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Decision No. 42380

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BETHEL ISLAND IMPROVEMENT CLUB, INC., Complainant -vs- FRANK J. HOLLENDER, Defendant	Case No. 4955

ORIGINAL

Leo Murcell and Donald F. Titus for complainant; Martin E. Rothenberg, for defendent.

O P I N I O N

Bethel Island Improvement Club, Inc., a corporation, composed of residents of Bethel Island, Contra Costa County, and, in this proceeding, representing property owners in a tract known as Pleasantimes Subdivision, located on the island, asks the Commission to compel Frank J. Hollander to submit himself and the water system, owned and operated by him and used in supplying residents in said tract, to the jurisdiction of this Commission. It is further requested that the service be hereafter furnished under rules and regulations that will assure all water users an adequate and a non-discriminatory service. Complainant alleges that water has been supplied to residents of the tract for compensation as a public utility, that the rates charged are discriminatory, that discontinuance of service has been threatened to certain water users, and that no action has been taken to provide an adequate water supply to meet present service conditions or for the immediate future.

Defendant, in his answer, entered a general denial of the allegations in the complaint and alleges that he has not, without

justifiable cause, threatened to discontinue water service to certain of the users thereof; that he has not dedicated his water supply to the public use but has sold and delivered a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic purposes is equally available; and that he is not operating as a public utility, Defendant further alleges that he has entered into written contracts with some of the property owners in the subdivision providing for the sale of surplus water as an accommodation and that said contracts may be terminated by defendant by giving seven days' notice; that each property owner was informed that there was no regular water supply for the subdivision, and that each owner would be required to drill a well upon his property; that defendant has supplied water as an accommodation until said wells are drilled and there can be no guarantee of an adequate supply of surplus water. The Commission is asked to dismiss the complaint.

Public hearings in this proceeding were held in Bethel Island before Examiner Stava.

The record shows that in 1943 defendant acquired a parcel of land containing approximately 519 acres, located on Bethel Island and, during 1944, subdivided a strip approximately two miles long and 175 feet wide, containing 52 acres, into 274 lots having areas that range from 7,500 to 13,000 square feet. The tract is bounded on the north, east, and south by Piper Slough and Sand Mound Slough and on the west by property largely owned by defendant. The tract is known as Pleasantimes Subdivision and is located 4½ miles from the town of Knightsen.

A well, 3½ inches in diameter and 157 feet deep, was drilled by defendant in 1944, located outside of the subdivision on his own land, 35 feet back of Lot No. 144 of said subdivision. Water was first produced by a windmill and pump and stored in a 500-gallon elevated tank. In 1945 a gas engine-driven centrifugal pump was installed at the

well and approximately two miles of two-inch mains were laid in a four-foot strip adjoining the back of the subdivision but on the defendant's unsubdivided land. In 1946 an 8,200-gallon tank was installed on a 32-foot tower, replacing the 500-gallon tank, and the gas engine was replaced with an electric motor. The total expenditure made in connection with the water system is $7,927.

There are 12 unsold lots in the subdivision, and 30 to 40 houses or cabins have been erected by the property owners. There are five commercial enterprises, consisting of a restaurant, gas station, auto camp, and a boat storage. The subdivision is considered resort property, and presently is a popular center for river fishermen, and motor boat owners. Some of the premises are occupied only during weekends, while others are maintained as permanent residences.

There are 87 connections to the water system, five of which serve property located outside the subdivision boundaries. There are 31 property owners paying charges that vary from the base residential flat rate of $1.25 per month to a maximum commercial flat rate of $15 per month. The operating revenues actually received and the available operating expenses for the 13-month period, July 1, 1947 to July 31, 1948, inclusive, totaled $557 and $553, respectively. The operating expenses included power cost, office expense, and county taxes.

Witnesses for the complainant testified that, at the time they acquired their respective properties in the subdivision, they were informed by defendant that water was available to each lot from a pipe line installed at the back of the subdivision; that the defendant pointed out a tee opposite the lot to which a service connection could be made; that eventually two additional wells would be drilled, one at each end of the two pipe lines; that no charge was being made for the water service; and that after the subdivision was developed

sufficiently, the water system would be turned over to the property owners to run and operate as a community project. A typical deed, executed during 1945 contained the following provision:

> "The price paid for this property includes water piped up to the property, wells and pipe line to be constructed as soon as war conditions permit."

Witnesses for complainant further testified that after they had paid a deposit on the property being purchased, defendant gave them a copy of a report issued by the State of California, Division of Real Estate, dated March 29, 1944, which contains the following information concerning domestic water service on the tract:

> "Water for domestic use will not be furnished by the subdivider. There is a well on the premises and the purchase of a parcel of land will entitle the purchaser to obtain water supply from that source or develop his own water supply from private wells."

The evidence shows that water was furnished free of charge until some time after the residents in the subdivision and other consumers received a letter from defendant, dated July 22, 1947, together with a proposed agreement providing for the sale of surplus water on an accommodation basis. The rate set forth therein for domestic users was a flat charge of $1.25 per month and for commercial users was $15 per month, also a flat rate. The agreement also provided for relieving defendant from liability to provide any specified quantity or quality of water and that the service could be terminated by defendant upon giving seven days' notice. The letter accompanying the agreement stated that when the subdivision was first placed on the market, a water supply was arranged for each lot, and water service was furnished free of charge for a limited period; that, owing to the larger number of users increasing the cost of operating the system to such an extent that it became burdensome, it was necessary to make a charge for the service to provide sufficient revenue to permit continued operations of the system and to make needed improvements.

The record shows that agreements were mailed to 83 property owners; that 21 agreements were signed and returned, that 31 users were paying the charges, and that the remaining property owners continued to receive water service but did not make any payments. The consumers in this latter group explained that they were awaiting the outcome of the instant proceeding before paying any charges for the water delivered.

The property owners residing in dwellings that are located at the level of the levee top complained of poor service during weekends, that interruptions in service varied from several hours to several days in duration, and that while water was sometimes available on the ground floors, it had to be carried upstairs. Other users objected to the payment of the $1.25 monthly charge on the grounds that the premises were occupied only on weekends and holidays, and during those periods the service was wholly inadequate.

Protest was made in behalf of Frank Andronico, to the $15 monthly flat charge for service furnished his fishing resort. The resort premises consist of a dwelling, gas station, six cabins, restaurant, bar, and a boat harbor. Andronico owns 15 lots but has only four 3/4-inch service connections to the two-inch line, and a two-inch service connection to a storage tank used to assure water for a fire hydrant. The dwelling, and some of the cabins are not located on the subdivision but are located on property adjoining the tract. Water service was furnished this resort free of charge for the first two years after the property was occupied, but in order to have water available Andronica was required to sign an agreement, dated July 1, 1947, for the purchase of so-called surplus water at a charge of $15 per month, reduced from the original demand of $20 for the resort. This consumer feels that the charge is excessive for the service rendered since he contends that only a comparatively small quantity of water is used on the premises.

Defendant testified that he subdivided the tract with no intention of furnishing water to the property, and that information to this effect was set out in the Division of Real Estate inspection report on the Pleasantimes Subdivision. He stated that he had no desire to go into the water business, and so informed all lot purchasers but that, during the war, pipe was difficult to obtain and to help the residents get water into their premises, he drilled the well, installed a pump and storage tank, piped the subdivision, installing a service tee for each lot, and permitted each resident at his own expense to connect to the pipe line. Defendant stated that he made no charge for the water service rendered, that he never had promised free water service to any purchaser of property in the subdivision, nor that the system would be turned over to the property owners. Defendant contended that originally he had planned to use the well to supply a dwelling on his ranch, but the distance was so great that it would have required an excessive expenditure for the necessary connecting pipe line. Defendant stated that the water system was not installed to aid in the sale of lots, but only as an accommodation to the residents. He admitted, however, that he had no other use for the water system.

Defendant testified that he had operated the system at no cost to the users until the expenses became a serious financial burden with the increased number of residents, and he felt it necessary to obtain some reimbursement to offset the costs. Since he did not wish to operate as a public utility, he decided to sell surplus water on an accommodation basis, relying on Section 1 of the Act for Regulation of Water Companies. This section reads in part as follows:

> "provided, however, that whenever the owner of a water supply not otherwise dedicated to public use and primarily used for domestic purposes by such owner or for the irrigation of such owner's lands, shall sell or deliver the surplus of such water for domestic purposes or for the irrigation of adjoining lands, or whenever such owner shall, in an emergency water

shortage sell or deliver water from such supply to others for a limited period not to exceed one irrigation season, or whenever such owner shall sell or deliver a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available then such owner shall not be subject to the jurisdiction, control and regulation of the railroad commission of the State of California;"

The record shows that defendant supplied water free until July, 1947, at which time he sent out a letter and an agreement to all consumers served by the system informing them that in order to obtain further water service they would be required to sign and return said agreements, which, among other things and provisions, and in effect, provided that the sale of water from defendant's pipe line is from surplus water and that there rests no liability upon the suppliers to provide any specified quantity or quality of water; and that said agreements may be terminated at any time by the suppliers upon the giving of seven days' notice.

The evidence shows that only 21 property owners signed and returned the agreements; nevertheless, a total of 31 consumers were furnished water service by defendant, all paying the requested rates and charges; and that many other property owners, while continuing to receive water service from defendant, have refused either to sign said agreements or to pay the charges demanded.

The testimony is uncontradicted that the water furnished is not surplus. The water from the well is not now nor has it ever been to any extent whatsoever "primarily used for domestic purposes by such owner or for the irrigation of such owners' lands." The evidence shows that the entire production of the well is used solely to serve the present system's water users. Delivery of water from this well under the circumstances herein obtaining clearly does not come within the exemption from jurisdiction of this Commission, as provided in Section 1 of the Act for Regulation of Water Companies. It follows, therefore, that the distribution and sale of water for compensation to consumers

by defendant, regardless of whether or not certain of said consumers signed written agreements as requested, constituted a dedication of the water supply and facilities to the public use, and by such act defendant has subjected himself to the control and jurisdiction of this Commission in the operation of his water system.

Defendant conceded that the water service was inadequate and stated that as a result of complaints, he had replaced the former 500-gallon storage tank with another having a capacity of 8,200 gallons. He had, however, no present plans for increasing pressure and eliminating service interruptions, most of which he blamed upon the excessive use of water at Frank's Fishing Resort, especially during week ends. The evidence indicates that the storage tank is too low in elevation to supply water adequately to dwellings and cabins located at levee heights, and that the two-inch pipe lines from the storage tank are not large enough to convey sufficient water to meet the demand during week ends.

While the record shows that the service is inadequate, yet defendant is entitled to the unpaid charges since July 1, 1947, in order to avoid loss in operation and to provide sufficient revenue to warrant making needed improvements. The payment by all users of presently charged rates should provide funds either to raise the present tank or install a pressure system to render satisfactory service to consumers residing on the levees or at levee elevation, and to install larger-sized mains for a sufficient distance from the storage tank to provide the capacity necessary to meet present and immediate future service demands. Customer usage may require drilling of additional wells as suggested by defendant in order to serve future lot purchasers. The water service to the fishing resort may be supplied on a measured basis if the present flat rate appears excessive.

Defendant will be required in the following order to file the flat rates, which flat rates shall not be higher than those presently

in effect, and also a schedule of meter rates. If operating experience shows that these rates are not sufficient to provide adequate service to the users, defendant may apply to the Commission for authority to increase the rates.

O R D E R

Complaint as entitled above having been filed with this Commission, public hearings having been held thereon, the matter having been duly submitted, and the Commission having been fully advised in the premises, and, basing its order upon the evidence of record,

IT IS HEREBY FOUND AS A FACT that the water system owned by Frank J. Hollender, supplying water for domestic and commercial purposes in that certain subdivision known as Pleasantimes Subdivision, located on Bethel Island, Contra Costa 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 as follows:

1. That Frank J. Hollender shall file in quadruplicate with this Commission, within thirty (30) days from and after the effective date of this order, in conformity with the Commission's General Order No. 96, flat rates for water service rendered in Pleasantimes Subdivision, Bethel Island, Contra Costa County, which flat rates shall not be higher than those presently charged for the service.

2. That Frank J. Hollender shall file in quadruplicate with this Commission, within thirty (30) days from the effective date of this order, a schedule of just and reasonable meter rates for water service rendered in Pleasantimes Subdivision, Bethel Island, Contra Costa County.

3. That Frank J. Hollender, within sixty (60) days from the effective date of this order shall file with this Commission plans for the enlargement of the two distribution pipe lines leading from the well and for improving pressure conditions throughout the system which will provide water in adequate quantities to meet the reasonable requirements of the consumers.

4. That Frank J. Hollender, within twenty (20) days from the effective date of this order, shall file with this Commission four sets of rules and regulations, 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.

5. That Frank J. Hollender, within sixty (60) days from the effective date of this order, shall file with this Commission two 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 shall 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 Secretary is directed to cause a certified copy of this decision to be served upon Frank J. Hollender.

The effective date of this order shall be twenty (20) days after the date of such service.

Dated at San Francisco, California, this 29th day of December, 1948.

R. T. Anderson
Justus F. Craemer
Leonard M. Potter

Commissioners.