

ORIGINAL

Decision No. 40331

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROMIE C. JACKS, doing business under the name
and style of Monte Regio Water System,

Vs Complainant,

CALIFORNIA WATER AND TELEPHONE CO.,
a corporation,

Defendant.

Case No. 4866

Investigation on the Commission's own motion
into the operations and practices of ROMIE C.
JACKS, doing business as Monte Regio Water
System, and MONTE REGIO WATER SYSTEM,
a corporation, in the furnishing of water
service in and near Monterey.

Case No. 4871

MONTEREY PENINSULA ASSOCIATES, a corporation,
Complainant,

Vs

ROMIE C. JACKS; an individual doing business
under the name,
"MONTE REGIO WATER SYSTEM"

Defendant.

Case No. 4872

J. Harold Weise, for Romie C. Jacks.

Bacigalupi, Elkus & Salinger, by Claude N. Rosenberg
and Tadini Bacigalupi, for California Water and
Telephone Co.

Edmond M. Sullivan, for Monterey Peninsula Associates..

J. J. Douel and Edson Abel, by Edson Abel for
California Farm Bureau Federation.

HULS, COMMISSIONER:

O P I N I O N

Romie C. Jacks owns and operates a water distributing system under the
fictitious firm name and style of Monte Regio Water System, supplying water in
subdivided tracts officially designated Monte Regio No. 1, Monte Regio No. 2, and
Monte Regio No. 3, certain portions thereof lying within the corporate boundaries

of the City of Monterey and the remainder thereof in territory immediately contiguous thereto in the County of Monterey.

In Case No. 4866 said Romie C. Jacks alleges that California Water and Telephone Co., a corporation, intends to invade the service area of Monte Regio Water System to sell and distribute water in Monte Vista Park No. 1, a subdivision adjoining the city limits of the City of Monterey, which subdivision complainant alleges is a part of his service area which he is ready and willing to supply with water. The Commission is asked to order said California Water and Telephone Co. to cease and desist invading or selling water in Monte Vista Park No. 1 and that it further order that Romie C. Jacks is the sole distributor of water within said area.

By way of answer, California Water and Telephone Co., defendant, admits that it proposes and intends to engage in the sale and distribution of water in Monte Vista Park No. 1. Defendant alleges that for many years last past, even prior to the creation of the Railroad Commission of the State of California, now the California Public Utilities Commission, Monterey County Water Works, its predecessor in interest, and defendant have continuously served water throughout the Monterey Peninsula and Carmel Valley; that defendant and its predecessor in interest have dedicated their service throughout the above area to public use; that defendant legally is entitled to render public utility water service in Monte Vista Park No.1, and, therefore, asks the Commission to dismiss the complaint.

Monterey Peninsula Associates, a corporation, is engaged in the business of subdividing large tracts of land adjacent to the corporate limits of the City of Monterey. In Case No. 4872 this corporation has filed a complaint against Romie C. Jacks, doing business as Monte Regio Water System, alleging that one of the tracts it has developed is known as Monte Vista Park No. 1, located adjacent to and contiguous with the city limits of the City of Monterey; that many lots have been sold within this tract and that in order to supply water adequately to the purchasers of the lots, complainant, on November 7, 1946, entered into a contract with the California Water and Telephone Co. providing for the extension of a transmission main at the water company's expense to the edge of said tract, connecting with a

system of distribution mains to be installed at the expense of complainant, subject to refund under the regular rules and regulations of the water company. It is further alleged that Romie C. Jacks has been distributing water without having obtained a franchise or certificate so to do and without having filed rates, rules and regulations, as required by law, and that, furthermore, said Romie C. Jacks is not equipped to render adequate water service in the areas wherein he seeks exclusive service franchise. Wherefore, said corporation prays that Romie C. Jacks be decreed not entitled to the rights and privileges of supplying water in Monte Vista Park No. 1, that he be ordered to cease and desist in the business of distributing and selling water to the public, and that it be further ordered that California Water and Telephone Co. is the public utility solely entitled to distribute water within the Monte Vista Park No. 1.

In his answer to this complaint Romie C. Jacks enters a general denial of the essential allegations contained therein and asked that the matter be dismissed.

The records of the Commission show that on the 28th day of May, 1936, Monte Regio Water System, then a corporation, filed with this Commission Application No. 20585, signed on behalf of said corporation by Romie C. Jacks, President, and M. W. Jacks, Secretary, wherein said corporation requested the issuance of a certificate of public convenience and necessity authorizing the operation of a public utility water system in Monterey County and also asked for authority to issue stock and the establishment of reasonable rates. This application was dismissed for want of prosecution on the 9th day of April, 1940, and a petition for reinstatement of said application was denied on the 6th day of May, 1940.

Under the above circumstances and in view of the many and several conflicting interests and issues involved, and other good cause appearing, the Commission on the 7th day of March, 1947, ordered that an investigation on the Commission's own motion be instituted into the operations of Romie C. Jacks and the Monte Regio Water System, a corporation, to determine whether they or either of them, own, control, operate, or manage a public utility water system furnishing service in or near Monterey, California, without first having obtained a certificate of public

convenience and necessity, and should therefore be ordered to file rates, rules and regulations and submit to regulation as a public utility or to desist such operation until a certificate shall have been obtained. This investigation was given Case No. 4871.

A public hearing in these three matters was held at Monterey at which time the proceedings were consolidated for hearing and decision.

The evidence presented in these proceedings showed that Romie C. Jacks heretofore was owner of a large tract of land lying partially within and also adjoining the city limits of the City of Monterey and lying along the main Monterey-Carmel Highway. In 1926 negotiations by and between Romie C. Jacks and officials of Monterey County Water Works, a public utility corporation then supplying water in the cities of Monterey, Pacific Grove and Del Monte and adjacent territory, resulted in the installation by Romie C. Jacks of a water system conforming to plans and specifications required by said waterworks, to supply certain portions of the subdivision generally referred to as Monte Regio Subdivision, but including specifically at that time units thereof officially designated as Monte Regio No. 1, Monte Regio No. 2 and Monte Regio No. 3. Disputes arose over the refunding of the costs incurred by Romie C. Jacks in piping the Monte Regio Subdivision and the duty and obligation of the Water Works to serve water therein. As a result of failure to reach an agreement, Mr. Jacks elected to operate the water system himself or through a corporation to be formed and organized for such purpose.

The water system in the Monte Regio Subdivision was installed by Romie C. Jacks and placed in operation during the year of 1926. Mr. Jacks obtained his water supply from the Monterey County Water Works, purchasing water under the regularly established rates in effect on that system. The rates charged for resale to his consumers were identical with the rates then charged by the Water Works, resulting in considerable financial loss through unaccounted-for water. At the present time the distribution system consists of 19,830 feet of 4" and 6" cast iron main, 12,460 feet of 2" S.S. galvanized pipe, a 50,000 gallon steel storage tank and certain pumping facilities. Water is now purchased from defendant California Water

and Telephone Co., delivery being received through a 6" service line, measured through two 4" master meters. According to testimony of Mr. Jacks the water system was installed at a cost of approximately \$40,000. There are now 162 consumers served with water. The gross revenues for the year 1946 are reported to be \$5,575, and operating expenses, exclusive of depreciation and management and superintendence charges \$4,336, leaving a net profit of \$1,239.

The record indicates that Romie C. Jacks maintains no regular office in or near his subdivision, or in Monterey, for the transaction of water business with his consumers or with the public. He does, however, maintain a telephone listing in the Monterey Telephone Directory, which appears to be connected with a private home located in Del Monte, owned by his sister and occupied by a caretaker. This also is the local residence of Mr. Jacks during occasional trips to Monterey. Mr. Jacks is available at his residence in Hillsborough in San Mateo County. A post office box is maintained at Monterey for the payment of water bills which apparently are forwarded to Hillsborough where all monthly bills are made out and the accounts of the system are kept. A bill collector and meter reader is employed, who devotes only a part of his time to waterworks duties which include minor and occasional repairs. All major repairs, however, such as the installation of meters and service connections, main extensions and other similar installations are made by the California Water and Telephone Co. by a mutual arrangement. There is, therefore, no responsible employee, a resident of the Monte Regio Tract, or of Monterey or vicinity, delegated with authority to handle emergency complaints and repairs. Under the circumstances, most of the consumers have felt it necessary to take up all such matters, which are many, frequent, and often serious, with the division manager in the Monterey Office of the California Water and Telephone Co. This method of handling the affairs of the Monte Regio Water System has resulted in much confusion and dissatisfaction among the consumers and is one of the principal reasons that Mr. Wright S. Fisher, President of the Monterey Peninsula Associates, advanced for not wishing to have water service supplied to the corporation's tract, Monte Vista Park No. 1 by Monte Regio Water System.

On April 2, 1934, this Commission issued its Decision No. 26915 in a complaint brought by the Monte Regio Water System, complainant, vs Monterey County Water Works, defendant, the latter being a predecessor in interest to California Water and Telephone Co. in the operation of the water system supplying Monterey Peninsula. In this complaint Romie C. Jacks alleged that the rates charged by the defendant water works were unreasonably high and excessive and requested the establishment of an especially reduced rate for his water system for use in resale to his consumers in the subdivision generally known as Monte Regio Tract. The Commission denied the request for a reduction in rates and the establishment of a reduced charge for resale purposes and made the following recommendation:

"Under the circumstances, the remedy for this unfortunate water service problem is for the company to purchase this small independent water system and operate it in conjunction with its own plant which completely surrounds it, or for complainant to apply for the establishment of a more remunerative schedule of rates. Obviously, the transfer of the system to defendant is the more satisfactory and permanent procedure from all viewpoints."

On May 28, 1936, Monte Regio Water System, a corporation, filed an application with this Commission for permission to issue capital stock and for a certificate of public convenience and necessity and for the approval of rates. The certificated area as proposed purported to embrace lands owned or controlled by Romie C. Jacks and his wife or by Monte Regio Corporation, a corporation, including, among other things, the subdivided units of Monte Regio No.1, Monte Regio No. 2 and Monte Regio No. 3, also a certain proposed hotel and other developments in conjunction therewith in adjoining and adjacent areas. This application was never heard by the Railroad Commission although from August 28, 1936, the original date set for hearing, the matter was reset at the request of applicant, nineteen times until on November 27, 1939, the matter was removed from the Commission's calendar. On April 9, 1940, the application was dismissed for want of prosecution by Decision No. 33000, and on May 6, 1940, the Commission in its Decision No. 33087 denied a petition for the reinstatement of said application in the following terms:

"The Commission having considered applicant's petition for reinstatement of the application and restoration to the calendar, and being of the opinion that no good cause has been shown for the granting of such request, said petition is hereby denied."

According to the evidence submitted in this proceeding, a corporation was formed and organized by Mr. Jacks and called Monte Regio Water System. This corporation, however, was never authorized to issue stock, it never conducted any business, and at no time did it ever acquire any title to or interest in the water system supplying any part of Monte Regio Subdivision. The corporation became bankrupt in 1935. A corporation known as Monte Regio Corporation apparently is still in existence, although the record herein is not clear as to what part, if any, such corporation may play in any of the interests affected by these proceedings. The evidence does show, however, that M. Corey, sister-in-law of Mr. Jacks, for a while held title to the Monte Regio Water System properties. However, such interests as M. Corey may have possessed were transferred back to Romie C. Jacks about the year 1942. These transactions were never submitted to this Commission for approval.

Certain lands owned and controlled by Romie C. Jacks were lost in foreclosure proceedings. Portions of these properties subsequently were acquired by Monterey Peninsula Associates, Inc. According to the testimony of Wright S. Fisher, its president, the Associates subdivided Monte Vista Park No.1, originally a part of the Jacks properties. This tract was subdivided into 194 lots,- 130 having been sold already. Monterey Peninsula Associates entered into a contract with Stolte Inc., general construction contractors, for the installation of a water system in Monte Vista Park No.1, at a contract price of \$45,411, subject to an escalator clause. At the date of the hearing the testimony indicated that the installation under the terms of this contract was 60% completed. Prior thereto, on the 7th day of November, 1946, the Associates had entered into an agreement with California Water and Telephone Co., providing for extension of mains and water service in Monte Vista Park No.1, which, among other things, provided for the extension of a transmission main by California Water and Telephone Co. to a specific point at or near one of the boundaries of the subdivision, the installation of a distribution system in said tract by and at the expense of the Associates, subject to refund under the Company's Extension Rule No. 19-B. The testimony indicates that the

above transmission pipeline already has been installed by the Water Company at a cost reported to be \$6,775.

From the record presented in this proceeding it appears that about the year 1926 Romie C. Jacks decided to operate his own water system and serve water to consumers in his Monte Regio Subdivision because he was unable to obtain what he considered a satisfactory agreement with Monterey County Water Works for the refunding of expenditures made by him in the installation of the distribution system. According to his testimony he embarked in the water business only by reason of the fact that he considered it the only course or expedient left open to him. His sole source of water supply is by purchase from California Water and Telephone Co. The restricted size of his water system, the few consumers, and the fact that Mr. Jacks is a non-resident of Monterey, make it economically infeasible for him to operate this water system in an efficient manner and at the same time provide water service satisfactory to his consumers, at least under rates which the consumers would be able and willing to pay under the competitive conditions which here exist. The numerous complaints made by consumers now on this system indicate that even a limited extension to supply a few new consumers would seriously interfere with and injuriously affect present water users and certainly would not warrant or justify an extension to serve a large tract such as Monte Vista Park No. 1, even from a new and independent connection.

Mr. Jacks never at any time has filed rates or rules and regulations with this Commission. No certificate of public convenience and necessity has ever been granted to him to operate a water system in this district. Although he caused to be filed through the former corporation, known as Monte Regio Water System, an application for such certificate, the unusually dilatory tactics of Mr. Jacks in being continuously unprepared over a period of several years to bring the matter to hearing before this Commission resulted in the necessity of dismissing such application for lack of prosecution. It cannot be said that this Commission was not aware of the operations of Mr. Jacks without proper certification, in view of our above referred to Decision No. 26915, in Case No. 3578, and the recommendation made

therein that this small water system be sold to, or acquired by, the Monterey County Water Works. However, it was only in anticipation of compliance with the recommendation so made that the Commission took no further affirmative action.

California Water and Telephone Co. together with its predecessor in interest have supplied water generally throughout the Monterey Peninsula commencing on or about the year 1862. The present company, as its major business in this district, supplies water generally throughout the city of Monterey and immediately adjacent territory and now serves properties bordering on at least three sides of Monte Regio Subdivision, including territory immediately adjoining and contiguous to the Monterey Peninsula Associates' development, Monte Vista Park No. 1. The local group of businessmen in Monterey and vicinity who have formed and organized Monterey Peninsula Associates, Inc., are entitled to and necessarily must depend upon an adequate water service to supply the purchasers and prospective residents of their tract. It is clear that neither satisfactory and adequate service nor dependable management and supervision can be depended upon through extension of the Monte Regio Water System to this tract. In justice and fairness to the water users and prospective consumers, it is conclusive, therefore, that California Water and Telephone Co. should be permitted to extend water service into this tract and assume the public utility obligations and liabilities in connection therewith.

Romie C. Jacks has not obtained from this Commission a certificate of public convenience and necessity to sell and distribute water in the area now served. The record, however, discloses that actually he has been engaged in this business at least from the year 1926 to date. By his operations illegal or otherwise, he has dedicated the water service to the public generally, within the territory in which he now serves with the exception of the temporary service from the pipeline supplying a consumer by the name of Smith and possibly three other residents connected thereto. Service to this property should be taken over by California Water and Telephone Co. along with Monte Vista Park No. 1.

Romie C. Jacks will be directed to file rates, rules and regulations and a map outlining the service area in which he shall hereafter confine his water

distribution business. This service area shall be confined to Monte Regio Subdivision units, Monte Regio No. 1, Monte Regio No. 2 and Monte Regio No.3. Such a service area map will be ordered filed subject to approval of this Commission.

O R D E R

Complaints as above entitled having been filed with this Commission, an investigation having been instituted on the Commission's own motion, a public hearing having been held thereon, the matter having been duly submitted and the Commission now being fully informed in the premises, and based upon the conclusions and findings set forth in the foregoing Opinion,

IT IS HEREBY FOUND AS A FACT that the waterworks owned by Romie C. Jacks and operated under the fictitious firm name and style of Monte Regio Water System, supplying water for domestic and other purposes in the subdivided tracts designated as Monte Regio No. 1, Monte Regio No. 2 and Monte Regio No. 3, situate partially within the city limits of the City of Monterey and immediately adjacent to and contiguous therewith in the County of Monterey, is a public utility and as such is under the control and jurisdiction of the Public Utilities Commission of the State of California, and now therefore,

IT IS HEREBY ORDERED as follows:

1. That Romie C. Jacks shall file with this Commission, within thirty (30) days from and after the date of this Order, in quadruplicate and in conformity with the Commission's General Order No. 96, rates for water service in the subdivided tracts designated Monte Regio No. 1, Monte Regio No. 2 and Monte Regio No. 3, adjoining and within the corporate limits of the City of Monterey, Monterey County, which rates shall not be higher than the rates heretofore charged for water service in said subdivision;
2. That Romie C. Jacks, 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 8 $\frac{1}{2}$ x 11 inches in size, delineating thereupon in distinctive markings the boundaries of the present service area, as set forth in the preceding Paragraph 1, and the location thereof with reference to the immediate surrounding territory, subject to the approval of this Commission;

3. That Romie C. Jacks, 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, subject to the approval of this Commission.

IT IS HEREBY FURTHER ORDERED that as to all other relief prayed for herein the same is hereby denied.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order is hereby approved and ordered filed as the Opinion and Order of the Public Utilities Commission of the State of California.

Dated at San Francisco, California, this 27th day of

May, 1947.

Harold P. Kuls
Justin J. Garner
Frank H. Swell
R. J. Johnson
Herbert P. Potter
Commissioners.