

ORIGINAL

Decision No. 65190

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALDERCROFT HEIGHTS COMPANY,
 a corporation,
 Complainant,
 vs.
 O. L. THOMASEN,
 Defendant.

Case No. 7436

Earl A. LaPorte, for complainant.Robert M. Davies, for defendant.John D. Reader, for the Commission staff.O P I N I O N

Aldercroft Heights Company, a certificated public utility water company serving about 103 customers in the hillside community of Aldercroft Heights, near Los Gatos, alleges, in a complaint filed September 7, 1962, that defendant, a former customer, is unlawfully operating a public utility water system by supplying water to a neighbor, Semple (also a former customer), from a well developed and maintained by both on defendant's land. Complainant seeks an order requiring defendant to cease supplying water to premises other than his own, or, in the alternative, for permanent exclusion of the premises of both defendant and Semple from complainant's service area.

Defendant denies the material allegations of the complaint and alleges, as a separate defense, that he and Semple agreed to share the labor and expense of development, operation and maintenance of the

well pursuant to an oral understanding, to be reduced to writing and recorded, whereby Semple and his wife would have the right to draw one-half of the water from the well, such right to run with and be appurtenant to the Semples' land.

The case was submitted at the conclusion of a public hearing held, after due notice, on February 7, 1963 at Los Gatos before Examiner Gregory.

The only issues are: (1) the public utility status of defendant, and (2) a subsidiary issue related to complainant's alternative request for permanent exclusion of the two premises from its service area whether or not defendant is found to have utility status.

The record reveals that the Aldercroft Heights system has suffered recurring shortages in its water supply for many years, especially during the summer months. The service area slopes steeply upward from Los Gatos Creek, from which the company pumps its limited entitlement of water into a number of reservoirs from which, along with water from springs, it is distributed to the consumers. The company is currently engaged in a program designed to increase storage and distribution capacity and to improve the service generally.

During April, 1960, John L. Semple and his wife acquired the premises at 21397 Aldercroft Heights Road and became customers of Aldercroft Heights Company. The Semples used water at the rate of about 900 cubic feet monthly. Defendant O. L. Thomasen and his wife had owned and occupied the adjoining premises at 21422 Roaring Water Way for some 17 years and were also customers of the utility. Thomasen used about 800-1,000 cubic feet monthly during summer and about 500-600 cubic feet monthly during winter, but had experienced

recurring water shortages, especially during recent dry years. The shortages sometimes extended from May to September. At times, he was entirely without water. The Semples had also suffered shortages since their arrival at Aldercroft Heights.

During a water shortage in the summer of 1961, Semple approached Thomasen with the suggestion that they develop a well "to lick the problem of water shortages", as Thomasen phrased it. Both contributed funds and labor to the project, which was completed and in operation by approximately July 1, 1962, at a total cost of about \$900. The system consists of a well on Thomasen's land, a 3,500-gallon storage tank, also on Thomasen's land but near the boundary line dividing his land from Semple's, and an electric pump, motor and necessary pipes and fittings to supply water to both premises. Neither Thomasen nor Semple, at any time, offered to serve others from their well.

On July 6, 1962, Thomasen and Semple notified the utility, in writing, to cease delivering water to their premises as of the date of receipt of the notice, and to remove its meters from their premises. The utility delivered no water to either after August 1, 1962 and removed the meter for Semple's service about October 1, 1962. The meter for Thomasen's service was left in place.

On December 18, 1962, Thomasen and Semple, and their wives, executed an agreement which was recorded on December 24, 1962, in Santa Clara County. The agreement provides that Semple and his wife shall have the right to one-half the water from the water system located on the Thomasens' property and that the Thomasens and Semples each covenant for themselves, their heirs, devisees, legatees and

assigns that they will pay one-half of the cost of repairing, maintaining and replacing the water system, including the pipes, pump, motor and storage tank, and that such covenant shall run with and be an obligation of the owners of the respective properties, which are described in the agreement. The agreement then provides that the Thomasens grant to the Semples an undivided one-half of the water produced from the well and water system and an easement and right to share in the operation and maintenance of the system and that such rights shall be appurtenant to and run with the Semples' land.

On December 24, 1962, the Semples moved away from Aldercroft Heights and put their property up for sale. The Thomasens, as of the date of hearing in this case, were continuing to use the water from their well. The record indicates that the well has received a favorable report by local public health authorities.

Thomasen testified that he would like to have the utility's service available on a standby basis by paying a monthly "standby" charge of \$2. The utility, however, does not offer standby service in its tariffs but it does have a minimum monthly metered service charge of \$5. The company does not have facilities on Thomasen's land which would require maintenance. Its program, however, for replacement of small-size distribution mains with larger mains and for increasing the system's storage capacity would, presumably, have to take into account the total existing and potential demands on the system in light of the available supply of water. Hence, the question of whether the two premises are, or are not, to remain in the service area is of some significance.

We are unable to find, on the facts revealed by this record, that Thomasen and his wife have dedicated their water supply or facilities to the general public so as to impose upon them the status of a public utility. Rather, we are of the opinion, and find, that the arrangements for a water supply concluded by the Thomasens and the Semples, as implemented by their agreement of December 18, 1962, fall within the class of activities intended to be exempted from regulation by this Commission pursuant to the provisions of Section 2704 of the Public Utilities Code of California.

On the question of exclusion of the two premises from the utility's service area, we note that the Commission's General Order No. 96-A provides, in Section XIV, that no public utility of a class therein specified (which includes water utilities) may withdraw from public service in any portion of the territory served without authority from the Commission. While it is possible to consider complainant's alternative proposal as a request for such authority, we do not believe that the facts disclosed by this record warrant its issuance at this time. This record does not reveal that the Thomasens, especially if faced with a shortage in their well water supply, would be unwilling to become customers of the utility again, under reasonable conditions of service, or would, even now, object to paying the minimum monthly metered service charge of \$5 as a condition to being reinstated as customers. The Semples were not made defendants herein, and they were not at the hearing.

O R D E R

IT IS ORDERED that:

1. The complaint herein is dismissed.
2. The alternative relief proposed by complainant herein, for exclusion from its service territory of the premises at 21422 Roaring Water Way and 21397 Aldercroft Heights Road, both in Aldercroft Heights, Santa Clara County, is denied.

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

Dated at San Francisco, California, this 9th day of APRIL, 1963.

George H. Grover
President

Carl P. Mitchell

Wesley W. King

Fredrick B. Holbrook

J. William Mc Burnett
Commissioners