

**ORIGINAL**

Decision No. 62705

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITIZENS SUBURBAN COMPANY, a California corporation,

Complainant,

vs.

Case No. 6595

ROSEMONT DEVELOPMENT CO., INC., a California corporation, PRICE & REYNOLDS, a partnership, RICHARD C. PRICE, an individual, DOE I, DOE II, DOE III, DOE IV, DOE V, and DOE VI,

Defendants.

Orrick, Dahlquist, Herrington & Sutcliffe by  
Warren A. Palmer, Richard J. Lucas and  
Christopher M. Jenks, for Citizens Suburban  
Company, complainant.  
Morris M. Grupp, for Rosemont Development Co.,  
inc., Price & Reynolds, Richard C. Price,  
defendants.

O P I N I O N

Citizens Suburban Company is a public utility water company which holds a certificate of public convenience and necessity authorizing it to serve various areas in Sacramento County. It filed this complaint which alleges that the defendants are illegally furnishing public utility water service in its authorized service area. Citizens seeks an order directing the defendants to cease and desist the complained of activities. An action is pending in the Sacramento Superior Court involving the same subject matter and substantially the same parties.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis at San Francisco on December 12, 13, 21, 22 and 23, 1960. The matter was submitted subject to the filing of briefs and certain late-filed exhibits. On January 30, 1961,

Citizens filed a petition which requested that the submission be set aside and the proceeding reopened to permit the presentation of specified additional evidence. On February 21, 1961, the Commission entered an order which set aside the submission and reopened the proceeding for the limited purpose of permitting the production of evidence dealing with two issues. A further hearing was held before Examiner Jarvis at San Francisco on March 16, 1961. The matter was then submitted subject to the filing of certain briefs. All of the briefs have been filed and the matter is now ready for decision.

No attempt was made to proceed against any of the fictitious named Doe defendants and they need not be further considered.

Defendant Richard C. Price has participated, in various capacities, in the development of a subdivision in Sacramento County known as Rosemont. At the present time the subdivision has six units.

In 1955 the development of the Rosemont Subdivision was being conducted by a limited partnership known as Rosemont Development Co. (hereinafter called the Limited Partnership). The Limited Partnership was composed of two corporate general partners and thirteen limited partners.

The Limited Partnership caused the formation of a water company, eventually known as the Rosemont Water Company, for the purpose of supplying water to the Rosemont Subdivision. On September 21, 1955, the Rosemont Water Company filed Application No. 37312 which sought a certificate of public convenience and necessity to serve Unit 1 of the Rosemont Subdivision. The water

company proposed to develop the remainder of its system by extensions. The Commission denied the application on January 23, 1956 in Decision No. 52498.

On May 23, 1956, the Limited Partnership entered into a water service agreement and supplemental water service agreement with Citizens. Price executed the agreements on behalf of the Limited Partnership in his capacity as president of Sunnyvale Home Builders, Inc., one of the general partners in the Limited Partnership. Price also signed the agreements in his capacity as vice president of the Rosemont Water Company, which accepted and consented to them. On September 25, 1956, the Commission in Decision No. 53807, authorized Citizens to carry out the terms of the agreements, except for one provision not here involved.

The agreements provided for the sale and transfer to Citizens of the then existing water supply system in the subdivision. The agreements have given rise to a dispute between the parties as to where title to certain water distribution facilities lies. The adjudication of such dispute is properly within the jurisdiction of the Superior Court before which an action therefor is presently pending.

The defendants state that the Limited Partnership was dissolved in September, 1956; that early in 1957 Price formed a partnership with Gordon E. Reynolds; and that subsequently the partnership of Price and Reynolds was succeeded by a corporation known as Rosemont Development Co., Inc. (hereinafter sometimes called the corporation).

The question for determination by the Commission is whether any of the defendants have constructed or operated a public utility water system without having secured from this Commission a certificate of public convenience and necessity.

Some time during 1959 a dispute arose between Citizens and the defendants. Price objected to the rates charged by Citizens and contended that they were higher than those charged by other water companies in the area. At this time Citizens was serving Units 1, 2, 3, 4 and 20 homes in Unit 5.

On or about September 4, 1959, Price, on behalf of the corporation, entered into a contract with a local pump company to dig a well in Unit 6 and install the necessary pump and pressure system to distribute water from the well. On or about September 25, 1959, the defendants caused preliminary steps to be taken contemplating the formation of a proposed Rosemont County Water District. The district never came into existence. On or about October 10, 1959, the corporation, under the direction of Price, began to serve water to the homes in Units 5 and 6 except for the 20 homes in Unit 5 served by Citizens.

The evidence is undisputed that from October 10, 1959, until December 7, 1960, the corporation, under the active management of Price, operated a water distribution system in Units 5 and 6, except for the 20 homes in Unit 5 served by Citizens, without a certificate of public convenience and necessity from this Commission. From December 7, 1960, until the present time, the corporation has continued to operate the water system without a certificate of public convenience and necessity.

The evidence clearly establishes, and the defendants concede, that from October 10, 1959, until December 7, 1960, the corporation furnished water service to part of Unit 5 and to Unit 6 of the Rosemont Subdivision. During this period of time, Price was president of Rosemont Development Co., Inc., and directed and supervised the furnishing of the water service. The corporation

furnished water service to homes in Units 5 and 6 as they were completed and was serving approximately 180 homes. At least \$300 was collected from the water users during this period.

The Commission finds that:

1. The defendants constructed a water distribution system in Units 5 and 6 in the Rosemont Subdivision located in Sacramento County.

2. Such water distribution system was dedicated to a public use on or about October 10, 1959.

3. During the period from October 10, 1959, until December 7, 1960, Rosemont Development Co., Inc., and Richard C. Price, operated a public utility water system and distributed and sold water to homes in Units 5 and 6 of the Rosemont Subdivision, except for 20 homes in Unit 5 located on Lots 525 through 539, 549 through 551 and Lots 578 and 579, without having obtained a certificate of public convenience and necessity from this Commission and without having filed with it tariffs and rates.

4. Since December 7, 1960, Rosemont Development Co., Inc., has operated a public utility water system and distributed and sold water to homes in Units 5 and 6 of the Rosemont Subdivision, except for 20 homes located on Lots 525 through 539, 549 through 551 and Lots 578 and 579 without having obtained a certificate of public convenience and necessity from the Commission and without having filed with it tariffs and rates.

5. Units 5 and 6 of the Rosemont Subdivision are within complainant's authorized service area.

The defendants will be directed to cease and desist from operating a public utility water system within Units 5 and 6 of the

Rosemont Subdivision and complainant will be directed to furnish its water service to such units.

O R D E R

A public hearing having been held, and based upon the evidence herein adduced,

IT IS ORDERED that:

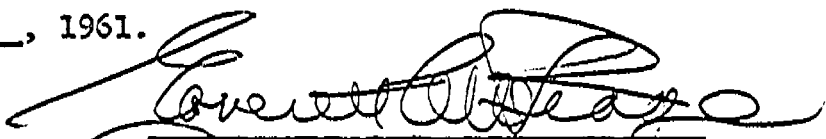
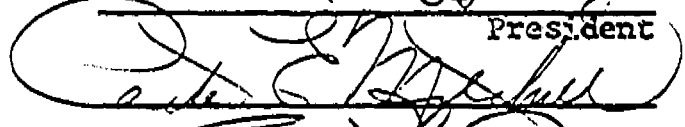
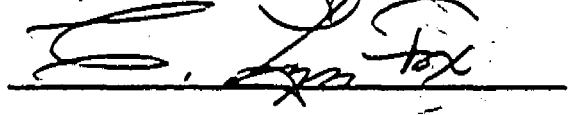
1. The defendants and each of them are directed and required to cease and desist from operating, directly or indirectly, or by any subterfuge or device, a public utility water system for the distribution and sale of water in Units 5 and 6 of the Rosemont Subdivision located in the County of Sacramento, California, provided, however, that defendants shall not discontinue service to their utility customers until complainant shall have made the necessary arrangements to serve said customers, as required by paragraph 2 of this order.

2. Upon the effective date of this order and concurrently with compliance by defendants with the provisions of paragraph 1 of this order, complainant shall operate its public utility water system so as to distribute and sell water within Unit 5, in its entirety, and Unit 6 of the Rosemont Subdivision

and shall notify the Commission, in writing, of the date such service is first rendered to the public, within ten days thereafter.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of OCTOBER, 1961.

  
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President  
  
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Commissioners

We dissent.

The Commission's decision omits any reference to the Sacramento County Water Agency. That Agency has been empowered by the Legislature to render utility water service to the public in the area in question, and there is a substantial prospect that it will do so. We agree that the Agency's purported purchase of the system from respondents is not valid without our approval (Public Utilities Code Section 851); but the Commission customarily grants ex parte approval in such cases, and if the Superior Court finds that respondents do own the system, then Commission approval of a sale to the Agency is not likely to be more than a formality.

Citizens is not in possession of the distribution system, and this decision does not transfer possession to it. To comply with the Commission's order, therefore, Citizens will be forced to duplicate the system. If the Superior Court later holds that Citizens was the owner all along, Citizens will have two systems; and if respondents are found to be the owners, the Agency will presumably complete its purchase of the original system and offer competing service to Citizens' customers.

Under these circumstances, Citizens is almost certain to request a stay of today's order. It is difficult to imagine that we would refuse such a request or that we will actually require respondents meanwhile to cease and desist public utility service. Why not admit now that a reasonable solution of the controversy is not possible until the Superior Court adjudicates the title to the existing system? In the interim, we have authority to require continued water service by respondents, who are in possession of public utility property under our jurisdiction; that they have no certificate of public convenience and necessity does not relieve them of the duty to the public which they have voluntarily assumed.

George E. Deaver

Fredrick B. Hallock

October 17, 1961