

Decision No. 80589

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PATRICK J. SAMPSON,

Complainant,

vs.

SHARDER GROUP NO. THREE, INC.,  
a California corporation,

Defendant.

Case No. 9288  
(Filed November 4, 1971;  
Amended February 11, 1972)

Patrick J. Sampson, Attorney at Law, in  
propria persona; and Moran & Nuss, by  
Thomas F. Nuss, Attorney at Law, for  
complainant.

Jaffee & Mallery, by Arthur J. Jaffee and  
Robert W. Nowack, Attorneys at Law,  
for defendant.

Robert C. Durkin, for the Commission staff.

### O P I N I O N

Complainant seeks an order declaring defendant to be a public utility water company subject to the jurisdiction of this Commission. Defendant filed a declaration and answer claiming to be a mutual water company duly incorporated under the laws of California and not subject to regulation by the Commission. A member of the Commission staff appeared at the hearing, examined witnesses, issued a statement, but took no position.

A public hearing was held before Examiner DeWolf on June 26 and July 7, 1972. The matter was submitted on July 7 subject to the filing of concurrent briefs, which have been filed.

Complainant alleges that Sharder was organized for the purpose of delivering water solely to its shareholders at cost, but has, in fact, delivered water to persons other than its shareholders.

He contends, therefore, that defendant is subject to the jurisdiction, control and regulation of the Public Utilities Commission pursuant to Section 2702 of the Public Utilities Code. Tract 25493 of Los Angeles County was developed by Mountain Springs Estates, a California corporation, hereinafter referred to as "Estates", in 1961. While using no water whatsoever, Estates controls Sharder by owning 227 of the 320 shares of stock issued and outstanding. At all times herein mentioned, Sharder was the sole supplier of domestic water to Tract 25493.

Complainant further alleges that:

- (a) Sharder is not substantially consumer-controlled, its water users have been denied the usual judicial remedies available to shareholders, and therefore, requires public utility regulation.
- (b) As a further result of the fact that Sharder is not substantially consumer-controlled, Sharder charges a water rate of 51 cents per 100 cubic feet plus an assessment of \$32 per year.
- (c) City water service to the tract immediately adjacent to the service area of defendant is charged at the rate of approximately 33 cents per 100 cubic feet with no assessments.

Defendant answered the complaint by admitting part and denying part and alleged, among other things, that: (1) It has never supplied, and will not supply, water to any parcel or lot that does not have a share of water stock located on that property and by which service is permitted and required; (2) it will, pursuant to its Articles of Incorporation, serve water to tenants or lessees of that stockholder; (3) it has from time to time requested persons whom it has believed to have purchased an interest in the property to complete the procedure to acquire stock from their predecessor in interest; (4) as long as there is a share of stock applicable to that property on which a person is living, the water company under these articles cannot refuse to provide water service, even though the

person occupying the property may be holding under color of title and does not have physical possession of the share of stock; and (5) the issues set forth by complainant are not properly before the Public Utilities Commission but are properly a matter to be considered in the Superior Court in terms of stockholders' claims against Boards of Directors.

A prehearing conference was held on May 2, 1972, and statements requested by the examiner of the issues involved were filed.

Complainant's statement is in part as follows:

Complainant relies primarily on Sections 2702 and 2703 of the Public Utilities Code for the statutory basis of his claim. It is his contention that the Public Utilities Commission is required to exercise its jurisdiction over mutual water companies when such companies are organized for the purpose of delivering water solely to their stockholders but deliver water to others than their stockholders (Section 2702) or if the mutual is organized both for the purpose of delivering water to stockholders and to other persons (Section 2703). Complainant believes that Section 2702 is applicable but apparently Sharder contends that under the articles it must provide water not only to shareholders but also to non-shareholders. In such event, Section 2703 would be applicable.

Defendant's statement is partly as follows:

Sharder Group No. Three was created by the filing of its Articles of Incorporation with the California Secretary of State on July 31, 1956. The company was organized in connection with a plan for the development of a subdivision to be known as Mountain Springs Estates Tract 25493 and to operate as a mutual water company furnishing water to the lots within this tract. The assets of the water company were acquired from Mountain Springs Estates, the construction corporation, for approximately \$79,000 in exchange for the issuance of the capital stock of the water company. As each lot within the

subdivision was thereafter sold, one share of Sharder stock was allocated upon this lot, and a transfer of the stock from Mountain Springs to the purchaser was made by the transfer agent of the water company upon presentation of a deed to him by the purchaser.

The initial question posed by the complaint is, does the delivering of water by defendant to persons who have acquired land within the subdivision, but who are not shareholders of record, constitute delivering water to non-shareholders so as to make the mutual a public utility within the meaning of Section 2702 of the Public Utilities Code? Defendant contends that it does not.

Plaintiff's witnesses complain about excessive assessment charges on water bills and numerous difficulties in getting their shares of water stock and in the shutting off of their water for nonpayment of water assessments and water charges.

The defendant's witnesses testified that there are 52 water users in this tract, all of whom are within the original water service area of the defendant.

There is no evidence that defendant has sold water outside of the tract or that it has dedicated any of its property to public use outside of the subdivision and its original service area.

There is evidence of numerous complaints as to management of the water company, processing and issuing of shares of water stock to customers and the lack of information concerning stockholders' meetings.

#### Findings

1. Defendant has not dedicated its property to public use.
2. Defendant does not offer, deliver, or sell water to persons other than its stockholders.
3. Defendant is operating as a mutual water company serving water to 52 customers on a non-profit basis.
4. Defendant does not lose its status as a mutual water company merely because it delivers water to persons occupying lots in Tract 25493 when such persons do not have shares of stock of

the mutual water company in their possession, so long as the persons are entitled to a share of stock and are in the process of obtaining it.

Conclusions

The Commission concludes that:

1. Sharder is not, and has not been, operating as a public utility subject to jurisdiction of this Commission.
2. An investigation into the service area, operations and profits as to whether Sharder has been, or is, a public utility should not issue at this time.
3. The complaint should be dismissed.

O R D E R

IT IS ORDERED that the complaint is dismissed.

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

Dated at San Francisco, California, this 14<sup>th</sup> day of OCTOBER, 1972.

Vernon L. Lichten  
President  
William J. Lichten  
J. L. Lichten  
Don L. Lichten  
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.