

ORIGINAL

Decision No. 40402

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| HARRY ASLIN, et al, |) | |
| |) | |
| Complainants |) | |
| vs. |) | Case No. 4827 |
| HARRIET O. CASE and DOROTHY H. WOLF, |) | |
| Defendants. |) | |
| | | |
| In the Matter of the Application of HARRIET |) | |
| O. CASE and DOROTHY H. WOLF to discontinue |) | Application No. 27463 |
| water service. |) | |
| | | |
| Investigation on the Commission's own motion |) | |
| into the operations of WILLIAM J. ROBERTSON |) | |
| and JESSE J. ROBERTSON in supplying water ser- |) | Case No. 4880 |
| vice at Wright's Beach, Sonoma County, |) | |
| California |) | |

GEARY & TAUZER, by CARLTON SPRIDGEN and JOHN M. MOSKOWITZ, for Complainants in Case No. 4827.

R. M. QUACKENBUSH for Defendants in Case No. 4827, and Applicants in Application No. 27463.

LOUNIBOS & LOUNIBOS, by JOHN B. LOUNIBOS, for Respondents in Case No. 4880.

O P I N I O N

In an interim opinion rendered on April 1, 1947, Decision No. 40126, the Commission directed that a further hearing be held in the first two of the above entitled matters. The Commission also, on its own motion, then instituted Case No. 4880 to determine whether W. J. Robertson and J. J. Robertson, as well as defendants Harriet O. Case and Dorothy H. Wolf in Case No. 4827, should be held to be operating a water system as a public utility at Wright's Beach, Sonoma County. The three matters were joined for the receipt of further evidence at a hearing held at Santa Rosa on April 23, 1947.

It does not appear necessary now to enlarge materially upon the facts set forth in that interim opinion with respect to the public utility nature of the

water service rendered at Wright's Beach. Defendants W. J. Robertson and J. J. Robertson deny that they ever rendered a utility service, asserting that one of their tenants was solely responsible for the sale of water. The evidence shows, however, that beginning with the year 1933 the Robertsons personally represented to prospective purchasers of lots within their subdivision that water would be supplied. They installed water gathering and distribution facilities for that purpose. They instructed residents to make payments directly to them and they personally accepted payments for service rendered. Then, in 1942, when they agreed to convey to defendants Case and Wolf that part of their property upon which the water production facilities were located, they required these new owners to supply water to all future purchasers of lots. They now admit that they imposed such condition for the purpose of protecting their interest in the parcels then remaining unsold. In the light of such facts it must be found that the Robertsons undertook to render a public utility water service to all who might purchase property in their tract.

The evidence also shows that defendants Case and Wolf, as successors to at least a part of the water system developed by the Robertsons, have thereby assumed some obligation to continue the service of water. The questions remaining for decision are whether the responsibility for the continuance of service to the full extent of the original dedication now legally rests upon the defendants Case and Wolf alone or upon all the defendants jointly. In addition, the application of Case and Wolf for authority to discontinue the delivery of water to existing customers raises the question whether, because of the extremely limited supply of water available, the Commission would be justified in directing them to serve all present and future residents within the tract.

The property which the Robertsons owned and subdivided in 1933 was a narrow parcel of land lying along the cliff overlooking the ocean shore, comprising about eight acres. Some of the lots or parcels subsequently sold were described by notes and bounds and others by reference to a recorded map. In determining the extent

of the area to which water service was offered, no distinction can be made between the parcels conveyed by reference to the subdivision map and those otherwise described. It is evident that the Robertsons intended to provide a water supply for themselves and for all others residing within the tract.

That portion of the tract purchased by the defendants Case and Wolf included about two acres lying above the cliff, together with a smaller parcel on the ocean shore below. It is upon the parcel last mentioned that the springs and pumping facilities are located. This water supply is used by these defendants at their own residence, by tenants of their two cottages, and by eight other residents within the subdivision. Of the twelve homes which have been erected to date on other lots sold by the Robertsons, it appears that the owners of two have developed their own water supply. Two others may be connected to the system but have not been paying for water used. Only eight have been billed regularly by Case and Wolf. Some owners of vacant lots have indicated their intention to build.

The Robertsons disclaim any present ownership in the water bearing portion of the property sold to Case and Wolf, or in any of the production or distribution facilities, and Case and Wolf have not expressed any intention to reconvey title to any part. Hence, the Commission must hold that defendants Case and Wolf remain responsible for the continuance of the service until such time as their legal interest therein may be altered, or the Commission should give its consent to the abandonment of the service. Although a duty rests upon the Robertsons to carry out their original offer of service, there appears to be no way to enforce this obligation as long as Case and Wolf retain title and possession.

The application of Case and Wolf for authority to cease the delivery of water must be decided in the light of the facts above set forth. Upon consideration of all the evidence offered in these proceedings, it must be concluded that the burden thus falling upon these women to furnish water as a public utility to all persons within the scope of the original dedication cannot long be imposed upon them. The only source of supply available is that from springs or seepages found

along the edge of the cliff below their property. The testimony given by the Commission's engineer, Mr. Duncan, indicates that the volume of water which these springs may be expected to yield depends directly upon the local rainfall, and will diminish greatly during the summer months. Measurements taken in June, 1946, indicated a total flow of about 36 gallons per hour. In August of the same year the flow was but 27 gallons per hour. Thus, during the season when homes are generally occupied, at least over weekend periods, the quantity of water available to each of the fifteen existing homes may be less than 50 gallons daily. If any one should use in excess of this amount, the supply to others is reduced accordingly. All residents except one have joined as plaintiffs demanding the delivery of water as a utility service, and also some owners of unoccupied lots. Should additional homes be erected, the total quantity of water yielded by the springs must be partitioned in even smaller quantities.

Mr. Duncan suggested the possible installation of an automatically controlled pressure system which would not only reduce the amount of time now required for the operation of the pumping plant, but would also sufficiently increase the water pressure in the distribution line to permit the metering of customers' premises. However, the obligation to install such additional facilities cannot be imposed on the owners under present conditions. An increase of the delivery pressure would merely tend to increase the use of water by each customer, and the installation of meters would serve only to permit a measurement of the exact amount to which each would be entitled.

The financial return to be expected from the operation of such a water system can scarcely be deemed an adequate reward for the labor which the owners must devote to its operation. Mr. Duncan estimated that the original cost of the water system was only \$1,694.00, but this does not include an allowance for many days of labor which Case and Wolf themselves have performed in cleaning the springs and improving the water gathering facilities. They must be prepared to operate the pumping system at practically all times because the slow accumulation of water from

the springs does not permit of substantial storage. The time and attention which these owners are thus compelled to devote to the operation of the system entitles them to a reward beyond the small monetary return they receive in excess of the direct costs of operation. They have been receiving payment from eight consumers at a flat rate of \$12 per year. If there also be included the three places of their own, their total annual revenue would amount to but \$132.00. This is less than the cost of maintenance and operation. Even if the present rate be doubled, as Mr. Duncan suggested, and each of the fifteen existing residences were attached, the net revenue would be less than \$150.00 per year. This is inadequate compensation for the attention that these owners must give to the operation of the water system. Additional material and labor costs would be incurred if they be held responsible for the installation and maintenance of distribution line services, which they have not done in the past and it was their understanding with the Robertsons that they need not do.

It is believed that all consumers are aware of the necessity that a plan be worked out among themselves for the apportionment of the total water supply. As suggested by Mr. Duncan, each could install a storage tank which would permit the accumulation of his daily quota during times when his premises are not occupied. Some expressed an intent to give consideration to the possibility of forming an organization to acquire and operate the water facilities as a mutual undertaking. Although the Commission is ready to aid in the study of such possibilities, its regulatory authority is limited to a prescription of the duties now resting upon the owners of the utility.

It must be concluded that defendants Case and Wolf should not be authorized to discontinue water service to those who are presently receiving service from this system and are dependent thereon for their water supply. It is evident, however, that the addition of other consumers would injuriously affect those now receiving service. Under such circumstances it is believed that, as is provided in the Water Company Act of 1913, these owners should be directed not to furnish water to any new or additional consumers until otherwise authorized by further order of

this Commission. This would require the continuance of service by Case and Wolf to the best of their ability by means of existing facilities to those only who heretofore have received and paid for water service. Those who have developed their own supply of water must be deemed to have waived their rights to service. It must be recognized also that these defendants are entitled to share ratably in all water produced.

It appears impossible to establish adequate rules and regulations governing the rationing of the existing water supply. It is obvious that uses during the summer months must be confined to household purposes only. No rule could well be prescribed by which the owners might control the amount of water taken by each consumer. Under such conditions, it is believed that an increase in the rates charged should not now be permitted. The present rates will be continued in effect. However, the owners are entitled to collect for service rendered to customers since the beginning of these proceedings if the charges therefor have not already been paid.

It must be understood that the disposition here made of these matters cannot be taken as a satisfactory solution of the problem presented. As the owners of this system have no source of supply other than the limited quantity of water now developed on their property, it is obvious that all property owners in this area must seek a more adequate water supply. Defendants Case and Wolf are not financially able to undertake such a project, nor is there prospect of a sufficiently adequate return therefrom to justify such an undertaking.

ORDER

Hearings having been held in the above entitled proceedings, the matters considered, and it being found by the Public Utilities Commission of the State of

California that Harriet O. Case and Dorothy H. Wolf, the defendants in Case No. 4827 and applicants in Application No. 27463, have been and now are engaged in supplying water for domestic purposes, as a public utility, at Wright's Beach, Sonoma County, and basing its order upon all the findings and conclusions set forth in the foregoing opinion:

IT IS ORDERED as follows:

1. Harriet O. Case and Dorothy H. Wolf are hereby directed to continue to supply water as a public utility for domestic uses within that certain area at Wright's Beach, Sonoma County, as shown on the map introduced as Exhibit No. 3 in these proceedings, subject to the following conditions and limitations:

(a) No water services shall be connected or permitted for the purpose of supplying water to premises not now being served by said defendants unless the approval of this Commission first be obtained.

(b) Water shall not be used by customers for the irrigation of lawns or gardens, nor for any uses other than household purposes, during the months of May to October inclusive of each year.

2. Harriet O. Case and Dorothy H. Wolf shall file and apply a flat rate of \$12.00 per year applicable to each water user, and, within thirty days from the effective date of this order, shall submit for approval appropriate rules and regulations applying to the sale and delivery of water.

3. The application of Harriet O. Case and Dorothy H. Wolf, Application No. 27463, for authority to discontinue water service, is hereby denied except to the extent herein authorized.

4. The investigation on the Commission's own motion into the operations of William J. Robertson and Jesse J. Robertson is hereby discontinued, subject to reopening should such action become appropriate.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco California, this 10th day of

June, 1947.

Harold P. Kule

Justus F. Craemer

David Powell

R. E. [unclear]

Samuel Potter

Commissioners.