

ORIGINAL

Decision No. 48275

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and service of CLARA BLUM BARTLETT, dba Pomona Valley Water Company, in connection with a public utility water system at Los Serranos Village, near Chino, San Bernardino County.

Case No. 5231

In the Matter of the Joint Application of CLARA B. BARTLETT, an individual doing business as POMONA VALLEY WATER COMPANY and of POMONA VALLEY WATER COMPANY, a California corporation, for permission to issue stock and for authority to sell and transfer properties to said Corporation and for authority to sell minor portion of land to a third person.

Application No. 33189

(ORDER TO SHOW CAUSE)

R. B. Cassidy, for affiant.  
Steiner A. Larsen, for Clara Blum Bartlett and Pomona Valley Water Co., a corporation.

HULS, Commissioner

O P I N I O N

Clara Blum Bartlett, as an individual and as president of Pomona Valley Water Company, a corporation, hereinafter called "respondent", was ordered to show cause why she should not be punished for contempt of the Public Utilities Commission for failing and refusing, in four specified particulars, to comply with the terms of Decision No. 46903 and Decision No. 46881 issued in the above proceedings. The affidavit and application of Randolph J. Pajalich, Secretary of the Public Utilities Commission, for the order to show cause, supported by an affidavit of Roy E. Sutherland, Assistant Utilities Engineer employed by the Commission at Los Angeles, together with the order to show cause, were personally served upon respondent, both individually and as president of the corporation, on October 15, 1952.

Public hearing was held before Commissioner Huls and Examiner Gregory at Los Angeles on October 30, 1952, at which respondent appeared personally and by counsel. Following introduction of evidence on behalf of affiant, respondent requested and was granted a continuance to enable her to prepare a defense. The hearing was resumed on December 3, 1952 and was concluded with submission of the case on the following day. During the course of the hearing on December 3, respondent, who had not theretofore filed a defensive pleading, requested and was granted leave to file a counter affidavit, to which were attached three documents, denominated reports to the Public Utilities Commission, purporting to be responsive to the requirements of Decisions Nos. 46881 and 46993. Respondent called several witnesses and also testified voluntarily in her own behalf.

This proceeding in contempt arises as the most recent of a series of formal matters before this Commission involving the operation, service and rates of the Pomona Valley Water Company, acquired by respondent in 1950 along with some 320 acres of land on which are situated a golf club, restaurant and other structures. The properties are located in or in the vicinity of Los Serranos Village near Chino in San Bernardino County and, prior to incorporation of the water utility in February, 1952, had been operated as a unit by former owners and by respondent.

The decisions of the Commission which respondent here is charged contumaciously with having violated were issued in an investigatory proceeding involving respondent's utility operations and service (Decision No. 46993, dated April 14, 1952, Case No. 5231) and in a joint application by respondent and the Pomona Valley Water Company, a corporation, for authority to sell the utility properties to the corporation and for the latter to issue stock in payment therefor (Decision No. 46881, dated March 25, 1952, Application

No. 33189): The affidavit and application for an order to show cause, in specifying with particularity each of the four offenses charged, contain appropriate allegations concerning respondent's knowledge of the Commission's orders; her intent to violate them and her ability to comply with them.

Decision No. 46993 became effective May 4, 1952. A petition for rehearing was denied on May 13, 1952. (Dec. No. 47154.) No petition for a writ of review was filed with the Supreme Court of California and said Decision No. 46993 became final on June 9, 1952. It never has been amended, canceled, revoked, or annulled and is still in full force and effect. A copy of Decision No. 46993 was served upon respondent on or about April 16, 1952.

Decision No. 46881 provided that it should become effective 20 days after the date thereof. It became effective and final on April 16, 1952, no petition for rehearing having been filed. Decision No. 46881 never has been amended, canceled, revoked, or annulled. By the terms of the permissive authorization granted therein, such permissive authorization could be exercised only after April 16, 1952, the effective date of said decision, and on or before August 31, 1952. In so far as said Decision No. 46881 contained mandatory orders to be complied with in the event that the permissive authorization granted therein was exercised, such decision is still in full force and effect. A copy of Decision No. 46881 was served upon respondent on or about March 26, 1952.

#### First Offense

The order in Decision No. 46881, after conferring permissive authorization upon respondent to transfer her public utility assets to the corporation and upon the corporation to assume the payment of outstanding liabilities and to issue not exceeding 1,000

shares of its no par stock, further required, in part, that the corporation shall file with the Commission "a copy of each journal entry used to record on its books the acquisition of the assets of Clara B. Bartlett and the distribution of the purchase price to primary fixed capital and other accounts, and shall file a report as required by General Order No. 24-A,<sup>1/</sup> which order in so far as applicable, is made a part of this order." In addition, the order required the refiling of rates, rules and regulations, under the name of the corporation, within 30 days after the date of transfer, or, in lieu of such refiling, the filing by the corporation of a notice of adoption of then existing rates, rules and regulations.

Respondent transferred her public utility assets to the corporation on July 15, 1952. The corporation issued 1,000 shares of its stock to respondent on the same day. Although respondent, as president of the corporation, on April 23, 1952, filed a notice of adoption of rates, she did not file, or cause to be filed, any monthly report or statement, as required by Decision No. 46881 and by General Order No. 24-A, on or before the twenty-fifth days of the months of April to August, 1952, inclusive.

On December 3, 1952, however, during the course of the hearing on the order to show cause, respondent presented for filing, as a supplement to her counteraffidavit, a document entitled

<sup>1/</sup> General Order No. 24-A provides in part as follows:  
"On or before the twenty-fifth day of each month, the following statements for the preceding month, certified under oath by the president or by the secretary of the corporation issuing stocks, bonds or other evidences of indebtedness, or by the partnership or individual authorized to issue bonds or other evidences of indebtedness shall be filed with the Commission:  
1. A list of the certificates of stock issued during the month under the authority of the Commission \* \* \*.  
2. The total amount of stock issued under the order of the Commission outstanding at the end of the month \* \* \*."

"Report to Public Utilities Commission of the State of California of the Pomona Valley Water Company, Incorporated, required by General Order No. 24-A for period of April, 1952 to date," reading as follows:

"The only stock certificates or bond issued was certificate No. 1 for 1,000 shares of stock of the corporation as approved by the Public Utilities Commission.

"The consideration for the transfer was as stated in the application to the Public Utilities Commission of Clara Bartlett.

"Dated: November 24, 1952

POMONA VALLEY WATER COMPANY

By Clara Blum Bartlett  
President"

Respondent, answering the charge contained in the First Offense set forth in the Pajalich affidavit, admits that she failed to file the reports called for by that portion of Decision No. 46881 which requires compliance with the provisions of General Order No. 24-A. She alleges that the omission was due to inadvertence, that no one had called her attention to the necessity for filing such reports, that her failure to comply was not intentional and that the purpose of General Order No. 24-A was not violated since there had been no sales of stock except the single sale authorized by the Commission. Both respondent and her counsel assert, in effect, that despite the plain language of the order duly served upon her she was not bound to comply with it unless and until someone in some manner urged or reminded her to do so.

There is no merit to respondent's defense to the First Offense. The order imposed upon her a clear duty to file the reports called for by General Order No. 24-A not later than the 25th day of the month following issuance by the corporation of the 1,000 shares of its stock. She had evidenced sufficient familiarity with that portion of the same order directing the corporation to

file a notice of adoption of existing rates, rules and regulations maintained by the utility to enable her to file such a notice on April 23, 1952. The evidence disclosed no lack of ability to comply with the provisions of the order requiring the filing of the reports above referred to. Her failure to file the reports required by the order was inexcusable in the circumstances disclosed by this record.

Second Offense

By Decision No. 46181, rendered September 11, 1951, in Application No. 32463, respondent was granted an increase in rates estimated to produce a rate of return of 5.81% on a rate base of \$96,411, which included an allowance estimated at \$50,000 for necessary additions to rehabilitate the system. Decision No. 46993, rendered April 14, 1952, in Case No. 5231, found as a fact that substantial improvements in water service by the utility could be effected by (a) immediate replacement of remaining sections of redwood-stave transmission pipe line with steel pipe and (b) installation of mains to connect dead ends in the existing Los Serranos Village distribution system, thereby making such system fully circulating. The order in that decision directed respondent to make the necessary improvements to and replacements of the water system in order to render adequate service to consumers.

The record establishes that the redwood-stave transmission main has not been replaced with steel or other pipe and that the mains connecting dead ends so as to make the system fully circulating have not been installed.

Respondent, answering the charge contained in the statement of the Second Offense, asserts that electrolytic conditions in the soil in which the pipe must be laid preclude the use of steel pipe, since steel pipe laid two years ago in portions of the system

already has started to disintegrate. The evidence indicates that transite pipe may be better adapted to soil conditions in the area. Respondent considered that it would not be in the public interest to replace the mains with steel pipe, as the Commission's order directed, but that "an amendment to the order was necessary". Respondent, however, did not seek modification of the Commission's order in any respect. She is actively prosecuting an application for a loan of \$75,000 from the Reconstruction Finance Corporation with which to rehabilitate the system. If the loan is granted she plans to ask permission of this Commission to use transite pipe instead of steel pipe in effecting necessary improvements. She asserts, moreover, that financial and service difficulties encountered since she came into possession of the utility, together with time-consuming though ineffective efforts to sell both the utility and the country club properties, have contributed to make it impossible, as a practical matter, to comply with the Commission's decision.

Although respondent has offered no satisfactory explanation for her failure to seek modification of the Commission's order to replace the redwood-stave main with steel pipe and to connect the dead ends in the distribution system, the record makes it plain that she was and is confronted with serious problems connected with management and operation of the system to which her financial difficulties may have contributed.

#### Third Offense

Ordering Paragraph 3 of Decision No. 46993 directed "3. That no water be furnished to anyone without compensation." Respondent's predecessor, Gordon Bell and his associates, in January, 1948, had sold to one Saffell a 66-acre parcel of land on which was situated a lake. Saffell has used the lake mainly for

propagation of fish. Under the agreement of sale, Bell agrees to sell and Saffell agrees to buy water to be supplied by Bell at Saffell's aforesaid property at the rate of one cent per hour-inch, "in such amounts as may be required by Saffell for the purposes hereinafter specified, \* \* \*." The agreement also provides that Bell shall be permitted, at any time or times, "to discharge \* \* \* water from the said distribution system, or any additions hereinafter made thereto, into and through the said lake \* \* \*."

The record establishes that Saffell, although he is a customer of Pomona Valley Water Company for domestic water service, has never requested nor has he been charged for delivery of water under the contract but that water from a settling basin in the distribution system occasionally has flowed into the lake. The contract never was authorized by the Commission. In fact, it was held to be void for that reason in Decision No. 44500, issued in 1950 in Application No. 29767 (49 C.P.U.C. 778), the proceeding in which Bell and his associates were authorized to transfer the utility assets to respondent here.

Under the foregoing circumstances, respondent's position would appear to be that, to the extent that discharge of water into the lake is of benefit to the system, she enjoys the privilege of disposing of such water, while Saffell, to the extent such water may benefit his enterprises, has the corresponding privilege of receiving it. We expressly refrain, however, from passing upon the question of legal rights and obligations arising from the execution of this contract or from determining whether an easement exists with respect to the discharge of water into Saffell's lake. Such questions are for the courts.

#### Fourth Offense

The Fourth Offense charges that respondent, in violation of ordering Paragraph 4 of Decision No. 46993, failed to install



meters on service to the golf course of Los Serranos Country Club and to furnish service thenceforth according to Schedule No. 1, General Metered Service, of the utility's filed rates. The meters have not been installed. Water has been and is being furnished to the golf course at a flat rate.

Respondent's answer to this charge falls into the same category as her defense to the Second Offense, outlined above. In other words, she determined that meters would be installed at the time the mains were replaced, as part of the general program of rehabilitating the system. In the absence of meters it is not possible to furnish service to the golf course in accordance with the utility's schedule of metered rates.

The record shows that a substantial program of work, involving severance of a number of existing individual connections and installation of a cross connection to serve another tract, would be entailed in supplying water to the golf course under metered rates. Testimony of the Commission's engineer, who was familiar with the system and whose affidavit appears herein in support of the application for order to show cause, is to the effect that the practical procedure would be to install meters for the golf club service when the pipe is replaced, rather than separate the two jobs.

#### Conclusions

The record herein, despite the clear showing of respondent's inexcusable neglect in failing to file the reports called for by Decision No. 46881 and General Order No. 24-A, raises a serious question as to the efficacy of a judgment which would hold respondent to be in contempt for that reason alone and yet omit to deal with the pressing question of rehabilitation of the water system.

The Commission, when sitting as a court, as it does here, is clothed with requisite power, and it should be its duty, so to fashion its judgments and orders as to deal with the sources of a utility's difficulties, where possible, rather than with their symptoms. If, by the rendition now of an interlocutory order in this proceeding, directing respondent to embark on a program of rehabilitation, a more adequate and satisfactory water service might be achieved, that would seem to be the course to pursue. Otherwise, both the Commission and the utility inevitably will be subjected to expensive and time-consuming proceedings, at a later date, in which the same problems would be presented for solution. If respondent should fail to carry out the terms of such an order there exist procedures, both criminal and civil, for securing compliance therewith.

Accordingly, it is recommended that, in addition to a judgment holding respondent to be in contempt of the Commission in connection with the First Offense, the Commission issue an order at this time directing respondent, within 90 days from the effective date of such order, (a) to replace the remaining sections of redwood-stave transmission pipe line in the company's system with transite pipe or other suitable pipe of size and quality adequate for the rendition of proper service, (b) to install mains to connect dead ends in the existing Los Serranos Village distribution system so as to make such system fully circulating, (c) to install meters on service to the golf course of Los Serranos Country Club and to furnish service thenceforth according to Schedule No. 1, General Metered Service, of the filed rates of Pomona Valley Water Company. I find, from the record, that respondent has the ability to comply with such an order.

The Commission, at the expiration of 90 days from the effective date of this order and after due notice, will schedule a further hearing herein to ascertain whether this order has been complied with and thereafter will make such final order or orders as may be appropriate. Meanwhile, the Commission will withhold judgment in connection with the Second, Third and Fourth Offenses alleged in the affidavit.

I recommend the following findings, judgment and order:

FINDINGS OF FACT

Upon consideration of the record herein IT IS HEREBY FOUND:

First Offense

1. That the Public Utilities Commission of the State of California, on March 25, 1952, rendered its Decision No. 46881 on Application No. 33189, ordering Pomona Valley Water Company, a corporation, to file a monthly report as required by General Order No. 24-A of said Public Utilities Commission, said General Order being a part of said decision by reference. That said decision and order have never been amended, canceled, revoked, or annulled and, in so far as it contained mandatory orders, such decision is still in full force and effect. That a copy of said decision was served upon respondent on or about March 26, 1952. That respondent had personal knowledge and notice of said decision and the contents thereof prior to the effective date of said decision, to wit, April 16, 1952, and, at all times after July 15, 1952, the date upon which Pomona Valley Water Company, a corporation, issued 1,000 shares of its common stock, was able to comply with said order.

2. That on October 9, 1952, the affidavits and application for order to show cause herein were filed with the Commission in which it was alleged, in substance, that respondent, notwithstanding the

order in said Decision No. 46881 and with full knowledge of the contents thereof and during its effective period had failed and refused to comply therewith in that she did not file or cause to be filed any monthly report or statement as required by said decision and by General Order No. 24-A.

3. That on October 14, 1952, subsequent to the filing of the affidavits and application for order to show cause as hereinabove set out, the Public Utilities Commission issued its order directing respondent, an individual, and as president of Pomona Valley Water Company, a corporation, to appear before Commissioner Huls and Examiner Gregory at 10 o'clock a.m. on Thursday, the 30th day of October, 1952, in the Court Room of the Public Utilities Commission on the Ninth Floor, Mirror Building, 145 South Spring Street, Los Angeles, California, to show cause why she should not be punished for the alleged contempts set forth in said application and affidavits. That certified copies of said order to show cause, to which were attached certified copies of the affidavit and application for order to show cause filed with the Commission on October 9, 1952, were personally served on Clara Blum Bartlett, respondent herein, both as an individual and as president of Pomona Valley Water Company, a corporation, on October 15, 1952. That on October 30, 1952 and December 3 and 4, 1952, respondent appeared at the original and adjourned hearings herein, in person and by counsel, and participated fully therein.

4. That the failure of respondent, as president of Pomona Valley Water Company, a corporation, to comply with ordering Paragraph 4 of Decision No. 46881, by failing to file the monthly report or statement required thereby to be filed on behalf of said corporation, was and is in contempt of the Public Utilities Commission of the State of California and its said order.

JUDGMENT AND ORDER

Clara Blum Bartlett, an individual, and as president of Pomona Valley Water Company, a corporation, having appeared in person and by counsel and having been given full opportunity to answer the order to show cause dated October 14, 1952 and to exonerate herself from the alleged contempts set forth in the affidavit and application for order to show cause herein, now therefore, based upon the foregoing Opinion and Findings of Fact,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Clara Blum Bartlett, as president of Pomona Valley Water Company, a corporation, is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made March 25, 1952, in ordering Paragraph 4 of its Decision No. 46881 in Application No. 33189, by failing and refusing to file or cause to be filed the monthly report or statement directed by said order.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for said contempt of the Public Utilities Commission and its order as hereinabove set out, Clara Blum Bartlett be punished by a fine of \$100, said fine to be paid to the Secretary of the Public Utilities Commission of the State of California, 5th Floor, State Building, San Francisco 2, California, within five (5) days after the effective date of this Opinion, Findings, Judgment and Order.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the aforesaid fine as hereinabove ordered, said Clara Blum Bartlett be committed to the County Jail of the County of San Bernardino, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars (\$5) of said fine that shall be unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Public Utilities Commission of the State of California, if said fine or any part thereof shall not be paid within the time specified above, shall prepare appropriate order or orders of arrest and commitment in the name of the Public Utilities Commission of the State of California, directed to the Sheriff of the County of San Bernardino, to which shall be attached and made a part thereof a certified copy of this Opinion, Findings, Judgment and Order.

IT IS HEREBY FURTHER ORDERED that Clara Blum Bartlett, as president and sole stockholder of Pomona Valley Water Company, a corporation, within 90 days from the effective date of this order, shall:

- a. Replace, or cause to be replaced, remaining sections of redwood-stave transmission pipe line in the company's system with transite pipe or other suitable pipe of size and quality adequate for rendition of proper service,
- b. Install, or cause to be installed, mains to connect dead ends in the existing Los Serranos Village distribution system so as to make such system fully circulating,
- c. Install, or cause to be installed, meters on service to the golf course of Los Serranos Country Club and thenceforth furnish service for said golf course according to Schedule No. 1, General Metered Service, of the filed rates of Pomona Valley Water Company.

IT IS HEREBY FURTHER ORDERED that this Opinion, Findings, Judgment and Order shall become effective twenty days after personal service of a certified copy hereof upon said Clara Blum Bartlett.

The foregoing Opinion, Findings, Judgment and Order hereby are approved and ordered filed as the Opinion, Findings, Judgment and Order of the Public Utilities Commission of the State of California.

Dated at San Francisco, California, this 17<sup>th</sup> day of February, 1953.

[Signature]  
President  
[Signature]  
[Signature]  
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Commissioners