

**ORIGINAL**Decision No. 75865

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Ray A. Perry doing business as Ray )  
 Perry Water Services, P. O. Box 103, )  
 Soulsbyville, California, for a )  
 Certificate of Public Convenience and )  
 Necessity to Operate a Public Utility )  
 Water System near Soulsbyville in )  
 Tuolumne County and to Establish )  
 Rates for Service. )

Application No. 50387  
 (Filed July 12, 1968, Amended  
 September 5, 1968 and  
 September 18, 1968)

Edward B. Beattie, for applicant.  
Tedd F. Marvin, for the Commission staff.

INTERIM OPINION

In this proceeding Ray A. Perry seeks a certificate of public convenience and necessity for the construction and operation of a water system near Soulsbyville, Tuolumne County. Public hearing in the matter was held before Examiner Emerson on September 24, 1968 at Sonora.

The area which Perry seeks to serve as a public utility comprises about 55 acres which is subdivided into 43 lots, the largest lot being one of 4.76 acres and the smallest being one of 0.61 acre. The subdivision was developed by R. J. Baunhausser sometime during the period 1956-58.

The testimony of Perry indicates that Baunhausser constructed a water system for the subdivision and that it was in operation and serving the public in 1958. Baunhausser received a water supply permit from the State Department of Public Health in such year. Perry bought a lot from Baunhausser about five years ago for \$3,250. With it he received a deed to the water system (he describes it as a "package" deal).

At the time Perry took over operation of the water system, customers were charged \$3.50 per month for water service. He later raised the charge to \$4.50 per month. The system serves 14 customers, 10 within and four without the subdivision. Perry now proposes to charge a flat rate of \$12.50 per month.

The water system is deficient in numerous respects. Customers have in the past been without water and at times have received discolored, distasteful and muddy water. The water supply, originally from one well drilled in 1957 and now augmented by a second well drilled in 1967, is at times barely sufficient to serve the existing number of customers. Mains are in some instances plastic, undersized and without sufficient ground cover. Storage is not adequate for more than the present number of customers. The system does not meet the minimum standards of our General Order No. 103.

Perry has expended much time and energy in repairing, operating and attempting to make improvements on the system but he has very little in the way of financial resources other than current wages unassociated with this water system. For financing repairs and improvements to the water system he has turned to Baunhausser who, apparently from its inception, has been the source of money for the system. Perry still owes about \$2,000 on the lot and water system "package deal" and owes Baunhausser about \$4,600 for system repairs and improvements. Baunhausser has paid all bills for materials used on the system, including the costs applicable to the well drilled in 1967. Perry's debt to Baunhausser appears to be "long term" debt in that Perry is obligated to repay it but with no schedule as to time. There appears to be no written understanding respecting this debt. The present net plant investment in the

tangible utility plant of this system is \$8,587; thus the Baunhausser debt is greater than half of such investment.

With the present charge of \$4.50 per month, the system's 14 customers provide an annual revenue of \$756. Operating expenses, with no allowance for depreciation expense, amount to approximately \$1,175. Clearly, the system is operating at a loss and is neither generating sufficient funds to pay reasonable wages to the operator nor any funds to pay off outstanding debts.

After ten years, there are only ten in-tract customers. All but 4 lots have been sold; however, the best estimate in this record is that the system will serve a total of no more than 24 customers five years hence. Before this latter number of customers can be served, additional storage, additional mains and a pressure system must be installed, at additional costs estimated by Perry as \$4,000 and as \$11,200 by an engineer on the Commission's staff. Under either cost estimate, the outlook is bleak indeed, for even if it were assumed that a rate of return of no more than 6 percent should be realized, the annual water rate would necessarily have to be on the order of \$180 or \$15 per month. The retired people now within the tract would find such a rate prohibitive; others would find it highly, if not impossibly, burdensome. In the experience of this Commission neither Perry's proposed rate nor the prospective rate is a reasonable rate. The evidence is clear that the system is not economically sound.

If this system were merely a proposed one and construction of it had not yet been started, it would be the clear duty of this Commission to deny authority to commence its construction. Indeed, it is the purpose of the law, in requiring that a certificate of public convenience and necessity be obtained from this Commission

PRIOR to construction, to prevent just such situation as has here developed.

From the evidence it appears that a number of unlawful acts have occurred respecting this system. It was constructed without a certificate and operated as a public utility.<sup>1/</sup> It charged for water service and filed no rates therefor.<sup>2/</sup> Ownership was transferred without authority and also without authority the properties are encumbered with long-term debt.<sup>3/</sup> Rates were increased without authority.<sup>4/</sup>

It is obvious that Perry is in fact operating a public utility water system, whether owned by him or not, and is presently serving 14 households which are dependent upon the system for water. Without water these homes would be unlivable. Somehow they must continue to have water at rates which are within their ability to pay.

Several courses may be followed by which the above-discussed matters may be handled. In any event, however, some increase in rates is necessary to assure at least temporarily continued operation as at present, for it is fundamental in law that a utility may not be forced to operate at a loss. One possible course of action would be to "undo" the unlawful acts above enumerated. This would mean that the transfer of the system from Baunhausser to Perry would become null and void and probably that Baunhausser would be forced to bring the physical system up to proper standards and thereafter operate it until a lawful transfer could be accomplished.

---

1/ Section 1001, Public Utilities Code.  
2/ Section 489, Public Utilities Code.  
3/ Section 851, Public Utilities Code.  
4/ Section 454, Public Utilities Code.

Another possible course of action would be that the present property owners in the tract could form either a "mutual water company" or a "utility district" and thereafter acquire the system and own and operate it themselves. A third possibility is that this system might be connected to and become a part of a nearby "mutual" system, assuming that the present property owners would acquire the existing system and could negotiate a joinder with the nearby mutual water company. Of these possibilities, the first is clearly within the power of this Commission; the others within the province of the property owners.

Perry is an energetic, hard-working person. We have no doubt about his ability to properly operate this system nor about his intentions to properly tend to the needs of his customers. Insofar as this system is concerned, his real problem is that he acquired a totally uneconomic enterprise which, if not very carefully managed, can "break" him and leave his customers in dire circumstances. Within the realm of "reasonable" rates, he has no prospect of earning a realistic profit from the system for years to come. If the estimates of prospective growth turn out to be accurate, little more than "out-of-pocket" costs will be produced during at least the next five years.

Baunhausser, although purportedly present during some portion of the hearing in this matter, did not make his presence known to the Commission and thus no testimony was received from him. The full truth respecting his transfer of the system or his present-day financial interest therein is thus not determinable from this record. It is necessary that a full disclosure be placed before this Commission. To such end, we shall concurrently herewith issue an order instituting investigation for the primary purpose of

determining whether Baunhausser should be held to be the owner of this system and be held accountable for the unlawful actions hereinabove discussed.

From the evidence the Commission makes the following findings of fact:

1. The water system hereinabove described is a public utility water system presently under the operation and control of Ray A. Perry.
2. The water system operations are economically unsound and presently are producing monetary losses.
3. The physical system is deficient in certain respects and does not meet the minimum standards set forth in the Commission's General Order No. 103.
4. The true ownership of the system is not disclosed by the record herein.
5. Increased revenues are necessary in order to assure continued service to the customers of the system.
6. This utility system was commenced unlawfully, its charges for service were not filed with this Commission, it has been unlawfully transferred, and its charges for service have been unlawfully increased.

The Commission makes the following conclusions of law:

1. No certificate of public convenience and necessity should at this time be granted to Ray A. Perry.
2. A flat-rate charge of \$7.00 per month should be authorized pending determination and ultimate disposition of the above-stated findings Nos. 4 and 6.
3. An Order Instituting Investigation should be issued concurrently herewith for the purposes hereinabove discussed.

4. Submission of this matter should be set aside and further hearings held on a record consolidated with the aforementioned investigation.

INTERIM ORDER

IT IS ORDERED that:

1. Pending further order of this Commission, Ray A. Perry shall continue to operate the water system described herein and is authorized to establish a flat-rate monthly charge of \$7.00 per customer for water service rendered therefrom, said charge to become effective on July 1, 1969.

2. Submission of this matter is hereby set aside and the matter is reopened for further hearing before such Commissioner and/or Examiner and at such time and place as the Commission may hereafter designate.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 1st  
day of JULY: 1, 1969.

William J. Lyons  
President  
Augustine  
Jack P. Morrison  
W. J. Williams  
Commissioners