

Decision No. 85461

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PAUL W. SHAW,

Complainant,

v.

SUBURBAN WATER SYSTEMS,

Defendant.

Case No. 9930
(Filed June 16, 1975;
amended June 28, 1975)

Wm. M. Lassleben, Jr., Attorney at Law, for
complainant.
Clayson, Stark, Rothrock, and Mann, by
George G. Grover, Attorney at Law, for defendant.
Alexander D. Thomson, Attorney at Law, and
John G. Nelson, Attorney at Law, for La Habra
Heights Mutual Water Co., interested party.
Joel H. Lubin, for the Commission staff.

O P I N I O N

Paul W. Shaw (Shaw) is now receiving domestic water service from La Habra Heights Mutual Water Company (La Habra). He alleges that his residence at 2151 West Road, Whittier, California (parcel A) is within the service area of Suburban Water Systems (Suburban) and seeks an order to require Suburban to furnish him domestic public utility water service at Suburban's applicable rates and tariffs. Suburban contends that Shaw's property is outside of its service area

but has no objection to complying with his request provided that he pay the cost of service extension which it estimates to be \$1,280.

La Habra also contends that Shaw's property is outside of Suburban's service area and that his request should be denied.

Public hearings were held before Examiner James D. Tante in Los Angeles on December 1 and 29, 1975, and the matter was submitted on the latter date.

Shaw testified for himself. Suburban's manager of revenue requirements, a professional engineer, testified for Shaw and Suburban; its project coordinator testified for Suburban; and the secretary and general manager of La Habra testified for La Habra.

Exhibit 1, a letter to Shaw from Suburban dated July 26, 1974 with an enclosure of a letter from La Habra to Suburban dated July 23, 1974; Exhibit 2, a map showing, among other things, a part of the service area of Suburban and the Shaw property; Exhibit 3, an estimate of the cost to provide service to Shaw; Exhibit 4, Suburban's Cal. P.U.C. Sheet No. 415 W. filed September 6, 1972; and Exhibit 5, a letter from the Commission to Suburban dated August 25, 1959; Exhibit 6, estimate of cost of material; Exhibit 7, Work Order 74-3737; Exhibit 8, two-page map of an intersection; Exhibit 9, letter dated December 11, 1975 to La Habra; Exhibit 10, La Habra rate schedule as of August 1, 1975; Exhibit 11, map of La Habra distribution system as of May, 1964; Exhibit 12, proposed boundary for La Habra district; and Exhibit 13, La Habra's Articles of Incorporation and By-laws; were received in evidence.

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).

The Commission takes official notice of Sections 54773 to 54863 of the Government Code and Sections 30,200 to 30,325 of the Water Code.

Shaw's property is irregular in shape, contains approximately 1.19 acres and is improved with a residence. It is situated on the north side of West Road in Whittier, California. Suburban's water main is beneath the street surface on the south side of West Road, approximately 50 feet from Shaw's property and 20 feet from the underlying fee owned by Shaw beneath the street easement on West Road. Suburban's service area extends to the south side of West Road but it services the three parcels east of Shaw's property on the north side of West Road at 2141 (parcel B), 2131 (parcel C), and 2125 (parcel D) West Road and has done so for more than eight years. It does not serve the parcels west of Shaw's property on the north side of West Road. Suburban has an adequate water supply available to serve Shaw's property.

Shaw testified:

1. That in 1974 an employee of Suburban told him that Suburban had an oral permit from La Habra to serve Shaw and that the oral permit was still valid and in effect and that Suburban would provide him water service upon certain conditions with which Shaw complied.

2. In July of 1974 Suburban proceeded to dig trenches, make connections, and extend water service to Shaw's property at Suburban's cost and received a \$125 security deposit from Shaw.

3. Suburban did not complete the extension but informed Shaw that there had been a mistake and that La Habra had not consented to Suburban providing service for Shaw. (See Exhibit 1) Shaw's \$125 deposit was returned.

4. No one from La Habra had expressed assent to Shaw for Suburban to serve Shaw.

5. The water service of La Habra is more costly than that of Suburban; the water from La Habra is highly chlorinated and has a bad taste; La Habra's meter (where the turn-off valve is situated) is 300 feet from Shaw's house; on one occasion the water appeared muddy when La Habra was repairing a broken main near Shaw's residence; on three occasions prior to 1971 he saw a small 3/16-inch sow bug in the water; parcel B was receiving water from La Habra without cost as La Habra had removed its meter and discontinued water service but an owner of parcel B had opened the turn-off valve and caused water to be supplied to parcel B without La Habra's knowledge or consent.

6. Shaw realized that Suburban could serve him only if La Habra consented.

Shaw contends that Suburban has dedicated its property and public utility water facilities to the territory that includes Shaw's property and therefore Suburban has a duty to provide water service to him under the same terms and condition as it does its other domestic customers.

Suburban's witnesses testified that:

1. Shaw's property is not within Suburban's certificated service area; it has not dedicated its property to serve Shaw's property without consent of La Habra; and it does not wish to extend service to that property in the ordinary course of business pursuant to Section 1001 of the Public Utilities Code or on any basis unless it receives permission from the Commission and Shaw is required to pay the cost of the extension.

2. La Habra had given consent for Suburban to serve parcels B, C, and D.

3. Suburban's policy is not to provide service to a customer receiving service from some other company without consent of the other company.

4. A recent conversation with one Pete Royere, former manager of La Habra, revealed that prior to 1968 La Habra had no objection to Suburban serving parcels B, C, and D or other parcels in that area, including Shaw's parcel, which were on the outside fringe of La Habra's service area.

La Habra's witness testified:

1. When he learned that Suburban intended to serve Shaw and La Habra would lose Shaw as a customer, he objected and Suburban discontinued work on the service line to Shaw's property.

2. Thereafter, on two occasions in 1974 Shaw requested La Habra's board of directors for permission to have service from Suburban and the request was denied. The board authorized the witness to purchase any material or equipment from Shaw that the latter had purchased in contemplation of the change to Suburban, but Shaw did not accept the offer.

3. Shaw is now being served by La Habra and it does not desire to consent to a change.

4. La Habra's chlorination is not excessive, is well regulated, is acceptable to the health departments of the County of Los Angeles and the State of California, there have been no complaints concerning chlorination in the past year, and Shaw has not complained to La Habra concerning chlorination of the water.

5. If La Habra's water has been muddy it has been only as a result of a broken main and has lasted only for a few hours.

6. There was no complaint from Shaw until 1974 concerning sow bugs in the water several years before, there has never been such a complaint from any other person, and it would be very unlikely that a 3/16-inch sow bug could get into the water system and be delivered through a faucet.

7. On December 1, 1975 he became aware of parcel B using La Habra water without cost and had the practice discontinued.

8. La Habra is making an effort to upgrade its service, reduce its water loss by leakage, prevent increase in costs, and improve its system. If it loses Shaw's business it will not only lose the revenue it now derives from Shaw, but other customers will probably make similar requests resulting in financial loss to La Habra.

9. La Habra has 1,590 customers and its service area is approximately 6.28 square miles or 4,128 acres.

Discussion

Shaw's property is within the service area of La Habra and not within the service area of Suburban. Suburban has never intended to and has not dedicated its property or facilities to serve Shaw's property or any area of which his property is a part, and the fact that Suburban serves parcels B, C, and D, with the consent of La Habra and under the circumstances of this case, or that seven or eight years before La Habra would have had no objection to Shaw changing to Suburban, does not necessarily indicate to the contrary.

The Commission may not compel a water utility to extend its service into a new area on terms other than those agreed to by the utility. (California Water and Tel. Co. v Public Utilities Commission (1959) 51 Cal 2d 478, but cf. San Jose Water Works (1972) 73 CPUC 358.)

In Decision No. 83426, dated September 11, 1974 we stated:

"...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 288, 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."

There is no evidence that the water or the service that Shaw would receive from Suburban would be any different or any better than that which he now receives from La Habra, which is not substandard. His cost for water would, however, be less from Suburban.

If Shaw's request is granted there may be other similar applications which, if granted, would cause La Habra economic loss, and would tend to permit Suburban to drive a wedge into the distribution system of La Habra, an operating mutual water company. This should be avoided in the absence of a showing of inadequate service by the mutual company.

Findings

1. Shaw's real property consists of approximately 1.19 acres and is improved with a dwelling.

2. Shaw now receives adequate water service from La Habra and there is no evidence that it is inferior to Suburban's service.

3. Shaw's real property is in La Habra's service area and is not in Suburban's service area.

4. Suburban has not dedicated its property or facilities to any area which includes Shaw's property.

5. Suburban does not desire to and should not be authorized to provide service to Shaw as an extension of its service area.

6. To authorize Shaw to receive water from Suburban and discontinue receiving water from La Habra would cause La Habra to suffer economic loss and would tend to increase La Habra's difficulty in performing an efficient service for its remaining customers.

The Commission concludes that the best interest of the public requires that Suburban not be authorized to extend its service area to include Shaw's property, and Shaw's request should be denied.

O R D E R

IT IS ORDERED that the request of complainant Paul W. Shaw is denied.

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

Dated at San Francisco, California, this 18th
day of FEBRUARY, 1976.

[Signature]
President
William Synove Jr.
Vernon L. Sturgeon
F. Ron
Robert Pat
Commissioners