

Decision No. 62707

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the practices, operations, contracts, rates, rules, facilities and service of E. A. REYNOLDS, dba HUMBOLDT HILL WATER SERVICE.

Case No. 7091

Application of ELBERT A. REYNOLDS to operate a water system in Humboldt Hill Subdivision in Humboldt County, California.

Application No. 34039

In the Matter of the Application of ELBERT A. REYNOLDS, doing business as Humboldt Hill Water Service, for a certificate of public convenience and necessity to operate a public utility water system and to establish rates therefor.

Application No. 43327

RONALD A. BROWN and MARY E. BROWN,
Complainants,

vs.

E. A. REYNOLDS, dba HUMBOLDT HILL
WATER SERVICE,

Defendant.

Case No. 6277

In the Matter of the Application of the HUMBOLDT HILL LAND DEVELOPMENT COMPANY, a California corporation, for a Certificate of Public Convenience and Necessity to operate a public utility water system and to establish rates therefor.

Application No. 43115

Sam J. Alexander and C. B. Weltner, for Humboldt Hill Land Development Company, applicant in Application No. 43115 and protestant in Application No. 43327.

Hilger & Thomas by Charles M. Thomas, for Humboldt Hill Water Service, applicant in Application No. 43327, protestant in Application No. 43115, respondent in Case No. 7091 and defendant in Case No. 6277.

James T. McCutcheon, for County Planning Commission; Thomas F. Pugh, for South Bay Elementary School; Vorace Tappan, for South Bay School District; interested parties.

Hugh N. Orr, for the Commission staff.

O P I N I O N

Public hearings were held in the matters here under consideration before Examiner Donald B. Jarvis at Eureka on May 24 and 25, 1961. The matters were submitted subject to the filing of briefs and certain late-filed exhibits. All of these documents have been received and the matters are now ready for decision.

The following matters were consolidated for hearing because interrelated subject matter is involved:

1. Application No. 43115 (amended). This is an application by the Humboldt Hill Land Development Company seeking a certificate of public convenience and necessity to operate a public utility water system near Eureka in a portion of the area known as Humboldt Hill.

2. Application No. 43327. This is an application by Elbert A. Reynolds, doing business as Humboldt Hill Water Service, who seeks a certificate of public convenience and necessity to operate a public utility water system in portions of the Humboldt Hill area including the area encompassed by Application No. 43115 (amended).

3. Case No. 6277. This case was reopened on the Commission's own motion to determine whether the defendant, Elbert A. Reynolds, had complied with the terms of the Order in Decision No. 59965 entered on April 19, 1960. Subsequent to the Order reopening the proceeding, Reynolds filed a petition in the matter seeking modification of Decision No. 59965.

4. Case No. 7091. This is an investigation on the Commission's own motion to determine whether: (a) the facilities owned or controlled by Elbert A. Reynolds are adequate to serve the needs of the public within the area he now serves or desires to serve, (b) Reynolds owns or will in the future own or control an adequate supply of water to supply present and future customers, and (c) the certificate of public convenience and necessity granted Reynolds in Decision No. 48424 should be revoked or suspended in whole or in part.

5. Application No. 34039. This proceeding was reopened to determine whether the certificate of public convenience and necessity granted to Reynolds in Decision No. 48424 had lapsed or been forfeited by failure to comply with its terms, and whether or not a portion of Decision No. 48424 should be rescinded or modified.

Humboldt Hill is located near Eureka. On January 23, 1953, Reynolds filed with this Commission Application No. 34039 which sought authority to operate a public utility water service in a portion of the Humboldt Hill area. On March 30, 1953, the Commission issued Decision No. 48424 which granted Reynolds the requested certificate of public convenience and necessity. The area which Reynolds was authorized to serve is known as Humboldt Hill Unit 1.

Decision No. 48424 also provided that:

"...the certificate of public convenience and necessity herein granted to Elbert A. Reynolds shall be subject to the condition that he shall not make extensions into other territory contiguous to any of the certificated area heretofore described without authority first having been obtained from this Commission."

On June 2, 1959, Ronald and Mary Brown filed Case No. 6277; a complaint against Reynolds which alleged that Reynolds was furnishing them water service (apparently in violation of Decision No. 48424). Various service complaints were recited. The Browns asked for an order which would prohibit Reynolds from expanding his service area except under the approval and supervision of this Commission and for an order which would give relief to their service complaints.

A public hearing was held in Case No. 6277 at Eureka. On April 19, 1960, the Commission filed Decision No. 59965. The decision contained findings and conclusions which, in part, stated that "Defendant has offered to, and continues to offer to render water service to residents of certain areas contiguous to Humboldt Hill subdivision, namely: County Club Estates and Parkwood Unit No. 2."; that " . . . service to complainants herein and other residents of Parkwood and to residents of Country Club Estates is unlawful."; that " . . . if the water supply were withdrawn from persons now being unlawfully served, such persons would be deprived of the use and enjoyment of their several properties without fault on their part."; that " . . . public convenience and necessity will require that defendant render water service to the residents of the following subdivisions in Humboldt County: Humboldt Hill (amended map); Humboldt Hill (Unit No. 2); Parkwood

Units Nos. 1, 2 and 3; and Country Club Estates."; that " . . . Elbert A. Reynolds cannot supply any new consumers without injuriously withdrawing the water supply, wholly or in part from those presently served, unless such supply is increased."; and that " . . . the requirements for water supply and storage set forth in the following order are reasonably necessary to provide an adequate water supply to residents of the area within which defendant holds himself out to provide water service."

The Order in Decision No. 59965 required Reynolds to seek authority within 30 days to serve the area he had dedicated service to but was illegally serving; file appropriate tariffs after filing the application for additional operating authority; construct, not later than June 1, 1960, a 350,000 gallon reservoir at a specified location; increase his water supply, not later than June 1, 1960, to at least 300 gallons per minute; designate a responsible representative to receive customer complaints and place the address and phone number of the representative on customer's bills; make reports to the Commission of actions taken to comply with the order within specified times; and not to extend the system to additional areas without further order of this Commission. The Order became final on May 9, 1960.

On February 1, 1961, the Humboldt Hill Land Development Company filed Application No. 43115 seeking a certificate of public convenience and necessity to serve portions of the Humboldt Hill area. The application averred in part that "The large majority of the area . . . [for which the certificate is sought] is owned by Humboldt Hill Land Development Company and Weltner Corp. as a joint venture. Water is at present being supplied to Parkwood

Unit No. 2 by Humboldt Hill Water Service, a utility owned by Mr. Elbert Reynolds, and is being supplied through lines installed completely at the expense of the applicant. Because of Mr. Reynold's consistent failure to comply with the Public Utility Commission directives to install adequate water storage facilities along with other items, Mr. Reynolds is now forbidden to expand any further. The result of this is that the applicant now finds itself in the position of being unable to continue subdividing and building without an approved water supply; therefore, since there is no other utility capable of adequately serving the area, the public convenience and necessity requires the certification of your applicant as a public utility water company to furnish water to the area for which certification is requested . . ."

Application No. 43115 was set for hearing on April 27, 1961. On April 11, 1961, this Commission entered Orders reopening Case No. 6277 and Application No. 34039 and commenced the investigation in Case No. 7091. On April 19, 1961, Reynolds filed Application No. 43327 which seeks authority to serve substantially the same area requested by Humboldt Hill Land Development Company in Application No. 43115. In addition, Reynolds also filed on April 19, 1961, a petition in Case No. 6277 seeking modification of portions of Decision No. 59965. In view of the interrelated subject matter in these proceedings, the hearing scheduled on Application No. 43115 was reset and all the matters were consolidated for hearing as above indicated.

Ordering Paragraph 1 of Decision No. 59965 directed Reynolds to file with this Commission, on or before May 19, 1960: (1) a request for removal of restriction, in his certificate of public convenience and necessity, against extending service into contiguous territory, and (2) a request for a certificate of public convenience and necessity to serve Humboldt Hill Unit 2, Parkwood Units 1, 2 and 3, and Country Club Estates. Reynolds did not comply with Ordering Paragraph 1 within the time specified. Reynolds had the ability to comply with Ordering Paragraph 1 within the specified period. On April 19, 1961, Reynolds filed Application No. 43327 which substantially complies with Ordering Paragraph 1.

Ordering Paragraph 2 of Decision No. 59965 directed Reynolds to make certain tariff filings. These filings were to apply to the areas for which Reynolds was to seek authority to serve pursuant to Ordering Paragraph 1. The Commission could not accept any tariff filings until Reynolds complied with Ordering Paragraph 1. Reynolds was unable to comply with Ordering Paragraph 2 because of his failure to comply with Ordering Paragraph 1.

Ordering Paragraph 3 of Decision No. 59965 required Reynolds to "construct and place in operation at the point in Humboldt Hill Subdivision indicated on the map, Exhibit No. 1, a storage reservoir of not less than 350,000 gallons capacity." The reservoir has never been built. Decision No. 59965 indicates that Ordering Paragraph 3 was based upon a proposal made by Reynolds, himself, at the public hearing on Case No. 6277.

Reynolds testified that he made unsuccessful attempts to secure bank financing for the water system which would have included money to construct the reservoir.

The record indicates that Reynolds had a net worth of approximately \$136,000 as of April 17, 1961. At various times during the hearing Reynolds indicated that he would use his funds in connection with specific improvements to the water system. These representations were made to induce the Commission to grant Application No. 43327. Reynolds thus takes the position that he can refer to his personal funds to induce Commission action but that he need not look to these funds in order to comply with the Commission's orders.

The record discloses that Reynolds never made a genuine effort to construct the reservoir. The Commission finds that Reynolds has not constructed the reservoir required by Ordering Paragraph 3 of Decision No. 59965 and that Reynolds had the ability to construct said reservoir.

Ordering Paragraph 4 of Decision No. 59965 required Reynolds to increase, not later than June 1, 1960, his water supply to at least 300 gallons per minute by the development or acquisition of additional wells or springs and connecting the additional water supply to the system.

The record discloses that Reynolds did not comply with the terms of Ordering Paragraph 4. At the date of hearing, Reynolds had a water supply of 230 gallons per minute. He had also acquired additional sources of water which were not connected to the system.

The Commission finds that Reynolds has not developed or acquired the water supply required by Ordering Paragraph 4 of Decision No. 59965 and that Reynolds had the ability to develop or acquire such water supply.

Ordering Paragraph 5 of Decision No. 59965 required Reynolds to report to the Commission, within a specified time after completion, the fact of completion of the reservoir required by Ordering Paragraph 3 and the fact of the acquisition or development of the additional water supply required by Ordering Paragraph 4. Reynolds has not complied with Ordering Paragraph 5 because of his failure to comply with Ordering Paragraphs 3 and 4.

Ordering Paragraph 6 of Decision No. 59965 required Reynolds, on or before June 8, 1960, to designate a responsible representative located in or near the service area to whom service complaints could be reported, and to put the representative's address and phone number on his bills. Reynolds was also required to notify the Commission of the appointment of the representative. It appears that Reynolds timely appointed the representative and included his address and phone number on billings, but Reynolds did not notify the Commission of this prior to the hearing.

Ordering Paragraph 7 of Decision No. 59965 directed Reynolds to "cease and desist from making any extensions of his water system into any additional areas other than Humboldt Hill (Unit No.2); Parkwood Units Nos. 1, 2 and 3; and Country Club Estates, without further order of this Commission."

The Humboldt Hill Land Development Company (the applicant in Application No. 43115 hereinafter considered) is part of a joint venture which is developing the Parkwood subdivision. Subsequent to the entry of Decision No. 59965, development was commenced on Units 4 and 5 of the Parkwood subdivision, and the developers connected the water system to Reynolds' existing system. Reynolds had knowledge of the connection and was advised by representatives

of this Commission that his remedy was to have the illegal extension enjoined by the Superior Court. Reynolds took no action and Parkwood Units 4 and 5 are presently connected to his system. The Commission finds that Reynolds did not comply with Ordering Paragraph 7 of Decision No. 59965 and that he had the ability to comply with said paragraph.

Reynolds has not complied with a substantial portion of the Order in Decision No. 59965. Where he has complied the compliance has been belated. In determining what action to take with respect to such noncompliance and belated compliance, the Commission has looked to the impact on the customers in the service area and affected subdividers as well as admonitions previously given Reynolds.

In Decision No. 59965 the Commission in considering the matters to be included in the order stated in part as follows:

"The whole testimony of defendant with respect to supply and storage is vague and unsatisfactory. Yet the solution of the supply problem is easy. The development of one well or certain springs on land owned by defendant plus the proposed reservoir would meet the major requirements. Certain re-piping is also needed but is less imperative than the supply procedure.

"What was said in the last paragraph has been known for some time. No action however has been taken. While the long wait for Exhibit No. 1 was going on, the major ills of this water system could have been cured but the Commission has not been advised of any such action.

"The delay in seeking relief from the certificate restriction, in filing exhibits and in getting started with improvements known to be needed, suggests negligence and procrastination. More than anything else, these are the source of trouble in Humboldt Hill. No physical or financial problems exist, so far as the Commission is advised, which would prevent solutions. Nevertheless, actions that should have been taken have not been taken for months or even for years. The illegality of the water system's service to Parkwood could have easily been cured.

"It is clearly the defendant's duty to either manage this system efficiently or put some one else in charge of it. The Commission has no intention of allowing defendant to go on ignoring its orders as he has in the past. The order following will require the installation of an adequate storage facility and an increase in water supply. The Commission expects that these orders will be complied with promptly."

The record shows the result of Reynolds noncompliance and belated compliance with Decision No. 59965 has been to have a system with low water pressure adversely affecting its consumers including the Humboldt Fire District No. 1. For example, the Chief of the fire district testified that he had participated in making various pressure tests on hydrants connected to Reynolds' system; that most of the time the flow pressure was so low that it was not recordable; and that if a fire of any magnitude occurs in the area, the firemen have instructions to refill their trucks at a hydrant three miles distant rather than rely on the hydrants in Reynolds' system.

The Commission is mindful of Reynolds' request, hereinafter considered, to modify portions of the Order in Decision No. 59965. However, regardless of what action the Commission may take upon this request, Reynolds' failure to comply with Decision No. 59965 has adversely affected the consumers in the area and has been in violation of the orders of this Commission.

The Commission finds that Elbert A. Reynolds is in contempt of this Commission and should be fined the sum of Five Hundred Dollars (\$500.00).

There is also pending before the Commission the conflicting applications of Reynolds and the Humboldt Hill Land Development Company. At the hearing the Commission permitted both applications

to be amended to restrict the requested service areas.

The Humboldt Hill Land Development Company application, as amended, seeks a certificate of public convenience and necessity to serve Units 2, 3, 4, 5 and 6 of the Parkwood subdivision as well as a few individual customers. The Humboldt Hill Land Development Company is developing the Parkwood subdivision. The primary reason for prosecuting the application is that the Humboldt Hill Land Development Company has been unable to continue developing the Parkwood subdivision because of Reynolds' failure to comply with the orders of this Commission.

The Humboldt Hill Land Development Company proposes to utilize the distribution facilities it has already constructed in the Parkwood subdivision and to add to these facilities if necessary. The proposed system would have 205 service connections when fully developed. It would be largely surrounded by the certificated areas of other public utility water companies. The Humboldt Hill Land Development Company proposes to utilize a well which has not been used for many years as its source of water supply. Informal tests indicate the capacity of the well to be 60 gallons per minute. The quality of the water has not been tested recently. The Humboldt Hill Land Development Company proposes to utilize as part of its proposed water system a 650,000 gallon reservoir which is partially completed.

The Humboldt Hill Land Development Company proposes to confine its activities to operating the proposed water system and leave the development of the Parkwood subdivision to other entities. It proposes to initially finance its activities by borrowing \$30,000 from some of its principals.

The Reynolds application, as amended, seeks authority to serve Humboldt Hill Units 2 and 3, Country Club Estates and Units Nos. 2, 3, 4, 5 and 6 of the Parkwood subdivision as well as certain small fringe areas.

Reynolds testified that his son-in-law, James J. Worthington, was presently managing the utility; that Worthington had acquired, through a stock purchase control of two proximately located public utility water systems, namely Coast Air Electronics doing business as Fields Landing Water Works and Sea-View Manor Water Service; that Reynolds and Worthington proposed to eventually merge these utilities into one system; that if the three systems were consolidated the resulting utility would have approximately 710 customers; that Reynolds had approached the Small Business Administration for a loan for the proposed merged system, and there is a possibility that such a loan might be granted; and that Reynolds would use his personal funds to make certain improvements in the system.

Reynolds proposed to install a 67,000-gallon storage tank in his present system, which would give it a total storage capacity of 85,000 gallons. He asks to be relieved of the requirement, in Decision No. 59965, to construct a 350,000-gallon reservoir and to substitute the 67,000-gallon storage tank instead.^{1/}

Reynolds proposes to acquire the distribution system in the requested service area under the provisions of the main extension rule.

^{1/} Reynolds also seeks alternate authority to acquire the 650,000-gallon reservoir which has been partially constructed by the Humboldt Hill Land Development Company. This storage capacity would be in excess of that ordered in Decision No. 59965, although at a different location. There is nothing in the record, aside from articulated hopes, which would indicate that Reynolds could acquire this reservoir. Since the request is in the alternative the Commission would, in any event, look to the lowest requirement portion of it.

The record discloses that Reynolds has acquired certain springs which have not been connected to the system. If these springs are connected the system will have a capacity of 340 gallons per minute.

Reynolds presently serves 202 customers. Most of the system is metered. If Application No. 43327 be granted the system would have approximately 418 customers when it is fully developed. If Reynolds complies with the orders of this Commission, he will have a water supply adequate to serve the area.

Reynolds also seeks to be relieved of the requirement of Decision No. 59965 to serve Parkwood Unit 1. The record discloses that this unit did not develop as anticipated; that there are only 7 homes in the unit; that Unit 1 is located adjacent to the Fields Landing system; that the Fields Landing system has offered to serve the area; and that it would be more economical if the Fields Landing system rendered such service.

The Commission has carefully considered the applications of Reynolds and the Humboldt Hill Land Development Company and Reynolds' request for modification of Decision No. 59965.

The water system proposed by the Humboldt Hill Land Development Company is an uneconomical unit. It is confined to a limited area. The quality and quantity of its proposed water supply have not been definitely established. The system would be established for implementing the development of the Parkwood subdivision. After the subdivision is completed there would be little incentive for the subdividers to properly maintain and operate it.

The Commission is of the opinion that it would not be in the public interest to grant the Humboldt Hill Land Development Company application at this time. The Commission is mindful of the

fact that Reynolds has not properly operated his system and failed to comply with orders of this Commission. However, the public interest would appear to be best served by having, as proposed by Reynolds and Worthington, the Reynolds' system combined with the Fields Landing and Sea-View Manor systems. This will create a water system which can better meet the needs of the public in the area. In addition, the Commission is prepared to insure compliance with its orders by instituting further proceedings against Reynolds if he continues to disobey its orders. Reynolds is hereby placed on notice that violations of Commission orders, in addition to being contempts of the Commission, are misdemeanors and are also subject to penalties. Where there is a continuing violation, each day's continuance is a separate offense. Each offense is subject to a penalty of not less than \$500 nor more than \$2,000. (Public Utilities Code, Sections 2101 et seq.) If Reynolds still continues to disobey the Commission's orders in the face of additional contempt, penalty or misdemeanor proceedings, the Humboldt Hill Land Development Company may renew its application for operating authority in the area.

The Commission finds that Reynolds should be authorized to serve the service area requested in Application No. 43327 subject to the terms and conditions hereinafter set forth.

The Commission finds that Ordering Paragraph 3 of Decision No. 59965 should not be modified with respect to storage capacity, but that it should be modified with respect to the time for compliance and requirement for a reservoir at a particular site. The order herein will provide that the system shall have a 350,000-gallon storage capacity at suitable sites.

Reynolds' request to be relieved of the obligation contained in Ordering Paragraph 1 of Decision No. 59965 to serve Parkwood Unit 1 should be granted. The Fields Landing system will be able to serve this area more economically until the systems are merged.

The Commission finds that Reynolds should be compelled to comply with Ordering Paragraph 4 of Decision No. 59965 within 30 days and increase his water supply to at least 300 gallons per minute.

The Commission finds that none of Reynolds' operating authority should be revoked at this time.

O R D E R

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

IT IS ORDERED that:

1. Elbert A. Reynolds is in contempt of this Commission and fined the sum of Five Hundred Dollars (\$500.00).
2. Elbert A. Reynolds is directed to, within thirty days after the effective date of this order, increase the water supply of his water system to yield not less than a total of 300 gallons per minute and within ten days thereafter report his compliance herewith to the Commission in writing.
3. Ordering Paragraph 3 of Decision No. 59965 is deleted and in its stead the following is substituted: Within six months from the effective date of this order Elbert A. Reynolds shall construct or acquire and place in operation within his water system storage facilities of not less than 350,000-gallon capacity. Elbert A. Reynolds shall file with the Commission every thirty days commencing with the effective date of this order a written report of the progress made in compliance with the requirements of this paragraph.
4. Elbert A. Reynolds shall forthwith apply to the public health authority having jurisdiction to issue water supply permits, for a water supply permit covering all sources of his water supply.

5. A certificate of public convenience and necessity is hereby granted to Elbert A. Reynolds to construct and operate a public utility water system near Eureka in Humboldt County in the areas known as Parkwood Units 2, 3, 4, 5, 6; Humboldt Hill Units 2, 3; Country Club Estates and certain fringe areas proximately located near Humboldt Hill Units 1, 2 and Country Club Estates more particularly set forth in late-filed Exhibit 13 in Application No. 43327 and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 4 of this order shall not become effective until Elbert A. Reynolds and James J. Worthington file with this Commission an application seeking authority to merge Reynolds' water system with the Fields Landing Water Works and Sea-View Manor Water system.

7.(a) Elbert A. Reynolds is authorized to apply, after the effective date of the certificate of public convenience and necessity herein granted, his presently effective tariff rates in the areas herein certificated.

(b) Within thirty days after the effective date of this order Elbert A. Reynolds shall revise, in accordance with the requirements of General Order No. 96 and in a manner acceptable to this Commission, such of his tariff schedules, including a tariff service area map, as are necessary to provide for the application of his tariff schedules to the areas herein certificated. Such tariff sheets shall become effective upon five days' notice to the Commission and to the public after such filing.

8. Elbert A. Reynolds shall file, within thirty days after the effective date of this order, four copies of a comprehensive map, drawn to an indicated scale not smaller than 400 feet to the inch, delineating by appropriate markings the tracts of land and territory served; the principal water production, storage and distribution facilities; and the location of the various water system properties of Elbert A. Reynolds.

9. Elbert A. Reynolds shall determine the accruals for depreciation by dividing the original cost of the utility plant less estimated future net salvage less depreciation reserve by the estimated remaining life of the plant. Applicant shall review the accruals as of January 1st of the year following the date service is first rendered to the public under the rates and rules authorized herein and thereafter when major changes in utility plant composition occur and at intervals of not more than five years. Results of these reviews shall be submitted to this Commission.

10. Elbert A. Reynolds shall not extend his water system outside the areas certificated herein and in Decision No. 48424, unless and until authorized by a subsequent order of this Commission.

11. Application No. 43115 is denied without prejudice.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Elbert A. Reynolds, and this order shall be effective twenty days after the date of said service.

Dated at San Francisco, California, this 20th day of October, 1961.

Ernest B. Page
President
Arthur E. Marshall
L. J. Fox
George T. Hoover

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.