

ORIGINAL

Decision No. 77059

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ELIZABETH A. DAVIS,
HAROLD J. MEADOWCROFT,
FONTAINE W. RUSS,

Complainants,

vs.

HILLVIEW #6 WATER CO.
JOHN S. & EVELYN CAVANAUGH,
SANTA CRUZ LAND & TITLE CO.,
Defendants.

Case No. 8967
(Filed September 22, 1969)

H. E. Davis, for complainants.
Thomas P. Kendrick, for defendants Cavanaugh.
W. R. Yeazell, for defendant Santa Cruz Land
Title Company.
William J. McNertney, Counsel, for the Commission
staff.

O P I N I O N

Complainants Davis, Meadowcroft and Russ seek an order (1) declaring defendants Cavanaugh and/or defendant Hillview #6 Water Co. and defendant Santa Cruz Land Title Company^{1/} to be a public utility under Commission jurisdiction and (2) prohibiting transfer of the utility's water system without Commission authorization.

Public hearing was held before Examiner Catey at Santa Cruz on March 9 and 10, 1970. The three complainants, the husband of one of the complainants, and a neighbor of complainants all testified in complainants' behalf. Mr. Cavanaugh testified on behalf of himself and his wife. An officer of Santa Cruz Land Title Company testified on behalf of the title company. An engineer testified for the Commission staff. The matter was submitted on March 10, 1970.

^{1/} Sometimes erroneously referred to in various documents in this proceeding as "Santa Cruz Land & Title Co."

Complainants and Defendants

Complainants are residents of Rio del Mar Lodge Sites subdivision near Aptos, Santa Cruz County. They and fourteen other residences in the subdivision receive water from a water system owned by defendants Cavanaugh.

Defendants Cavanaugh have owned and operated water systems elsewhere in Santa Cruz County under the name of "Hillview Water Company." The record discloses no known corporation or proprietorship doing business as "Hillview #6 Water Co."

Defendant Santa Cruz Land Title Company at one time was the escrow holder for a deed conveying the water system from the Cavanaughs to Soquel Creek County Water District (SCCWD). The escrow was not closed, however, and in any event the title company never owned nor operated the water system.

History

A public utility, Aptos Water Company, had served customers in and about the community of Aptos at least as far back as 1913. Exhibit No. 1^{2/} in Application No. 21298, filed June 24, 1937, by Aptos Water Company includes "Rio del Mar Lodge Sites" as part of the area it had undertaken to serve. The exhibit also shows that the utility already had extended service into a portion of Subdivision No. 1 of Rio del Mar Lodge Sites.

Decision No. 35803, dated September 29, 1942, in Application No. 25153 authorized Aptos Water Company to transfer the water system to James A. Harris, Jr. and G. W. Cooper, doing business as Monterey Bay Water Company. The authorized transfer was effected, so the obligation to serve Rio del Mar Lodge Sites, under applicable filed tariffs,

^{2/} This exhibit and others mentioned hereinafter were incorporated by reference in the current proceeding.

passed to the Harris-Cooper co-partnership. The two partners and various heirs and assigns operated the Aptos water system until 1964.

In 1960, the Cavanaugh's and others acquired about 290 lots in Rio del Mar Lodge Sites. Mr. Cavanaugh testified that the then owners of Monterey Bay Water Company did not deny their obligation to serve the subdivision but were unable financially to provide the necessary facilities. The uniform water main extension rule^{3/} in effect for all water utilities at that time required the applicant for a subdivision main extension to advance the entire cost of the extension and, upon Commission authorization, the cost of necessary pressure and storage facilities, subject to refund over a period of years. It is thus not clear why the financial condition of Monterey Bay Water Company acted as a deterrent to the installation of facilities.

In order to provide water service to their lots, the Cavanaugh's installed a well, a tank, and a connecting distribution main. Monterey Bay Water Company connected the new facilities to its then existing public utility system but the arrangement between the parties apparently was never reduced to writing. The utility operated the system for a short time until, pursuant to Decision No. 66712, dated January 28, 1964, in Application No. 46001, Monterey Bay Water Company sold its assets to SCCWD. Mr. Cavanaugh testified that the district operated the Rio del Mar Lodge Sites system for a while, but title to that portion of Monterey Bay Water Company's system was not passed to the district. Subsequent efforts by the Cavanaugh's to effect the transfer of the Rio del Mar Lodge Sites system to the district, at no cost, were unsuccessful. In fact, the district physically removed a short section of its pipeline and separated the Rio del Mar Lodge Sites system from the rest of the district's system.

3/ Decision No. 50580, dated September 28, 1954, in Case No. 5501.

In the meantime, several of the lots in the subdivision were resold and the purchasers built residences. With at least the tacit approval of the Cavanaughs, the homeowners connected service pipes to the water system. During the year 1965 and until September, 1966, the Cavanaughs charged the homeowners a flat rate of \$2.50 per month for water service. The Cavanaughs utilized the bill forms of their public utility water system, Hillview Water Company, which served elsewhere in the county.

On September 9, 1966, complainants and other homeowners served by the water system entered into an agreement with the Cavanaughs whereby the homeowners were responsible for necessary repairs to the water system and continued to receive water service. The Cavanaughs no longer collected the \$2.50 per month flat rate they had previously charged. The Cavanaughs also undertook to pay the power bills on the well pump. Mr. Cavanaugh reaffirmed in his testimony that he intends to continue to pay the power bills, pending determination of the responsibilities of SCCWD. The Cavanaughs intend to institute legal action in the courts to force SCCWD to resume operation of the water system and service to the area, pursuant to the stipulation filed by SCCWD as a condition precedent to Commission authorization of the transfer of Monterey Bay Water Company's assets to the district:

"District will be subject to all legal claims for water service which might have been enforced against ... Monterey Bay, including such claims as may exist in territory outside of the boundaries of District."

Discussion

Despite the mitigating circumstances disclosed by the record, it is clear that the Cavanaughs' installation and ownership of a water system specifically intended to serve the public and their rendering

of water bills to the public establishes them as a public utility under this Commission's jurisdiction. The service cannot be considered an "accommodation" service to neighbors. The Cavanaughs do not even reside in the area.

Although we must find the Cavanaughs to be operating a public utility water system serving the three complainants and fourteen other users, this is not equivalent to granting the Cavanaughs a certificate of public convenience and necessity. Inasmuch as additional water users could adversely affect service to present users, the Cavanaughs will be prohibited from serving any additional users without first obtaining authorization from this Commission.

The record does not show what the Cavanaughs' expenses would be if they, instead of the water users, maintained and operated the system. Rather than to establish water rates at this time, we will authorize the Cavanaughs to continue the arrangement they have had with the water users since 1966. If the planned legal action or negotiations do not result in resumption of operation by SCCWD, the Cavanaughs may file an application for authority to establish rates on a more conventional basis.

Findings and Conclusions

The Commission finds that:

1.a. The record discloses no entity identifiable as "Hillview #6 Water Co."

b. Defendant Santa Cruz Land Title Company does not own, control, operate or manage the water system discussed herein and has not sold or delivered water to users supplied by that system.

c. Neither Hillview #6 Water Co. nor Santa Cruz Land Title Company has been shown to be a public utility water corporation subject to this Commission's jurisdiction.

2.a. Defendants John S. Cavanaugh and Evelyn Cavanaugh own the water system supplying complainants and fourteen other parties and have sold and delivered water from that system.

b. In the area served by the aforementioned water system, defendants Cavanaugh are a public utility water corporation subject to this Commission's jurisdiction.

3.a. The water system discussed herein does not conform with the minimum standards in General Order No. 103.

b. Service to additional users could adversely affect service to present users.

4. The present arrangement for maintenance and operation of the water system will not be adverse to the public interest, pending resumption of operation of that system by Soquel Creek County Water District or the establishment of more conventional arrangements approved by this Commission.

The Commission concludes that no cause of action has been shown against Hillview #6 Water Co. nor Santa Cruz Land Title Company but that defendants Cavanaugh should be required to continue serving the present seventeen water users until further order of the Commission. There is now no need for an order prohibiting the transfer of the water system because Section 851 of the Public Utilities Code prohibits the transfer of public utility property without Commission authorization.

O R D E R

IT IS ORDERED that:

1. Case No. 3967, insofar as it relates to defendants Hillview #6 Water Co. and Santa Cruz Land Title Company, is dismissed.

2. Within ten days after the effective date of this order, defendants John S. Cavanaugh and Evelyn Cavanaugh shall file a tariff service area map clearly indicating the seventeen users now supplied by the water system discussed herein, and clearly marked:

"Water service is available only to the seventeen parcels designated on this map."

Such filing shall comply with General Order No. 96-A. The tariff map shall become effective on the fourth day after the date of filing.

3. Until further order of this Commission, defendants Cavanaugh shall not supply water from the system discussed herein to other than the present seventeen parcels.

4. Until further order of this Commission, defendants Cavanaugh are authorized to continue their present arrangement with water users whereby (a) no charges are made for water service, (b) the water users maintain and operate the system, and (c) the Cavanaughs pay the power bill on the pump.

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

Dated at Los Angeles, California, this 7th day of APRIL, 1970.

William J. [Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners