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Decision No. 58703

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations)
of EASTSHORE CONSOLIDATED WATER) Case No. 6229
COMPANY, a corporation, and JOHN)
GILBERT LARSON, an individual.)

Robert M. Brilliant, for respondent.
Edward G. Fraser, for the Commission's staff.

O P I N I O N

On March 2, 1959, and by amendment of April 7, 1959, the Commission issued an order instituting an investigation on its own motion into the operations of Eastshore Consolidated Water Company, a corporation, and John Gilbert Larson, an individual. Pursuant to said order, public hearings were held at Clear Lake, Lake County, on April 29, 1959, and in San Francisco on May 4, 1959, before Examiner James F. Mastoris, at which time evidence was presented and the matter was submitted.

Purpose of Investigation

The purpose of this investigation is to determine:

- (1) Whether both respondents, or either of them, have constructed or are about to construct a water system or an extension to an existing water system without having first obtained from the Commission a certificate of public convenience and necessity authorizing such construction.
- (2) Whether or not both respondents, or either of them, should be ordered to cease and desist from constructing a water system or an extension to an existing system unless and until Commission approval is acquired authorizing such construction or extension.
- (3) Whether said respondents should be prohibited from furnishing water to any new or additional customers not now served by them.

Staff's Evidence

Evidence was presented by the staff of the Commission indicating that the respondents, in Application No. 38589, as amended, applied for authorization from this Commission to construct and operate a water system in the Clearlake Highlands area of Clear Lake, Lake County, to establish rates for service for this system and to issue stock. In Decision No. 55048, dated May 28, 1957, this application was denied for the reason, among others, that it appeared applicant Eastshore Consolidated Water Company did not possess sufficient financial resources to insure an adequate and continuing water supply in the proposed area. Evidence was produced showing that, despite the denial by the Commission to operate a water system, the respondents have been engaged, in the past two years, in constructing extensions to the existing systems throughout the area and vicinity proposed to be served in Application No. 38589. When Decision No. 55048 was issued, approximately 15,000 feet of distribution mains had already been installed in the area in question. In addition, an 80,000-gallon storage tank was being installed but had not been completed. According to the record, as of March 20, 1959 the installed transmission and distribution mains consisted of more than 26 miles, or approximately 140,000 feet of steel and plastic pipe. In other words, approximately 125,000 feet of distribution pipe has been constructed in this 8,000-lot subdivision since the Commission's decision. The aforementioned storage tank has been completed and installed, along with an additional 24,000-gallon wooden tank. The foregoing construction encompasses 800 out of the 1,100 acres in this development.

Respondent's Position

Mr. John Larson, testifying on behalf of both respondents, admitted that such construction occurred as charged by the staff.

He declared that he personally installed many miles of distribution main with the full knowledge that the Commission had denied the application to operate in the area in question. Two reasons were given for this conduct. First, he stated that he did not believe the Commission possessed any jurisdiction over him or the corporate respondent. Second, installation of pipe was necessary in order to develop the water system and thus satisfy the legal and moral obligation he believed he owed to the lot purchasers. In many cases he and the employees hired by him constructed extensions of mains up to the homes in the lots; in other cases he constructed pipe to the middle or side of the street, installed service tap connections, and then permitted customers to install their own pipes from their residences out to these street connections. Evidence was adduced at the time of the hearings that more than 100 property developments out of the 253 in the subdivision were being served with water. Eight hundred of the aforementioned street connections have been installed, ready for customer use.

Findings

Both respondents flagrantly violated this Commission's authority by constructing these extensions after being denied a certificate of public convenience and necessity. The evidence clearly and convincingly supports the staff's charges. The corporate respondent's responsibility is based upon the conduct and activities of its director and president, respondent John Larson. His acts are the corporation's acts when acting within the scope of his authority. That he was acting within such scope is clear and unequivocal. The fact that some invoices for supplies and equipment for these extensions were made in the name of the corporate respondent but paid by checks drawn on Mr. Larson's account is immaterial. The fact that money for water

delivery and water system development paid by the lot purchasers was deposited not always in the corporate respondent's bank account but sometimes in various trust accounts is likewise immaterial. The fact that another corporation, Lakeshore Construction, Inc., assisted in the installation of the distribution pipe through the labor of its employees does not exonerate the corporate respondent. It is clear that Mr. John Larson controlled all these entities. He was a trustee of the five separate trust accounts; he was the treasurer and a director of Lakeshore Construction, Inc. Mr. Larson cannot exculpate the corporate respondent by setting up such transparent devices; the corporate respondent constructed these extensions through him and legally benefited from such constructions.

There was no evidence introduced by the respondents to indicate that they are exempt from the jurisdiction of this Commission. The evidence introduced by the staff shows that water has been delivered to the consumers by the respondents for the past two years.

The record clearly discloses that the respondents are a public utility water system within the meaning of Sections 216, 240 or 241 of the Public Utilities Code, as well as Section 2701 of said code. They controlled, operated, and managed the system and delivered water to the residents of the Chapman subdivision. They were not organized for the purpose of delivering water solely to their stockholders or members at cost. The corporation was organized for profit. There were no stockholders or members. Water was not delivered at cost (Sections 2705, 2725, Public Utilities Code). The "intent to dedicate" within the meaning of Allen v. Railroad Commission (1918). 179 Cal. 68 is also established by the "holding out" to sell to any applicant, or bidder, within the development and within the limits of the supply, by the readiness to serve water to all who would apply, and by submission

to Commission jurisdiction (Lakewood Civic Group, Inc., v. Homestead Land & Water Co., Inc., 1957 56 Cal. PUC 31.)

The record in this proceeding and that in Application No. 38589, as amended, which was incorporated by reference herein, shows that:

1. The Department of Public Health has so far refused to issue a permit for this system to supply water, although the permit application has been under active study and negotiation since the early part of 1957; further, the water served has an objectionable odor and taste.
2. The system has been operated in a careless and potentially hazardous manner in that the chlorinator has not been maintained in service continuously.
3. The recommendation of the Department of Public Health to modify the well source to obtain a more potable water supply has not been carried out.
4. There is no source of supply other than the single well and the relatively long transmission line which crosses the state highway.
5. The distribution system is grossly inadequate for the service to be rendered, both as to diameter and length of lines and the faulty installation of materials used, and falls far short of the minimum requirements of the Commission's General Order No. 103, at least in the following specific respects:
 - a. Excessive lengths of noncirculating distribution mains.
 - b. Utilization of plastic mains far in excess of the specified pressure limitations of the material.
 - c. Insufficient cover over mains in public streets.
 - d. System pressures both in excess of and below recommended operating limits.

Although the Commission has previously found in Application No. 38589, as amended, that Eastshore Consolidated Water Company should not be granted the privileges usually enjoyed by a public utility, and although the record in the present proceeding reinforces this conclusion, nonetheless we are bound to recognize that these

respondents are presently serving a necessary commodity to a substantial number of people who presumably are relying upon this company for water service.

In view of the foregoing we find that:

(1) Both respondents have constructed and are constructing a public utility water system and an extension to an existing water system without having first obtained from the Commission a certificate of public convenience and necessity authorizing such construction.

(2) Both respondents should be ordered to cease and desist from constructing any water system or any extensions to presently existing systems unless and until they shall have first obtained from the Commission a certificate of public convenience and necessity authorizing such construction or extension.

(3) Both respondents should be ordered to cease and desist from furnishing water in any of the areas referred to in this decision to any new or additional customers not now served by them.

Accordingly both respondents, in the order that follows, will be ordered to cease and desist from further construction or extension and from serving new or additional customers. Such an order by this Commission, directing that an operation cease and desist, is, in its legal effect, the same as an injunction by a court. Contempt of the Commission arises when there is a violation of such order. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record.

The respondents will also be required, in the order that follows, to provide a list of customers and the address of their respective premises being served, as of the date of this order; and the order will provide that service shall not be rendered to any other individuals or premises.

O R D E R

Public hearings having been held in the above-entitled matter, the matter being duly submitted and the Commission now being fully advised,

IT IS HEREBY ORDERED:

(1) That respondents Eastshore Consolidated Water Company and John Gilbert Larson shall cease and desist from constructing or installing a water system or systems in the area of Clearlake Highlands, Lake County, more particularly described in Application No. 38589, as amended, and in Decision No. 55048 dated May 28, 1957, and in paragraph E(9) of Chapter 1, Exhibit 2, received into evidence in this proceeding, unless and until they jointly or individually shall first secure from this Commission a certificate that public convenience and necessity require the same.

(2) That respondents Eastshore Consolidated Water Company and John Gilbert Larson shall cease and desist from constructing, installing, or extending any extensions to any presently existing water system or systems in the area described in paragraph (1) unless and until they jointly or individually shall first secure from this Commission a certificate that public convenience and necessity require such extension.

(3) That respondents Eastshore Consolidated Water Company and John Gilbert Larson shall cease and desist from furnishing or delivering water in the area described in paragraph (1) to any new or additional customers not now served by them, unless and until they jointly or individually shall first secure from this Commission a certificate that public convenience and necessity require such service.

(4) (a) That said respondents shall not render water service to any individual or premise not being served on the date hereof unless and until said respondents shall first secure from this Commission a certificate that public convenience and necessity require such service.

(b) That said respondents shall, within ten days after the effective date of this order, file with this Commission a certified statement showing the names of all customers and the addresses of their respective premises being served on the date hereof.

(5) That the orders referred to in the first four paragraphs include and encompass, but are not limited to, as a water system, all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, valves, fittings, 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.

(6) That the orders referred to in the first four paragraphs shall apply to Mr. John Gilbert Larson in his individual capacity and in his position as director and treasurer of the Lakeshore Construction, Inc., and as trustee for the following trusts:

(1) Clearlake Trust Fund, (2) Lake County Trust Fund, (3) Eastshore Consolidated Water Co. Fund, (4) Highland Trust Fund, (5) Larson and Osterholt Fund.

(7) That said respondents shall cease and desist from aiding and abetting any other person, firm or corporation, directly or indirectly, or by any subterfuge or device, in engaging in any or

all of said operations as a water system, unless and until said respondents shall first secure from this Commission a certificate that public convenience and necessity require the same.

(8) That the Secretary of the Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondents.

This order shall become effective twenty days from and after the date of such service.

Dated at San Francisco, California, this 7th day of July, 1959.

Edward M. Rago
President

John E. Hutchins

Michael J. Walsh

E. J. Fox

Theodore H. Jenner
Commissioners