

ORIGINALDecision No. 42042

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C. E. GARLOCK, O. J. BLACKMON,
 J. D. PRICE, H. D. BOHANNON,
 O. M. ANDERSON, H. G. WILLIAMS,
 E. R. HOWARD, JOHNIE LONG, D. E.
 McNABB, SETH ABBOTT, RUEL PARKER,
 O. W. GOULD, LAWRENCE L. BOHANNON,
 and FERN H. FARNSWORTH,
 Complainants,

-vs-

Case No. 4884

DUCOR LAND CO., a corporation,
 and JOE C. BRALY, WILBUR O.
 DENNIS, MARK ADAMS, ALICE BRALY
 and MRS. A. J. HUNSAKER,
 Defendants,
 P. J. DIVIZICH,
 Intervenor.

J. A. Chase, for Complainants;
 Gaylor Hubler, for Ducor Land Company;
 A. O. Hunter, for P. J. Divizich, Intervenor.

POTTER, COMMISSIONER:

O P I N I O N

C. E. Garlock, et al., filed this formal complaint against Ducor Land Company, a corporation, and certain individuals claimed to be officials or directors of said company. The complainants allege that the above-named defendants have constructed and maintained a pumping plant and elevated tank, distributing water to an estimated 40 consumers for household and irrigation purposes within the town of Ducor in Tulare County, for which rates have been established and have been regularly charged and collected; that the rates charged for water are not uniform but are arbitrarily set as defendants see fit, without regard to the amount used; that said defendants served such persons and properties as they elected so to do and refused to serve

water to other persons and lots; and that said defendants have arbitrarily refused service of water to lots while serving others in the same area.

Wherefore, complainants pray that Ducor Land Company be adjudged to be a public utility and be required to establish uniform rates for service to patrons and be required to serve all patrons within the town of Ducor, California, and otherwise comply with the rules and regulations established for the maintenance and operation of a public utility and for such other and further relief as is proper in the premises.

In the answer filed by Ducor Land Company and signed by Wilbur O. Dennis as president, it is set forth that the named defendants in the above-entitled complaint deny that Ducor Land Company is a public utility offering water for sale to the general public, and it is alleged that Ducor Land Company subdivided land owned by said company located in the County of Tulare and commonly known as Ducor Townsite; that in connection with said subdivision said company maintains a well, pumping plant, elevated tank, and limited distribution system for the purpose of supplying water to those persons who purchased lots in said subdivision from Ducor Land Company since 1909. Defendants allege that Ducor Land Company has never made a general offer to supply or serve all persons or any particular person who might apply for water, and deny that Ducor Land Company is obligated to furnish water to any person or persons other than those who are owners of lots in the subdivision platted and recorded by said Ducor Land Company. It is further alleged that upon two occasions since 1909 Ducor Land Company has refused to furnish water to landowners who have purchased land outside of the Ducor Land Company subdivision and said land company admits that it has refused to furnish water to real property outside of the Ducor Land Company's subdivision.

Defendants admit that Ducor Land Company has furnished water to certain landowners in the town of Ducor for domestic purposes but denies it has furnished water for irrigation purposes and alleges that the water supply in the well of Ducor Land Company and its distribution facilities are limited to the extent that water may be furnished for domestic purposes to land included within the boundaries of the Ducor Land Company's subdivision. It is alleged further that a large area within Ducor Land Company's subdivision is unsold and if and when said lots are sold it will tax the supply of Ducor Land Company to furnish said owners of said lots with water for domestic purposes. Defendants therefore pray that the complaint herein be dismissed.

A public hearing in this proceeding was held in Porterville.

The townsite of Ducor is located approximately 13 miles southwesterly of the city of Porterville, in Tulare County, and comprises approximately 150 acres of land subdivided into 26 city blocks, each containing 32 lots. The original water system was installed by Ducor Land Company about 1907 to serve residents in Blocks Nos. 1, 2 and 3 of the First Addition of the town of Ducor. Some years later real estate operators, now unknown, installed water mains to serve Blocks Nos. 8, 9, 10, 11, 12, and 13 in the area designated on the map of the town of Ducor as Portion of Ducor, which is situate north of Fountain Springs Avenue. Mr. Wilbur O. Dennis, president of Ducor Land Company, testified that the above distribution facilities serving the addition designated as Portion of Ducor never legally was acquired by the land company but has been operated and maintained for several years by said company, and further that revenues have been collected by said land company for water service rendered through and by means of said facilities.

The evidence presented in this matter shows, without contradiction, that the operators of this system for many years last past have distributed water to consumers for compensation and that in the year 1947 thirty-three consumers were receiving water, paying therefor at rates varying from \$1.50 to \$5 per month. The exact number of consumers being served at the time of the hearing held in this proceeding was not available.

Under the facts set forth above, it is conclusively established that Ducor Land Company has dedicated its water production and distribution facilities to the public use, and in so doing operated a public utility, subject to the control and jurisdiction of this Commission.

The water system involved herein consists of approximately 10,000 feet of distribution mains ranging from five inches to three-quarters of an inch in diameter, a 6,000-gallon steel storage tank elevated on a 60-foot steel tower, a well 14 inches in diameter and 400 feet in depth, equipped with a deep well electric-driven centrifugal pump with a rated capacity of 60 GPM. The capital investment in the water system was estimated by Commission engineers to be \$11,137 as of June 2, 1947.

The record herein shows that on or about the month of June, 1947, and subsequent to the date of filing the complaint herein, Ducor Land Company sold its water system and certain unsold lands in the town of Ducor to one Peters who thereupon assumed control and possession of the water system and the operation thereof, and continued to supply water service to consumers until the well failed and no further water was available from this source. On or about the time of the failure of this well, said F. Norman Peters transferred the water system to Peter J. Divizich, who owns and operates a large fruit packing and cold storage plant at Ducor. Mr. Divizich

connected the water distribution system to the well used by him to supply water to his packing and cold storage plant and thereafter has continued to operate the water works and to supply water to the consumers on the system for compensation.

In 1948, Mr. Divizich presented a plan to the consumers wherein a mutual water company was to be formed and duly organized, to which mutual organization he agreed to convey without cost the entire distribution facilities, exclusive of his plant well, together with certain lands for new well and tank sites, and all or any other necessary purposes. He further agreed to aid to a generous extent in the financing of the plan. On May 19, 1948, Articles of Incorporation of Ducor Water Company, a mutual water company, were filed with the Secretary of State.

The testimony and evidence submitted shows that although the above mutual water company has been duly formed and organized, complainant C. E. Garlock and certain others were and still are dissatisfied with the plans and proposed financing, with the result that no general agreement for the transfer of the water system to the mutual company has occurred. Furthermore, no such transfer appears imminent under existing conditions. Mr. Divizich remains in control and ownership of the water system and is continuing to provide water service to the consumers.

At the date of filing of the complaint herein, Ducor Land Company owned and operated the waterworks supplying residents living in the town of Ducor. Accordingly, the answer in this proceeding was filed by said Ducor Land Company in its own behalf and also in behalf of the other parties defendant~~s~~ who were officials or directors of said land company. Subsequent to the above filings, Peter J. Divizich acquired the above waterworks and at the hearing held in this matter, appeared personally before the Commission, was represented

by counsel, and also appeared as a witness and intervened in the proceeding. No contention was made by Mr. Divizich nor by counsel in his behalf that the said Divizich had not assumed in law and in fact whatever public utility interests and liabilities theretofore may have been attached to said waterworks properties during the ownership thereof by his predecessors in interest. In view of such acts it appears proper to find that said Peter J. Divizich has submitted to the jurisdiction of the Commission in this proceeding, and by so doing properly may be considered as a party thereto.

Based upon the facts and findings set forth above, it is clear that intervenor Peter J. Divizich, having succeeded to the interests of Ducor Land Company in its dedicated public utility water system properties, is now the owner of and is the operator of a public utility water system under the control and jurisdiction of this Commission and therefore will be ordered and directed in the following Order to file with this Commission his rates, not greater than now charged, together with rules and regulations involving the service rendered.

The following form of Order is recommended:

O R D E R

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 waterworks owned and operated by Peter J. Divizich, and serving water for domestic and other purposes in the town of Ducor in Tulare 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 that:

1. Peter J. Divizich shall 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, rates for water service rendered in the town of Ducor, which rates shall not be higher than those in effect for the various consumers in the area served, subject to approval by the Commission.
2. Peter J. Divizich, within thirty (30) days from the effective date of this Order, shall file with this Commission 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. Peter J. Divizich, 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.

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 14th day of September, 1948.

R. J. Divizich
Justice F. Craven
Sup. V. L. Lavee
Margaret Kula
Kenneth Potter
Commissioners.