

Decision No. 41915

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of RICHARD S. OTTO
to abandon public utility water
service operation.

Application No. 28998

Gordon and Knapp, by Wyman C. Knapp,
for applicant; Andrew Renetzky, by
Paul W. Davis, for certain water users,
protestants.

O P I N I O N

Richard S. Otto, the applicant in this proceeding, requests authority to abandon public utility water service at Baywood Park Estates near the Town of Morro Bay, San Luis Obispo County. The water system in question was found to be a public utility by Decision No. 39863 (Case No. 4848) of January 13, 1947, and again upon rehearing by Decision No. 40818 of October 10, 1947. The latter decision became effective on February 16, 1948. Even before such effective date, however, Otto filed the application herein seeking authority to abandon the public utility mantle with which the Commission had determined his water service was cloaked.

The application assigns several reasons for the desired authority. They fall into three main heads: (a) ill health, (b) inability to operate the system on a compensatory basis, and (c) the desire to convey the physical system, without cost, to any bona fide mutual water organization. Public hearing was had on April 20, 1948, in San Luis Obispo. Otto himself assumed the entire burden of presenting the affirmative case, partly through oral testimony and part-

ly through exhibits. No other witnesses were called for him.

While ill health was assigned as the first reason for the authority sought, the bulk of the evidence centers upon the second ground, viz., that the system cannot be operated by Otto on a compensatory basis. It is this phase of the evidence which requires special scrutiny. Two exhibits were relied on, Exhibit No. 2, which was an analysis of operations for the year April 1, 1946 to March 31, 1947, prepared by the Commission's Hydraulic Division for an earlier proceeding, and Exhibit No. 3, which was an analysis of operations for the calendar year 1947, prepared at Otto's instance. It was sought to demonstrate through these exhibits that a substantial deficit accrues from operating at existing rates and that rates sufficient even to meet out-of-pocket costs would be prohibitory to the water users.

Exhibit No. 3, being prepared at Otto's own instance and extending to a later period than Exhibit No. 2, merits particular attention. It will be noted that the entries at the bottom of Exhibit No. 3 indicate monthly averages for 1947 and conclude with an average monthly deficit of \$101.22 or \$1,214.66 for the year. Testimony adduced on cross-examination of Otto indicates that the exhibit reflects too black a picture. Specifically, it was shown that an item of \$549.91 for June of 1947 was a capital expenditure for a new pump, including installation cost, which could not properly be charged to operating expense, that items of \$178.14 and \$273.89 for July and September, respectively, referred to out-of-the-ordinary outlays occasioned by county grading activities and the need to move certain mains to new locations. It has long been established that unusual expenses of this character should be amortized over a period of their probable recurrence. It may be conservatively assumed in this instance that the amortization period

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should cover a minimum of three years. In addition to the foregoing items to which exception could properly be taken in Exhibit No. 3, it was brought out on cross-examination that, while, generally, the rates authorized by the Commission in Decision No. 40818 were applied in 1947, in one instance \$1.50 per month was collected instead of the \$3.50 called for by the rate schedule.

If Exhibit No. 3 be amended to omit the item of \$549.91, be amended to reflect only one-third of the items \$178.14 and \$273.89, respectively, and be further amended to show the \$24.00 additional revenue which would have been obtained if the full charge to one customer, as indicated above, had been collected, we arrive at the following figures for the operating account in 1947:

Total receipts -----	\$ 742.00
Total operating expenses -----	1,081.40
Total deficit -----	339.40

Otto stated that a charge to each consumer of from \$6.00 to \$8.50 per month would be required to meet out-of-pocket costs even without reference to any return on investment and that such charge would be prohibitory. However, using the amended total operating expense of \$1,081.40 for 1947, shown above, and distributing such expense among the average number of consumers for the year, the result is an average monthly charge to each consumer of \$3.08 to meet out-of-pocket costs. It should be noted in passing, too, that Otto's exhibit reflects improvement in the number of consumers served, from a low of 17 in January of 1947 to a high of 46 in December of 1947. It is true that there were fluctuations in between but the trend appears to be upward.

Otto, on direct examination, undertook to develop certain additional costs, specifically, workmen's compensation insurance, Social Security, travel expense, and superintendence, which he claimed would have to be met if he "operated as a public utility."

This points to a fundamental misconception which recurs throughout the record. The misconception is that Otto has not heretofore "operated as a public utility." It ignores the Commission's finding in Decision No. 40818 that Otto has, indeed, operated as a public utility since at least 1932. It is specious to reason that additional expenses now emerge by virtue of a determination of a long-existing status. Aside from a requirement that rates, rules and maps be filed, no burdens were placed upon Otto by Decision No. 40818 which he had not theretofore voluntarily, though perhaps unwittingly, assumed. Nor can we give serious consideration to the presumed additional expenses in view of the total lack of evidence indicating their amounts.

It is true that no mention is made in Exhibit No. 3 of depreciation expense. Assuming that an annual depreciation charge of \$160.05, as suggested by the Commission's hydraulic engineer in Exhibit No. 2, is approximately correct, we still arrive at an average monthly charge per consumer substantially short of the \$6.00 to \$8.50 contended for by Otto. The average additional cost would be only \$.46 per month per consumer, computed according to the average number of consumers for 1947.

Otto testified that, because of ill health which at least had its beginning twelve or fifteen years ago, he must now give up operation of his utility entirely. He stated that such change would necessitate the employment of a manager who would have to be paid between \$150 and \$200 a month. His testimony was not convincing that Torkelson, the present manager, would be unwilling to continue at \$15 a month for clerical work and \$30 a month for labor. We have only the somewhat wavering testimony of Otto himself, who, furthermore, made no showing at all as to the unavailability of other employees and the terms of employment which they would exact.

We cannot properly attach great evidentiary weight to the mere assertions of a witness, himself vitally interested in the outcome of a proceeding. It may be noted that Otto sought to support his position that a full-time manager at \$150 to \$200 a month would be required by contending that such a person would have to assume not only the work of Torkelson but the work of Otto as well. This appears to contradict Otto's own words that he had for years turned over the operation of the system to others.

Otto testified that, should the rates be fixed at \$6.00 to \$8.50 per consumer per month, at least one-half of the existing consumers would withdraw and dig their own wells at nominal cost. No effort was made to support such an assertion; no witnesses were called to state what they would do under such circumstances; no testimony by an engineer or contractor was offered respecting the cost of digging wells and the water supply which might be anticipated. Furthermore, protesting witnesses denied that any substantial number of consumers could afford to dig wells even in the face of a \$6.00 to \$8.50 a month rate, and seriously questioned that adequate wells could be constructed with necessary appurtenances for less than \$450 each.

Much was made over Otto's asserted willingness to convey his system, should authority to abandon be granted, to "any bona fide mutual water organization that may be formed in the area." Evidently, no such organization had come forward by the time of the hearing and the consensus even of those protesting witnesses whose attitude was sympathetic toward Otto questioned the advisability of any taking-over in the immediate future.

After careful review of the record, we feel compelled to conclude that the record lacks the evidentiary support necessary to justify a finding that applicant should be authorized to abandon

his public utility service. We are not convinced that the water system can not be operated on a compensatory basis, nor are we convinced that Otto should now be relieved of his public utility responsibilities. For reasons which we need not question, Otto has, over many years, operated the system without direct profit. During that time, consumers in the area have come to rely heavily upon the water he provides. Until it has been sufficiently shown that continued operation would be confiscatory, or until it has been shown that the people in the community will be protected in the water supply on which they have come to rely, we do not feel justified in granting the authority herein sought.

O R D E R

The above application having been filed, a public hearing having been held thereon, the matter having been submitted, and the Commission now being fully informed in the premises,

IT IS HEREBY ORDERED that the application of Richard S. Otto for authority to abandon his public utility water service and operations in the area known as Baywood Park Estates, near Morro Bay, San Luis Obispo County, be and it is hereby denied.

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

Dated at San Francisco, California this 3rd day of

August, 1948.

R. B. Dwyer
James H. Russell
Harold P. Kils
Samuel P. Potter