

ORIGINAL

Decision No. 68939

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Frank A. Hawn,
)
 Complainant,
)
 vs.
)
 Earl A. LaPorte, dba
 Redwood Lodge Water System,
)
 Defendant.
)

Case No. 8027
(Filed September 29, 1964)

Frank A. Hawn, in propria persona, complainant.
Earl A. LaPorte, in propria persona, defendant.
John D. Reader, for the Commission staff.

O P I N I O N

Nature of Pleadings

The complaint herein, heard on January 22, 1965, at Los Gatos, before Examiner Gillanders and submitted on January 29, 1965 upon receipt of late filed Exhibit No. 1, seeks an order that will determine the number of users that can be served by the present system; determine the legality of forcing the water users to develop a new distribution tank; and enjoin the defendant from raising the water rate or terminating users for non-payment of the new rate until the Commission has determined a fair rate.

The complaint alleges, in substance, that defendant told the users of the system that if they wanted water they would have to buy a tank and develop a new tank site; that defendant pumps only 1,000 gallons of water per day for nine families; that many times service is out for up to 18 hours; that the users have bought a tank and developed a new site; that defendant, on September 22, 1964, notified his customers that the flat rate for water service would be

\$10.00 per month, or double the previous rate, beginning on September 1, 1964, without notice; and that delinquent users are liable to disconnection without further notice.

The answer of defendant avers, in substance, that he is operating a non-certificated non-regulated system; he did not force anyone to do anything; since he acquired the system he has been engaged in laying new pipe, acquiring a tank site and right-of-way and acquiring financing for further improvements; he has installed a new main and service connection to complainant; that complainant has failed to bring his piping up to standard; that he was prevented from supplying water service to three adjacent customers because the existing customers would not agree to providing right-of-way access; and that he did double the rate as the old rate did not even cover out-of-pocket costs.

History of System

Redwood Lodge Water System was installed about 50 years ago to supply a lodge and guest houses surrounding the lodge. Around 1930, the lodge and some of the guest houses were destroyed by fire. Melvin P. Fitzgerald purchased the property and subsequently sold the remaining guest houses and some lots. In the 1950s, a Mr. Porter purchased approximately 30 acres from Fitzgerald which included the land containing the water system's pump house, 5,000 gallon tank and reservoir. Fitzgerald was granted permission to use the tank, reservoir and pump house to supply water service to nine families with the understanding permission could be revoked by Porter at any time. Complainant Hawn, whose property was not a part of the Redwood Lodge property, had been served by Fitzgerald for approximately one year. For five or six years, Fitzgerald had been trying to sell his system to his customers.

Evidence

Fitzgerald charged each family \$5 per month for water service. On February 22, 1963, defendant purchased from Fitzgerald, for \$4,000, an acre of land containing a spring, a concrete reservoir, and a pump house, 2,000 feet of 1½ inch transmission main and about 1,000 feet of 1 inch distribution main. Porter subsequently withdrew permission to use the facilities on his land and defendant is presently pumping water from his own spring and reservoir. In September, 1964, defendant raised the charge for water service from \$5 per month to \$10 per month.

The nine families receiving water service have erected a 5,000 gallon tank which they are willing to let defendant use. However, defendant does not wish to use this tank as it cannot furnish enough head to supply new customers. Instead, defendant has purchased a tank site at a higher elevation and has obtained the necessary right-of-way to connect a planned temporary tank of 1,000 gallons to the system.

The record discloses that the system is subject to frequent interruptions of service and that delays in restoration of service range from a few hours to a day at a time. Part of the delay is caused by the physical inability of defendant to start the gasoline engine driven pump due to his recent heart attack, and his reliance on the part-time services of his son.

Jurisdiction

Defendant, in his answer to the complaint, stated that he "... is present owner of the Redwood Lodge Water System, a non-certificated, non-regulated system."

During cross examination, defendant testified that he had purchased this system because he wanted some place to invest the monies he expected to receive from the condemnation of Aldercroft Heights Water Co., a public utility which he owns; that he intends to supply service to new customers under the "extension rule" of the Commission; that he believes he is a public utility, and that when the system is improved he intends to apply to the Commission for a certificate of public convenience and necessity.

Public Utilities Code Section 2701 states:

"Any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system within this State, who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public utility, and is subject to the provisions of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission, except as otherwise provided in this chapter."

Findings

Upon consideration of the evidence the Commission finds that defendant is operating a public utility water system and is a public utility "water corporation" within the meaning of the Public Utilities Act.

O R D E R

IT IS ORDERED that:

1. Earl A. LaPorte, within thirty days from and after the effective date of this order, shall prepare and file with this Commission, in quadruplicate and in conformity with the Commission's General Order No. 96-A rates and rules for water service, which rates shall not be higher than \$5 per month.

2. Within forty-five days after the effective date of this order, Earl A. LaPorte shall file a tariff service area map and sample copies of printed forms that are normally used in connection with customers' services.

3. Earl A. LaPorte shall prepare and keep current the system map required by paragraph I.10.a of General Order No. 103. Within nine days after the effective date of this order, Earl A. LaPorte shall file with the Commission two copies of this map.

4. For the year 1965, Earl A. LaPorte shall apply a depreciation rate of 2 percent to the original cost of depreciable plant. Until review indicates otherwise, this rate shall be used. This rate shall be reviewed at intervals of five years and whenever a major change in depreciable plant occurs. Any revised depreciation rate shall be determined by: (1) subtracting the estimated future net salvage and the depreciation reserve from the original cost of plant; (2) dividing the remainder by the estimated remaining life of the plant; and (3) dividing the quotient by the original cost of plant. The results of each review shall be submitted promptly to the Commission.

5. Earl A. LaPorte shall not without further order of this Commission extend his water system.

6. Earl A. LaPorte shall apply to the health authority having jurisdiction for a water supply permit for his system, and report to

the Commission in writing that application has been made for such permit.

The Secretary of the Commission is directed to cause personal service of this order to be made upon defendant. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 20th day of APRIL, 1965.

Frederick B. Hallock
President

John S. Mitchell

George L. Hoover

Augusta

Dellencor Burnett
Commissioners