

Decision No. 85338

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Truman A. Nordby,

Complainant,

vs.

Neal Water Works,

Defendant.

Case No. 9872
(Filed February 13, 1975)

Truman A. Nordby, for himself, complainant.
Richard Lee Neal and Carol Ann Neal, for Neal
Water Works, defendant.
Albert T. Vogel, Jr., Attorney at Law, for
himself, interested party.
Eugene M. Lill, for the Commission staff.

O P I N I O N

Complainant Truman A. Nordby requests that defendant Neal Water Works (Neal), a partnership composed of Richard L. Neal and Carol Ann Neal (the Neals), husband and wife, be declared to be a public utility; be required to properly maintain and repair its water plant; and be required to cease charging unreasonable rates. A hearing was held on the matter at Morgan Hill on May 28, 1975 before Examiner Pilling. On August 15, 1975 the Commission received a written communication from complainant withdrawing his complaint.

Neal's water system is located approximately 2-1/2 miles east and south of the city of Morgan Hill. The system serves water for domestic and irrigation uses from two wells via mains to 13 families, including the Neals. The lots served are identified as Parcel 264, Santa Clara County.

The staff witness from the Hydraulic Branch of the Commission's Utilities Division, who investigated the water system and complaints concerning its service, reported at the hearing that the water supply for the system is obtained from two wells: Well No. 1, which is 360 feet deep and 50 years old, and Well No. 2, which is 480 feet deep and 30 years old. Well No. 1 delivers water through 330 feet of 5-inch pipe to a 2,250-gallon hydropneumatic tank which pressurizes the domestic water system which consists of 523 feet of 2-1/2-inch pipe, 1,000 feet of 1-1/2-inch pipe, 700 feet of 1-1/4-inch pipe, and 200 feet of 1-inch pipe. Well No. 2 delivers water to a 500-gallon hydropneumatic tank which pressurizes 3,258 feet of 3-inch pipe principally used for irrigation. Well No. 2 is not now in operation due to the submersible pump having broken down and there not being enough money in the business to fix it. The staff witness testified that the present facilities would meet the standards and requirements of the Commission's General Order No. 103, if Well No. 2 was made operational and the domestic water supply lines were replaced with larger size mains. The staff witness also reported that Neal renders service under four rate schedules. The kind of schedule under which a customer is served is based on an agreement entered into at the time of purchase of the lot. Two of the rate schedules are for domestic metered service, one is for flat rate domestic service, and one is for bulk watering of pasture land.

Complainant, a user of Neal's water, detailed a series of water outages he experienced with the system so far in 1975.

The system has had five previous owners, the first of which was Mr. Tony Talerico, who built the system in 1970, at which time he parceled the land containing the lots now being served by the water system. No certificate for the construction of the system was obtained from the Commission. Talerico, who still lives within the

parcel and who signed a petition in this case to have Neal declared a public utility, transferred the system and unsold portions of the parcel to Mr. Edwin McManus, who transferred them to his brother, Mr. Alvin McManus, who, as time went by, sold portions of his vacant lands to others and connected the individual pieces of land he sold to the water system. Eight of the homeowners being served by the water system signed a petition to be admitted into evidence at hearing requesting that Neal be declared a public utility.

Alvin McManus was living on the lot now owned by the Neals which was being served by the water system when he sold the water system, his house lot, and unsold portions of the parcel to Mr. Malcolm Campbell, who sold off the remaining portions of the parcel and connected the water system to them. Campbell then sold the system and the house lot now owned by the Neals to Mr. William Hastings. In August of 1974 the Neals were looking for a home in the country in which to raise their children with acreage large enough on which to keep a couple of horses and came across Hastings' house and lot which were for sale. Hastings conditioned the sale of his house and lot on the Neals' taking over the water system and its operations. It was represented to the Neals that they could net \$30 a month in operating the system. Neither of the Neals had had any experience operating a water system up to that time. He is employed full time as a school teacher. In August of 1974 the Neals bought the house and took over the water system and its operations. Neal has offered to give the system to any mutual water company which the recipients of the water formed, but the offer was rejected.

Neal's water system is located entirely on the private property of the home owners served by the system with the exception of one small piece of main which crosses under a public road. The system was never extended outside of the tract, and no plans for the

system's expansion were indicated at the hearing. Up to January 10, 1975 Neal had collected \$482.32 in charges from its customers and had expended \$407.70 on the system with a \$322 bill for outside work on the system still unpaid. The Neals and members of their family operate the system, mostly in their spare time, and work without pay. The system is in disrepair, including the pump in one well being inoperable, and will require the expenditure of approximately \$5,100 to repair the system and bring it up to the standards set by the Commission's General Order No. 103. A previous owner of the system told the Neals that he had put \$5,000 into the system over a three-year period and feels he lost money on the operation. Neal has no assets outside of the facilities used to render the water service. Neal has been attempting to finance the operation by using internally generated revenue. The Neals desire to be relieved of the responsibility of operating the system and have offered to give the system to any mutual water company formed by the users of the system.

Customers receive their water under a water service agreement which each of them or their predecessors had entered into with the owner of system at the time they purchased their lots. The agreements provide that the customers would pay the same rates as are paid by the rural users of the Morgan Hill city water facilities including any increases or decreases as they occur. Neal has been charging its customers less than the rates of the Morgan Hill City water rates paid by rural users. Neal now wants to increase its rates to equal those as provided for in the water service agreement. No evidence was presented as to what point in time the operation allegedly became a public utility.

The Commission's staff witness recommended as follows:

1. Neal be declared a public utility.
2. Present agreements under which service is rendered by Neal be declared null and void.

3. All domestic customers be placed on metered rates and apply the rates attached as Appendix A to Exhibit 5.
4. All irrigation customers be placed on annual flat rate schedule and apply the rates attached as Appendix A to Exhibit 5.
5. Mains serving domestic water customers be upgraded to meet the requirements of General Order No. 103, including fire protection.
6. The hydropneumatic tanks being served by Well No. 1 be stabilized.
7. Well No. 2 be repaired and made operational.
8. Meters be installed at each well for recording quantities of water produced as required by General Order No. 103, Section 4.

The staff witness suggested that by charging the rates set out in its recommendations 3 and 4 above, Neal, in time, may be able to accumulate money to upgrade the system and make presently needed repairs and replacements.

Discussion

Neal is a public utility. The 13-customer system was constructed and extended without the Commission's approval or knowledge in connection with a series of small real estate ventures. It has been the Commission's experience that the operations of many small water systems constructed in connection with real estate ventures and without our approval are usually subsidized by the associated real estate venture until such time as the venture is concluded, at which time the promoters lose their enthusiasm for running the system and withdraw the subsidy in the unrealized hope that the operations can somehow be held together through the use of internally generated funds. Previous operators of the Neal system did not see fit to set up reserves or to set aside money from revenues when the system was new and required few repairs or replacements for that proverbial rainy day that was sure to come when money for major repairs and

replacements would be needed. That rainy day has now arrived, through no fault of the Neals. The system is in disrepair and no money is available to finance the needed repairs and replacements let alone to upgrade the system to the Commission's standards. Neal's continued operation as a public utility would be solely dependent on using revenue financing to keep the operation afloat--the same unsound method of financing which led to Neal's present impoverished status. The picture of the 13-customer operation pulling itself out of its financial straits through revenue financing before the system completely breaks down is an illusion. If the system was brand new, we might admit to the possibility that the operation could survive through revenue financing if high enough rates were to be charged. Now, however, time and deterioration have robbed the operation of that possibility. Neal's operation of the system in public utility service is economically infeasible. We will authorize the Neals to abandon the operation.

Findings

1. Neal furnishes water from wells through a water system to thirteen domestic and irrigation customers for compensation under written contracts.
2. Neal's water system has been dedicated to public use.
3. Neal is a public utility water company.
4. Neal's water system was constructed and extended, prior to its acquisition by the Neals, in association with a series of small real estate ventures and then ownership was passed on without reserves and with financial backing only from current internally generated funds.
5. Neal's water system was constructed and extended without the Commission's knowledge or approval.
6. The contracts under which the system furnishes water service have not been filed with the Commission as required by Section 532 of

the Public Utilities Code nor do they conform to the tariff specifications required by General Order No. 96-A.

7. The water system does not conform to the Commission's construction standards set out in General Order No. 103, is badly in need of repairs and replacements, and does not render adequate or efficient water service.

8. It will take approximately \$5,100 to effect currently needed repairs to the system and to bring the system up to the standards set out in General Order No. 103.

9. Neal possesses no assets except for the facilities which make up the water system, and Neal's expenses have exceeded its income since the Neals took over the operation.

10. Neal has deferred maintenance and the making of necessary repairs and replacements because the meager revenue derived from the small 13-customer system allows for only minor expenditures to keep the system in operation.

11. The uncompensated efforts of the Neals and members of their family are primarily responsible for keeping the system in operation.

12. The Neals desire to be relieved from the responsibility of operating the water system.

13. The Neals have offered to turn over the water system to a mutual water company if one is formed by Neal's customers.

14. Neal's continued operation as a public utility would be solely dependent on the use of revenue financing to keep the operation afloat--the same unsound method of financing which failed to check the operation's downward spiral to its present impoverished level.

15. Even if the continued service was performed at increased rates, additional deferred items of expense and capital outlay would be accumulated during the time it would take Neal to collect sufficient money from the small number of customers it serves to correct

present deficiencies, some of which may be of less importance to correct than those cropping up during the continuation of the service, and would hasten Neal's complete demise and cessation of service.

16. Neal's continued operation as a public utility is so economically infeasible that abandonment is warranted.

17. Complainant has requested that his complaint be withdrawn.

Conclusions

1. Complainant's request that his complaint be withdrawn should be denied as to the issue of whether or not Neal is a public utility water company subject to the Commission's jurisdiction, and should be granted as to all other matters.

2. Neal should be declared to be a public utility water company subject to the jurisdiction of the Public Utilities Commission.

3. The continuation of Neal's operation in public utility service due to the small number of customers it serves and its impoverished financial condition is economically infeasible.

4. Neal should be authorized to abandon its public utility water service. This authorization should be on condition that Neal agrees to donate the system to a mutual water company should one be formed promptly by present users of the utility service.

5. Neal's customers should be given 120 days in which to seek other sources of water or water service before Neal abandons its service.

6. Pending abandonment of its service Neal should not be required to file tariffs with the Commission but should be authorized to charge the rates charged by the city of Morgan Hill to its water customers who reside outside of the city of Morgan Hill.

7. The agreements under which Neal ostensibly has been furnishing water service should be abrogated as to Neal and as to the Neals because such agreements are in violation of Section 532 of the Public Utilities Code and General Order No. 96-A.

8. Neal should not be ordered to upgrade its system or to make repairs or replacements.

O R D E R

IT IS ORDERED that:

1. Complainant's request that his complaint be withdrawn is denied as to the issue of whether or not Neal Water Works, a partnership composed of Richard L. Neal and Carol Ann Neal, is a public utility water company subject to the Commission's jurisdiction and is granted as to all matters.

2. Neal Water Works, a partnership composed of Richard L. Neal and Carol Ann Neal, is a public utility water company subject to the jurisdiction of the Public Utilities Commission.

3. Neal Water Works, a partnership composed of Richard L. Neal and Carol Ann Neal, is authorized to abandon its public utility water service one hundred twenty days after the effective date of this order, provided that it agrees to donate the water system to any mutual water company that may be formed by present users of the water system within these one hundred twenty days.

4. Pending abandonment of its service Neal Water Works, a partnership composed of Richard L. Neal and Carol Ann Neal, is authorized to charge the rates charged by the city of Morgan Hill to its water customers who reside outside of the city of Morgan Hill and is not required to file tariffs with the Commission.

5. All prior agreements for furnishing water service in or to Parcel 264, Santa Clara County, are, as to Richard L. Neal and Carol Ann Neal, or either one of them, abrogated and declared null and void.

6. Richard L. Neal and Carol Ann Neal shall notify the Commission of their abandonment of water service within fifteen days after the abandonment of such service.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th day of JANUARY, 1976.

William J. Quinn President
Vernon J. Stinson
Robert H. [unclear] Commissioners