

Decision 96-02-013 February 7, 1996

BEFORE THE PUBLIC UTILITIES COMMISSIONS OF THE STATE OF CALIFORNIA

Ben I. Canales and Nat Agliano,

ORIGINAL

Complainants,

Case 95-11-001  
(Filed November 3, 1995)

Toro Water Service Co. and Ambler Park Water Service,

Defendants.

OPINION

Statement of Facts

On November 3, 1995, Ben I. Canales and Nat Agliano (complainants) filed the present complaint listing Toro Water Service Co. (Toro) and Ambler Park Water Service (Ambler) as defendants. Complainants' domestic well at 62 Corral de Tierra Road had failed and the complainants sought service from the closest and least expensive public utility source. Both Toro and Ambler are public utilities under the jurisdiction of this Commission, and both provide water service in presently contiguous areas respectively generally to the west or east of Coral de Tierra Road to the south of the road's junction with State Highway 68 southwest of Salinas in Monterey County.

Initially, Ambler provided service to the residents of the Ambler Park subdivision off San Benancio Road to the east of that road's junction with State Highway 68. Its service territory, as filed by CPUC Street No. 10 W, indicated a service area extending westward no further than to the El Toro Country Club, fronting State Highway 68. Subsequently in 1974, by Decision (D.) 81575 Ambler was authorized to extend service to Rim Rock (a subdivision further to the east and not relevant here) at that time it also claimed an extension to include the El Toro Country Club area to the east of but not contiguous to, Corral de Tierra Road. On October 26, 1974,

Ambler filed CPUC Sheet No. 117-W to replace CPUC Sheet No. 10-W, to reflect these service territory acquisitions, By D. 91072 issued November 30, 1979, Ambler was authorized as relevant here, to extend service to a proposed subdivision development south of Ambler Park Subdivision and contiguous to Ambler Park. This new development was known as the Meadows of Corral de Tierra. Again, it did not extend as far west as Corral de Tierra Road. By Ordering Paragraph 4 of D.91072 Ambler was ordered, pursuant to provisions of paragraph I.10.a of General Order 103 to prepare, file, and keep current maps of its enlarged service territory. Ambler neglected to comply and no map replacement was filed.

On December 30, 1986, a William Phelps, who owns a commercial property on the eastern side of Corral de Tierra Road where it meets State Highway 68, reportedly asked for service from Ambler, advancing \$15,000 "up-front" costs for a 1500-foot 8-inch main extension to his property to serve three hydrants. The advance was held in an attorney's trust account until 1993 when the main was installed and paid for. This procedure was adopted to avoid provisions of the Tax Reform Act of 1986 which became effective January 1, 1987. Again, no notice or map revision was filed with the Commission.

The tax bill was signed by President Reagan on October 22, 1986, giving advance warning before its effective date on January 1, 1987. On November 14, 1986, this Commission instituted its investigation (I.86-11-019) into the ratemaking implications, with virtually all utilities made respondents. Out of this investigation came the Commission's Order (Re. Tax Reform Act of 1986 (1987) 29 CPUC 2d 299) establishing a "gross up" procedure for the collection of taxes on contributions in aid of construction. The Commission decision issued September 10, 1987, becoming effective 30 days later.

The efficacy of an act placing an "up-front" deposit in an attorney's trust account to forestall application of a tax bill's consequences when the utility plant is neither installed nor the utility paid until almost seven years later, even disregarding inflation's impact on the ultimate costs, is an interesting question. But we will let this sleeping dog lie.

On June of 1991, by Advice Letter No. 21 Ambler filed its intention to serve a 12-home development extension of Rim Rock, and included a revised CPUC Sheet No. 203-W to replace the 1974 filed CPUC Sheet No. 117-W (the map of this service area) included on the map filed was the 1979 "Meadows" extension as well as the Phelps commercial property extension. CPUC Sheet No. 203-W was accepted as effective as of July 28, 1991. However, back in 1986, and acting in response to various written requests for service fronting on Corral de Tierra Road on both sides of this road just to the south of its junction with State Highway 68, Toro had on December 2, 1986 filed its Advice Letter No. 20, along with CPUC Sheet No. 147-W (the revised service area map replacing CPUC Sheet No. 145-W) to extend its service area contiguous to the northeast side of its then-existing authorized area, so as to include both sides of Corral de Tierra Road up to its junction with State Highway 68. Also included were both sides of State Highway 68 along the extension. Toro's advice letter indicates that the Local Agency Formation Commission (LAFCO) and three area water companies (Amler, Carmel Valley, and Laguna Seca) were provided a copy pursuant to requirements of Paragraph G of General Order 96. In the absence of objection, the filing and extension became effective January 1, 1987. In response to the present complaint naming Ambler as a defendant, Ambler states its desire and willingness to serve the complainants as well as two others in the same area. Ambler asserts that the northeastern corner of the Corral de Tierra Road and State Highway 68 intersection is already in its service area and states that since 1980 it has provided service to William Martin in that area. Ambler denies having any notification from Toro of Toro's Advice Letters 20 and 25. With its response it includes a map purporting to show its existing service area, a contiguous area how

In a telephone conversation with Administrative Law Judge [redacted] interestingly, one of those applicant letters was from the two complainants to the present proceeding.

being served, a contiguous area to be added, and an area of potential expansion. Essentially Ambler seeks recognition of a claimed right to serve the east side of Corral de Tierra Road from the southern boundary of the Meadows to the State Highway 68 intersection, as well as the entire western side of Corral de Tierra Road north of Corral de Tierra Terrace and west to State Highway 68, this being virtually all the territory previously requested by and granted to Toro by the latter's Advice Letter No. 20 filing made December 2, 1986, and effective January 1, 1987. Finally, by a letter to the Commission dated January 3, 1996, complainants advise that the service issue is currently being resolved through a basic agreement reached with Toro for a Toro main extension contract, and request to withdraw their complaint.

**Discussion** As the complainants have satisfactorily resolved their problem by contracting with Toro for a main extension to provide them with Toro water service, and have accordingly requested withdrawal of their complaint, we will grant their withdrawal request. However, this complaint has also brought to light the growing territorial dispute between Ambler and Toro which led to the filing of this complaint. The uncertainties underlying the dispute serve to invite the filing of further complaints unless resolved. Accordingly, as the facts are all available in Commission records or in Ambler's response to the complaint, to avoid a proliferation of proceedings we will use this case as a vehicle to settle the dispute. The dispute centers upon service territory frontages on Corral de Tierra Road south of the highway intersection. Relative to the issue, and as required by D. 81575 (which authorized an

<sup>1</sup> In a telephone conversation with Administrative Law Judge Weigs on January 10, 1996, Canales confirmed their request to withdraw the complaint. Two complainants to the present proceeding.

extension eastward to (Rim Rock) Ambler filed its revised service area map (CPUC Sheet No. 117-W) on October 26, 1974 which also showed a westward contiguous extension, including the El Toro Country Club. But this did not include any frontage on Corral de Tierra Road.

By D.91072 issued November 30, 1979, Ambler was granted authorization to serve the Meadows, a contiguous area subdivision to the south of Ambler Park, but an area with no frontage property onto Corral de Tierra Road. Specifically ordered in Paragraph 4 of the decision order to file two copies of the resulting revised service territory. Ambler did not do so.

Therefore, in 1986, Ambler had no authorization or filed service territory map to serve any property fronting Corral de Tierra Road.

At that point on December 2, 1986, with a number of written inquiries and/or requests for service on both sides of Corral de Tierra north of Toro's then service area (as represented in its filed CPUC Sheet No. 145-W), Toro filed Advice Letter 20 with CPUC Sheet No. 147-W to extend its service area northeastward on both sides of Corral de Tierra Road up to and including the State Highway 68 intersection. The record shows requisite notice being sent. The extension became effective January 1, 1987. That Ambler nine years later states it received no notice is not credited.

Furthermore, a utility proposing to extend into the neighborhood of

It should be noted that Ambler's stated provision of service to Martin in 1980 at 59 Corral de Tierra Road was unauthorized. The area was not in Ambler's service territory. If Ambler wished to serve Martin, it should have filed an advice letter and, pursuant to provisions of General Application B (New Territory) of General Order 96-A, before commencing service, have filed a tariff service area map to record the proposed extension of its service territory.

This service area extension was a classic example of an appropriate extension being in accord with Radisavljevic and Bakum v. Cal. Am. Water Co. ((1979), D. 90262, issued May 8, 1979), which provided that when service is extended into a new area the area must not be gerrymandered to exclude potential customers and should be extended to new boundaries which are logically and naturally defined, avoiding unserved enclaves, peninsulas or islands.

another utility should always check the neighbor's territory of record before acting; these service area maps are a public record on file at this Commission's office and available for inspection.

Since the seminal Oro Electric Corporation ((1913) 3 CRRC (748) decision, the Commission repeatedly has adhered to the general policy of protecting a public utility's service territory so long as the utility has properly discharged its duties to the public. When a public utility voluntarily has determined to extend its service availability into an area heretofore outside its declared service territory boundaries, the utility concurrently must accept an obligation to serve all customers in that area as it has then dedicated its service to said new area (DJ Liberto v. Parko Water Co. (1956) 54 CPUC 639). The fact that residents within that area did not take or contract for service does not alter the fact that Toro "serves" the area. As we held in Great Oaks Water Co. (1985) 18 CPUC 2d 22, 27:

"A utility 'serves' both by physical installation of facilities, and by posturing itself so that it has incurred a legal obligation under the terms of its tariff to provide service upon demand in its announced service territory." Toro has dedicated itself to serve customers or potential customers whose property lies within this extended service area represented by CPUC Sheet No. 197-W.

The situation today derives from Ambler's repeated failures to comply with the provisions of General Order 96-A when launching otherwise unauthorized extensions. The Ambler extension to Phelps' intrusion into Toro territory in 1993 does not serve to make this main extension available to other Corral de Tierra Road customers as an alternative to a Toro extension even though a Toro extension would be the more costly now. Main extensions must be paid for by those who benefit from them, not by a utility's existing ratepayers. Those in the Toro service territory deriving public benefit from this extension should be required to pay for it. This extension is a classic example of a service area extension which is logically and naturally defined, avoiding unserved enclaves, and should be paid for by those who benefit from them, not by a utility's existing ratepayers.

utility/water service must obtain such service only from Toro. However, Toro was remiss in not having complained of Ambler's extension to Phelps when it learned of the Ambler intrusion into Toro territory, thus it appears that Toro condoned the limited intrusion. For the present and future, Ambler will be allowed to continue its existing service to the Phelps and Martin properties, but no further hookup to Ambler's 1500-foot main or extensions from it, to serve others will be permitted within the Toro service area along both sides of Corral de Tierra Road.

**Findings of Fact**

1. Both Ambler and Toro are water public utilities within the jurisdiction, regulation, and control of this Commission.

2. Ambler, despite orders to both file and keep current its service territory maps with the Commission on various occasions has failed to comply. Ambler now states that in 1980 it extended service to Martin on Corral de Tierra Road, but the records of the Commission fail to show that it sought authorization for the extension or that it filed the requisite map recording any intended extension of its service territory as required by provisions of General Order 96-A.

3. Until December 2, 1986, both sides of Corral de Tierra Road, from approximately the Corral de Tierra Country Club northeastwards to the intersection of State Highway 68, remained an open but contiguous area to the respective filed service territories of Ambler and Toro.

4. On December 2, 1986, with inquiries in hand for services to the Corral de Tierra Road area, Toro annexed the area on both sides of the road from the Country Club to the highway intersection to its then-existing and recorded-service territory by filing its Advice Letter 20, together with CPUC Sheet No. 147-W to record the annexation, made effective on January 1, 1987. By annexing the additional service territory in the Corral de Tierra Road area, Toro accepted an obligation to serve all potential customers in that area upon demand.

7. It is Commission policy to protect a water utility's service territory so long as the utility properly discharges its duties to the public.

8. Ambler's 1993 main extension to serve Phelps was an intrusion into Toro's authorized service territory. Toro should have complained to the Commission at the time it learned of the Ambler service territory invasion to serve Phelps, and its failure to timely do so may be construed as having condoned that limited intrusion.

10. Ambler should be permitted to continue service to both Phelps and Martin.

11. Complainants Canales and Agliano have by letter requested withdrawal of the present complaint.

12. To avoid the strong probability of further complaints regarding who serves the Corral de Torres Road area, and a resulting probability of a proliferation of proceedings, this case will be used as a vehicle to settle the service area conflict between Ambler and Toro.

Conclusions of Law

As of January 1, 1987, Toro became the only water public utility authorized by the Commission to offer and provide water service to properties on both sides of Corral de Tierras Road northward from the Canal de Tierra County Club to the State Highway 68 intersection.

2. Ambler's 1993 service extension to the Phelps property was an invasion of Toro's dedicated service area.

3. Ambler should not be permitted to further profit from this 1993 invasion of Toro territory by further hookups or extensions to or from the extension.

4. In all other respects the complaint should be dismissed as requested by complainants without prejudice.

5. To avoid probable further service issues between Ambler and Toro involving the Corral de Tierra Road area, the order that follows should be made effective immediately.



6. All facts needed to resolve the issues raised by this underlying service territory dispute being available either in the Commission's records or in the respective responses to the complaint, there is no need for a public hearing.

O R D E R

IT IS ORDERED that:

1. The properties fronting into both sides of Corral De Tierra Road from the Corral de Tierra County Club northeastwards to and including the State Highway 68 intersection are within the filed service territory of Toro Water Service (Toro), and those property owners therein seeking public utility water service must obtain it from Toro under the terms and conditions set forth in Toro's filed tariff.

2. Ambler Park Water Service (Ambler) may continue to provide public utility water service to the Phelps and Martin properties, but shall make no additional hookups or extensions from the 1500-foot Ambler main serving the Phelps' property to properties within Toro's filed service territory.

3. Otherwise, Case 95-11-001 filed November 3, 1995 is dismissed without prejudice.

4. Ambler must file current maps of its service territory consistent with this decision within 90 days.

This order is effective today.

Dated February 7, 1996, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners