

ORIGINAL

Decision No. 62792

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EDWIGUES L. TORRES, GEORGE MOSQUEDA,
JOHN CASTANEDA, and DOE'S ONE through
NINETY-NINE,

Complainants,

vs.

ANTON BONDESON, DOE B, DOE C, DOE D,
DOE COMPANY and DOE CORPORATION,

Defendants.

Case No. 7119

E. Day Carman, for complainants.
Don A. Tambling, for Anton Bondesen.
John D. Reader, for the Commission staff.

O P I N I O N

This complaint filed May 16, 1961, as amended, alleges that defendant Bondesen¹ has been operating a public utility water company since 1947 supplying water to complainants and others for which they have been paying on a monthly or yearly basis, but that on April 10, 1961, this water service was arbitrarily cut off from these complainants although there is sufficient water available to continue such service. The Commission is asked to adjudge defendant to be a water utility under its control and to order defendant to immediately resume water service to complainants.

Public hearing was held on August 22, 1961, in San Jose before Examiner Rowe. The matter was submitted on said date with the right granted to the parties to file concurrent briefs within ten days. No briefs have been filed, the time therefor has expired and this case is ready for decision.

¹ Incorrectly shown as "Bondenson" in the complaint.

The record, aside from the testimony of the staff witness, includes only the testimony of complainant Torres and defendant Bondesen. The former testified that subsequent to his purchase of his residence in this area he had regularly received unmetered service from defendant's water pipe until April, 1961, when the water was turned off although he was not delinquent in the monthly charge. Complainant asserted that service was continued at that time to some fourteen families and claimed discrimination against himself and others because of their Mexican descent. However, he admitted that several others, including Mexican-Americans, were continuing to receive service.

Defendant testified that he had a well on his property and that as he sold various parcels he agreed to supply water for two or three years until another supply was obtained. He stated that he never agreed to furnish water on a continuing basis, although he had been serving these parcels for a number of years. He indicated that he had discontinued the service to complainant and some of the others at the insistence of local authorities because of the condition of their own service pipes which had no shutoff valves and were contaminating the entire system.

Clear proof of an unequivocal intention to dedicate property to a public use is required before that property may be declared a public utility (Klatt v. Railroad Commission (1923) 192 Cal. 689). Here the evidence discloses no such intention or conduct from which a dedication of defendant's water supply to the public use can be inferred. The evidence discloses, at best, that defendant sold water used primarily for domestic purposes by himself as an accommodation to a few neighbors to whom no other water supply was equally available.

From the evidence of record the Commission finds and concludes:

1. That defendant owns a water supply primarily used for domestic or irrigation purposes by himself.

2. That defendant as an accommodation sold a portion of such water supply to some of his neighbors to whom no other supply of water for domestic or irrigation purposes was equally available.

3. That such water supply of defendant was not otherwise dedicated to public use.

4. That in consonance with the provisions of Section 2704 of the Public Utilities Code the defendant is not subject to the jurisdiction, control and regulation of this Commission.

5. That the relief requested by this complaint should be denied and such complaint dismissed.

O R D E R

Complaint having been filed, public hearing having been held, the matter considered by the Commission and being predicated upon the record, findings and conclusions herein,

IT IS ORDERED that Case No.7119 be and it is dismissed.

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

Dated at San Francisco, California, this 14th day of November, 1961.

[Signature]
President

[Signature]

George L. Grover

Commissioners

*I dissent.
Peter C. [Signature]*