

ORIGINAL

Decision No. 65895

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
FRANK ASTARINHART, as Judgment
Purchaser at Sheriff's Sale of all
interest of MANUEL MADRID and
DOLORES MADRID, doing business as
WHITENER HEIGHTS WATER COMPANY, a
public utility, for an order
authorizing applicant to operate
said company.

Application No. 44838

In the Matter of the Application of
ARAM ATMAJIAN, Beneficiary under a
certain deed of trust, and mortgagee
in a certain chattel mortgage,
executed by MANUEL MADRID and DOLORES
MADRID, doing business as WHITENER
HEIGHTS WATER COMPANY, for an order
authorizing applicant to carry out
the terms of a promissory note, deed
of trust and mortgage and to operate
said company.

Application No. 44024
(Amended)

FRANK ASTARINHART,

Complainant,

vs.

WHITENER HEIGHTS WATER CO., a
public utility; MANUEL MADRID,
DOLORES MADRID and LYDIA MADRID;
A. ATMAJIAN; HOME TITLE COMPANY,
a corporation; JOHN DOE, JANE DOE,
WHITE COMPANY, BLACK CORPORATION,

Defendants.

Case No. 7471

James C. Janjigian, for Frank Astarinhart, applicant
in Application No. 44838, protestant in Application
No. 44024 and complainant in Case No. 7471.

Clifton G. Harris of Staniford, Harris & Loomis, for
A. Atmajian, applicant in Application No. 44024,
protestant in Application No. 44838 and defendant
in Case No. 7471.

G. B. Manson and C. A. Jones, for Fresno County Health
Department, interested party.

John D. Reader and Sidney J. Webb, for the Commission
staff.

O P I N I O N

By their respective applications Aram Atmajian and Frank Astarinhart are in effect requesting that the certificate of public convenience and necessity acquired by Manuel Madrid and Dolores Madrid to operate a public utility water system in Fresno County be revoked on the ground of abandonment and that a certificate be issued to one of them.

A public hearing was held before Examiner Daly on April 16, 1963 at Fresno and the matters were submitted subject to receipt of Exhibits 15, 20, 22, 23 and 24, the deposition of Judge John Traber, the cross-interrogatories and answers thereto of applicant Frank Astarinhart, and concurrent briefs all to be filed within twenty days. At the request of counsel for applicant Atmajian the time was extended to May 21, 1963. Only Exhibit 22, the financial statement of applicant Atmajian, the briefs, the cross-interrogatories of applicant Astarinhart and the answers thereto were filed.

By Decision No. 58950 dated September 1, 1959, the Commission authorized Mrs. B. A. Whitener to sell and Mr. and Mrs. Manuel Madrid to purchase a water system known as Whitener Heights Water Company, which is located approximately three-quarters of a mile west of the City of Parlier. The agreed consideration was \$2,750. The Whitener Heights Subdivision was recorded with the office of the Recorder of Fresno County as Tract No. 1014. Located on Block 3 of said subdivision are the well and storage tank which serve the Whitener Heights Water Company.

According to the record, Manuel Madrid and Dolores Madrid on October 12, 1959, obtained from applicant Atmajian a loan of \$2,700, which was secured by a deed of trust upon Block 3 of Tract

No. 1014 and a chattel mortgage upon the well, pump, electric motor, storage tank, pipe and fire plugs. The deed of trust and chattel mortgage were recorded on November 20, 1959. At the time the loan was negotiated applicant Atmajian testified that he acted in good faith and was unaware that the Commission's authority to encumber public utility property is required by Section 851 of the Public Utilities Code.

On December 19, 1961, applicant Atmajian filed his application with this Commission and alleged that he had recently been informed as to the need for Commission approval. He further alleged that Mr. and Mrs. Madrid had defaulted on the loan and he requested the Commission to approve the loan and authorize him to operate the system. On August 29, 1962, applicant foreclosed on the deed of trust and chattel mortgage.

Applicant Astarinhart claims an interest pursuant to a judgment obtained by San Joaquin Blocklite, Inc., and San Joaquin Blocklite, Inc., doing business as "Blocklite", against Manuel Madrid and Dolores Madrid. An abstract of said judgment was recorded on April 12, 1959 as a lien against various parcels of real property in the name of Mr. and Mrs. Madrid. The judgment was subsequently assigned^{1/} to applicant Astarinhart, who on December 18, 1961 caused the realty (Block 3 of Tract No. 1014) to be sold at Sheriff's Sale. According to Exhibit 8, however, said property (Block 3 of Tract No. 1014) was released from the lien of said judgment on November 13, 1959 because of partial satisfaction of the judgment. The release was recorded on November 20, 1959, the same day that applicant Atmajian recorded his deed of trust and chattel mortgage affecting the same property.

^{1/} The judgment was assigned to applicant Astarinhart on October 11, 1961, for the sum of \$900.

The Whitener Heights Water Company actually consists of two separate systems. One is in the Whitener Heights Tract, which the Madrids acquired from Mrs. Whitener and the other is in the Bise Tract, a development adjacent to Whitener Heights, but partially separated therefrom by a third development known as the Cox Tract. Both systems have their own well, storage systems, pump and distribution systems. Together they serve approximately 84 residential customers on a flat rate basis. The real property in the Bise Tract, upon which is located the well and storage system, has also been acquired by applicant Atmajian pursuant to a judgment lien and Sheriff's Sale.

The record indicates that the Madrids abandoned the operation many months ago and despite the efforts of the Commission's staff, the Fresno County Health Department, the Sheriff's office and creditors they have not been located. Notice of hearing was sent by registered mail to their last-known address and was returned. Notice of hearing was published in papers of general circulation located in Fresno and Reedley. No appearance was made by the Madrids or on their behalf.

Following the abandonment of the system by the Madrids and through the efforts of Judge Traber, acting in a nonjudicial capacity, two customers were selected to make collections and deposit them in a trust account, with the First National Bank in Parlier, from which all bills of the water system are paid.

A representative of the Fresno County Health Department testified that the Madrids never obtained a health permit and that recent tests show the water to have a rather high bacteria count. He recommended that both systems be interconnected, dead ends eliminated and the systems made circulatory.

A Commission engineer testified that the Madrids filed incomplete annual reports for the years 1958, 1961 and 1962, and no reports for other years. He further testified that the systems failed to comply with the requirements of General Order No. 103. He also recommended that the systems be interconnected by an extension along Whitener Avenue for a distance of 220 feet. He was of the opinion that the present pumps and storage facilities would adequately meet the necessary requirements in the event the two systems were interconnected.

Both applicants Atmajian and Astarinhart indicated their willingness to take over the operations of the systems, to interconnect said systems and to do all things necessary to comply with General Order No. 103 and the requirements of the Fresno County Health Department. In view of the fact that applicant Atmajian owns the real property in the Bise Tract on which the well, pump and storage facilities are located, it was admitted by applicant Astarinhart that his successful operation of the entire system would depend upon a suitable lease arrangement with applicant Atmajian.

After consideration the Commission finds as follows:

1. Manuel Madrid and Dolores Madrid have abandoned the public utility water operations in the Whitener Heights and Bise areas and the certificate of public convenience and necessity acquired by them by Decision No. 58950 should be revoked.
2. Applicant Astarinhart claims an interest to the system through a judgment lien on Block 3 of Tract No. 1014; however, said property was released from the lien by order of the Municipal Court, Fresno Judicial District, on November 13, 1959.
3. Applicant Astarinhart would not be in a position to interconnect and operate both systems without first obtaining a lease from

applicant Atmajian covering the well, storage facilities, pump and the real property upon which they are located in the Bise Tract.

4. Applicant Atmajian is in a better position to unify both systems and to make the necessary improvements as required by General Order No. 103.

5. The authority to execute the deed of trust and chattel mortgage by Manuel Madrid and Dolores Madrid in favor of Aram Atmajian should be granted nunc pro tunc.

6. Public convenience and necessity require the granting of a certificate of public convenience and necessity to Aram Atmajian for the purpose of operating a public utility water system as hereinafter set forth.

7. Applicant Atmajian possesses the financial resources to operate the proposed water system.

8. Applicant Atmajian should apply for a water supply permit from the appropriate health authority.

The certificate hereinafter granted shall be subject to the following provision of law:

The Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

IT IS ORDERED that:

1. The deed of trust and chattel mortgage executed by Manuel Madrid and Dolores Madrid on October 12, 1959, in favor of Aram Atmajian is hereby authorized nunc pro tunc.

2. The certificate of public convenience and necessity granted by Decision No. 42108 dated October 5, 1948, in Application No. 29358 and as acquired by Manuel Madrid and Dolores Madrid by Decision No. 58950 dated September 1, 1959 in Application No. 41275 is hereby revoked and the tariffs presently on file with the Commission in the name of Manuel Madrid and Dolores Madrid are hereby canceled.

3. A certificate of public convenience and necessity is hereby granted to Aram Atmajian, authorizing him to operate a public utility water system for the distribution and sale of water within the Whitener Heights and Bisc areas near the City of Parlier.

4. Aram Atmajian is authorized to file with this Commission, after the effective date of this order and prior to the date service is first rendered to the public under the authority herein granted, in a manner acceptable to the Commission and in conformity with the provisions of General Order No. 96-A, the schedules of rates and charges set forth in Appendix A attached to this order, together with rules governing service to customers, a tariff service area map showing definite boundaries, and sample copies of printed forms to be used in connection with customers' services. Said rates, rules, tariff service area map and forms shall become effective upon five days' notice to the public and to this Commission after filing as hereinabove provided.

5. Aram Atmajian, before January 1, 1964, shall (a) install and place in operation a pipeline of not less than four inches in diameter to interconnect the Whitener Heights System with the Bisc System and (b) report to the Commission in writing, within ten days thereafter, the date when such installation shall have been completed and placed in operation.

6. Aram Atmajian shall notify this Commission in writing of the date service is first furnished to the public under the rates and rules authorized herein, within ten days thereafter.

7. Aram Atmajian shall file, within thirty days after the system is placed in operation under the rates and rules authorized herein, four copies of a comprehensive map, drawn to an indicated scale of not more 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 applicant.

8. Beginning with the year 1963, Aram Atmajian shall determine depreciation accruals by multiplying the depreciable utility plant by a rate of three percent. This rate shall be used until review indicates that it should be revised. Applicant shall review the depreciation rate, using the straight-line remaining life method, when major changes in utility plant composition occur and at intervals of not more than five years, and shall revise the above rate in conformance with such reviews. Results of these reviews shall be submitted to this Commission.

9. Prior to the date service is first furnished to the public under the rates and rules authorized herein, Aram Atmajian shall (a) apply to the appropriate public health authority for a water supply permit for the system which will serve the area herein certificated, and (b) report to the Commission in writing, within ten days thereafter, that such application has been made.

10. Application No. 44838 is hereby denied.

The authority herein granted will expire if not exercised within one year after the effective date hereof.

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

Dated at San Francisco, California, this 20th day of AUGUST, 1963.

William W. Bennett
President
John E. Smith
Walter H. Page
George H. Grover
Frederic B. Holcomb
Commissioners

APPENDIX A
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Schedule No. 1
GENERAL METERED SERVICE (T)

APPLICABILITY

Applicable to all metered water service. (T)

TERRITORY

Whitener Heights Subdivision, Tract No. 1014, and Bise Subdivision, Tract No. 1501, approximately 1 mile west of Parlier, Fresno County. (C)

RATES

Per Meter
Per Month

Quantity Rates:

First	1,250 cu. ft. or less	\$2.50
Next	3,750 cu. ft., per 100 cu. ft18
Next	5,000 cu. ft., per 100 cu. ft15
Over	10,000 cu. ft., per 100 cu. ft12

Minimum Charge:

For	5/8 x 3/4-inch meter	\$2.50
For	3/4-inch meter	3.50
For	1-inch meter	5.00

The Minimum Charge will entitle the customer to the quantity of water which that minimum charge will purchase at the Quantity Rates.

APPENDIX A
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Schedule No. 2R
RESIDENTIAL FLAT RATE SERVICE (T)

APPLICABILITY

Applicable to all flat rate residential water service. (T)

TERRITORY

Whitener Heights Subdivision, Tract No. 1014, and Base Subdivision, Tract No. 1501, approximately 1 mile west of Parlier, Fresno County. (C)

RATES

	<u>Per Service Connection Per Month</u>
For a single-family residential unit, including premises not exceeding 6,000 sq. ft. in area	\$2.50
For each 100 sq. ft. or premises in excess of 6,000 sq. ft.03

SPECIAL CONDITIONS

1. The above flat rates apply to service connections not larger than 3/4-inch in diameter. (C)

2. For service covered by the above classification, if the utility or the customer so elects, a meter shall be installed and service provided under Schedule No. 1, General Metered Service. (C)