

ORIGINAL

Decision No. 39863

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

R. D. Beckner, Hilda Zeeper, Elizabeth  
Hoskins, James Kiholm, Gerald Diefendorfer,  
C. L. Gault, Frank Giltner, George Bozzelle,  
and Frank Aston,

Complainants,

-vs-

Richard S. Otto,

Defendant..

Case No. 4848

Andrew Renetzky, for Complainants.  
Richard S. Otto, for Defendant.

O P I N I O N

In this proceeding, R. D. Beckner, et al., residents or landowners of the unincorporated town of El Morro, in San Luis Obispo County, complain against Richard S. Otto, a real estate dealer of Hollywood, Los Angeles County, and allege that they have received water for several years last past from a system owned and operated by Richard S. Otto, paying compensation therefor at rates ranging from \$0.50 to a maximum of \$1.50 per month; that defendant has organized an association known as Baywood Park Estates Mutual Water Users' Association and is trying to force complainants to join such association or be cut off from water service; and ask the Commission to find and declare said water system to be a public utility and to fix equitable rates.

Richard S. Otto in his answer admits that he is the owner of the water system but denies that complainants have been receiving water from a company being operated by him; denies that he organized the Baywood Park Mutual Water Users' Association; and denies that he is trying to force complainants to join said mutual association or that he is imposing on complainants new and excessive rates..

Defendant alleges, among other things, that he has made no charge for supplying water, for rent or compensation for the use of said water system, or for its maintenance and repair; that prior to 1932 he furnished water free of charge to several users and in 1932 turned over operations of the water system to the users with the understanding that they would form a mutual water association; that he has made no charge or received compensation for supplying water to said users or any of them; and that he has personally borne the entire expense of repairs, maintenance, depreciation, and the installation of new wells and pumps. The defendant further alleges that this Commission has no jurisdiction in the matter and prays that the complaint be dismissed.

A public hearing in this matter was held in San Luis Obispo before Examiner MacKall.

The subdivision legally described as "Town of El Morro" was recorded January 24, 1889 as Baywood Park Estates and is located on the shores of Morro Bay, about 12 miles from the city of San Luis Obispo and four miles south of the town of Morro Bay, in San Luis Obispo County. The subdivision contains approximately 1,000 acres, divided into various sized parcels or lots ranging in size from 25 x 125 feet to one-half acre. During the period from 1922 to 1926, Mr. Otto purchased the unsold lots in said subdivision, comprising about 80% of the entire tract. Thereafter he actively promoted the sale of lots therein, maintaining a tract office in the subdivision.

Mr. Otto installed a water system to serve Baywood Park Estates in 1927 and 1928. A cased well was sunk 27 feet deep. An electrically-driven pump discharges into the distribution system consisting of about 19,000 feet of mains from 2 to 4 inches in diameter. Formerly storage was provided by an 8,000-gallon wooden tank located on the highest point within the subdivision at an elevation of 151 feet above sea level. This tank has been destroyed and no storage is available. A second well, having an 8-inch casing inside a 12-inch casing, was completed in May, 1945. A third well was drilled in October, 1946,

with a 6-inch casing in a gravel envelope. A new pumping unit recently has been installed consisting of a five-horsepower electric motor direct-connected to a turbine pump, rated at 75 gallons per minute against a pressure of 60 pounds per square inch. During the year 1946 defendant has installed over 9,000 feet of 2½ and 3-inch pipe. At the present time there are about 33 consumers, none metered. Reports indicated that the water supplied by the system is soft and of excellent quality. Many of the premises within the subdivision obtain water from individually-owned wells.

Mr. Otto testified that he is the owner of the water system. Although no detailed inventory or appraisal of the property was presented, he estimated that to the date of hearing in this matter he had invested in the water works facilities at least \$25,000.

From the record it is clear that at the outset Mr. Otto did not charge the consumers for water service. However, it appears that from time to time, subsequent to the year 1932, he urged the consumers to organize a mutual association to operate, maintain and distribute the water and to collect charges for water service. The title to the system however was to be held by Mr. Otto. In the spring and summer of 1932 meetings were called by defendant but were attended by only a few, about eight or nine, out of the twenty water users. As a result of these meetings service assessments were established ranging from 50 cents to \$1.50 per month per consumer. In 1944 and 1945 efforts were made to obtain signatures of all water users on a printed form of application for water service which required membership in a so-called water users association in which Richard S. Otto was secretary and treasurer. By-laws for this association were prepared by Mr. Otto and submitted to and adopted by the association. In these by-laws the name of Baywood Park Estates Mutual Water Users Association was ratified and established for the use of the organization which in turn received from Mr. Otto the right to operate the water system without charge or liability. Ownership of the water system was acknowledged by said

association to rest in Richard S. Otto. In the latter part of the year 1945, Mr. R. A. Torkelson was elected secretary-treasurer. He was granted by the association a salary of \$15 per month for management of the water system and the collection of bills from the water users. Additional compensation was paid Mr. Torkelson by Mr. Otto who also furnished whatever additional money was necessary to make up the deficit in the cost of operation and repairs to the system.

On the 15th day of May, 1946, the Baywood Park Mutual Water Users' Association held a meeting and established a new schedule of rates, ranging from \$1.50 to \$3.50 per month, according to class of use. Notice of this increase in rates was sent to all consumers. Following this meeting, because of protests made by many of the consumers, a letter was sent out by the secretary of the association, under date of August 8, 1946, to the effect that all water service would be discontinued three days thereafter to all consumers who had not qualified as members of the association. This qualification consisted primarily of the signing by the water user of a new and revised form called "Application for Membership and Water Service." A substantial number of consumers refused to sign the application as demanded and also refused to pay the increased rates established by the association and instead filed the formal complaint in this proceeding.

The testimony of witnesses shows that at least during part of the year 1932 and thereafter, the rate of \$1.50 per month per consumer had been collected for water service as a routine duty by various tract managers who were resident agents in charge of the sale of lots on this tract and in the employ of Mr. Otto. Certain of these tract managers testified that during their terms as local managers the money collected by them for water service was delivered to Mr. Otto, usually deposited in the petty cash funds. Receipts were given to the consumers as payment for water service rendered. Although a large proportion of the water users were not members of the association organized by Mr. Otto, the

record shows that no water service was discontinued to any of the non-members of the organization because of the fact that they had neglected or refused to join the association and had not signed the required form of application for membership and for water service. The evidence shows that during the year 1946 one new lot purchaser, not a consumer, applied for water service but was refused unless and until he signed the above-mentioned application for membership and water service.

The evidence shows that there is no recital in any of the sales' contracts or deeds of conveyance of the lots sold in Baywood Park Estates that gives to the purchaser any interest in or right to operate the water properties serving the subdivision. Nothing is set forth in either of these two types of instruments which refers in any way whatsoever to the formation of, or the requirement of membership in, a mutual water company or association.

The testimony of Mr. Otto and the record in this proceeding bears out the fact that while water undoubtedly was supplied free of charge for some undetermined period during the early stages of operation by the defendant during the initial stages of the sales campaign in Baywood Park Estates, nevertheless said defendant did make certain fixed and nominal charges for water service to his consumers from at least the middle of the year 1932 to May, 1946. Undoubtedly continuous efforts had been made by Mr. Otto to prevail on the consumers to form the mutual organization to take over the actual local plant management and operation.

The revenues at no time had been sufficient to pay for these costs. During the time the water system was managed by employees or resident sales agents of Mr. Otto, and thereafter and up to the present time, all additional funds required for repairs and other operating expenses were furnished by the owner. One very important fact must be noted and that is that defendant still considers it necessary to maintain ownership of this water system in order to protect his interests in the unsold lots in the tract. Defendant furthermore still has the responsibility to pay the costs of extensions of mains and other new construction.

From the facts set forth above, it is conclusive that defendant has for many years last past delivered water for compensation to lot purchasers and residents living in Baywood Park Estates. Water has been so sold to customers whether or not they were members of the recently organized Baywood Park Estates Mutual Water Users' Association. It is clear, therefore, that in so doing Mr. Otto has dedicated his water system and water service to the public use and is therefore subject to the jurisdiction and control of the Public Utilities Commission of the State of California. In fairness to Mr. Otto, it should be pointed out at this time that the rates charged for water service at no time have been excessive or unfair. He has made a sincere and honest effort to permit the water users themselves to operate the water system to reduce expenses to a minimum, at the same time willingly providing funds necessary to pay for deficits in operating costs. While the Commission will, under the circumstances, be forced to direct the re-instatement of the original rates charged before the increases of 1946, nevertheless it is recognized that said rates may not produce revenues equivalent to the total costs of maintaining and operating the plant. It is clear, however, that neither the mutual association nor defendant had authority to increase the existing rates. The proper remedy for relief in this situation lies in the filing with this Commission of an application for the establishment of just and reasonable rates, including both flat and meter schedules.

The evidence shows that at the present time no storage facilities exist. The Commission's engineer, Mr. -. Ronald Foster, at the time of the hearing recommended that a storage tank of suitable capacity be installed at such a location and elevation as to provide a dependable gravity supply in case of temporary failure of the pumps. The contour of the land permits such storage without the expense of an elevated tank. A surface storage tank or reservoir

is much safer and more necessary on so large a project than the present method of dependence upon the present small automatic pressure tank. Accordingly, in the Order which follows, Mr. Otto will be required to proceed with the installation of storage facilities which are now vitally necessary for reliable and satisfactory water service to this growing community and the protection of the health and safety of its inhabitants.

The record presented does not contain sufficient evidence to permit the determination in this decision of the boundaries of the service area of this system. In order to avoid further difficulties and controversies over territorial limitations in the future, Richard S. Otto will be required to file with this Commission, subject to its approval, a comprehensive map delineating thereupon the service area in and in the vicinity of Baywood Park Estates.

In view of the circumstances, defendant will be directed in the following Order to file rates for water service and rules and regulations governing the sale and distribution of water to consumers. Said rates, rules and regulations shall eliminate all discrimination, if any, between consumers by reason of membership in Baywood Park Estates Mutual Water Users' Association.

#### ORDER

A public hearing having been held in the above entitled proceeding and based upon the conclusions and findings set forth in the foregoing Opinion, it is hereby found as a fact that the water works owned by defendant, Richard S. Otto, and serving water for domestic and other purposes in the subdivision known as Baywood Park Estates, in San Luis Obispo County, is a public utility and as such is under the control and jurisdiction of the Public Utilities Commission of the State of California.

IT IS HEREBY ORDERED as follows:

1. That Richard S. Otto shall file in quadruplicate with this Commission, within thirty (30) days from the date of this Order, in conformity with the Commission's General Order No. 96, rates for water service rendered in Baywood Park Estates, which rates shall not be higher than those in effect for the various consumers in the area prior to June 1, 1946, subject to approval by the Commission.
2. That Richard S. Otto, within thirty (30) days from the date of this Order, shall submit to this Commission for its approval four sets of rules and regulations governing relations with his consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet 8½ x 11 inches in size, delineating thereupon in distinctive markings the boundaries of the present service area, and the location thereof with reference to the immediate surrounding territory; provided, however, that such map or sketch shall not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.
3. That Richard S. Otto, within sixty (60) days from the date of this Order, shall file with this Commission four copies of a comprehensive map, drawn to an indicated scale of not less than 600 feet to the inch, upon which shall be delineated by appropriate markings the territory presently served. This map should be reasonably accurate, show the source and date thereof and include sufficient data to determine clearly and definitely the location of the property comprising the entire utility area of service; provided, however, that such map shall not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.
4. That Richard S. Otto, within ninety (90) days from the date of this Order, shall file with this Commission detailed plans for the installation of a water tank or storage reservoir of not less than 20,000-gallon capacity, and preferably of about 50,000-gallon capacity, to be located in Block 50 of Baywood Park Estates subdivision, being the highest point thereof. Such plans are to be subject to the approval of this Commission and said storage facilities are to be installed and in operation in a manner satisfactory to this Commission within ninety (90) days after approval of said plans.

IT IS HEREBY FURTHER ORDERED that for all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.



Dated at San Francisco California, this 13<sup>th</sup> day  
of January, 1947.

Harold P. Huls

Justus F. Carlson

Earl H. Powell

A. F. Dutton

Commissioners.