

Decision No. 42487

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DOMINICK SACCUCCO, GEO. HE. PHILL,  
 W. L. CRAWFORD, K. F. BARLOW,  
 DAVID WOODS, GEORGE V. WATTS,  
 ARTHUR O. WOODALL, FRANCIS H.  
 BAUGHER, ROLLAND COOKSIE, JACK  
 COOKSIE, OLIVE MARSHAL, JOSEPH  
 SACCUCCO, RAYMOND GILE and  
 RALPH STEPP,

Complainants

Vs.

CECIL FOUST and  
 CHRISTINE FOUST,

Defendants

ORIGINAL

Case No. 4976

Harold Holden for complainants;  
Robert K. Byers for defendant.

O P I N I O N

Dominick Saccullo and 13 other residents of Tract No. 224, Crowner Subdivision, located three-fourths of a mile north of San Martin, on the east side of Highway No. 101 in Santa Clara County, filed a formal complaint against Cecil and Christine Foust, owners of a well and water system furnishing water for domestic use to complainants. The complainants alleged that the defendants have threatened to discontinue the service at any time after November 1, 1948, and, therefore, requested a hearing for the purpose of declaring the defendants a public utility; to require the defendants to continue to furnish water service; and to file with the Commission rates, rules and regulations governing the service rendered.

Defendants answered the complaint and stated that it was necessary to shut off the water at night as a necessary conservation

measure, that they were only selling surplus water, and denied that the terms and conditions under which water is now being furnished are excessive, unfair and discriminatory. A public hearing was held before Examiner Edwards at San Martin on December 3, 1948.

Mr. and Mrs. Foust purchased Lots Nos. 5, 27, and 28 in September, 1946, from Mrs. Ethel Crowmer. The well in question is situated on Lot No. 5, and was drilled by Mrs. Crowmer in 1944 apparently to supply water service to the tract for real estate development purposes. At the present time some 17 homes have been built on this tract and the occupants depend upon the well and distribution pipes owned by defendants for water service, there being no other source of water supply available to them.

Mrs. Foust testified that when she bought the property, she was informed by Mrs. Crowmer that only surplus water would be sold and that service could be discontinued at any time. Mrs. Foust further testified that during this past summer, the water level dropped in the well to the point where she had to shut off the pump every night from 10 p.m. to 6 a.m. in order to have sufficient water in the well for daytime needs. She stated she had been charging \$2 per month to her neighbors for this accommodation and also collected two cents per 100 square feet for garden irrigation. Last June, she had to purchase a new pump to meet the demands of the water system and has been paying for it at the rate of \$20 per month. She said the customers are poor at paying their bills and are wasteful of water.

Mr. Baugher testified for the complainants, stating that he owns two lots purchased from Mrs. Ethel Crowmer. A two-inch pipe was installed at the rear of his property, and Mrs. Crowmer told him that he could have water as long as there was water in the well at the rate of \$1.50 per month. When Mrs. Foust bought the Crowmer property, she increased the rate to \$2 per month. He stated he would not have

purchased the lot without the water benefit. He did not think the rates being charged by Mrs. Foust were unfair but did think that they should have meters to stop wastage of water.

Another complainant, Mr. K. F. Barlow, testified that he purchased his property from a Mr. Rogers on February 10, 1948, and Mrs. Foust told him the water system was a public utility. Mr. Watts, another property owner in the tract, testified that he purchased his lot in June, 1946 from Mrs. Crowmer with the understanding that he would have water as long as there was water in the well. He said there was nothing in writing but in no case did Mrs. Crowmer indicate she was selling only surplus water.

The record indicates that relations between Mrs. Foust and the residents in the tract have been strained because of the uncertain status of the water system. The underground water supply in the area is limited and the problem is serious. Some users have probably used more than their share of the available water for irrigating vegetable gardens. Others have felt that the rates charged are excessive.

Mr. D. L. Duncan, an engineer on the Commission's Hydraulic Division staff, made a study of the operations of this system and testified that the rates being charged were inadequate to cover the normal operating expenses. The average monthly charge per customer has been \$2.74, whereas the expense of furnishing the service is estimated to be \$3.90 per month per customer. He presented evidence at the hearing covering the water system estimated capital investment, recorded revenues, and recorded and adjusted operating expenses and return for the immediate future which are as follows:

Summary of Annual Earnings and Rate of Return  
Undepreciated Fixed Capital  
5% Sinking Fund Method

	<u>Recorded</u>	<u>Adjusted</u>
Operating Revenues	\$ 593.20	\$ 593.20
Operating Expenses	141.03	672.00
Net Operating Revenue	452.17	(79.00)
Fixed Capital	2,808.00	2,808.00
Rate of Return	16.1%	(.281)%

(Red Figure)

The recorded operating expenses include only the power bill. Mr. Duncan estimated that the maintenance and operation cost is \$360 per year, taxes \$66.69, and depreciation \$104.94.

An annual total operating revenue of \$842 will be required to earn 6% on the estimated capital investment. Based on 18 consumers, this represents an annual charge of \$46.77, or \$3.90 per month per customer. At the present time there are only 18 consumers occupying homes in this 30-lot subdivision. It appears that the rates established should be based on approximately 30 consumers, thereby materially reducing the foregoing estimated consumer charges.

With regard to the problem of water wastage, Mr. Duncan testified that the installation of meters should remedy the situation. Mrs. Foust testified that she did not have money to install meters. The group of complainants indicated their willingness to purchase and install meters provided such cost would be refunded. Before the hearing was closed, the parties were asked to submit a statement to the Commission at a later date expressing their views as to establishment of a mutual water company to take over the system now owned and operated by the defendants. On December 13, Mr. Holden, representing the complainants, addressed a letter to the Commission advising that the complainants were financially unable at the present time to form a mutual company and develop their own well. Prior to this date, on

December 6, Mr. Byers, counsel for defendants, sent a letter to the Commission advising that the defendants do not want all the trouble and grief connected with running a water system, do not want to install meters, nor to allow complainants to form a mutual water company utilizing defendants' well as a source of supply. However, the Fousts are willing to let the various complainants have all the water system, except the well and other water facilities located on their own properties, to install their mutual system. These replies indicate the parties have been unable to reach a mutually agreed basis of settlement.

The evidence shows that since September, 1946, following purchase of the property from Mrs. Crowner, the Fousts have continuously distributed and sold water to the residents of the Crowner Subdivision. The Commission is of the opinion and finds that the water system now owned and operated by Cecil and Christine Foust, used in supplying water to the residents of Crowner Subdivision, in Santa Clara 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 \$2 per month is inadequate in view of the estimated costs of operation of the system. In our opinion, a flat rate of at least \$3 per month per customer for domestic use only, will be required to provide the necessary costs of operation. A metered service should be provided where an area of more than 300 square feet of lawn or garden is to be irrigated. 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. The complainants must realize that water levels are receding and the

ability of the Fousts to continue the service depends upon the cooperation of all users in preventing wastage and careless use of water, by installing meters and promptly paying the water bills.

O R D E R

The above-entitled complaint having been filed with this Commission, a public hearing having been held and the matter submitted for decision,

IT IS HEREBY FOUND AS A FACT that the water works owned by Cecil and Christine Foust, used in supplying water to inhabitants of Tract No. 224, Crowmer Subdivision, located three-fourths of a mile north of San Martin on the east side of Highway No. 101, in Santa Clara County, is a public utility and as such is under the control and jurisdiction of the Public Utilities Commission of the State of California; and, therefore,

IT IS HEREBY ORDERED that Cecil and Christine Foust are authorized and directed to file with this Commission within thirty (30) days after the effective date of this order:

1. In quadruplicate, in conformity with General Order No. 96, the schedules of rates in Exhibit A appended, to be charged for all water service rendered to consumers on and after said effective date of this order, which schedules of rates are hereby found to be just and reasonable for the service to be rendered.
2. Four sets of rules and regulations governing relations with their customers, 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 by distinctive markings

the boundary of the present service area and the location thereof with reference to the immediate surrounding territory; provided, however, that such filing shall not be construed 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.

Dated at San Francisco, California, this 8<sup>th</sup> day of February 1949.

A. J. [Signature]  
Justin F. [Signature]  
[Signature]  
Harold D. [Signature]  
[Signature]  
Commissioners

Schedule No. 1

FLAT RATES

APPLICABILITY

Applicable to domestic establishments.

TERRITORY

In Crowner Subdivision, Tract No. 224, located 3/4 mile north of San Martin, Santa Clara County, California.

RATES

	<u>Per Month</u>
For each residence located on a single lot, but irrigation of lawns and gardens restricted to 300 square feet . . . . .	\$3.00
For each additional residence on same lot . . . . .	2.00

SPECIAL CONDITION:

Meters will be installed at the option of the utility when evidence indicates wastage of water.



Schedule No. 2

METER RATES

APPLICABILITY

Applicable to all domestic, commercial, and industrial water service furnished on a measured basis.

TERRITORY

In Crowner Subdivision, Tract No. 224, located 3/4 mile north of San Martin, Santa Clara County, California.

RATES

Monthly Minimum Charge:	<u>Per Meter</u> <u>Per Month</u>
For 5/8 x 3/4-inch meter. . . . .	32.00
For 3/4-inch meter. . . . .	2.50
For 1-inch meter. . . . .	3.50

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

Quantity Rates:

First 400 cubic feet or less . . . . .	2.00
Next 600 cubic feet, per 100 cubic feet . . . . .	.40
Over 1,000 cubic feet, per 100 cubic feet . . . . .	.30

SPECIAL CONDITION

Until such time as the utility is financially able to install meters, customers shall advance to the owners of the utility the estimated installed cost of the meters. The amount so advanced shall be refunded to the consumer, without interest, by allowing a refund of 75 cents on each monthly bill until the entire amount so advanced shall be returned. Title to the ownership of the meter shall at all times be vested in the utility.