

ORIGINALDecision No. 62742

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HULBURD GROVE IMPROVEMENT ASSOCIATION,)

Complainant,)

vs.)

ESTES INVESTMENTS, INC., NIEUPORT B.
ESTES, LOTTIE W. ESTES, KATHLEEN
McCARDLE, EDGAR L. NORRIS, VIRGINIA
L. NORRIS, MAYFAIR HOTEL COMPANY,
NIEL PERKINS, and JOHN DOE,)

Defendants.)

Case No. 7090
(Filed March 31, 1961)P. S. Treiber, for complainant.William Schofield, for defendants.R. H. Knaggs, for the Commission staff.INTERIM OPINION

Public hearing was held in San Diego before Examiner Rowe on August 15, 1961.

Appearance was made for all the defendants. However, since no reference was made to John Doe and since no evidence in any way identified him, he will be considered a fictitious defendant as to whom dismissal is entered.

Counsel for defendants stated at the time he entered his appearance that he would stipulate that defendant Mayfair Hotel Company owned the water system, had been and was operating it as a public utility and that it was subject to supervision by this Commission. The offered stipulation was not accepted by complainant as it did not satisfactorily dispose of the title of any of the other defendants nor indicate a reasonable basis for relieving them from their public utility obligations.

The only evidence submitted was on behalf of complainant. A map was introduced which showed the location of two wells and approximately ten thousand feet of 2-inch mains and about 700 feet of 4-inch mains, in the community of Mulburd Grove near Descanso, California. A large portion of the 2-inch pipe has been placed in River Drive and Tanglewood Lane east of Sweetwater River. This pipe crosses the river and is laid out to serve in what appears to be the downtown portion of the community. Greater detail of the system is not shown as the witness stated that he had prepared this map largely from personal memory and from the general reputation of the community. The system provides water service to about 51 customers.

This witness identified Exhibit No. 4 as a contract between E. & P. Industrial Investment Co., and Lottie W. Estes as sellers and Mayfair Hotel Company as buyer, whereby sellers purport to sell and convey the Mulburd Grove Water Company, including all pipelines, distribution facilities, three pumps and two tanks to buyer. Sellers agree also to quitclaim to buyer the property known as River Road, subject to easements of record and the right to use the road. Three existing water wells together with surrounding land are leased to buyer for a 10-year term with an option to renew for an additional ten years. Sellers in this document reserve the right to sufficient water to supply their lodge property free of charge. For this, buyer agrees to pay \$1,200 on June 15, 1961, and thereafter pay within three months of the close of each accounting year one half of the net profits derived from the water company.

A civil engineer testified that the system produced only five pounds of pressure and he joined with another landowner in generally describing the service as very poor. The secretary of

complainant testified that the flat rate monthly charges imposed by the defendants had been raised progressively from \$2.00 to \$12.00. The complaint alleges that the new owners had raised the monthly charges from \$4.00 to \$8.25.

From the evidence of record the Commission finds that Estes Investments, Inc., Nieuport B. Estes, Lottie W. Estes, Kathleen McCardle, Edgar L. Norris, Virginia L. Norris, Mayfair Hotel Company and Niel Perkins have been and are acting as a public utility and own, control, operate and manage the water system on the property known as Hulburt Grove Tracts Nos. 1 and 2 consisting of approximately 64 half-acre lots on the northeast side of Sweetwater River and extending across said river and serving an area west of said river all lying within Section 13, T15S, R3E, San Bernardino Base and Meridian; and that from said water system said defendants sell, lease, rent and deliver water to members of Hulburt Grove Improvement Association, to Donal V. Perkins, to P. S. Treiber, to William B. Clark, Willis Faddis and to many others in and near the town of Hulburt Grove, California. It is found that said defendants as a water company have reached the limit of their capacity to supply water and that no further consumers of water can be supplied from their system without injuriously withdrawing the supply wholly or in part from those who have heretofore been supplied by them.

It is further found that defendants have increased rates and charges for water from \$4.00 to \$8.25 per month without the showing required by Section 454 of the Public Utilities Code that such increase is justified. Accordingly, the ensuing order will require that defendants cease and desist from collecting rates and charges for water in any amount exceeding \$4.00 per month, and

will require that defendants file a tariff in conformance with this finding.

It should be observed at this point that the aforesaid finding that the defendants have been acting as a public utility should not be construed as conferring any rights. From the evidence it appears that the system is inadequate to serve its present customers. The evidence, furthermore, instead of indicating adequate title in defendant Mayfair Hotel Company, suggests the reverse. The lease contract above referred to also contains provisions giving the lessor rights to service without charge, thereby amounting to an illegal preference. Before any of the defendants are in a position to receive a certificate of public convenience and necessity there must be a sufficient showing that any applicant will own, construct and operate an adequate water utility, and that it has sufficient financial resources and is otherwise capable of successfully meeting its public utility obligations. The boundaries of the proposed service area must also be definitely stated.

INTERIM ORDER

Complaint having been filed, public hearing having been held and based upon the above findings,

IT IS HEREBY ORDERED that Estes Investments, Inc., Nieuport B. Estes, Lottie W. Estes, Kathleen McCardle, Edgar L. Norris, Virginia L. Norris, Mayfair Hotel Company and Niel Perkins, owning, controlling, operating and managing the Hulburd Grove water system, are declared to be a public utility subject to the jurisdiction of this Commission and to the applicable provisions of law.

IT IS HEREBY FURTHER ORDERED that:

1. Said defendants shall cease and desist from imposing and collecting rates and charges for the delivery of water from their public utility water system in any amount in excess of the rates set forth in Appendix A attached hereto.

2. Within thirty days after the effective date of this order, said defendants shall file in quadruplicate with this Commission, the rates set forth in Appendix A attached to this order, together with rules and tariff service area map acceptable to this Commission and in accordance with the requirements of General Order No. 96. Such rates, rules and tariff service area map shall become effective upon five days' notice to the Commission and to the public after filing as hereinabove provided.

3. Said defendants shall cease and desist from furnishing or delivering water to any new or additional customers not served by them as of the date of this order, unless and until they jointly or individually shall first apply for and secure from this Commission a certificate that public convenience and necessity require such service.

4. Within ten days after the effective date of this order, said defendants shall file with this Commission a certified statement showing the names of all customers and the addresses of their respective premises being served as of the date of this order. ✓

5. Within sixty days after the effective date of this order, said defendants shall file with this Commission the plans, estimates of construction costs and a program acceptable to this Commission for installation of improvements for the existing water system designed to provide continuous service to all customers in accordance with the requirements of General Order No. 103, said

plans, estimates of costs and program to be prepared by a registered professional engineer in the branch of Civil Engineering.

6. Said defendants shall file with this Commission, within ninety days after the effective date of this order, a report setting forth in detail a determination of the original cost, estimated if not known (historical cost appraisal), of the properties used and useful in the public service, and also the depreciation reserve requirement applicable to such properties. The report shall designate which items are supported by vouchers or other like documentary evidence and which items are estimated, and shall show the basis upon which any such estimates were made.

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

Dated at San Francisco, California, this
31st day of OCTOBER, 1961.

W. D. L. [Signature]
President
[Signature]
[Signature]
George F. Grover
Fredrick B. Halblom
Commissioners

APPENDIX A

Schedule No. 2

FLAT RATE SERVICE

APPLICABILITY

Applicable to all flat rate water service.

TERRITORY

The area known as Hulburd Grove, located near Descanso, San Diego County.

RATES

	<u>Per Service Connection</u> <u>Per Month</u>
For a single family residential unit	\$ 4.00
a. For each additional residential unit served from the same service connection	2.00