

ORIGINAL

Decision No. 81607

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ARLAND B. JONES,

Complainant,

vs.

SHASTA RETREAT WATER SYSTEM,
HARRY H. GESTER, Owner
P. O. Box 697
Lafayette, California,

Defendant.

Case No. 8936

ORDER TO SHOW CAUSE

Upon reading the affidavit and application for order to show cause of William R. Johnson and the affidavit in support of application for order to show cause of Francis S. Ferraro, filed herein,

IT IS ORDERED that Harry H. Gester, doing business as SHASTA RETREAT WATER SYSTEM, whose residence address is 2148 Stewart Avenue, Walnut Creek, California, and whose business address is 1468 East 14th Street, San Leandro, California, appear before Examiner Jarvis at 10:00 a.m. on Thursday, July 26, 1973, in the Fire Chief's Office, City Hall, 5902 Dunsmuir Avenue, Dunsmuir, California, and then and there show cause, if any he has, why he should not be adjudged to be in contempt of the Public Utilities Commission of the State of California and punished therefor in the manner prescribed by law for each and every offense of alleged contempt set forth in the aforementioned affidavit and application, it being alleged therein that Harry H. Gester, doing business as Shasta Retreat Water System, while having knowledge of the ordering paragraphs of Decision

No. 77017 and while having ability to comply therewith, failed and refused to obey the orders contained in ordering paragraphs numbered 1 and 2 of said decision of the Public Utilities Commission, and that said failures and refusals are in violation of the law and in contempt of this Commission.

The Secretary is directed to cause a true copy of this order, to which shall be attached a true copy of said affidavit and application for order to show cause, to be personally served upon Harry H. Gester, doing business as Shasta Retreat Water System.

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

Vernon L. Sturgeon
President
J. P. Sullivan Jr.
[Signature]
[Signature]
Commissioners

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

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AFFIDAVIT AND APPLICATION
FOR ORDER TO SHOW CAUSE

State of California

City and County of San Francisco

ss.

WILLIAM R. JOHNSON, being first duly sworn, deposes and says:

First Offense

I.

That he is the duly appointed, qualified and acting Secretary of the Public Utilities Commission of the State of California; that he is the officer required to keep full and true records of all proceedings of said Commission, and that he has kept such records of the proceeding before this Commission numbered and entitled as above.

That said Public Utilities Commission is a public body of said State created under and by Sections 22 and 23 of Article XII of the Constitution of California, and exercises such powers, including the power to punish for contempt, as have been conferred by Sections 20, 21, 22, 23 and 23a of Article XII of said Constitution by the Public Utilities Code, and by various other statutes.

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That affiant makes this Affidavit and Application for Order to Show Cause in his capacity as Secretary of the Public Utilities Commission and upon the request and direction of said Public Utilities Commission.

II.

That Harry H. Gester, doing business as Shasta Retreat Water System, is a public utility water corporation within the meaning of Section 241 of the Public Utilities Code. That the present or usual mailing address of said Harry H. Gester is P. O. Box 183, Alamo, California 94507, that said Harry H. Gester resides at 2148 Stewart Avenue, Walnut Creek, California, and that his business address is 1468 E. 14th Street, San Leandro, California.

III.

That on July 15, 1969, a complaint having been filed in Case No. 8936 by a customer of Harry H. Gester, doing business as Shasta Retreat Water System, a public hearing was held before Examiner Coffey on January 22, 1970 in Dunsmuir, California. Subsequently the Commission issued Decision No. 77017 dated March 31, 1970, wherein said Harry H. Gester, doing business as Shasta Retreat Water System, was ordered to take certain steps to prevent the entry of debris into the intake structure of the Shasta Retreat Water System, make arrangements for a local maintenance man to maintain the system, furnish said maintenance man with written instructions covering his job, arrange for telephone messages to be received in the water system service area, to provide all customers with written notice of the telephone number of said maintenance representative, inform the Commission in writing of the name, address and telephone number of said maintenance man, maintain the records of said water system in conformance with the Commission's Uniform System of Accounts for Class D Water Utilities, and for the year 1970 and subsequent years to apply a depreciation rate of 3 percent to the original cost of depreciable plant. That a certified copy of said

Decision No. 77017 was served by mail upon said Harry H. Gester, doing business as Shasta Retreat Water System, on March 31 and December 4, 1970.

IV.

That on December 15, 1972, a complaint was filed by a customer of Shasta Retreat Water System in Case No. 9487 alleging failure of Harry H. Gester to repair a water system line in front of complainant's residence and that since September 1972 there has not been a resident manager in the area to maintain said water system. Subsequently, pursuant to Decision No. 81032 dated February 6, 1973, said damaged water line was repaired. That said repair was effected following personal service of Decision No. 81032 made on Harry H. Gester on February 10, 1973.

V.

That Paragraph 1 of the ordering paragraphs of Decision No. 81032 provides as follows:

"IT IS ORDERED that Harry H. Gester, doing business as Shasta Retreat Water System (defendant), on or before August 1, 1970, shall place rock and gravel over the screens on the intake structure of such size and to such depth that the entry of debris into the water system will be prevented and the rock and gravel will not be removed by stream flow action."

That on July 3, 1973, Francis S. Ferraro, an employee of the Public Utilities Commission, inspected said intake structure and found that said intake structure was not being maintained in accordance with Ordering Paragraph No. 1 of Decision No. 77017, whatsoever. A copy of an affidavit of Francis S. Ferraro in support of Application for Order to Show Cause alleging the failure to maintain said intake structures in the manner ordered is attached hereto marked as Exhibit A and made a part hereof.

VI.

That affiant is informed and believes and upon such information and belief alleges that Harry H. Gester, doing business as Shasta Retreat Water System, while having notice and knowledge

of the contents of Decision No. 77017, including Ordering Paragraph 1 thereof, and while having ability to comply therewith, and while said Ordering Paragraph has remained in full force and effect, has continuously to the present time, and with intent to violate the same, failed and refused to comply with said Ordering Paragraph 1 in that said Harry H. Gester has failed to maintain the intake structure of the Shasta Retreat Water System in the manner prescribed in Ordering Paragraph 1 of Decision No. 77017 as set forth hereinabove, and that said failure and refusal were and continue to be in violation of law and in contempt of this Commission.

Second Offense

For a second, separate and distinct offense, affiant alleges as follows:

I.

Affiant hereby refers to and incorporates by reference Paragraphs I through IV of the first offense, as if set forth fully herein.

II.

That Paragraph 2 of the ordering paragraphs of said Decision No. 77017 provides as follows:

"IT IS ORDERED that on or before June 1, 1970, defendant shall:

- a. Make arrangements for a local maintenance man to (1) inspect the intake facilities not less than once each week and more often during stormy weather, (2) when appropriate clean debris from the intake facilities and rearrange the rock and gravel to keep the intake screens at maximum efficiency and (3) flush the mains at least once each month and more often during stormy weather.
- b. Furnish the maintenance man with written instructions concerning his job.
- c. Arrange for telephone messages to be received in the Dunsmuir area to enable customers to notify the maintenance man of service complaints and arrange for a copy of the filed tariffs to be available for public inspection in Dunsmuir or vicinity.

"d. Inform all customers, in writing, of the name, address and telephone number of the maintenance man or service representative selected to receive customer service complaints in the Dunsmuir area.

e. Defendant shall discontinue his practice of requiring his customers in Dunsmuir to make their service complaints directly to him in Contra Costa County.

f. Report to the Commission, in writing, the name, address and telephone number of the individual selected to place rock and gravel required in Ordering Paragraphs Nos. 1 and 2a above, furnish a copy of the written instructions required by Ordering Paragraph No. 2b above; state the date said individual commenced his responsibility; and state the terms of said individual's employment, the name of the party, the local telephone number arranged to receive the messages and the arrangements for the local availability of filed tariffs as required by Ordering Paragraph No. 2 above."

III.

That pursuant to the affidavit of Francis S. Ferraro, an Assistant Utilities Engineer employed in the Hydraulic Division of the Public Utilities Commission of the State of California, dated July 11, 1973, a copy of which is attached hereto marked Exhibit A and made a part hereof, that on July 2, 1973, Mr. Ferraro personally inspected the Shasta Retreat Water System near Dunsmuir, California, and interviewed at least one customer as well as attempted to obtain a local telephone number to contact the water system by reference to the telephone company directory for the Dunsmuir area and has determined that since September 1972 Mr. Gester, who does not live in the area of the water system, has not had a resident manager in the area to maintain the system as required by Ordering Paragraph No. 2 of Decision No. 77017.

IV.

That affiant is informed and believes and upon such information and belief alleges that Harry H. Gester, doing business as Shasta Retreat Water System, while having notice and knowledge of the contents of said Decision No. 77017 and Ordering Paragraph No. 2 thereof and while having ability to comply therewith, and

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while said Decision No. 77017 and Ordering Paragraph No. 2 thereof remained in force and effect, has continuously since September of 1972 to the present time, failed and refused to comply with said Ordering Paragraph No. 2 in that Harry H. Gester, doing business as Shasta Retreat Water System, failed and refused to have a resident manager in the area to maintain said water system or to arrange for local telephone messages to be received in the Dunsmuir area to enable customers to notify said maintenance man of service complaints, and that said failures and refusals were and continue to be in violation of the law and in contempt of this Commission.

V.

That affiant states that based upon the facts stated herein and the supporting affidavit of Francis S. Ferraro attached hereto as Exhibit A, that Harry H. Gester, doing business as Shasta Retreat Water System, has been and continues to be in violation of law and in contempt of this Commission since September 1972, and further states that each of said failures and refusals to obey the lawful orders of this Commission constitutes a separate and distinct act of contempt.

WHEREFORE, affiant declares that pursuant to the complaint filed by Raymond Lincoln Ebbe in Case No. 9487 the Public Utilities Commission of the State of California has ordered a hearing in said case to be held before Examiner Jarvis, on Thursday, July 26, 1973 at 10:00 a.m. in the Fire Chief's Office, City Hall, 5902 Dunsmuir Avenue, Dunsmuir, California.

WHEREFORE, affiant prays that the Public Utilities Commission issue its order requiring said Harry H. Gester, doing business as Shasta Retreat Water System, to appear before said

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Commission at said hearing scheduled for July 26, 1973 in the Fire Chief's Office, City Hall, Dunsmuir, California, at 10:00 a.m. and show cause, if any he has, why he should not be adjudged to be in contempt of this Commission pursuant to Section 2113 of the Public Utilities Code and punished in the manner provided for by law for each and all of his contempts of said Public Utilities Commission and of its orders hereinabove described.

William R. Johnson
William R. Johnson
Secretary of the Public Utilities
Commission of the State of California

Subscribed and sworn to before me
this 17th day of JULY, 1973.

Isola R. Lino
Notary Public in and for the
City and County of San Francisco,
State of California
My Commission expires: March 14, 1976

Case No. 8936

EXHIBIT A

ds

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ARLAND B. JONES,

Complainant,

vs.

SEASTA RETREAT WATER SYSTEM,
HARRY H. GESTER, Owner
P. O. Box 697
Lafayette, California,

Defendant.

Case No. 8936

AFFIDAVIT OF FRANCIS S. FERRARO
IN SUPPORT OF
APPLICATION FOR ORDER TO SHOW CAUSE

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

ss.

FRANCIS S. FERRARO, being duly sworn, deposes and says:

I

That he is now and at all times herein mentioned was a citizen of the State of California, over the age of 21 years, a resident of the County of Alameda, State of California, and is employed as an Assistant Utilities Engineer by the Public Utilities Commission of the State of California, his office address being 350 McAllister Street, San Francisco, California.

II

That he is familiar with that certain public utilities water system owned and operated by Harry H. Gester, doing business as Shasta Retreat Water System. That he is familiar with Decision

No. 77017 dated March 31, 1970, and is familiar with Decision No. 81032 dated February 6, 1973, in Cases Nos. 8936 and 9487, respectively.

III

That he is familiar with the area for which Harry H. Gester, doing business as Shasta Retreat Water System, was granted a certificate of public convenience and necessity to operate a water system in the vicinity of Dunsmuir, Siskiyou County, California.

IV

That he is familiar with the orders contained in Decision No. 77017 dated March 31, 1970, more particularly Ordering Paragraphs 1, 2(a through f) and Ordering Paragraph 3(a, b).

V

That on July 2, 1973, he inspected the intake structure of Shasta Retreat Water System for the purpose of determining whether or not rock and gravel were placed over the screens on said intake structure of such size and to such depth that the entry of debris into the water system will be prevented and the rock and gravel will not be removed by stream flow action, as required by Ordering Paragraph 1 in Commission Decision No. 77017. He determined that said intake structure had not been covered with rock and gravel or screens in the manner ordered by Ordering Paragraph 1 of said decision.



VI

That he interviewed a customer of the Shasta Retreat Water System for the purpose of determining whether arrangements for a local maintenance man to inspect the intake facilities,

clean said intake facilities, and flush the mains in said water system had been hired; and to further determine whether said maintenance man had been furnished with written instructions covering his job, and to further determine whether arrangements had been made for telephone messages to be received in the Dunsmuir area to enable customers to notify the maintenance man of service complaints and whether copies of filed tariffs were available; and to determine whether all customers had been informed in writing of the name, address and telephone number of said maintenance man, and to determine whether Mr. Gester had discontinued requiring his customers in Dunsmuir to make their service complaints to him in Contra Costa County. He determined that since September 1972 Mr. Gester, who does not live in the area of the water system, has not had a resident manager in the area to maintain the system as required by Ordering Paragraph 2 of Decision No. 77017, nor had said facilities been cleaned and maintained, nor customers notified, nor local complaint procedure established, since September 1972.


Francis S. Ferraro

Subscribed and sworn to before me
this 17th day of July, 1973

Notary Public in and for the
City and County of San Francisco
State of California

My Commission expires: MARCH 14, 1976