

Decision 90 11 001 NOV 00 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEMON HEIGHTS MUTUAL WATER COMPANY,)
 Complainant,)
 vs.)
 SOUTHERN CALIFORNIA WATER COMPANY,)
 Defendant.)

ORIGINAL

Case 90-03-011
(Filed March 12, 1990)

William VanderWerff, appearing for Lemon Heights Mutual Water Company, complainant.
Steven Romines, appearing for Southern California Water Company, defendant.

O P I N I O N

On March 12, 1990, Lemon Heights Mutual Water Company (Mutual) filed a complaint requesting that the Commission order Southern California Water Company (SoCalWater) to cease and desist from providing water service to Orange County Tract 11520, Parcel 503-76 (tract). The tract lies on the boundary between Mutual's Lemon Heights service area and SoCalWater's Cowan Heights service area.

On April 17, 1990, SoCalWater filed its answer stating that the tract is within its franchise area. To support its position, SoCalWater submitted a map of its Cowan Heights service area, tariff sheet No. 2702-W, filed with the Commission on March 26, 1984, pursuant to Advice Letter No. 676-W. On this map, the tract is shown located within SoCalWater's Cowan Heights service area.

Mutual argues that the map is not the result of any proper survey. It is no more than a copy of a page from Thomas Brothers' book of street maps for Orange County on which SoCalWater delineated an area which overreaches its territory of Cowan Heights.

Also, Mutual contends that this 1984 advice letter tariff map filing was made with no notice to the adjacent water agencies, nor was there a hearing on the subject. Therefore, Mutual submits that the map has no legal basis and the Commission should declare it void.

In addition, Mutual believes it has submitted sufficient evidence from its records to show that Mutual's rights to the tract predate the filing of the tariff map by over 30 years. Mutual submitted copies of its records commencing in 1964 of water sales to this tract.

Jack Chou, the present owner of the tract has requested service from SoCalWater. Since Chou has no stock in Mutual, he cannot at present legally obtain service from Mutual. Thus, SoCalWater believes that Chou is free to choose his water purveyor.

Mutual responds that it has offered to provide service to Chou; however, as a prerequisite, he must buy-back the shares that are appurtenant to the land. Mutual explained that the shares were taken back into its treasury because the prior owner of the tract refused to pay an assessment.

Regarding water system design and operational considerations, SoCalWater states that since the tract is contiguous to its Cowan Heights system, it can easily provide service.

Mutual points out that access to the tract is through a private road from Lemon Heights. There is no road from SoCalWater's Cowan Heights service area that provides direct access. According to Mutual, SoCalWater will have to cross private

property to serve the tract. On the other hand, to serve the tract, Mutual has a water main and meter in place.

Finally, Mutual argues that a customer located on the border between two utilities should not be permitted to switch utilities by simply refusing to pay an assessment. If such switching is permitted, it could result in the demise of small mutual water companies. Mutual describes this as the "domino effect."

Discussion

On the subject of service area maps filed by water utilities, the Commission in Radisavljevic stated:

" . . . Nor do we consider the filing of a water service area map by the utility as being the final or conclusive circumscription of the limits within which the utility will be obligated to render service. When an issue arises as to the appropriateness and extent of the utility's extension of its service boundaries, this Commission has exclusive jurisdiction to make a determination, and in making a determination of the new service boundaries created by a main extension, the Commission will be guided by the rule of reasonableness. Such extended service areas, preferably to the extent possible, should be defined by logical natural boundaries, avoiding small unserved enclaves or peninsulas, and they may not be gerrymandered to exclude customers or potential customers." (D.90262, p. 13.)

Therefore, SoCalWater's argument that the filing of its tariff map in 1984 gives it the right to serve the tract is not final or conclusive. In fact, the map, as filed, bears the notation: "This map shall not be considered by the Public Utilities Commission of the State of California or any other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof." (Exhibit 1.).

Regarding the need to give notice to competing utilities of such tariff map filings, in Prometheus Development Co., Inc.

(D.86-05-021), the Commission, rescinded such an advice letter filing for failure of the defendant water utilities to provide notice to parties affected by a boundary realignment.

In the case now before us, Mutual alleges that SoCalWater did not provide notice of its 1984 tariff map filing. SoCalWater did not refute Mutual. Therefore, we conclude that proper notice was not provided. Accordingly, SoCalWater's service area map on tariff sheet No. 2702-W, should be rescinded.

Next, the Commission has previously addressed the question of customer preference of water purveyor. In the application of California Water Service Co. to extend service in the territory of Westmilton Water System, the Commission stated:

"[2] If customers or would-be developers were allowed to pick and choose between neighboring utilities for their own economic advantage, the situation would be highly unstable and utility planning not only impossible but meaningless. Certainly the public interest always must enter into the consideration, but we must be concerned with the overall welfare of all the public involved in that utility's service territory, and not merely with that of a subdivider and his prospective customers located in the immediate area of the proposed subdivision." (10 CPUC 2d, 690, 697, D.83-01-05.)

Therefore, Chou's preference for service by SoCalWater does not decide this case.

The customer billing records for the tract show that service was provided to the tract by Mutual before SoCalWater filed its tariff map in 1984. Mutual has a main and water meter in place.

Furthermore, since there is no road from SoCalWater's Cowan Heights service area that provides direct access to the tract, the logical natural boundaries and the water system design and operational factors all favor service by Mutual.

Lastly, we share Mutual's concern that a customer situated on a service area boundary should not be able to switch utilities by the simple expedient of refusing to pay an assessment. The public interest requires that the integrity of small mutual water companies be preserved.

Findings of Fact

1. SoCalWater did not provide notice to adjacent utilities when it filed its service area map tariff sheet No. 2702-W.
2. Mutual has offered to provide service to the tract contingent on the buy-back of shares appurtenant to the land by the owner of the land.
3. The logical natural boundaries and water system operational considerations indicate that service can best be provided by Mutual.

Conclusions of Law

1. The filing of a service area map is not conclusive evidence that the utility is entitled to serve the area demarcated (D.90262).
2. Failure to properly serve a service area map on parties affected by a boundary change voids the filing (D.86-05-021).
3. It is in the public interest that Mutual be authorized to serve the tract.

O R D E R

IT IS ORDERED that:

1. Lemon Heights Mutual Water Company is authorized to provide water service to Orange County Tract 11520, Parcel 503-76.
2. Within 60 days Southern California Water Company shall file a new service area map with the Water Utilities Branch to replace tariff sheet No. 2702-W which is rescinded.

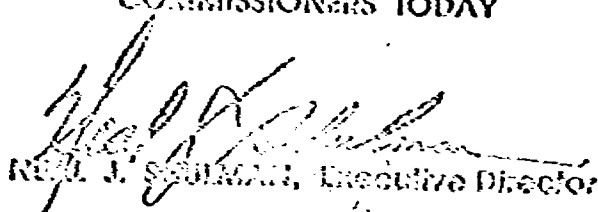
This order is effective today.

Dated NOV 09 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


REGINALD J. SPOLMAN, Executive Director