

ORIGINAL

Decision No. 40665

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Harold Williams, et al,
Complainants,
vs.
Marshall E. Heeder and Blanche L. Heeder,
Defendants.

Case No. 4874

Investigation into the status, service, operations, rates, charges, contracts and practices of Marshall E. Heeder and Blanche L. Heeder, his wife, in the operation of a water system in a subdivided area known as Redwood Terrace, near La Honda, San Mateo County.

Case No. 4886

F. E. Smith, for complainants in Case No. 4874.

Edward J. Ryan, for Marshall E. and Blanche L. Heeder.

O P I N I O N

Complainants in Case No. 4874 are sixteen residents of Redwood Terrace, near La Honda, San Mateo County, who occupy homes in the tract chiefly during the summer months and on weekends. Defendants are the present owners and operators of a trout farm and resort known as Troutmere, adjacent to Redwood Terrace. They also operate a water system which for about 25 years has served both Troutmere and Redwood Terrace.

Complainants allege that defendants, in March, 1946, presented bills for 15 months' water service at \$1.50 per month (October 1, 1944 to December 31, 1945) and a notice containing service rules and regulations. Complainants do not object to paying for water service, they say, but do object to paying for water they have not received due to failure of supply and "indifference" on the part of defendants.

It is alleged that no other source of supply is available and that deeds to the lots in Redwood Terrace prohibit the digging of wells. The prayer is that the water system be declared to be a public utility and that the Commission fix reasonable rates.

Defendants by their answers admit the ownership of the properties and the sending of the bills for service with the accompanying rules and regulations. They state that with the exception of four consumers (one of whom is not a complainant) none of the residents of Redwood Terrace paid for water for a period of approximately two and one-half years. They further state that the system is about twenty-five years old and is in a run-down condition, and that they cannot afford to replace the equipment at their own expense. It would be neither feasible nor economical, they assert, to declare the system a public utility since the small number of consumers would make necessary the establishment of prohibitive rates.

The complaint was heard jointly with an investigation, instituted by the Commission on its own motion, before Examiner Gregory at Redwood City. A number of the complainants testified as did both defendants.

The properties involved were formerly owned by Rudolph W. Krobitzsch and his wife, and are located in a portion of Section 22, Township 7 South, Range 4 West, M.D.B. & M., in the La Honda School District, San Mateo County. Mr. Krobitzsch many years ago subdivided the Redwood Terrace tract into about forty lots, and the community developed into a typical summer and weekend residential area. Krobitzsch, it appears, supplied water to the residents of Redwood Terrace without charge until his death on October 1, 1941.⁽¹⁾ His representatives thereafter continued service on the same basis until they sold the property to the Heeders in August, 1944. (Estate of R. W. Krobitzsch, S.F. No. 88139.)

Marshall Heeder testified that one of the conditions under which he bid for the property at the probate sale was that water should continue to be supplied to the residents of Redwood Terrace. There is some evidence, confirmed in the

(1) - One of the consumers, Norris C. Cummings, testified that although he did not receive bills for water service from Krobitzsch, the deed to his lot provided that he would be furnished water at a rate not to exceed 50¢ per month in exchange for his agreement not to cut trees on the property. Aside from that arrangement, the evidence does not disclose any other agreement for water service involving the payment of money or other compensation to Krobitzsch or his representatives.

report of the Commission engineer in the investigation case, (Ex. B, Case 4886), that one of the instructions for bidding at the probate sale provided that the consumers be required to pay \$1.00 per month for water service. In any event, following acquisition of the property the new owners operated the water system for about a year to see how the equipment would stand up and during that time did not discuss with the patrons the question of payment for service. Heeder testified, however, that even prior to October 1, 1944, he had concluded that a reasonable charge would be \$1.50 per month, and in March, 1946, he billed his patrons (numbering about twenty-four) for fifteen months service at that rate. Later in the year he increased the rate to \$2.00 per month. In one case, service was discontinued after notice to the patron. The consumers, generally dissatisfied with the rates and service, attempted during this period to settle those questions among themselves and with the Heeders, and also discussed the situation with members of the Commission's staff. Some of the patrons have paid the bills for past service while others have not. One testified she was paying at the \$2.00 rate. As of April 14, 1947, it appears, the Heeders had received payments totalling \$355.25 for water service from their system. (2)

The system originally received all of its water from springs located in the Redwood Terrace tract. As the number of customers increased, it became necessary to increase the supply. About 1925, a well was dug adjoining La Honda Creek (on the Troutmere property across the county road from Redwood Terrace), and a pump was installed, together with 1,430 feet of 2½ and 3-inch O.D. casing, leading from the well to a 20,000-gallon storage tank located at a highpoint in the tract. At present water is delivered to the tank from three sources: (1) from

(2) - The notice accompanying the bills for service, after reciting the purchase of the properties by the Heeders in August, 1944, and generally describing the water system, states that the owners decided to operate the system for one year before presenting a bill for services, for the following reasons (see notice attached as exhibit to complaint, Case 4874):

1. To determine how this equipment would stand up in continuous service.
2. To determine costs of operation upon which a fair rate was to be based.
3. To determine all legal phases involved in such operation.
4. To determine what immediate improvements were required."

The notice then goes on to state that the foregoing matters are "in hand," that a bill for past services is enclosed, that bills will be mailed for every three months' period, that a flat rate for domestic service only was decided upon, but that metered service would be arranged for if a majority of the users so desired and the meters could be purchased.

the well just mentioned, where a Gould plunger pump delivers about 25 gallons per minute; (2) from a previously-owned spring in the tract, from which surplus water only flows through 315 feet of 1-inch pipe to the tank; (3) from a spring located just above the tank. Both of the springs produce small quantities of water and apparently cease flowing in dry years. There also is a Fairbanks Morse pump, operated by a 1-horsepower motor, which pumps water from a brick-lined well on the Troutmere property near La Honda Creek. This well, however, mainly is used to supply water for the trout farm since the pumping equipment is inadequate to deliver water into the storage tank. Water is delivered from the tank to about 24 customers through approximately 5,200 feet of pipe line, varying in size from 2½ to 3¼-inches in diameter. All of the pipes are laid on top of the ground, except where they cross roads.

The evidence, without dispute, shows that the entire system is badly depreciated and will require considerable repair to function properly. Many of the consumers who testified stated that on numerous occasions they had helped Heeder repair pipes and do other jobs in an effort to get water for their homes when the system failed. One property owner testified he had discontinued going to his premises because of the uncertainty of the water supply.

Heeder testified that he had no contracts with his patrons for water service, but had attempted to serve them to the best of his ability. He corroborated other testimony of record concerning the condition of the system, and stated that the expense of maintaining it in serviceable order was too great for the income received. The storage tank, he said, is in barely fair condition, and holds only four feet of water without leaking. No other source of supply is available to the consumers, he stated, except a creek running through some of the lots. The lot owners testified, however, that water from the creek was not suitable for domestic use.

A report on the system, developed from a field survey, was introduced by the Commission's engineer, Mr. John D. Reader, who prepared it, and who testified at the hearing. (Ex. B, Case 4886.) The estimated historical cost of the system,

as of April 11, 1947, as shown by the report, totals \$3,368. Depreciation expense is shown as \$38.79, computed by the 5 per cent sinking fund method, and depreciation reserve requirements total \$1,548.74.

Estimates of the results of operation for the year 1946, using a \$1.00 per month flat rate for 24 consumers, are shown as follows:

<u>Item</u>	<u>Amount</u> <u>Year 1946</u>
Operating Revenues	\$288.00
Operating Expenses	<u>453.00</u>
Net Operating Revenue	<u>(\$165.00)</u>
Fixed Capital (Undepreciated)	\$3,368.00
Rate of Return	<u>(4.89%)</u>
<u>(Red Figures)</u>	

The report concludes as follows:

1. The capacity of the spring (located just above the storage tank) could be increased by lowering the intake pipe.
2. A new pump with automatic controls, operated by a float valve in the tank, would eliminate the expenses of labor in starting and stopping the present pump.
3. A meter rate should be established in case it is needed in the future to control wasteful or extravagant use of water.
4. The Troutmere properties could either buy water from the Redwood Terrace system at the established meter rate, or could be supplied entirely from the brick well on the property.
5. It is apparent that the \$1.00 rate does not produce sufficient revenue to meet operating expenses.

The evidence in these cases has been reviewed at some length because of the seriousness of any declaration by the Commission that private property has become dedicated to public use. The evidence shows, however, that at least since October 1, 1944, following acquisition of the properties from the Estate of Krobitzsch, the Heeders have continuously sold water to the residents of Redwood Terrace. By so doing, we are of the opinion and find that the water system owned and operated by Marshall E. Heeder and Blanche L. Heeder, used in supplying water to the residents of Redwood Terrace, in San Mateo County, has been dedicated to the public use, and is subject to the control and jurisdiction of the Public Utilities Commission of the State of California.

It is obvious on this record that a flat rate of \$1.00 per month (the origin of which is not wholly clear from the testimony) is inadequate in view of the estimated costs of operation of the system and the need for its rehabilitation. In our opinion, a flat rate of at least \$2.00 per month per consumer will be required to provide the necessary costs of operation and some return to the owners. A schedule of metered rates also should be established to control excessive or extravagant use of water. The order to follow will direct the filing of appropriate rates, rules and regulations.

The system should be placed in condition to deliver a continuous and adequate supply of water at all reasonable times. To that end, the defendants will be required to carry into effect the recommendations of the Commission's engineer, heretofore set forth, respecting the lowering of the intake pipe in the spring located just above the storage tank in Redwood Terrace, and the installation of a suitable pump, with automatic controls, operated by a float valve in the storage tank, in replacing the Gould plunger pump now being used.

The record does not contain sufficient evidence to permit the determination in this decision of the boundaries of the service area of this system. Defendants therefore will be directed to file with this Commission, subject to its approval, a comprehensive map delineating thereon the service area in and in the vicinity of Redwood Terrace.

Pending carrying out of the directions in the following order, the investigation proceeding herein will be temporarily discontinued, subject, however, to its being resumed should developments warrant such action. Final dismissal of the investigation will rest upon compliance by defendants with the order.

O R D E R

A complaint and an order instituting an investigation upon the Commission's own motion having been filed in these proceedings, a public hearing having been held thereon, the matters having been submitted, and the Commission now being fully advised, and basing its order upon the findings and conclusions set forth in the foregoing Opinion,

IT IS HEREBY FOUND AS A FACT that the water works owned by Marshall E. Heeder and Blanche L. Heeder, his wife, used in supplying water for domestic purposes in the tract known as Redwood Terrace, located in a portion of Section 22, Township 7 South, Range 4 West, M.D.B. & M., in the La Honda School District, San Mateo County, is a public utility and as such is under the control and jurisdiction of the Public Utilities Commission of the State of California; therefore,

IT IS HEREBY ORDERED:

- 1. That Marshall E. Heeder and Blanche L. Heeder, his wife, are hereby authorized and directed to file in quadruplicate with this Commission, within thirty (30) days from the effective date of this Order, in conformity with the Commission's General Order No. 96, the following schedules of rates to be charged for all water service rendered to their customers, subsequent to the effective date of this Order, which schedules of rates are hereby found to be just and reasonable for the service to be rendered:

Schedule No. 1

GENERAL FLAT RATES

Applicability:

Applicable to all permanent residents.

Territory:

In and in the vicinity of Redwood Terrace, San Mateo County.

Rates:

Per Month

General domestic flat rate \$2.00

A permanent consumer is one who lives on the premises twelve months of the year.

Schedule No. 2

GENERAL METERED RATES

Applicability:

Applicable to metered water service to permanent residents.

Territory:

In and in the vicinity of Redwood Terrace, San Mateo County.

Rates:

	<u>Per Meter</u> <u>Per Month</u>
<u>Monthly Minimum Charge:</u>	
For 5/8 x 3/4-inch meter	\$1.75
For 3/4-inch meter	2.00
For 1-inch meter	2.50
For 1 1/2-inch meter	3.50
For 2-inch meter	5.00

Monthly Quantity Charges:

First 400 cubic feet or less	\$1.75
Next 600 cubic feet, per 100 cubic feet40
Over 1,000 cubic feet, per 100 cubic feet35

The Monthly Minimum Charge will entitle the consumer to the quantity of water which that monthly minimum charge will purchase at the Monthly Quantity Rates.

Schedule No. 3

SUMMER RESIDENT METERED RATE

Applicability:

Applicable to metered water service to summer residents.

Territory:

In and in the vicinity of Redwood Terrace, San Mateo County.

Rates:

Annual minimum charge for domestic water service to be supplied through a 5/8 x 3/4-inch meter to summer homes, allowing 400 cubic feet of water per month during May, June, July and August and 200 cubic feet of water per month during the remaining months, payable in advance \$20.00

Schedule No. 3 - Continued

SUMMER RESIDENT METERED RATE

Rates - Continued:

Monthly Quantity Charges:

For months, May to August, both inclusive:

First	400 cubic feet, included in Annual Minimum Charge.	
Next	600 cubic feet, per 100 cubic feet	\$0.40
Over	1,000 cubic feet, per 100 cubic feet35

For months, September to April, both inclusive:

First	200 cubic feet, included in Annual Minimum Charge.	
Next	200 cubic feet, per 100 cubic feet	\$0.44
Next	600 cubic feet, per 100 cubic feet40
Over	1,000 cubic feet, per 100 cubic feet35

2. That Marshall E. Heeder and Blanche L. Heeder, within sixty (60) days from the effective date of this Order, shall submit to this Commission for its approval four sets of rules and regulations governing relations with their 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 their 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 Marshall E. Heeder and Blanche L. Heeder, within sixty (60) days from the effective 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 Marshall E. Heeder and Blanche L. Heeder, within ninety (90) days from the effective date of this Order, shall file with this Commission detailed plans for increasing the capacity of the spring located just above and connected with the 20,000-gallon storage tank situated in the southern portion of said Redwood Terrace; for the installation of a new pump of a capacity not less than 25 gallons per minute, said pump to be automatically controlled by means of a float valve in said storage tank; and, for such repairs or replacements to the pipe distribution system as may be necessary to place said system in adequate service condition. Said plans are to be subject to the approval of this Commission and said facilities are to be installed and in operation in a manner satisfactory to this Commission within ninety (90) days after approval of said plans.

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

Dated at San Francisco, California, this 26th day of August, 1947.

Harold P. Kula

Justus J. Craver

W. A. Powell

A. J. [unclear]

Samuel H. [unclear]
Commissioners.