

ORIGINAL

Decision No. 57591

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Anthony Burke,

Complainant,

vs.

Montague N. Herbert,

Defendant.

Case No. 5692
(Rehearing)

Investigation on the Commission's own motion into the operations and practices of Harold J. Hicks doing business as Palm Valley Water Company.

Case No. 6045

Investigation on the Commission's own motion into the status, operations and practices of Montague N. Herbert, and the transfer of his water system facilities to Mr. and Mrs. J. Morich.

Case No. 6023

Gordon, Knapp, Gill & Hibbert, by Wyman C. Knapp,
for Palm Valley Water Company, respondent
in Case No. 6045.

Montague N. Herbert, respondent in Cases Nos. 5692
and 6023.

Jack Morich, respondent in Case No. 6023.

Hugh N. Orr and Donald B. Steger, for the Public
Utilities Commission staff.

O P I N I O N

Montague N. Herbert, who formerly resided at 70-119 Wonder Palms Road, Palm Valley, California, had a well upon his property from which he furnished water to as many as ten users, and for this service he charged compensation. By Interim Decision No. 54329

dated December 27, 1956, in Case No. 5692, these operations were declared to be those of a public utility.

By Decision No. 54306 dated December 21, 1956, in Application No. 37856, Harold J. Hicks, an individual doing business as the Palm Valley Water Company, was granted a certificate of public convenience and necessity to construct and operate a public utility water system in a certain designated territory, which territory includes the property formerly owned by Montague N. Herbert and the properties to which he served water.

It should be noted that Decision No. 54329, declaring Herbert to be a public utility, referred to the fact that Herbert was negotiating with Hicks as to a contemplated transfer of Herbert's water service obligations to the proposed public utility of Hicks.

Sometime during the first part of the year 1957 Herbert transferred his property to Mr. and Mrs. Jack Morich and they have been furnishing water to some of Herbert's former customers without making any charge therefor.

Under date of December 10, 1957, this Commission issued an order of investigation to inquire into the "validity and legality of the transfer of water system facilities by respondent Montague N. Herbert to respondents Mr. and Mr. J. Morich ...", and on the same date also issued an order reopening Case No. 5692 for the purpose of "determining whether Interim Decision No. 54329 should be revoked, altered, or amended". On January 28, 1958, another order of investigation was issued in Case No. 6045 to determine the "liability of Harold J. Hicks, doing business as Palm Valley Water Company to

provide service as a public utility water system in the area and to the consumers now receiving water from the water system which Montague N. Herbert has transferred to Mr. and Mrs. J. Morich".

A public hearing in these three matters was held on April 9, 1958, at Palm Springs, California, before Commissioner Ray E. Untereiner and Examiner Grant E. Syphers. At the hearing the parties agreed to attempt negotiations whereby Mr. and Mrs. Morich would transfer their well to Harold J. Hicks and he would operate it as a part of his public utility water system. Considerable time has elapsed since this hearing and on September 9, 1958, the Commission was advised by the attorney for Harold J. Hicks that the parties had not as yet arrived at a satisfactory solution. During the latter part of September and the first part of October communications were received from all of the persons who are presently receiving water from the Morich well, and upon the basis of these communications it now appears that the matter is ready for decision.

The evidence discloses that in August of 1956 Herbert agreed to sell the property to Morich. The matter was placed in escrow prior to the time that Decisions No. 54329 and 54306 were issued. The escrow was closed and the property transferred to Morich on January 14, 1957. The evidence further discloses that Morich was not aware that he was purchasing a public utility property. He purchased one acre of land, the well and the water system installed thereon, and at the time he took over there were four users of the water. Since then he has permitted the users to have water without charge. At the present time there are only three properties in addition to the Morich property receiving water from the well. One of the three

properties is that of Mr. and Mrs. Charles W. Abern. On September 23, 1958, they advised this Commission in writing that they are receiving water on an accommodation basis without charge. A second user, Mr. V. A. Rosegrant, advised this Commission on September 25, 1958, that he is receiving water free of charge from Morich, and the third user, Mrs. William S. Tevis, similarly advised this Commission under date of October 6, 1958.

The record also discloses that there has been no agreement between Morich and Hicks as to any transfer of the water system. Under date of September 9, 1958, the attorney for Hicks advised this Commission that he could not agree to the Morich proposal in this regard.

A consideration of all of the evidence in this matter leads us to the conclusion, and we now find, that Mr. and Mrs. Jack Morich are not now operating a public utility water system. The water from their well is being used by them and by three neighbors on an accommodation basis. Section 2704 of the Public Utilities Act provides as follows:

"Acts of owner of water supply not as public utility. 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."

It is clear from this record that the territory involved is now in the certificated area of the Palm Valley Water Company; therefore, that company is obligated to serve any users in the area

who apply for service, subject to the applicable rules and regulations.

In the light of this finding the proceedings in Cases Nos. 5692, 6023 and 6045 will be discontinued.

O R D E R

Orders of Investigation in Cases Nos. 6023 and 6045 and an Order Reopening the Case for Further Hearing in Case No. 5692 having been issued, a public hearing having been held thereon, the Commission being fully advised in the premises and hereby finding it to be not adverse to the public interest,

IT IS ORDERED that Orders of Investigation in Case No. 6023 and Case No. 6045 be, and they hereby are, discontinued.

IT IS FURTHER ORDERED that Interim Decision No. 54329, dated December 27, 1956, in Case No. 5692, be, and it hereby is, revoked, and Case No. 5692 is discontinued.

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

Dated at San Francisco, California,
this 10th day of November, 1958.

E. Lynn Fox
President

Ed. E. Mitchell

Ray B. Lawrence

Walter J. Pool

Frederic J. Jensen
Commissioners