

**ORIGINAL**

Decision No. 71263

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William M. and Collette S. Van Fleet, )  
Irene and Humboldt B. Gates, Clara J. )  
and Leslie B. Anderson, Mary L. and )  
Donald L. Hurst, Barbara J. and )  
John M. Arnett, Jean and Arnold L. )  
Maahs, Marie F. and Roland P. )  
Giampaolo, )

Case No. 7953

Complainants,

vs.

ERNEST and LOUISE PIERSON,

Defendants.

Vaughan, Paul & Lyons, by John G. Lyons; Falk,  
Dunn & Burton, by Donald J. Falk, for defendants.  
Leslie B. Anderson, for complainants.  
John D. Reader, for the Commission staff.

OPINION AND ORDER ON REHEARING

On July 20, 1964, complainants filed a complaint against defendants asserting that water for domestic use supplied to them by defendants in an area known as Freshwater Valley Estates, near Eureka, is inadequate in quality and quantity. They requested an order declaring that defendants have been furnishing water as a public utility subject to the jurisdiction of this Commission.

Public hearing in this matter was held on April 7, 1965 at Eureka. Upon receipt of defendants' brief, the matter was submitted for decision on June 3, 1965.

On September 21, 1965, the Commission issued its Decision No. 69698. The Commission found "... that Ernest and Louise Pierson

are operating a public utility water system; and that they are a public utility 'water corporation' within the meaning of Section 241 of the Public Utilities Act."

On October 11, 1965 defendants petitioned for rehearing alleging that the Commission erred in certain of its findings, conclusions, and orders. In addition, defendants claimed that "..., it now appears that defendants have furnished, and are furnishing, water to complainants as an accommodation, as the word 'accommodation' is used in Section 2704 of the Public Utilities Code."

On March 15, 1966, the Commission issued its order granting rehearing limited to evidence and argument on the question whether defendants are furnishing water to complainants as an "accommodation" within the meaning of Section 2704 of the Public Utilities Code and oral argument on all issues of law raised by the petition for rehearing.

After due notice, public hearing was held before Examiner Gillanders on May 23, 1966, at Eureka. The matter was submitted subject to receipt of transcript and is now ready for decision.

Defendant George Ernest Pierson, having been called as a witness by complainants, testified in substance that in 1952 he purchased property known as the Falk Estate or Falk Ranch consisting of approximately 250 acres; 170 acres are used and rented as a ranch and approximately 50 acres are included in what is called Freshwater Valley Estates; at least 10 years ago he advertised lots for sale in Freshwater Valley Estates; complainants herein purchased their lots from defendants at various times since 1952; some day Pierson plans to sell the remaining lots in Freshwater Valley Estates. Pierson further testified that the ranch was supplied with water before anyone lived at Freshwater Valley Estates; that he intended that the water supply for the ranch come before the water supply for the

proposed mutual water company as the ranch is of no use unless it has some water; that there always has been enough water for both; and that the surplus water would be used to supply the mutual water company.

Counsel for defendants did not present direct evidence at the rehearing. Counsel for defendants requested that their brief and petition for rehearing be considered as their oral argument.

Section 2704 of the Public Utilities Code states:

"Any owner of a water supply not otherwise dedicated to public use and primarily used for domestic purposes by him or for the irrigation of his lands, who (a) sells or delivers the surplus of such water for domestic purposes or for the irrigation of adjoining lands, or (b) in an emergency water shortage sells or delivers water from such supply to others for a limited period not to exceed one irrigation season, or (c) sells or delivers a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available, is not subject to the jurisdiction, control, and regulation of the commission."

Counsel for defendants argued that defendants' actions, as set forth in the record, do not constitute dedication of their water supply to the public use but in fact do show that they are supplying water to complainants only as an accommodation. It is counsel's opinion that, as a matter of law, a person supplying water as an accommodation can lawfully cut off such water service to his consumers.

Complainants' representative argued that the water supply for the ranch is not the primary use of the water system. He further argued that neither he nor the other complainants would ever have bought property in Freshwater Valley Estates if it had been known that purchasers were receiving only surplus water which the ranch did not need.

The staff representative argued as follows:

"Well, I'd just like to state, Mr. Examiner, that Section 2704 states that an accommodation water service must be a water supply, first, not otherwise dedicated to public use, and primarily used by the owner for domestic or irrigation use. And even if this ranch property does qualify as a primary user of this water, I wonder if subdividing and selling land with water service is not dedication of the portion of the water supply to public use.

I think of an accommodation service -- accommodation -- like this: If I have a parcel of land with water service and a neighbor comes to me saying, 'I have no water on my land,' or, 'It would be too expensive to develop the water on my land,' I could let him have some of my water and could always reserve the right to discontinue this service on reasonable notice.

Incidentally, I always tell anyone who is thinking of giving or selling water to a neighbor that that should be put in writing.

However, if I sell a piece of my land with domestic water service stated to be included and, in effect, create this neighbor or neighbors, I see this as a different problem related more to the dedication first referred to in Section 2704.

I doubt very much if Mr. Pierson could have sold this land if he had insisted upon such a written agreement which permitted him to discontinue this service."

The arguments of complainants' representative and of the staff representative are persuasive.

Based on the entire record in this matter, we find that defendants Ernest and Louise Pierson have not furnished water to complainants as an accommodation as that word is used in Section 2704 of the Public Utilities Code.

Neither the evidence adduced in this hearing nor the argument of counsel for defendants merits reversal of our previous finding that defendants are a public utility "water corporation".

Defendants, in their petition for rehearing, alleged that the rate of \$7.50 per month set by Decision No. 69698 would be

confiscatory and is not supported by any finding in the decision. The failure to make such a finding was due to the fact that the evidence submitted was not sufficient to determine the reasonableness of any particular rate, high or low. The evidence did show, however, and we expressly find, that \$7.50 was the highest rate which defendants had charged. Section 454 of the Public Utilities Code provides that no public utility shall raise any rate "except upon a showing before the commission and a finding by the commission that such increase is justified." The ceiling of \$7.50 per month imposed in Paragraph 1 of the Order in Decision No. 69698 was based upon this requirement of Section 454. Defendants may, of course, file an application for increased rates.

We conclude that Decision No. 69698 should be affirmed.

IT IS ORDERED that Decision No. 69698 is affirmed.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of SEPTEMBER, 1966.

George T. Trover  
President

Frederick B. ...

Augusta  
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.