

Decision No. 42979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

Clyde W. Henry,)

an individual, doing business under)
the firm name and style of Klamath)
Water, Light and Power Co., for per-)
mission to execute promissory note and)
deed of trust, securing same, etc.)

Application
No. 29132
(Petition of L.W.Hosford)

Hauerken & St. Clair, by George H. Hauerken, for
L. W. Hosford, petitioner; Louis J. Glicksberg, for
Clyde W. Henry.

FIRST SUPPLEMENTAL OPINION

Clyde W. Henry is an individual doing business under the firm name and style of Klamath Water, Light and Power Co. He is furnishing water and electricity to the Town of Klamath, California, and surrounding territory as a public utility.

By Decision No. 41279, dated March 3, 1948, the Commission authorized Clyde W. Henry to issue a 4% promissory installment note for the principal sum of \$36,000, and execute a deed of trust to secure the payment of said note, said note and said deed of trust to be in, or substantially in, the same form as the note and deed of trust on file in this application as Exhibit "A".

Pursuant to the authority granted by said Decision No. 41279, Clyde W. Henry and Helen L. Henry, his wife, issued to L. W. Hosford their note for the principal sum of \$36,000 and executed a deed of trust to secure the payment of the note. The record shows that Clyde W. Henry has failed to make the installment payments due on the note.

The deed of trust contains a specific description of the real property to which the lien attaches. It does not contain a specific description of the easements and/or rights of way used in connection with the operation of the public utility properties, nor the power poles, power lines, substations, waterwells, water pipes and equipment used to transmit and carry power and water in the operation of the public utility properties, all referred to herein as service lines.

Allegedly without recognition of a legal necessity so to do, but out of an abundance of caution, L. W. Hosford requests the following:

"(a) That the COMMISSION authorize HENRY to include a specific description of said service lines in said deed of trust, or

"(b) Should HENRY decline to include a specific description of said service lines in said deed of trust within ten (10) days after being authorized so to do, that the COMMISSION authorize HOSFORD to file and prosecute an action against HENRY in a Court of competent jurisdiction for reformation of said deed of trust in accordance with said decision No. 41279 and with the intention of HENRY and HOSFORD at the time of the execution and delivery of said deed of trust or for such other relief with respect thereto as the Court may deem proper, and

"(c) That the COMMISSION authorize HOSFORD to foreclose said deed of trust and pursuant to said foreclosure proceedings, to secure and enter into the possession of the property described in said deed of trust, including said service lines."

The testimony adduced at the hearing had on L. W. Hosford's petition is in conflict both as to the value of the

property covered by the deed of trust and as to the intent of L. W. Hosford and Clyde W. Henry with respect to the scope of the deed of trust.

Inasmuch as the Commission has no authority to direct Clyde W. Henry to reform the deed of trust as requested by L. W. Hosford, it is not proper for it to make a finding on the testimony. If a court of competent jurisdiction orders the reformation of the deed of trust, the Commission will consider, upon the filing of an appropriate proceeding, what action it should take in regard thereto. No permission from the Commission is necessary for L. W. Hosford to take such legal steps to foreclose the deed of trust as he may deem necessary.

FIRST SUPPLEMENTAL ORDER

A public hearing having been held before Examiner Fankhauser on the petition of L. W. Hosford in the above entitled application, and the Commission having considered the testimony submitted at such hearing and it being of the opinion that said petition should be denied; therefore,

IT IS HEREBY ORDERED that the petition of L. W. Hosford filed in this application be, and it is hereby, denied.

IT IS HEREBY FURTHER ORDERED that this first supplemental order will become effective twenty (20) days after the date hereof.

Dated at San Francisco, California this 14th day of
June, 1949.

J. P. [unclear]
Justin F. Caswell
Frank [unclear]
Harold J. Huls
Samuel [unclear]
Commissioners