's contention that the present pipe (after repairs) would explode if it were necessary to furnish proper fire flow pressure, since the mutual appears to have adequate experience with this kind of pipe in the hilly terrain which exists in its service area. But even if this particular issue is resolved in favor of La Habra, it still appears that Suburban will be able to commence service faster and with less cost to Area 2.

As stated, no matter who serves the area, a booster pump will be necessary and the college district will have to pay for it either way. While no cost figures of either booster pump were furnished, it would seem likely that the booster pump necessary to send the water over the hill from the mutual's reservoir to Area 2 would be a more costly device than the booster pump necessary simply to boost the pressure from Suburban's reservoir, which will be necessary only when the reservoir level is low. Apparently, a backflow preventer would be necessary either way for health reasons.

There are also to be considered the costs of the stock purchase and the occasional assessments.

As to the fire flow requirements, if and when they are imposed, it appears that either Suburban or La Habra could furnish adequate water.

The facts of this case give only a slight advantage to Suburban, but in such case we believe that customer preference should be taken into consideration. The college district has expressed a clear preference for service by Suburban. Although the preference expressed by the owner of the land should not control the Commission's action, it is an important fact to be considered. (Park Water Company (1941) 43 CRC 627.)

As previously mentioned, La Habra has expressed its fears that a decision favorable to Suburban in this application would establish a precedent by which Suburban could make serious incursions into the overall service area of La Habra, eventually causing La Habra difficulty in maintaining successful and profitable operations. This is not the case, since precedent clearly establishes that the Commission has a duty to consider which type of entity can best serve a particular area. In Ventura County Waterworks District v PUC (1964) 61 Cal 2d 462, the Supreme Court found that the Commission had acted unreasonably in excluding all evidence that a waterworks district could provide better service in a particular area than a public utility. The Commission, citing the Ventura County case, held in Southern California Water Company (1966) 65 CPUC 681 that if the Commission were satisfied that a publicly owned water district would provide better and more economical service than an applicant water utility, it could find that the applicant's proposal did not meet the test of public convenience and necessity. This case also held that the Commission may compare competing proposals of a water utility and

a publicly owned water district even though it has no jurisdiction over the district. A reading of these two cases makes it clear that they stand not simply for the proposition that the Commission cannot place one of its regulated utilities in a favored position over a publicly owned water district, but rather for the proposition that the Commission cannot automatically favor one of its regulated entities over a nonregulated entity, and rather must determine public convenience and necessity upon the facts of each case. It has been generally held that the Commission should consider every element of public interest affected by the facilities that the Commission is called upon to approve in an application for a certificate of public convenience and necessity. (Northern California Power Agency v PUC (1971) 5 Cal 3d 370, 96 Cal Rptr 18, 486 P 2d 1218.)

Furthermore, from a purely regulatory standpoint, the Commission has an announced policy of preventing haphazard development of water service areas. (Fulton Utility Water Company (1965) 64 CPUC 286, 289.)

Thus, although it is clear that the area in which a mutual water company operates is not an official service area in the sense that this Commission has certificated it, the Commission should both from a legal and regulatory standpoint afford an operating mutual utility, upon complaint or protest, a chance to show that it may serve a certain area better than the competing public utility.

In this particular case, the Commission notes that Area 2, the subject of the dispute, is on the fringe of the area claimed for development by La Habra, adjoins property owned by the applicant, and is located approximately 1,500 feet north of La Habra's nearest customers. If the applicant serves Area 2, there will not be any incursion into the existing distribution system of La Habra. Certainly the Commission should not permit a public utility to drive a wedge

deep into the distribution system of an operating mutual water company, (at least in the absence of a showing of inadequate service by the mutual), but this will not occur here. The Commission will carefully scrutinize future applications by Suburban in the claimed area of La Habra and will consider, among the other issues, whether the integrity of the distribution system of La Habra would be affected by any application of Suburban. This is not to say that the Commission will fail to consider the other usual issues in reaching a determination of public convenience and necessity.

Findings

1. Applicant is an established public utility furnishing water service to approximately 45,000 general metered customers in Los Angeles County in the San Jose Hills area and the Whittier area.

2. Ordering Paragraph 3 of Decision No. 58716 dated July 7, 1959 prohibits the applicant from further extending public utility service as a water corporation outside of its presently certificated service area pursuant to Section 1001 of the Public Utilities Code or otherwise without first applying for and receiving authorization to do so from this Commission by appropriate order.

3. Since the issuance of Decision No. 58716, Suburban has, from time to time, requested and received authority to extend service to specific contiguous areas. The orders granting these specific authorizations have also reaffirmed the restriction imposed by Decision No. 58716 as to further contiguous extensions.

4. That area denominated Area 1 in the application and the amendment thereto consists of residential units in Los Angeles County, as more fully delineated in Exhibit "A" to the application herein.

5. Some of the units in Area 1 are already being served by Suburban due to Suburban's erroneous interpretation of its previously existing service area.

6. There is no protest to the extension of Suburban's service into Area 1.

7. Suburban's presently filed rates are fair and reasonable for service in Area 1.

8. Suburban's sources of water and distribution system are adequate for service to Area 1.

9. La Habra Heights Mutual Water Company is a California corporation serving an area of roughly six square miles containing 1,550 customers, located immediately to the south of the applicant's San Jose Hills service area. Exhibit 3 shows the claimed boundary of the area which it serves and the master plan of the distribution system.

10. Area 2 consists of a parcel of land of .5630 acres located within this claimed area, and also located contiguous to a parcel of land owned by the applicant upon which is located a 1.5 million-gallon reservoir belonging to the applicant, and part of a 16-inch main leading from this reservoir to Area 1.

11. The parcel of land mentioned in the previous finding is owned by the Coast Community College District and contains a TV transmitter and appurtenant buildings. Water service is now provided by tank truck, and it is desirable to serve this area by way of a pipeline in order to provide water for irrigation and normal plumbing uses.

12. Coast Community College District has expressed a preference for service by the applicant.

13. Either the applicant or La Habra could serve the property; however, applicant has established by a preponderance of the evidence that it can start service faster at slightly less cost to the property owner.

14. Suburban's sources of water supply and distribution system are adequate to serve Area 2.

15. Suburban's presently filed rates are fair and reasonable for service at this time to Area 2.

16. Pursuant to Commission Rule 17.1(a)(2), the Commission finds that the requirements of CEQA, the Guidelines, and Rule 17.1 do not apply to this proceeding since it can be seen with reasonable certainty that the project involved will not have a significant effect on the environment.

Conclusions

1. Public convenience and necessity require a provision of public utility water service by the applicant to Area 1 and Area 2.

2. The restriction against the extension of service by Suburban contained in Ordering Paragraph 3 of Decision No. 58716 dated July 7, 1959 should remain in effect.

O R D E R

IT IS ORDERED that:

1. Suburban Water Systems is authorized to extend its public utility water system service to serve the contiguous areas denominated herein as Area 1 and Area 2, as more completely described in Exhibit "A" to the application herein.

2. Within sixty days after the effective date of this order, applicant shall file revised tariff sheets including revised tariff service area maps to provide for the application of its present tariff schedules to Areas 1 and 2. Such filing shall comply with General Order No. 96-A and the revised tariff sheets shall become effective on the fourth day after the date of filing.

3. The restriction contained in Ordering Paragraph 3 of Decision No. 58716 dated July 7, 1959 shall remain in effect.

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

Dated at San Francisco, California, this 11th day of SEPTEMBER, 1974.

President

Commissioners

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

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.