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ORIGINAL

Decision No. 72108

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

N. Warren Sheldon, Percy H. Weston and William Steyding, Complainants, vs. Wright Estate and the Executor, George Cox; Summit Group, Richard Alderson and Ronald Dunton, General Partners, et al., Defendants.	Case No. 8356 Filed March 1, 1966

E. E. Dadmun, for complainants.
Joseph S. Lawry, for George Cox, defendant.
Richard Ewing Alderson and Ronald Dunton, for themselves as individuals and as partners of The Summit Group, defendants.
John D. Reader and W. B. Stradley, for the Commission staff.

O P I N I O N

Complainants Sheldon, Weston and Steyding seek (1) a determination by this Commission that the water system from which they obtain water is a public utility operation subject to the Commission's jurisdiction, and (2) an order directing whichever defendant is found to be a public utility to continue service, to comply with appropriate existing requirements as to service, and to file tariffs. The complaint as filed also requested an interim order restraining defendants from discontinuing service during the pendency of this proceeding, but the need therefor was obviated by an appropriate stipulation of defendant Summit Group, present owner of the water system.

Public hearing was held before Examiner Catey at Santa Cruz, on May 23, 1966 and June 20, 1966. The matter was submitted on the latter date with a stipulation by all parties that the Commission's decision should be deferred for at least 90 days. This delay was to enable the parties to enter into an agreement by which The Summit Group would donate the water system to the users for them to operate as a mutual water system. Complainants, under those circumstances, would have withdrawn their complaint.

Testimony was presented by the three complainants, by defendants Alderson, Cox and Dunton, and by a Commission staff engineer.

By letter dated September 1, 1966, directed to The Summit Group, a copy of which letter is hereby received as Exhibit No. 8, complainants indicated that they would withdraw the complaint provided certain details of the transfer agreement could be worked out. By letter dated December 1, 1966, a copy of which is hereby received as Exhibit No. 9, the Commission asked complainants to advise it as to the status of the proposed transfer so that the complaint could be either dismissed without prejudice or decided on its merits. Complainants' reply, dated January 3, 1967, hereby received as Exhibit No. 10, indicates that the scope of the issues may even be broadened, so there is no point in further delaying this decision.

Complainants and Defendants

Complainants each own a residence in the Santa Cruz Mountains, Santa Cruz County. Their properties are located between Highland Way and Loma Prieta Avenue, near the Santa Clara County boundary.

Defendant The Summit Group is a California limited partnership comprised of two general partners and numerous unnamed limited partners. The Summit Group is the present owner of the water system serving complainants. Defendants Alderson and Dunton are the general partners of The Summit Group.

Defendant Wright Estate is the former owner of the subject water system. Defendant Cox is the Receiver and Referee in partition of the Wright Estate. He is also the brother of Agnes Cox Wright, deceased, the party who previously controlled the water system.

History

Over 80 years ago, a spring was developed and transmission line installed to supply what was known as the Wright Ranch. The large home on the 200-acre ranch burned down, but the water facilities were still used to supply a store, a cottage and an apartment on the ranch properties.

The then owner, Agnes Cox Wright, apparently sold parcels of the land to others, five of whom built homes which thereafter were also supplied with water by gravity from a tank on the Wright Ranch system. They paid $2 per month for the water service. The arrangement was apparently by oral agreement, although some parties may have had included in their deeds the right to purchase water.

In or about 1946, complainants Weston and Sheldon and a party named Sole purchased from Mrs. Wright a 19-acre portion of the ranch property. The real estate broker's listing stated that water would be provided to the parcel by gravity for $2 per month. When the buyers indicated that they wished to divide the parcel and build three homes at the higher elevations of the property, Mrs. Wright (under her realtor business name of Agnes Cox) agreed to install

a booster pump and necessary distribution main to carry the water to the property line of the 19-acre parcel. Exhibit No. 2, a copy of the agreement, states that the $2 rate per customer, originally proposed for gravity water, would be revised to not more than $2.75 per month for domestic use, with an additional charge for water used for purposes other than domestic. Buyers agreed to install the necessary service lines on their own properties and to install small pressure tanks and also storage tanks of about 2,000 gallons at each of the three homes.

In or about 1950, complainant Steyding purchased the Sole residence and a portion of Sole's share of the original 19-acre parcel through Mrs. Wright, as broker. Instead of continuing water service to the new owner under the original agreement, Mrs. Wright entered into a new agreement with Steyding, a copy of which is Exhibit No. 5. The new agreement provided for the same $2.75 monthly rate, but specified that the water supplied would be "surplus water for domestic purposes."

At some later date, the home of one of the customers on the gravity portion of the system burned down and water service thereto was discontinued. Water service to another customer was discontinued because he had damaged a distribution main. Another individual connected to the distribution main without authorization. These changes result in the lower system's serving three authorized customers, one unauthorized user and The Summit Group's cottage, store and apartment. The pumped supply is provided only to the three complainants.

In 1955, defendant Cox moved to the area and managed the various ranch properties, including the store, apartment and water

system, for his sister, Mrs. Wright, until her death in 1957. He continued to supervise the operations as administrator of his sister's estate until the estate was distributed in 1960. At about that time, Mr. Wright died and ownership of the Wright properties, including the water system, was represented by various heirs' undivided interest in the property. Some of the heirs had as little as 1/32 interest in the estate. Defendant Cox was named successively as Receiver and Referee in Partition. The estate included no cash; in fact, the property taxes were delinquent. The entire residual Wright Ranch properties were sold to defendant The Summit Group in November 1965, at which time defendant Cox ceased to manage these properties.

When The Summit Group took over the properties, complainants were advised by defendant Cox that the new owner might not be willing to continue to serve water. The complaint herein was then filed.

Discussion

Defendants all contend that the service to complainants is not public utility service under this Commission's jurisdiction. They rely upon Section 2704 of the Public Utilities Code, which provides, in part:

> "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 ... sells or delivers the surplus of such water for domestic purposes or for the irrigation of adjoining lands, or ... 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, regulation and control of the Commission."

Section 2704 clearly is not applicable to a situation where the owner of the water system subdivides land and offers water service as an inducement to sell the subdivided parcels. Under such circumstances, the water system is dedicated to public use insofar as the homes built by the land purchasers are concerned. This is true even though, after such dedication, the owner of the water system includes in revised contracts and receipts self-serving statements that the water delivered is surplus water for domestic use. Thus, the water system owned by The Summit Group has been dedicated to public use, at least insofar as the homes of the three complainants are concerned. Although such dedication may also extend to other properties supplied by the system, the evidence thereon is not conclusive.

As owner of a water system which has been dedicated to public use, The Summit Group must continue to provide service to complainants unless and until relieved by this Commission of that responsibility. We are aware that a three-customer, or even ten-customer, water utility may be economically unfeasible under the circumstances herein. In fact, The Summit Group indicated that it would have to apply for a tremendous increase in rates if it were to spread maintenance and operation costs and return an investment over only three customers. Even with ten customers, if preliminary estimates are reasonably accurate, a significant rate increase might be applied for by The Summit Group. We must, nevertheless, base the findings as to dedication and public utility status upon the past actions of the parties, not upon economics.

To avoid adding to the potential burden on the customers, we will not, at this time, require The Summit Group to make improvements needed to bring the system up to normal standards of

construction and service. Preliminary estimates presented by The Summit Group indicate that the annual cost of frequent repairs to the old transmission main would, at this time, be less than the depreciation, return and taxes associated with replacement of that one-mile line.

Inasmuch as the original dedication of the water system to public use was by a former owner, now deceased, the various subsequent transfers discussed herein would be void under Section 851 of the Public Utilities Code were it not for the exemption permitted in Section 853. The first paragraph of the order which follows covers this aspect of the proceeding.

Findings and Conclusions

The Commission finds that:

1. The application of the provisions of Section 851 of the Public Utilities Code to the various transfers subsequent to dedication of the water system discussed herein is not necessary in the public interest.

2.a. Defendant The Summit Group is the owner of a water system which has been dedicated to public use, at least insofar as service to the homes of complainants Sheldon, Weston and Steyding is concerned.

b. Defendant The Summit Group is a public utility subject to the jurisdiction, regulation and control of this Commission.

3. Defendant Wright Estate and defendant Cox no longer own, control, operate or manage the water system referred to herein.

The Commission concludes that the various transfers of the water system discussed herein should be exempted from the provisions of Section 851 of the Public Utilities Code, that defendant The

Summit Group should be required to file the present rates charged to complainants and that the complaint against defendants Wright Estate and Cox should be dismissed.

O R D E R

IT IS ORDERED that:

1. The various transfers of the water system discussed herein, resulting in the ownership of that system by defendant The Summit Group, shall not be subject to the provisions of Section 851 of the Public Utilities Code.

2. Within ten days after the effective date of this order, defendant The Summit Group, a California partnership comprised of general partners Richard Alderson and Ronald Dunton and unnamed limited partners, shall file the schedule of rates set forth in Appendix A to this order, a tariff service area map clearly indicating the three homes of complainants Sheldon, Weston and Steyding, appropriate general rules, and copies of printed forms to be used in dealing with customers. Such filing shall comply with General Order No. 96-A. The tariff schedules shall become effective on the fourth day after the date of filing.

3. Case No. 8356, insofar as it relates to defendant Wright Estate and defendant George Cox, is dismissed.

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

Dated at San Francisco, California, this 7th day of MARCH, 1967.

President

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

C.8356 NB

APPENDIX A

Schedule No. 2 LR

LIMITED RESIDENTIAL FLAT RATE SERVICE

APPLICABILITY

Applicable to all limited flat rate residential water service.

TERRITORY

The premises of the three customers listed below in Special Condition 2, located approximately 2 miles north of Skyland in the Santa Cruz Mountains, Santa Cruz County.

RATE	Per Service Connection Per Month
For a single-family residential unit, including premises	$2.75

SPECIAL CONDITIONS

1. The above flat rate applies to a service connection not larger than one inch in diameter.

2. Service under this schedule shall be limited to the premises owned, as of June 20, 1966, by the following three customers:

a. N. Warren Sheldon
b. Percy C. Weston
c. William Steyding.

3. Not more than one single-family residential unit will be served at any time on each of the premises identified in Special Condition 2.