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Decision No. _____.

ORIGINAL

Decision No. 3240

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

Clara S. Hoff, wife of
E. G. Hoff,

Complainant,

v.

Case No. 887.

George S. Montgomery
and Carrie Judd Mont-
gomery, his wife,

Defendants.

E. J. Hoff for Complainant.

F. A. Berlin for Defendants.

BY THE COMMISSION.

O P I N I O N

The complaint herein alleges that defend-
ants, George S. Montgomery and Clara Judd Montgomery,
his wife, are operating a public utility water system
at Cazadero, Sonoma County, California, and prays for

an extension of the mains of that utility to serve two tracts of land owned by complainant in that vicinity.

Defendants filed exceptions and a demurrer to the complaint - the principal point therein raised being that this Commission had no jurisdiction over the subject matter of the complaint.

In support of the demurrer and exceptions, defendants filed an argument in which the position was taken that because sub-division (bb) of Section 2 of the Public Utilities Act of California refers only to water utilities which are "water corporations", and that the Commission had no jurisdiction over the defendants because there was no allegation that the defendants were a water corporation. Such an allegation is in our opinion unnecessary.

Sub-division (x) of the same section of the said Act is as follows:

"(x) The term 'water corporation', when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this state."

The term "water system" used in the last section named is defined by sub-division (w) of the same section of said Act, and is as follows:

"(w) The term 'water system', when used in this act, includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate fixtures and per-

sonal property owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for power, irrigation, reclamation or manufacturing, or for municipal, domestic or other beneficial use."

Upon order of the Commission to satisfy or answer the complaint, defendants filed their answer, specifically reserving unto themselves the points raised by them on demurrer, and denying all the allegations in plaintiff's complaint contained.

At the hearing of the case, the Commission did not rest its determination as to its jurisdiction upon the allegation of the complaint of the plaintiff to which the demurrer and exceptions of defendants were addressed, but took evidence on the subject and character of the company.

The following facts were developed in the testimony taken at the hearing, and each statement of a fact herein contained is to be regarded as a finding of fact.

Defendants herein are owners of certain springs near Cazadero, California. From those springs defendants' predecessor supplied water to his neighbors more as an accommodation than anything else for a great many years. Upon the acquisition of the property by defendants, defendants continued this practice and are continuing so to do.

Defendants are, and at all times mentioned in the pleadings of this action were, supplying water to

a portion of the community of Cazadero and were charging the consumers thereof for the service of that water to them. Defendant George S. Montgomery himself testified that at the time of the hearing he was supplying eleven consumers with water and that his agent at Cazadero made monthly reports to him of the receipts from the sale of water.

There can be no question, and we find as a fact, that the defendants herein are owning, controlling, operating and managing a water system within this State, and that they are selling water to a portion of the public for compensation.

Under the terms of Sub-division (bb) of Section 2 of the Public Utilities Act and Chapter 80 of the Laws of 1913, it must, therefore, be held that defendants are a public utility and are subject to the control and regulation of this Commission.

Having determined that the pipe lines and appurtenances used for the distribution of water at Cazadero, and now admittedly owned by the defendant in this proceeding, is a public utility water distributing system, it becomes necessary to determine the extent to which the system is obligated to give service as demanded by complainants. The arrangement made with complainants by S. R. Break, who at the time was in control of the pipe lines and was endeavoring to sell portions of the real estate formerly owned entirely by George S. Montgomery, under the agreement between the said Mont-

gomery and Break, filed with the Commission as defendants' Exhibit No. 1, impressed the system and the owner, whoever he might be, with some obligation.

As a public utility, the obligation claimed against the system by complainants to furnish free water, cannot be sustained. Any rate that may be established by this Commission will apply equally upon all who receive the same class of service. There is, however, no doubt that the service undertaken to consumers in Cazadero may be considered to have been established, as a part of the district to be served, each and every parcel sold by S. R. Break, either as agent for George S. Montgomery or as an individual operating independently. The land on which complainants desire service was obtained through the agency of S. R. Break and was transferred to complainants by deed from George S. and Carrie Judd Montgomery.

The Commission has, in its Decision No. 2879, laid down certain general rules in relation to the extension of service by water, gas, electric and telephone utilities in this State. The extension sought in this case lies within unincorporated territory and of the rules above referred to the following is applicable:

"Rule 16. A water, gas, electric, or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; provided, that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Com-

mission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission."

We believe that the construction of the extension sought by complainant at the utility's sole expense will work undue hardship upon the utility. The extension should be made, however, and in the following order the Commission will undertake to lay down such terms as to it seem fair and equitable to both parties herein. The decision herein is necessarily limited to the facts of this case.

O R D E R

CLARA S. EOFF having applied to this Commission for an order directing the defendants, GEORGE S. MONTGOMERY and CARRIE JUDD MONTGOMERY, his wife, owners and operators of a public utility water system in the town of Cazadero, California, to serve complainant as a consumer of such utility.

And a public hearing in relation thereto having been held by this Commission, at which hearing both parties introduced evidence, and the case having been submitted and being now ready for decision.

IT IS HEREBY ORDERED that George S. Montgomery and Carrie Judd Montgomery, his wife, owners and operators of a public utility water system in the town of Cazadero, California, be, and they are hereby, di-

rected to extend the water mains of said utility in said town of Cazadero to serve with water for domestic use those certain tracts of land situate, lying and being in the County of Sonoma, State of California, and particularly described as follows, to wit:

"Beginning at the intersecting quarter section line and Allen Street on West and running in a westerly direction three hundred seventy-seven (377) feet more or less to the intersecting of this section line and another section line and running then in a northerly direction 275 feet more or less to the intersection of Lawrence Avenue and thence on the southerly line of Lawrence Avenue to Gard Street and following the westerly line of Gard Street to Allen Street and following the northerly line to point of beginning, comprising six (6) acres more or less, being in the Southwest corner of Sub-division Four (4) Cazadero Townsite as shown and described on a certain map entitled Map of Cazadero Townsite, of Sub-division No. 4 thereof, and recorded in the office of the County Recorder of the said County, on the 14th day of September, 1910, in Map Book No. 21, at page 18 thereof." and

"All the land bounded by Lawrence Avenue, Short Street, Break Street, and Chapman Avenue, and the Westerly boundary line of said Cazadero Townsite, containing six (6) acres more or less, as shown and described on that certain map entitled Cazadero Townsite Subdivision Four, as recorded in the office of the County Recorder of the said county, on the fourteenth day of September, 1910, in Map Book No. 21, at page 18 thereof."

Payment for any such extension made as herein directed shall be made in the following manner:

The first 100 feet of the pipe line of any such extensions in each instance shall be installed at the expense of the utility. All of such extensions beyond the first 100 feet thereof in each instance

shall be made, provided complainant deposits with the utility the necessary cost of installation thereof. Said deposit shall be refunded to the depositor by giving the said depositor credit on each and every water bill paid to the utility for service on the above described tracts in an amount equal to one-half of such water bill, until the total amount of said deposit shall be refunded.

Dated at San Francisco, California, this 6th day of April, 1916.

Max Shelton
H. H. Loveland
Erwin C. Edgerton
Franz R. Decker

Commissioners.