

Decision No. 45010**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CHARLES B. HOLLAR and Residents of
Pine Lodge Park, Amador County
California.

Complainants

vs.

Case No. 5191

MARY E. FOSS and MART FOSS husband
and wife, doing business as Foss Water
Service, also known as Pine Lodge Park
Water Service and H. W. HUMPHREY

Defendants

Angelo J. De Paoli, for complainants
Wilke & Fleury, by Sherman C. Wilke,
for defendants.

O P I N I O N

Complainants, in substance, allege that defendants have been supplying domestic water service from their water system at Pine Lodge Park, River Pines, Amador County, under arbitrary and unreasonable terms and conditions. They ask that the Commission declare defendants to be a public utility and require them to file rates, rules, and regulations.

The separate answer filed by Leona C. Humphrey alleges that she sold the water system to defendants Mary and Martin Foss on August 16, 1948. She requests that the complaint be dismissed as to her.

Defendants Foss, by their answer, in substance admit the ownership and operation of the water system following its purchase; deny a lack of uniformity, regularity, or system in the sale of water; and deny that the terms and conditions under which they

furnish water are arbitrary or unreasonable. They further aver that they have not realized a net profit from water sales since acquiring the system.^{1/} These defendants ask that complainants "take nothing" by their action.

The case was submitted on October 5, 1950, following a public hearing held at Jackson, Amador County, before Examiner Gregory.

The evidence shows that in 1934 Harry W. Humphrey and Leona C. Humphrey, his wife, recorded a plat of Pine Lodge Park, located in the N $\frac{1}{2}$ of SW $\frac{1}{2}$ of Sec. 14, T. 8 N., R. 11 E., M.D.M., in Amador County, and thereafter sold lots and supplied water to the purchasers. Humphrey died in 1946. In 1947, Mrs. Humphrey recorded a plat of Pine Lodge Park Subdivision No. 2, located adjacent to the original subdivision. On August 16, 1948, pursuant to a grant deed, bill of sale and agreement, Mrs. Humphrey conveyed certain real property and the water system to Martin and Mary Foss, subject to certain conditions, of which one was "that water will be furnished the subdivision until such time as the property owners of said subdivision form a Water Users' District and take over said water system in its entirety."

At the time of the hearing there were 40 consumers, about half of whom are on metered service and the balance on flat rates. The latter are principally summer or week-end residents. The subdivisions are about 30% developed at the present time, and have a potential of approximately 150 customers.^{2/}

^{1/} They state that the property used for rendering water service is valued at approximately \$11,702; that gross income is about \$616 per year; that (as of June 2, 1950, when the answer was filed) 43 customers are being served; that the charges are \$1.50 per month for 3,000 cu. ft. or less of water, with an additional charge of .05¢ per 100 cu. ft. in excess of 3,000 cu. ft.

^{2/} Foss, in addition to owning and operating the Foss Water System, also acts as manager for River Pines Water Works, owned by an estate, from which a number of residents in the immediate vicinity of his own system are supplied with domestic water service from other sources.

The water production, storage, and distribution facilities acquired by the Fosses from Mrs. Humphrey include a well 30 feet deep, a 3 hp electric pump, two storage tanks of a total capacity of 9,000 gallons, approximately 7,000 feet of pipe, ranging from 2 inches to 3/4 inch in diameter, 52 valves and cutoffs, 22 meters enclosed in covered concrete boxes, and various structures, tools, and equipment. Foss also has another well, not now in use, and a spare engine for the pump.

Mrs. Humphrey testified that the original cost of the initial installation by her husband, for which, however, she produced no supporting data, amounted to about \$2,000. Foss paid her \$1,200 in 1948. In his answer, Foss alleges that it would cost about \$11,720 to replace the system. He testified, however, that with present increased costs of labor and materials, the replacement cost today would amount to approximately \$12,348. The record, however, does not contain sufficient data upon which to predicate the original cost of the system as now installed.

The record is conflicting as to the rates charged by Foss before and after he acquired the system. It appears, however, that prior to August, 1948, some metered customers paid rates of \$1 per month plus 5 cents per 100 gallons for amounts in excess of a minimum of 3,000 gallons per month. A flat charge of \$1.50 per month was assessed against nonmetered users, chiefly nonpermanent residents. Foss later raised the minimum charge for metered service to \$1.50 per month. Hollar objected to the increased rate and after some controversy Foss shut off his water. Difficulties also arose between Foss and another consumer over a \$2.50 service charge for turning water on and off while the consumer was away.

On July 1, 1950, after the filing of the complaint, Foss notified his consumers that, beginning August 1, rates would be

increased to \$3 per month for a minimum of 3,000 gallons and 10 cents per 100 gallons for quantities over the minimum. Foss testified that some consumers who had paid the increased rates under the mistaken belief that they applied to July service, had been credited with the difference on subsequent bills. Some of the bills in evidence do not show the meter readings. The evidence indicates that several consumers object to paying the increased rates, but would not object to "reasonable" rates, rules, and regulations.

The record establishes that Harry W. Humphrey, about 1934, dedicated the water system here involved to the use of the general public in the subdivision owned by him in and in the vicinity of River Pines. The record further establishes that Martin and Mary Foss, since on or about August 16, 1948, have owned and operated said water facilities as a public utility and are consequently subject to regulation as such under the statutes administered by this Commission. The record also establishes that Leona C. Humphrey has had no connection with said water system since the sale thereof to Martin and Mary Foss on or about August 16, 1948. She is therefore entitled to have the complaint dismissed as far as she is concerned.

There is not sufficient evidence in this record, in our opinion, upon which to predicate the fixing of reasonable rates, rules, or regulations respecting water service rendered to the consumers of this system. There appears to be no justification, however, for the scale of rates and charges which has been in effect since August 1, 1950. The order to follow will accordingly direct Martin and Mary Foss to file with the Commission, and observe until further order, the schedule of rates in effect on April 13, 1950, the date upon which the complaint herein was filed. If these rates are considered by the owners of this system to be noncompensatory, an appropriate application may be filed to increase them.

O R D E R

Public hearing having been held in the above-entitled and numbered proceeding, evidence having been received and considered, the matter having been submitted for decision and the Commission now being fully advised,

IT IS HEREBY FOUND AS A FACT that the water works owned and operated by Martin Foss and Mary E. Foss, used in supplying water for domestic use in Pine Lodge Park and Pine Lodge Park Subdivision No. 2, located at River Pines, Amador County, California, 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:

1. That Martin Foss and Mary E. Foss, his wife, be and they are hereby authorized and directed to file in quadruplicate with this Commission, within 30 days after the effective date of this order, in conformity with General Order No. 96, the rates, rules, and regulations which were in effect on April 13, 1950, for water service rendered to their customers by and through the Foss Water System.
2. That Martin Foss and Mary E. Foss, within sixty (60) days from the effective date of this order, shall submit to this Commission for its approval four sets of rules and regulations governing relations with their 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 their 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. That Martin Foss and Mary E. Foss, 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.

4. That the complaint herein be and it hereby is dismissed as to Leona C. Humphrey.

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

Dated at San Francisco, California, this 27th day of November, 1950.

R. E. [Signature]
Justice F. [Signature]
Chief [Signature]
Harold F. [Signature]
[Signature]
Commissioners.