

ORIGINAL

Decision No. 82111

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JESUS C. MENDOZA, BILLY ALVES, JR.,  
ERNEST NUANES and PAUL G. GARCIA,

Complainants,

v.

WILLIAM LAIKEM, RUDOLPH VOGLER, and  
MARIE VOGLER, dba VOGLER WATER  
SERVICE,

Defendants.

Case No. 9533  
(Filed April 4, 1973;  
amended May 17, 1973)

Howard K. Watkins, Attorney at Law, for  
complainants.

William H. Kessler, Attorney at Law,  
for defendants.

Francis H. Ferraro, for himself, interested  
party.

Cleo D. Allen, for the Commission staff.

O P I N I O N

A public hearing on the above complaint was held before Examiner Daly on September 25, 1973 at Fresno at which time and place the matter was submitted.

The complaint, as amended, alleges that defendants have been providing complainants with water service in Selma, California; that said service has been provided without prior authorization of the Commission and without conforming to rules and regulations established by the Commission; that defendants have cut off the water supply to neighbors without notice; that defendants have doubled water rates within the past year-and-a-half; and that defendants have failed to keep the water pressure up to a sufficient level.

In response thereto, defendants allege that the water service is not subject to the jurisdiction of the Commission, but is provided pursuant to the provisions of Section 2704 of the Public Utilities Code, which reads as follows:

"Any owner of a water supply not otherwise dedicated to public use and primarily used for domestic or industrial purposes by him or for the irrigation of his lands, who (a) sells or delivers the surplus of such water for domestic or school district purposes or for the irrigation of adjoining lands, or (b) in an emergency water shortage sells or delivers water from such supply to others for a limited period not to exceed one irrigation season, or (c) sells or delivers a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available, is not subject to the jurisdiction, control, and regulation of the commission."

The record indicates that in 1957 William Laikem and his brother owned and operated a manufacturing plant in Selma; that they also owned two acres of adjoining vineyard property; that in 1958 they installed a well, pump, and storage tank, which were used for the purpose of providing water to the plant and for the irrigation of the vineyard; that in 1959 a strip of property containing the well, pump, and storage tank was sold to defendant's son-in-law (Smith); that Smith thereafter provided water for compensation to one or two of the property owners in a nearby subdivision known as Tract 1199 and also provided water to defendant Laikem for use in the plant and for the irrigation of the vineyard; that in 1961 defendant Laikem sold the vineyard to his brother, who held the property until 1970, at which time defendant Laikem reacquired the property; that use of the property as a vineyard was discontinued in 1963 and

irrigation was discontinued except for the requirements of a few walnut trees located on the property; that Smith continued to provide water to property owners in Tract 1199 until 1964, when the water facilities were sold to a Mrs. Erickson who in turn provided water service until 1972 when she sold the system to Rudolph and Marie Vogler; that the Voglers continued to provide water service to Tract 1199 until 1973 when the property and water facilities were reacquired by defendant Laikem, who assertedly purchased the water property to realign his property line; that at the present time there are thirteen homeowners in Tract 1199, nine of whom are purchasing their water from defendant Laikem, the remaining four have their own water facilities; and there are four customers outside Tract 1199; that water was provided for \$3.50 a month until 1972, when the Voglers raised the rates to \$7.35; that the present estimated value of the water facilities including land is \$3,500; and that the nearest public utility water system is located two miles from Tract 1199.

Two of the complainants testified that they purchased their properties in Tract 1199 upon reliance that the water service provided by defendants would be made available to them. The staff conducted an investigation of the operation and introduced the results thereof along with recommendations in the form of Exhibit 1. The staff recommended that the operation be declared that of a public utility and that the applicable monthly rate of \$5 for a single family residential unit be authorized.

After consideration, the Commission finds that:

1. Defendant Laikem owns and operates a water system supplying water for compensation to thirteen customers, including complainants, in Selma, California.
2. Although there may have been no dedication in 1958 when defendant Laikem first installed the water system, public dedication

took place under the direction and control of the system by Smith and was continued under the subsequent direction and control of Mrs. Erickson and Mr. and Mrs. Vogler.

3. If the exemption provided under Section 2704 of the Public Utilities Code was available to defendant Laikem when he originally owned the water system, manufacturing plant, and vineyard, it did not extend to Smith, Mrs. Erickson, or to the Voglers, whose primary use of the water system was not for domestic or industrial purposes nor for the irrigation of their own land as required by Section 2704.

4. The use of the property as a vineyard was discontinued in 1963 so that the primary use of the water system thereafter was to provide service to the nine homeowners in Tract 1199.

5. The dedicated nature of the system was not altered upon reacquisition of the property by defendant Laikem.

6. Defendant Laikem shall improve the water system by placing in operation an auxiliary power source and a blow-off valve, as more particularly set forth in paragraphs 6 and 7 of the order.

The Commission concludes that defendant Laikem is conducting a public utility water corporation system within the meaning of Sections 216, 240, and 241 of the Public Utilities Code and that said operations are subject to the jurisdiction of the Commission. Defendant will be required to file the schedule of rates as proposed by the staff and as set forth in Exhibit 1. Said rates shall not be increased without prior authorization of the Commission.

#### O R D E R

IT IS ORDERED that:

1. Mr. William Laikem is declared to be a public utility subject to the jurisdiction of this Commission and to the applicable provisions of law.

2. Defendant Laikem is authorized and directed to file, within thirty days after the effective date of this order, the schedule of rates set forth in Appendix A of this order, a tariff service area

map clearly indicating the boundaries of the service area, appropriate general rules, and copies of printed forms to be used in dealing with customers. Such filing shall comply with General Order No. 96-A, and the tariff schedules shall become effective on the fourth day after the date of filing.

3. Defendant Laikem shall prepare and keep current the system map required by paragraph I.10.a of General Order No. 103. Within 180 days after the effective date of this order, defendant Laikem shall file with the Commission two copies of such map.

4. For the year 1973, defendant Laikem shall apply a depreciation rate of 3 percent to the original cost of depreciable plant. Until review indicates otherwise, defendant Laikem shall continue to use this rate, and shall review his depreciation rates at intervals of five years and whenever a major change in depreciable plant occurs. Any revised depreciation rate shall be determined by: (1) subtracting the estimated future net salvage and the depreciation reserve from the original cost of plant, (2) dividing the result by the estimated remaining life of the plant, and (3) dividing the quotient by the original cost of plant. The results of each review shall be submitted promptly to this Commission.

5. Defendant Laikem shall file with this Commission, within 120 days after the effective date of this order, a report setting forth in detail a determination of the original cost, estimated if not known (historical cost appraisal), of the properties used and useful in providing water service, and also the depreciation reserve requirement applicable to such properties. The report shall designate which items are supported by vouchers or other like documentary evidence and which items are estimated, and it shall show the basis upon which any such estimates were made.

6. Defendant Laikem shall install and place in operation, on or before July 1, 1974 an auxiliary power source of not less than 10 hp for the well pump. Such power source may be a gasoline or bottled gas fueled engine operable automatically upon electric power failure. Defendant Laikem shall report completion of the installation to the Commission by August 15, 1974.

7. Defendant Laikem shall install, before July 1, 1974 a blow-off valve at the end of the distribution main, and report completion thereof to the Commission by August 15, 1974.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of NOVEMBER, 1973.

Vernon L. Spurgeon  
President  
William J. Spurgeon Jr.  
William J. Spurgeon Jr.  
William J. Spurgeon Jr.  
William J. Spurgeon Jr.  
Commissioners

APPENDIX A

Schedule No. 2R

RESIDENTIAL FLAT RATE SERVICE

APPLICABILITY

Applicable to all flat rate residential water service.

TERRITORY

The unincorporated area known as Subdivision 1199 and vicinity, near the intersection of McCall and Manning Avenues, Fresno County.

RATES

	Per Service Connection Per Month
For a single-family residential unit including premises .....	\$ 5.00
a. For each additional single-family residential unit on the same premises and served from the same service connection .....	4.00
b. For each business or industrial connection...	15.00

SPECIAL CONDITION

The above flat rates apply to a service connection not larger than one inch in diameter.