NB

ORIGINAL

Decision No. 55862

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lakewood Civic Group, Inc., a California corporation, Complainant, vs. Homestead Land & Water Co., Inc., a California corporation, Defendant.	)	Case No. 5917

St. Sure, Moore & Corbett by Ralph B. Hoyt, complainant.
Vaughan, Paul & Lyons by John G. Lyons and Clifford W. Nelle, defendant.
W. Ben Stradley, for the Commission staff.

O P I N I O N

Nature of Pleadings

Lakewood Civic Group, Incorporated, hereinafter referred to as "Lakewood", is a California corporation organized, among other things, as an improvement club in a tract of land known as "Lakewood", in the Walnut Creek area of Contra Costa County. Its complaint filed March 20, 1957, alleges that the defendant, hereinafter referred to as "Homestead" operated a water system serving the residents of the above area in 1955 and 1956 as a public utility, and that during this operation it increased the rates for water service without this Commission's approval. The residents refused to pay the amount of the increase and, as a result, civil action was brought against them by the defendant for the unpaid amount in the courts of Contra Costa County. Judgments were rendered against some residents which are on appeal at present. Proceedings against others were by agreement of

the parties, held in abeyance pending the outcome of the appeal. The complainant has asked the Commission in this proceeding to order the defendant to refrain from enforcing the increased rates, to order the defendants to cease the prosecution of claims pending before the courts based on the aforementioned increase, and that "sums previously collected by defendant from the residents of 'Lakewood' in excess of the previously established rate structure be refunded to the persons from whom collected." Further the complainant requests the Commission to order the defendant to re-establish and adhere to the previously established rates, and to file with the Commission a schedule of rates.

Defendant, a California corporation, declared in its answer that "no complainant corporation exists" and therefore the complainant, in effect, is not competent to bring this action; further that it, Homestead, is not a public utility nor has it at any time operated as such. The answer alleged that, in effect, the issue was "moot" because as a result of election and annexation proceedings, East Bay Municipal Utility District, has been serving all consumers located in the Lakewood area for five months prior to the filing of the complaint. It also alleged that before it "had prepared a statement of rates for filing with the Commission" said East Bay Municipal District had commenced the above service. It alleged further that at the time of the complaint Homestead was not serving water to any consumer except as an accommodation to one party for domestic and irrigation purposes, and to two parties for irrigation. Defendant admitted serving residents of the Lakewood tract prior to the assumption of service by East Bay Municipal Utility District and admitted raising the rates.

Public Hearing

The case was submitted on briefs of memorandum of authorities on June 18, 1957 following hearings on May 23, 28 and June 3, 1957, before Examiner James F. Mastoris, in Walnut Creek.

Evidence

The record discloses that prior to 1935 Homestead's water system, consisting of five wells of a depth of from approximately 300 to 340 feet each, a small artifically created lake of approximately four acres, and a distribution system, was included in a 155-acre tract of land designated as Lakewood, near Walnut Creek, and was owned by one R. N. Burgess, Sr. Complainant was incorporated in 1935 by said Burgess as a nonprofit community corporation as part of a plan for the subdivision and sale of said Lakewood tract. About the same time Burgess caused to be organized another California corporation known as "Lakewood Company, Ltd.", and conveyed all of the lands of the Lakewood tract to the latter corporation. Burgess retained certain properties from this transfer, including the above water supply and distribution system, and he served the residents of Lakewood tract with water from said system. Said system was expanded from time to time as the number of residences in the tract increased. It appears that Burgess was president and a member of the Board of Directors of Lakewood Company, Ltd., and of complainant, and that all other officers and members of the Board of Directors of each corporation were so closely related to, or otherwise connected with him, that it appears evident that both corporations were at all times controlled by him.

Lakewood's articles of incorporation provided that membership certificates were to be issued only to owners of land in the Lakewood tract, and that each certificate was to be appurtenant to the land described on the back thereof. The articles also provided

that the purposes of the corporation were to be carried out at actual cost only to the members.[1]

In October 1953, Burgess sold said water system, along with certain real property, to Lakewood (the complainant herein) for $32,000. The purchase price was evidenced by a promissory note secured by a deed of trust. At the same time Lakewood purchased 350 membership certificates for $12,500, the purchase price thereof being also evidenced by a promissory note and secured by a deed of trust.

Lakewood operated said system and distributed water to the people owning land in Lakewood from October 1953 to September 28, 1955. During this 2-year period water was delivered for domestic use, irrigation and fire protection to approximately 260 homes. There was no other water service available to the residents and property owners in the tract at this time. Lakewood defaulted in its obligations, Burgess foreclosed and purchased said water system at the foreclosure sale.

Five months prior to the foreclosure, in April 1955, Lakewood applied to this Commission for a certificate of public convenience and necessity, declaring itself to be a public utility. However on November 1, 1955 it requested that the application be dismissed, explaining that the properties had been foreclosed, and that it believed that Burgess' successor in interest proposed to continue with the operation of the system. This request indicated that said successor intended to apply for a certificate from the Commission.[2] Dismissal of the application was ordered on November 22, 1955, by Decision No. 52242.

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1 Complainant's Exhibit No. 1.
2 Complainant's Exhibit No. 9.

Immediately following the aforementioned foreclosure, Burgess transferred said water system and properties to Homestead, which had been incorporated in October 1955. Homestead was organized as a profit-making venture but had no shareholders. Its Board of Directors consisted of the president, his wife, and his office secretary. Homstead continued to serve the residents of Lakewood following the foreclosure in the same manner as had been done by Lakewood; no change in operation or service was evident. From September 1955 to January 31, 1956 Lakewood collected payments for the service from the residents and remitted same to Homestead, and from all appearances acted as Homestead's agent in operating the system for this 4-month period. After assuming managerial control of the system in January 1956 Homestead continued on, as before, with distribution of water to the same landowners until October 1956, at which time East Bay Municipal District commenced serving the residents of Lakewood. Homestead discontinued its operations, except for water service to three individuals who reside on lands close by Homestead's properties, after East Bay Municipal District commenced service. Distribution to these persons continued by Homestead until May 31, 1957, at which time it served notice that all delivery of water would cease. This notification occurred while the hearings on this case were being held in Walnut Creek.

After assuming operations of the system in October 1953, Lakewood, in September 1954, increased the rates for water delivery to $8 per month for one connection and $12 per month for two connections. These rates continued until April 1, 1955, at which time they were reduced by Lakewood to $6 per month for one connection and $9 for two connections. This decrease occurred in the same month that Lakewood applied to the Commission for a certificate of public convenience and necessity. Approximately a year later, on March 30,

1956, and six months after Homestead purchased the system, Homestead increased the rates back to $8 and $12.[3] This latter increase, being without the Commission's permission, forms the basis of the complaint in this case.

Capacity to Institute Proceedings

The defendant made a summary motion to dismiss the complaint at the commencement of the hearings upon the ground that the complaint was not signed by at least 25 customers as required by Section 1702 of the California Public Utilities Code and Rule 9 of the Rules of Procedure of the Commission and therefore the Commission is without jurisdiction to entertain the matter. The motion was denied. Evidence on this issue consisted of testimony by the secretary of the complainant that authority to bring this action was given by the Board of Directors of Lakewood individually to the president over the telephone. Defendant contends therefore that the complainant had not legally authorized its officers to bring this action because authority was not given at a formal meeting of the directors; it is contended that the board did not act as a body.

Although the complaint was not signed by 25 patrons and not authorized by formal director resolution this contention is without merit. The first sentence of Section 1702 provides:

> "Complaint may be made .... by any .... person .... or any civic .... association or organization .... setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by .... any public utility, in violation or claimed to be in violation, of any provision of law ...." (Emphasis ours.)

3 See complainant's Exhibit No. 10.

The complaint alleges that rates of a public utility were raised without Commission sanction and thus were in "violation of law" (Section 454, Public Utilities Code). Moreover the second paragraph of Section 1702 indicates that provisions with reference to the number of complainants refer only to complaints against the "unreasonableness" of the rates. The complaint is not based upon "unreasonableness" but also on "unlawfulness" and "excessiveness" of the rates charged. Furthermore, other relief such as reparation is sought. Section 734 of the Public Utilities Code refers to "complainant" in reparation cases, and seems clearly to contemplate that a complaint for reparation may be filed by a single complainant.[4] The provision of Section 1702, requiring, in certain circumstances, a complaint to be signed by 25 persons, where the "reasonableness" of a rate is involved, has no application to a reparation proceeding. Such provision addresses itself to rates for the future. Even if it is assumed that an irregularity occurred in the authorization to institute the complaint such is not disabling, no prejudice attached to the fullest inquiry by the Commission into the complaint made.[5] The denial of the motion was proper and is affirmed.

Jurisdiction

Homestead alleges that this Commission has no jurisdiction to hear and decide this matter because it is not and never has been a public utility, and is therefore not subject to State regulation. The complainant's position is that, contrary to the appearances, Lakewood operated this system as a public utility and not as a mutual water company, and as a result Homestead became a public utility when it purchased the system and operated it in the same manner as Lakewood had done. Lakewood contends that the facts disclosed at the hearings reveal that Homestead dedicated its property to public use when it distributed water to the Lakewood residents.

4 Palo Alto Gas Co. v. P. G. and E., 15 CRC 618 (1918).
5 Antelope Valley Milk Producers' Ass'n v. Kielhofer, 22 CRC 623 (1922).

This particular question of Commission jurisdiction has been before the Commission on a great many occasions in the past 40 years. Moreover the Supreme Court of this State has directly and indirectly passed on this problem in approximately 60 decisions. The California Constitution and various state statutes appear to cover the somewhat refined distinctions between a mutual water company and a water company devoted to a public use. Article XIV, Section 1, of the Constitution in effect provides that "the use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is declared to be a public use, and subject to the regulation and control of the State ..." Section 23 of Article XII of the Constitution provides, in pertinent part:

> "Every private corporation, and every individual or association of individuals, owning, operating, managing or contolling ... for the production, generation, transmission, delivery or furnishing of ... water ... either directly or indirectly, to or for the public ... is hereby declared to be a public utility subject to such control and regulation by the ... Commission."

The basic set of legislative enactments was introduced in 1913 in the Act for Regulation of Water Companies. (Statutes 1913, Ch. 80, as amended by Cal. Statutes (1923) Ch. 172, p.413, Cal. Stats. (1933), Ch. 951, p.2480, and Cal. Stats. (1935), Ch. 306, p.1031.) This act, as modified, was carried over, in substance, in 1951, (and as amended) into Sections 2701-12 of the present Public Utilities Code. These sections, along with the corollary Sections 2725, 216a, 240 and 241 of said Public Utilities Code form the nucleus for the statutory law defining private companies and companies devoted to the public use. The pertinent statutes are:

> "Section 2701. Any person, firm or corporation, their lessees, trustees, receivers or trustees appointed by

any court whatsoever, owning, controlling, operating, or managing any water system within this State, who sells, leases, rents or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public utility, and is subject to the provisions of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission, except as otherwise provided in this chapter. (Part of former Sec. 1.)

"Section 2702. Any corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost which delivers water to others than its stockholders or members, or the State or any department or agency thereof or any school district, or any other mutual water company, for compensation, becomes a public utility and is subject to Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission. (Former Sec. 3. Amended 1955, Ch. 1587.)

"Section 2704. Any owner of a water supply not otherwise dedicated to public use and primarily used for domestic purposes by him or for the irrigation of his lands, who (a) sells or delivers the surplus of such water for domestic purposes or for the irrigation of adjoining lands, or (b) in an emergency water shortage sells or delivers water from such supply to others for a limited period not to exceed one irrigation season, or (c) sells, or delivers a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available, is not subject to the jurisdiction, control, and regulation of the commission. (Part of former Sec. 1.)

"Section 2705. Any corporation or association which is organized for the purpose solely of delivering water to its stockholders or members at cost, and which delivers water to no one except its stockholders or members or to the State or any agency or department thereof, or to any school district, or to any other mutual water company, at cost, is not a public utility, and is not subject to the jurisdiction, control or regulation of the commission. (Former Sec. 2, 1st par. Amended 1955, Ch. 1587.)

"2725. As used in this chapter, 'mutual water company' means any private corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost. (Former Sec. 1(b).)

"Section 216. (a) 'Public utility' includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation,

wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof. (Former Sec. 2(dd).)

"Section 240. 'Water System' includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment, or measurement of water for power, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use. (Former Sec. 2(w).)

"Section 241. 'Water corporation' includes every corporation or person owning, controlling, operating, or managing any water system for compensation within this State. (Former Sec. 2(x).)"

Civil Code 330.24, provides in pertinent part:

"330.24. Any corporation organized for or engaged in the business of selling, distributing, supplying or delivering water for irrigation purposes, or for domestic use, may provide in its articles or by-laws that water shall be sold, distributed, supplied or delivered only to owners of its shares and that such shares shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate is so issued and a certified copy of such articles or by-laws recorded in the office of the County Recorded in the County where such lands are situated the shares of stock shall become appurtenant to the said lands and shall only be transferred therewith, except after sale or forfeiture for delinquent assessments thereon as provided in Section 331 of this title. Notwithstanding such provision in its articles or by-laws, any such corporation may sell water to the State, or any department or agency thereof, or to any school district, or to any public agency, or, to any other mutual water company or, during any emergency resulting from fire or other disaster involving danger to public health or safety, to any person at the same rates as to holders of shares of such corporations; ..."

Civil Code 330.25 provides in pertinent part:

"330.25. Any corporation, including a nonprofit corporation organized for or engaged in the business of developing, distributing, supplying, or delivering water for irrigation or domestic use or both, may provide in its articles, or may amend its articles to provide, that its only purpose shall be to develop, distribute, supply, or deliver water for irrigation or domestic use or both to its members or shareholders, at actual cost plus necessary expenses. ...

"Such corporation shall not distribute any gains, profits, or dividends to its members or shareholders except upon the dissolution of the corporation."

However, a few of the court decisions arising since the adoption of the foregoing provisions have considered the question of the status of water corporation on the basis of the above definitions alone. The determination of the question as to whether or not a water corporation has become a public utility depends largely upon each individual set of facts. The decision in this case would not be complete without a brief recapitulation of these interpretations.

The Supreme Court of this State considered the problem of regulatory control over private water companies prior to the passage of the 1913 Act in a series of early decisions[6] culminating in the decision of Thayer v. California Company, 164 Cal. 117 (1912), which declared that a water corporation distributing water to its own shareholders did not make a devotion of its properties to public use. The court said in this case that the essential feature of public use is that it is not confined to a small group but is open to the public, and that it is this unrestricted quality which gives it the public character. The court cited a number of earlier cases wherein the quality of restrictiveness to persons benefitted along with the intent to devote to public use formed the test by which State regulatory control would be applied. This case, along with the Hildreth and Stanislaus Water Co. decisions, supra, moreover declared that the mere passage of Article 14, Section 1 of the

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6 McFadden v. County of Los Angeles, 74 Cal. 571 (1888).
McDermout v. Anaheim Water Co. 124 Cal. 112 (1899)
Hildreth v. Montecito Creek Water Co., 139 Cal. 22 (1903)
Stanislaus Water Co. v. Bachman, 152 Cal. 716 (1908)
Barton v. Riverside Water Co. 155 Cal. 509 (1909)
Burr v. Maclay Rancho Water Co., 160 Cal. 268 (1911).

Constitution did not transform a private corporation into a public utility unless there was a dedication of properties to a public use. In other words an additional and necessary element of dedication was read into this provision.

The Act for Regulation of Water Companies, supra, was passed following the ruling in the Thayer case, however, for six years the decisions from the Supreme Court largely ignored the Act, and relied on the Thayer case as governing.[7] Basically these cases held that one may acquire, hold, and manage a water supply and sell water for domestic and irrigation purposes without becoming a public utility, especially if a water company is supplying water to purchasers of land who are shareholders in the company. Whether or not the corporation was organized to sell to shareholders at cost was not emphasized; it was the fact of distribution only to purchasers of land in the area concerned which controlled.

Two cases, Franscioni v. Soledad Land & Water Co. 170 Cal. 221 (1915) and Palermo Land & Water Co. v. Railroad Commission 173 Cal. 380 (1916), although approving in principle the holding in the Thayer case, declared that a private water company became a public utility by submitting itself to regulation by this Commission. In the Palermo case the company applied to the Commission to fix rates and to control its policies. After becoming a public utility, it could not revert, by its own action, to a mutual water company. In Limoneira v. Railroad Commission, 174 Cal. 232 (1917), the court pointed out that if the entire system has been declared to be a public utility then the owner cannot reserve nor carve out part himself; he had no special rights, no preferences.

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7 Del Mar Water Co. v. Eshleman, 167 Cal. 666 (1914)
Palmer v. Railroad Commission 167 Cal. 163 (1914)
Howell v. Corning Water Co. 177 Cal. 513 (1918)

The 1913 Act for Regulation of Water Companies was directly before the court in the leading case of Allen v. Railroad Commission, 179 Cal. 68, decided in 1918. This case is strongly relied upon by Homestead for the proposition that it is not a public utility. The court decided that the aforementioned constitutional provisions, especially Article 12, Section 23, and the 1913 Act must be read as if the "intent to dedicate" was included as an element therein. Moreover the court said that the declaration to dedicate is never presumed without evidence of unequivocal intention.

Decisions following the Allen case reaffirmed the ruling and the principles described therein, but the court held that this intent to dedicate is a question of fact and that each case must be decided on its individual facts.[8]

In Traber v. Railroad Commission, 183 Cal. 304 (1920), the court held the water system to be a public utility, based to a large extent upon the fact that it submitted itself to Commission regulation and held itself out to serve water to all who would apply. The court said, at page 312 of the decision, referring to the water company manager's statement that "the water was for sale to all who would apply:"

> "Whether in all cases such an offer would constitute a dedication to public use or not, it is clear that evidence of such offer and acceptance is sufficient to justify a finding of such dedication."

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8 San Leandro v. Railroad Commission, 183 Cal. 229 (1920)
Mound Water Co. v. Southern California Edison, 184 Cal. 602 (1921)
Stratton v. Railroad Commission, 186 Cal. 119 (1921)
McCullagh v. Railroad Commission, 190 Cal. 13 (1922)
Klatt v. Railroad Commission, 192 Cal. 689 (1923)
Richardson v. Railroad Commission, 191 Cal. 716 (1923)
Southern California Edison v. Railroad Commission 194 Cal. 757 (1924);
Trask v. Moore (1944) 24 Cal. (2) p.373.

In Van Hoosear v. Railroad Commission, 184 Cal. 553 (1920) the court declared that the test is whether the company held itself out to supply water to a limited portion of the public as contra-distinguished from its readiness to serve only particular individuals, either as a matter of accommodation or for other reasons, and if there is "some evidence" to justify a finding of dedication then the court will not disturb the Commission's finding. Also, the fact that the company submitted itself to Commission jurisdiction was significant in arriving at this intent (p. 556).[9] Moreover once the system was declared to be devoted to public use it could not revert to the status of a private company. It would remain public regardless of the dwindling size of the consumers, even if none at all.

In Williamson v. Railroad Commission, 193 Cal. 22 (1924), the court found the system to be a public utility, the emphasis being placed on the sweeping power of the articles of incorporation, delivery of large quantities of water to many consumers anywhere at anytime, and upon the lack of refusal to serve those who asked for water, while in S. Edwards Associates v. Railroad Commission, 196 Cal. 62 (1925), it was held that the water was dedicated to public use based on the "holding out" by the company to sell to any applicant within the area adjacent to the system and within the limits of supply. In the Richardson case, supra, the court reaffirmed its prior declaration that if there was any evidence of dedication before the Commission then the finding will be sufficient and in determining this question the same rules apply as apply to the determination of the sufficiency of the evidence to justify the verdict of a jury in any civil action. Referring to the 1913 Act

9 See also Brewer v. Railroad Commission, 190 Cal. 60

the court further found evidence of intent in the fact that the articles of incorporation did not state that the water company was organized for the purpose of delivering water solely to stockholders at cost, and the fact that originally the water was appurtenant to the land of the first users was not inconsistent with a theory of subsequent dedication.

The court in Consolidated Peoples D. Co. v. Foothill Co., 205 Cal. 54 (1928), stated that a mutual water company exists only where the shareholders organize "chiefly" for the purpose of acquiring and distributing water. Even though organized as a mutual water company, the court held in Western Canal v. Railroad Commission, 216 Cal. 639, 646 (1932), that a company could become a public utility by its subsequent activity. In Lamb v. Calif. Water & Tel. Co., 21 Cal. (2) 33, (1942), the court declared that the system was devoted to public use, again placing emphasis on the purposes stated in the articles of incorporation and upon the provisions of Article 14, Section 1, of the Constitution, citing William v. Railroad Commission, supra, in support of this position.

The foregoing discussion is necessary in order to properly evaluate the facts of the present case. Homestead's president testified at the hearing that he never intended to dedicate his water company to public use. This statement was the only evidence produced by the defendant as to its intention. We must give to this statement the weight to which it is entitled, but it must be weighed with Homestead's acts and conduct along with other extrinsic circumstances surrounding the case. A corporation's intention, where it is relevant, as in these matters, must be judged in the same manner as that of an individual. We can only say, in all fairness, that acts and conduct give us a more accurate picture of intent than self-serving declarations. Allen v. Railroad Commission,

supra, is not construed to mean that the intent to dedicate to be read into the statutes is to be predicated simply upon such declarations. Unless conduct is to be balanced along with statements, this Commission would be, for all purposes, powerless to determine public utility status.

Although Lakewood may have become a mutual water company by virtue of the provisions of its articles and by-laws[10] and subsequent acquisition of the water system, the evidence strongly indicates that it subsequently dedicated the system. It never distributed water as a mutual water company. It sold water to landowners outside the Lakewood tract; it sold to everyone who requested water and refused no one, inside or outside the tract. In Franscioni v. Soledad Land & Water Co., supra, at page 228, the court said:

> "There is also evidence that the defendant made sales of water occasionally, when it could be spared for lands outside of the one thousand six hundred and seventy-five acre tract. This evidence also aids the conclusion that the prior use, whatever its character, has been converted into a public use. ..." 11

The record discloses no objection by the members of the corporation to this distribution and it is apparent the members acquiesced in the sale to nonmembers. Another factor indicating subsequent dedication was the fact that Lakewood applied to the Commission to assume jurisdiction and to fix rates;[12] it openly declared itself to be a public utility. Traber v. Railroad Commission, supra; Van Hoosear v. Railroad Commission, supra; Franscioni v. Railroad Commission, supra. Therefore, as these factors demonstrate

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10 Defendant's Exhibit A.

11 See also S. Edwards Associates v. Railroad Co., supra, p. 69;
Berry v. Oro Loma Farms, 13 CRC 513 (1913)
In Re Citizens Water Co., 16 CRC 950 (1916)
Bethel Is. Improvement Club v. Hollender, 48 PUC 364 (1948)

12 Complainant's Exhibit No. 2.

that Lakewood operated the system as a public utility, upon foreclosure and subsequent sale to Homestead said system passed to Homestead as a public utility, and when Homestead continued operations in the same manner as Lakewood had done then Homestead operated as a public utility, So. Pasadena v. Pasadena Land Co., 152 Cal. 579 (1908). This Commission stated in In Re: Public Utilities Calif. Corp. 45 CRC 462, 463, (1944) that:

> "Purchaser of property devoted to a public use takes such property subject to all of its public utility obligations....."

The system once impressed with the public utility status could not revert to a private system and whomsoever continued the operation of the company did so as a public utility.[13] As Commission approval is needed before a utility may discontinue operations, Homestead's reduced scale of operations immediately prior to its complete abandonment of operations would not affect its public utility status.

Disregarding the fact of acquisition of a system previously impressed with a public use, Homestead actually operated the system for approximately one year as a public utility water company. It clearly was not a mutual water company; it was not organized as such nor did it distribute water as such. It had no corporate affiliation with the residents of Lakewood; it merely distributed water to them.[14] It issued no stock; it issued no membership certificates. It was organized for profit as a general corporation for the sale and purchase of land and water. It was not only organized for profit but attempted to operate as a profitable enterprise.[15] It never sold water to "members" at cost; it had no members. It sold to any and

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13 Western Canal v. Railroad Com., supra, p. 644
Van Hoosear v. Railroad Com., supra
Byington v. Sacramento Valley Co., 170 Cal. 124 (1915)
Allen v. Railroad Co., supra, p. 82.

14 Complainant's Exhibits Nos. 7 and 8

15 Complainant's Exhibit No. 11

everyone who applied for water. It served consumers outside the Lakewood tract. It held itself out to serve all who asked for water; it made connections to all new houses as they were completed. It never refused anyone. Traber v. Railroad Com., supra; Williamson v. Railroad Comm., supra; S. Edwards Associates v. Railroad Comm., supra, p. 69, 70. This Commission declared in Beckman v. Otto, 47 Cal PUC 480 (1947), at p. 485:

> "We arrive at.....conclusion that....dedicated his water system to public use....Regardless of his avowed and no doubt sincere intention not to make such a dedication, the fact of a holding out of service to a particular group of the public is controlling"

The record also discloses that the defendant intended to file a statement of rates before this Commission, a factor which, as we have previously seen, is significant in determining intention.[16] Giving all due weight to the factors controlling in the Allen v. Railroad Com., supra, decision, and the cases that follow that decision, and conceding that each of the foregoing facts by themselves may be equivocal the composite picture of all these facts combined compel the finding and conclusion, which we hereby make, that the defendant did become a public utility and did dedicate the system to public use.[17]

The fact that Homestead is no longer operating this water system, having terminated all deliveries of water during the course of the hearings on this matter, does not affect its status. It cannot cease to be a public utility by merely discontinuing operations. Commission approval is required. Western Canal v. Railroad Com., supra, p. 647; Franscioni v. Soledad L & W Co., supra;

16 Paragraph V of Defendant's Answer; see also Complainant's Exh.10.

17 The Diamond Match Co. v. Sauercool, 218 Cal.665, 669
15 Cal. Jur. (2) 287, 288.
26 C.J.S. 418, 419, 426.
Morgan v. Chicago & A.R.R. Co. 96 U.S. 716,722,723.

In Re Rancho Green Valley W. Co., 53 PUC 83, 85; In Re Gore Bros., Inc., 30 CRC 555.

Requested Relief, Reparation

Defendant claims that even if it were held to be a public utility that the Commission has no authority to go back into the past and fix rates retroactively.[18] It is claimed that the reparation section of the Public Utilities Code, Section 734, does not provide for reparation under the circumstances of this case; it is argued that the Commission has no power to award reparation unless the Commission has first affirmatively established a rate, and the public utility later charges a rate higher than the rate established.

Lakewood, on the other hand, says that the latest expression by the Commission is that rates can be applied retroactively "within certain limitations where the facts so justify" (In Re: Citizens Utilities Co., 52 PUC 638, 639 (1953)); and that Section 734 of the Public Utilities Code gives the Commission authority to order reparation of illegally collected rates. Palo Alto Gas Co. v. Pacific Gas & Elec., supra, at p. 621; in Re Laguna Beach Tel. Co., 24 CRC 455 (1924). Without considering the relative merits of these contentions it is not necessary at this time to pass upon them because we are satisfied that after reviewing the whole record there was insufficient evidence to show that the increase in rates by the defendant was unreasonable.

Our holding on this point must be understood in the light of the peculiar circumstances involved in this case. It must also be kept in mind that Homestead has not heretofore been adjudicated

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18 Merchants Traffic Ass'n v. Atchison, Topeka, Santa Fe RR Co. 4 CRC 268 In Re W. L. Govan, 28 CRC 254, 256 (1926).

a public utility, nor has it voluntarily subjected itself to the regulatory jurisdiction of this Commission. It never has had on file with this Commission any rates or charges for the service which it furnished to the complainant or others. Our holding means no more than that we find the rates complained of were not unreasonable. The fact that a rate was increased does not mean that it was unreasonable. The record does not contain sufficient evidence to show that the increase from $6 to $8 was unreasonable, nor that the rate of $8 was unreasonable.[20]

By this action we do not condone any violation of the law on the part of Homestead, but are of the opinion that, because of the special circumstances in this case, such violation, without more, does not justify the relief sought by Lakewood.

We do not see any inequities in our finding that Homestead is a public utility while denying the relief requested. It is claimed that leaving Lakewood to its remedy in the courts will be more or less a futile gesture as the courts are unfamiliar with the technical aspects of public utility law. However, we believe that the courts of this State are quite capable of comprehending the issues and passing judgment on these matters.

In view of our holding it is unnecessary to consider or pass upon the other issues and points raised by the parties.

We hold, therefore, defendant is a public utility water corporation and, as such, is subject to regulation by this Commission as provided by the laws of this State. The fact that the defendant is here found to be a public utility requires that the Commission order it to comply immediately with those provisions of the Public

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20 Cummings v. La Rica Water Co., 9 CRC 152, 154 (1916).

Utilities Code which impose particular duties upon each public utility, such as the filing and observance of rate schedules, together with the rules and regulations affecting such rates. In the alternative the defendant may request authority to discontinue operations.

The Commission further finds that in all other respects the relief requested should be denied and the complaint against said defendant be dismissed.

O R D E R

The above matter having been heard and the evidence therein having been fully considered, it is hereby found as a fact that the water system owned by Homestead Land and Water Company is a public utility water system and, as such, is under the control and jurisdiction of the Public Utilities Commission of the State of California, therefore,

IT IS ORDERED that Homestead Land and Water Company shall, within thirty days from and after the effective date of this order, prepare and file with this Commission, in quadruplicate and in conformity with the Commission's General Order No. 96, rates for water service furnished to its patrons, which rates shall not be higher than the rates presently charged for such water service, or in lieu thereof, file a formal application to discontinue and abandon operations.

IT IS FURTHER ORDERED that the relief prayed for be and it is hereby denied and the complaint in the above-entitled action is dismissed.

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

Dated at San Francisco, California, this 19th day of November, 1957.

President

Commissioners