

ORIGINAL

Decision No. 54329

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANTHONY BURKE,

Complainant,

vs.

Case No. 5692

MONTAGUE N. HERBERT,

Defendant.

Warren Slaughter, for complainant.
Richardson & Henderson, by Jerome C. Richardson, for defendant.
Charles Drake, for Public Utilities Commission staff.

INTERIM OPINION

The complainant, Anthony Burke, resides at 70-117 Wonder Palms Road, Palm Valley, California. The defendant, Montague N. Herbert, resides at 70-129 Wonder Palms Road, Palm Valley. The complaint alleges that the defendant is conducting operations as a public utility water corporation in that he is furnishing water to complainant and to at least seven other residents of the area. The complaint further alleges that the service which defendant furnishes to complainant is not satisfactory in that there is inadequate pressure and resultantly an inadequate supply of water. It is specifically alleged that on October 24, 1955, the defendant discontinued the water service, and that great and irreparable damage will result if this condition is allowed to continue.

The answer of the defendant admits that since on or about April 9, 1951, he has been selling and delivering water to

complainant and to adjoining property owners. This service to complainant has been performed under terms of an agreement dated October 11, 1949, which agreement is attached to the answer as Exhibit A.

Various other allegations and admissions are made in the answer, but in substance the position of defendant is that the rights of the parties are determined by the contract herein referred to and that this contract is now the subject of an action in the Superior Court of Riverside County, No. 398, which action was commenced in April 1955. This action, it is alleged, is one which seeks to determine the rights of the parties under this contract, and that accordingly this Commission has no jurisdiction of the matter at this time. It is requested that all proceedings before this Commission be stayed until a determination of the court proceeding.

A public hearing was held before Examiner Grant E. Syphers in Palm Springs on April 27, 1956, at which time evidence was adduced. Subsequent thereto, on May 28, 1956, this Commission, by Decision No. 53152, issued an order of investigation inquiring into the operations of the defendant for the purpose of determining whether or not he is conducting operations as a public utility water corporation. A further hearing was held on October 3, 1956, in Palm Springs, before the same examiner, at which time the matter was submitted.

An analysis of the evidence in this matter discloses that the defendant is furnishing water to six users, allegedly under the terms of written agreements, and, additionally, is furnishing water to four other users in the area. There is no dispute on this record but that defendant has made charges for this water service. It is true that the complainant has not paid

for water service during recent months, but the evidence also discloses that the defendant has made a demand upon complainant for some of these payments.

While there was considerable evidence as to alleged personal difficulties between complainant and defendant, this evidence does not alter the conclusion, which we now make, that the defendant, Montague N. Herbert, is in fact conducting operations as a public utility water corporation, as that term is defined in Section 241 of the Public Utilities Code. Accordingly, the operations are subject to this Commission and to the rules and regulations which it has issued.

Inasmuch as the evidence in this record discloses that the defendant desires to be relieved of any water service obligations, the ensuing order will be interim in nature in order to provide defendant with an opportunity to take steps in that direction. In this connection, the record shows that Harold J. Hicks, doing business as Palm Valley Water Company, has filed Application No. 37856, requesting authority to serve this area as a public utility. By decision No. 54306 in said Application No. 37856, issued-December 21, 1956, Harold J. Hicks, doing business as the Palm Valley Water Company, was granted a certificate of public convenience and necessity to serve water in an area which includes the property of complainant and others presently being furnished water service by defendant.

Inasmuch as a final determination of this matter is dependent upon the outcome of any prospective negotiations between defendant and Harold J. Hicks, doing business as Palm Valley Water Company, which the parties may make, further proceedings may be necessary.

INTERIM ORDER

A complaint as above entitled having been filed, an order of investigation having been issued, public hearing having been held thereon, and the Commission being fully advised in the premises,

IT IS ORDERED that the operations of Montague N. Herbert in supplying water to the complainant and to the other consumers in the area are hereby declared to be those of a public utility water corporation, as such term is defined in Section 241 of the Public Utilities Code, and subject to the applicable law, rules and regulations pertaining thereto.

IT IS HEREBY FURTHER ORDERED:

1. That Montague N. Herbert shall submit in writing to the Commission, within thirty days after the effective date of this order, and every thirty days thereafter, the results of any negotiations with Harold J. Hicks, doing business as Palm Valley Water Company, pertaining to the transfer of his water service obligations to that public utility operation. Should said negotiations result in a proposal to transfer the Herbert water system facilities to Harold J. Hicks, doing business as Palm Valley Water Company, a joint application to authorize such transfer shall be filed with this Commission within one hundred eighty days after the effective date of this order.

2. That if it develops that the outcome of the negotiations referred to in the preceding paragraph appear to necessitate further Commission action, this complaint may be reopened by the Commission and such additional hearings held as required for the purpose of determining what further action may be appropriate.

3. That, except to the extent of the relief granted as above set forth, the complaint herein be and it is dismissed and the investigation instituted upon the Commission's own motion be and it is closed.

The Secretary of this Commission is directed to cause a certified copy of this decision to be served upon said defendant and other parties to this case.

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

Dated at San Francisco, California, this 27th day of December, 1956.

[Signature]
President

[Signature]

[Signature]

Commissioners

Commissioner C. Lyn Fox being necessarily absent, did not participate in the disposition of this proceeding.

Deeming himself disqualified, Commissioner Rex Hardy abstains from participating in this decision.