

ORIGINAL

Decision No. 81595

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

N. WARREN SHELDON, PERCY H. WESTON,
WILLIAM STEYDING, and BOBBIE DE CLURE,

Complainants,

vs.

SUMMIT GROUP, RICHARD ALDERSON,
RONALD DUNTON, GENERAL PARTNERS, ET
AL., Commonly known as LOMA PRIETA
WATER COMPANY,

Defendants,

Case No. 9458
(Filed October 19, 1972)

Philip S. Rosenblatt, Attorney at Law, for
complainants.

Ronald Dunton, Attorney at Law, for defendants.

Jack Strang, for Jack and William Strang,
interested parties.

Walter H. Kessenick, Attorney at Law, and
Robert Bennett, for the Commission staff.

O P I N I O N

This complaint was filed on October 19, 1972. The Answer to Complaint and Request for Affirmative Relief was filed on January 23, 1973. The defendant utility serves only eight customers; four are the complainants herein. The complaint alleges that from July 17, 1972 to October 1, 1972 very little water was provided by the system; for 18 days during the stated period the water was turned on for only 3 to 12 hours a day, and for 50 days there was no water at all. The complaint further alleges that the water provided is unsanitary and polluted; that part of the supply is drawn from an open creek through an unprotected plastic pipe; that new buildings have been constructed in the area and some have been

provided with deep wells which seriously deplete the water supply; and that the two springs which serve the system are located on land which has recently been sold. The complaint thereupon prays that the Loma Prieta Water Company, a public utility, be ordered to cease and desist from wrongfully depriving the complainants of their daily and only source of water. It further prays that the Commission order the defendants' utility to provide sufficient water from outside sources to satisfy customer needs, at no cost to the customer. The complaint suggest that Special Condition 4 of Tariff Schedule No. 2LR, which provides that the customers must share the cost of water purchased by the utility from outside sources, be eliminated from the tariff.

The Answer alleges that the complaint is based on the driest period of a very dry year; it includes the meter readings on the system for the stated period and reveals that 1,500 gallons were provided on six occasions and 1,000 gallons on one occasion for the three heaviest users of water, from July through October 2, 1972, to lessen the burden of supplying the other customers on the system, since the latter refused to pay for purchased water. It is further alleged that facilities of the water company have been altered, damaged, removed, or disconnected by parties unknown, without the knowledge or permission of defendants and that the water company has a current plan to improve and modernize its facilities and to apply for a rate increase in the near future. The Answer requests that two additional customers be designated as cross-defendants, since they are necessary and proper parties in this proceeding; that all parties be enjoined from interfering in any way with the facilities or equipment of the Loma Prieta Water Company without the express permission of defendants or one of them; and that complainants be denied the relief they request.

The request to bring in cross-defendants is denied.

The Water System

The utility is located near Los Gatos, Santa Cruz County, between New Summit Highway 273 (or Highland Way) and Loma Prieta Avenue.

The system is supplied by two springs located about one mile south of the storage tanks. Water flows through a one inch pipe from the main spring to a sump about 3-1/2 feet in diameter and 4 feet deep. The sump is enclosed by a structure which is normally kept locked. Water is drawn from the sump by gravity through a one-inch pipe to the storage tanks, which includes a 4,000-gallon steel tank and a 30,000-gallon redwood tank, with a booster pump, pressure tank, and other necessary valves and equipment. The second spring is located 100 yards from the main spring and resembles an old mine shaft. The flow from this spring is not known, but it is less than the main spring, with no water at all during dry years.

- The one-inch pipe to the tanks includes sections of plastic and metal pipe. It is laid on the ground surface in certain areas, without protection. It is reported that about six gallons per minute is the maximum flow the springs can provide, with less than one gallon a minute in the dry season.

Water from the storage tanks flows through three one-inch pipe outlets to the users. The three westerly users (Jack Strang, William Strang, and Bobbie De Clure) obtain their water by gravity flow from the storage tanks, through 1,000 feet of 1/2-inch plastic pipe, which is laid along the ground for most of its length. A second branch line is connected to a small booster pump which raises the water to a small galvanized steel pressure tank, then 300 feet up the hill through a one-inch pipe to Weston's residence, an additional 500 feet to Sheldon's place, and a final 300 feet to the Steyding home. There is a 120-gallon pressure tank located near each of the last three houses, which are higher than the main storage tanks. A third one-inch line, laid on the ground, carries water 300 feet downhill to a 1,500-gallon redwood tank located above

and near the Cox residence. This supplies a store, the Cox residence, and a tri-plex. The store has drilled a well and these three customers will disconnect from the water system in the near future. The water system does not satisfy some of the requirements of General Order No. 103, but it serves only six to eight customers, who frequently contest or refuse to pay for whatever water is received.

History

Defendant water company was serving three customers when classified as a public utility by Decision No. 72108 dated March 7, 1967 in Case No. 8356. Decision No. 74846 dated October 22, 1968 in Cases Nos. 8742 and 8752 and Application No. 50203 ordered defendant water company to extend service to five more residents, a total of eight customers. Decision No. 74908 dated November 6, 1968 (Application No. 50343) granted a rate increase to the present flat rate of \$11 per month and the right to prorate the cost of any water purchased among all the customers using it. A review of the record in past proceedings and the staff's current investigation reveal that the two springs connected to the system cannot provide an adequate supply of water even under favorable conditions. The system provided a flow of 1/3-gallon per minute during the summer, 1972. The minimum flow required by General Order No. 103 is 100 gallons per minute. An estimate of the cost of recommended improvements was provided by defendant water company. A well 300-feet deep at the storage tank site would cost \$3,000 to drill (\$10 a foot), with the necessary pump and lines an additional \$1,000, a new 700-foot underground line to Strang, \$400, and necessary fences \$1,400 more, for a total of \$5,800. During 1972 defendant water company received \$852.50 from its customers and paid out \$2,139.76, which left a deficit of \$1,287.26, according to the staff report.

Evidence

A public hearing was held on March 19 and 20, 1973 in Santa Cruz before Examiner Fraser. Evidence was presented by the complainants and cross-defendants, defendants, Santa Cruz County Health Department, and the Commission staff. The matter was submitted on the second day of hearing.

One of the complainants testified that he has been a customer of the water company for 27 years, and since 1965 when the present owners took over, services and supply have steadily deteriorated. He placed two calendars in evidence to show that for 82 days during the period from July 17 through December 31, 1972, and during all of January and February of 1973, he had no water service. He admitted, however, that he disconnected the tank which provides water from defendants' systems on November 21, 1972, and has never reconnected it since he considers it a useless act. He testified he obtained the necessary water during these periods by filling jars and pails from various outside sources. He advised he first phoned the utility manager in July 1972 and was told "there was no water"; later he was referred to the maintenance man who promised water but did not produce. He stated that he never checked the tanks or pumps when out of water because he had never obtained permission to trespass on land owned or used by defendants. He testified he will not pay extra for water hauled in by truck and deposited in the storage tanks because he pays \$11 for service, which includes water. He stated he is paying twice for the same water if required to pay for purchasing water elsewhere in addition to the monthly charge. He further testified if defendants are authorized to charge more than \$11 a month for water, he will refuse to pay and will purchase or obtain his water from other sources. If the utility rates are raised it will be less expensive for him to have his own water hauled in at \$12 per 1,000 gallons. A cross-defendant and former customer testified he was on the system from 1953 through December of 1971 when he moved and turned the premises over to his daughter. The water bills have not been paid since December of 1971, because water is usually not available through the system. This witness further testified that he will leave the water system if there is a substantial raise (to \$25) in the rates.

A sanitarian from the Santa Cruz County Health Department testified the water has been contaminated in the past by a high bacteria count and the occasional presence of irritants and fecal matter, which may be produced by birds or small animals who enter

poorly screened storage tanks or sumps. The witness noted that his department made an inspection in March of 1973 when it appeared that the sump and area around the spring had been cleaned. He testified most of the pipe is plastic and laid on the surface of the ground. There are many leaks, which could be avoided by using a better grade of pipe.

A witness under subpoena testified he was the system maintenance man from July to November of 1972. He stated he repaired leaks and replaced one pump during his tenure. He checked the system almost every day and purchased water on 15 or 20 occasions, which was placed in the storage tank that served the store. This tank is not connected to the water system but was filled from a well that is not on the system almost every day by pumping water through a long garden hose. The water purchased for the store also benefited the other customers, since it reduced the amount of water the store would normally require from the system. He testified that valves were opened on occasion without his knowledge or authority and on at least one occasion jammed so it was difficult to close; valves were also found partially dismantled with the parts laid out nearby. The valve box was locked after the valve changing occurred and there were no further incidents. The man who has maintained the system from November 9, 1972 to the date of hearing testified as follows for the defendants: He advised that heavy rain and freezing weather have made it difficult to keep up necessary repairs. One pump froze and became inoperative. A replacement was ordered and connected to the system about December 20, 1972, when the weather became warmer. Plastic pipes laid on the ground were damaged by horses and occasionally broken by trucks or cars. He has replaced the sections of damaged pipe and has cleaned, flushed, and rodent proofed the spring house as suggested by the county health department. He has cleaned, drained, flushed, and disinfected all the tanks and replaced the hinges, hasp, and lock on the spring house door. He is also scheduled to work on the roof but

has not started as yet. He has purchased water on five occasions and placed it in the system storage tanks with no charge to the users. Plans for future maintenance do not include burying the pipe laid on the surface. The ground is rocky and there are many trees. Digging the necessary trenches would be very expensive, whether done by hand or machine. He has recently had a telephone installed and will be available to handle customer complaints. He called a meeting of all customers in early February of 1973 to discuss how more water could be obtained and the system improved. The complainants in this action were the only ones who attended the meeting. He suggested a community well but no one else listened. All of the customers present merely complained about the amount or quality of the water available and nothing was accomplished.

An owner and general manager of the defendant water company testified as follows: The water system was purchased in 1965; it was maintained from 1965 to May of 1972 by an experienced and popular resident of the community; when he resigned a new man was hired and the latter was supposed to evenly distribute the water and keep the customers satisfied; the witness left the management of the system to the newly hired man and was not aware of the water shortage until Col. Sheldon finally called him; he immediately discharged the caretaker and hired a new man who is still employed; the witness paid for water transported and pumped into the store storage tank; nothing was accomplished since no one received an adequate supply of water. He testified that no source of water has been sold as alleged in the complaint. The land sold includes an open creek which has never been connected to the water system.

A staff engineer testified and placed an exhibit in evidence. He estimated that at 1/3 gallon per minute the system produced 45,000 gallons of water from July 17 to October 16, 1972. His investigation determined that 31,470 gallons passed through the meters, which leaves approximately 13,500 gallons not accounted for.

He recommended that new wells be dug, that the storage tanks and transmission mains be disinfected, that the exposed plastic pipe be replaced and buried, that the storage tank roofs be repaired, that measures be taken to prevent tampering with the system, a maintenance program be instituted, and a telephone number provided to make it convenient for customers to report problems with the system.

Discussion

Complainants seek to have defendants ordered to guarantee a continuing supply of plentiful water regardless of the cost of obtaining it. Complainants have stated on the record they will not participate in paying for needed improvements and have threatened to disconnect from the water system if their rates are raised. It would be unconscionable to order the utility to undertake expensive improvements under these conditions. If the quantity of water is increased and the quality improved the expense should be divided among those who share the benefits. The customers of the utility have a choice of continuing to use the system as it is now, or of agreeing to share in the expense of improvements, or of combining all customers into a mutual water company. The staff recommendations have been accepted and the work has been completed, with the exception of replacing pipe and digging new wells. The last two suggestions involve a great deal of expense which the utility cannot afford at this time.

Findings

1. Defendants have not wrongfully or deliberately deprived the complainants of water.
2. Parts of the system are in poor condition and the scant supply is aggravated by numerous leaks.
3. Defendants have provided necessary screening and cleaning. Leaks are being repaired and broken pipe replaced.
4. Water samples taken during the winter rains showed a high level of coliform contamination.
5. There is no evidence that the construction of wells in the vicinity has reduced the flow from the springs.

6. Both springs are located on land still owned by the defendants.

7. The tariffs filed by the utility authorized it to add the additional cost of purchased water to customer bills.

8. Certain valves and pumps have been placed in locked metal or wood boxes to discourage tampering and vandalism.

9. The utility will soon serve only six customers. The extensive improvements recommended by the staff are not justified.

10. The two springs do not produce sufficient water supply for the system during the dry season and it has, in the recent past, been necessary to haul water in trucks to the storage tanks.

11. The Commission in Decision No. 74908 dated November 6, 1968 found that the filed tariffs were reasonable including the added charge for trucked in supplemental water.

12. Since the company's filed tariffs provide for the trucking in of supplemental water in times of need, the customers are assured of a continuous supply of water.

The Commission concludes that the relief requested in the complaint and in the answer should be denied.

O R D E R

IT IS ORDERED that:

1. The relief requested is denied.

2. The company shall provide trucked in supplemental water at the storage tanks in sufficient quantity to assure a continuous supply of water.

3. The customers shall reimburse the company for the cost of this supplemental water as provided for in the company's filed tariffs.

4. The company shall add the following Special Condition to Tariff Schedule No. 2LR, and file the revised tariff within thirty days following the date of this order.

"The Company shall notify each customer and the Commission of the commencement and termination of providing trucked in supplemental water to the storage tanks. ✓

"The company shall furnish the Commission with the amount added to customers' bills for the additional costs of trucked in supplemental water."




5. The company shall furnish the Commission with copies of tests of water quality that are required by the applicable public health agencies.

6. The company shall furnish the Commission with a report that the company has corrected the deficiencies that were contributing to the contamination of the water supply.

7. The company shall initiate a regular and systematic inspection and maintenance program and maintain a legible log of the work performed.

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

Dated at San Francisco, California, this 17th day of JULY, 1973.


President


Commissioners

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