

Decision No. 85815

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GARY J. NEAR, individually and as
a representative of all persons
similarly situated,

Complainants,

vs.

PARADISE ESTATES WATER CO. also
known as the West Marin Water
Company, a California Corporation;
DAVID S. ADAMS & SONS INC., a
California Corporation; DOUGLAS
G. ADAMS; Does One through Ten,
Defendants.

Case No. 9916

(Petition to modify interim
order filed December 8, 1975)

Harvey M. Freed, Attorney at Law, for Gary J. Near,
and Gary J. Near, for himself, complainant.
Graham and James, by Boris H. Lakusta and Jamie O.
Harris, Attorneys at Law, for West Marin Water
Company, defendant.

Thomas C. Hendricks, Chief Deputy County Counsel,
for County of Marin, interested party.

Freda Abbott, Attorney at Law, for the Commission staff.

INTERIM OPINION MODIFYING DECISION NO. 84459

Case No. 9916 is a complaint proceeding brought by users
of water furnished by a water system owned and operated by Paradise
Estates Water Co. (Paradise) in which complainants seek an order
adjudging Paradise to be a public utility water company, restoring
Paradise's rates to the original flat rate of \$2.75 per month per
connection established in 1951, and prohibiting Paradise from cutting
off service to those customers who refuse to pay assessed rates in
excess of \$2.75 per month per connection. Paradise denies that it is
a public utility and claims it is exempt from Commission regulation

under Section 2704 of the Public Utilities Code as it is merely furnishing water to the users as an accommodation to them for a fee. As a result of the complaint the Commission issued Decision No. 84459 effective May 20, 1975 which contained an interim order which reads in part as follows:

- "1. Defendants shall cease and desist from any action which would interfere with or terminate water service to existing customers or service connections in Paradise Ranch Estates subdivision.
- "2. Defendants shall cease and desist from increasing rates or charges to said users of water above those rates and charges presently being billed and shall reinstitute service to any customer who may have had his service interrupted or terminated for failure to accede to the present rates and charges.

* * *

"Complainant seeks an order requiring us to restore rates to that level which was charged prior to the first retroactive rate increase described in the complaint. Since the status of defendants as a public utility is an issue in this proceeding we shall not grant this relief. However, defendants are placed on notice that there has never been a finding of reasonable rates for the service being provided to Paradise Estates Ranch subdivision. Should the Commission determine that defendants are a public utility, they are placed on notice that all sums heretofore collected prior to the issuance of this order, and all sums that may be collected prior to a final decision determining utility status, may be subject to reparation."

The rates and charges which were established in February 1975, and which users of Paradise's water were being asked to pay on the effective date of Decision No. 84459, May 20, 1975, were \$6 per month base rate plus 90¢ per 100 cubic feet of water used.

Paradise now requests that the interim order in Decision No. 84459 be modified to provide that Paradise may discontinue serving water to a user who, after notice of 15 days, fails to pay Paradise at the maximum rate permitted by such interim order, such rates to be applicable to the period when first instituted, and to continue until further order of the Commission. In its petition Paradise alleges that a significant percentage of its water users are not paying their bills at the rates which the Commission's interim order allowed and which Paradise is charging and that while approximately 64 percent of its customers are paying at the present rates, the remaining 36 percent of its customers are paying only at the \$2.75 rate or are tendering checks for \$2.75 with a written condition on their checks that the checks be accepted in full satisfaction of the monthly charge. Paradise states that it cannot cash the checks with the written condition without compromising its position and therefore is not cashing the checks, so it is receiving no revenue whatever from the users tendering the conditional checks. Paradise states that its 85-customer water system has an accounts receivable of \$3,653, all of which is more than 30 days overdue, and a large proportion of that amount is over 60 days overdue.

Complainants object to the interim order being modified on the grounds that Paradise inordinately delayed seeking modification of the order; that the rate increase was illegal since Paradise has made no showing as required by General Order No. 96-A, Section VI; that the increase is not justified and not approved by the Commission as required by Section 454 of the Public Utilities Code; that it would be inequitable to approve a rate above the initially established flat rate of \$2.75 per month without giving account for the fact that Paradise was part of a lucrative real estate development; and that no rate increase should be approved until the substandard water system is upgraded to render the quality water service as initially represented. Complainants do not deny that many of the users are tendering or paying only \$2.75 per month for water service from Paradise.

Discussion

Many users of the water service allegedly are refusing to pay the charges which we authorized Paradise to charge as a maximum charge in Ordering Paragraph 2 of Decision No. 84459 and are thereby causing a financial hardship to Paradise. Ordering Paragraph 1 of Decision No. 84459 precludes Paradise, in the event it is a non-public utility, from exercising its right to terminate water service to those persons who refuse to pay the asked-for charges, and precludes Paradise, in the event Paradise is a public utility, from exercising its duty to terminate the service of anyone who refuses to pay its legal rate. Such restrictions now threaten Paradise's economic viability. Accordingly, Ordering Paragraph 1 of Decision No. 84459 will be modified as we have set out below.

The Commission's authority to prescribe a maximum legal rate to be charged by a water company while that company is under formal investigation by the Commission to determine its utility status arises from Sections 2707 and 701 of the Public Utilities Code. Section 2707 reads as follows:

"For the purpose of determining the status of any person, firm, or corporation, ...owning...or managing any water system or water supply within this State, the commission may hold hearings and issue process and orders in like manner and to the same extent as provided in Part 1 of Division 1..."

Section 701 reads as follows:

"The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

The complaint and answer presented a rate issue requiring our immediate interim determination. We found it convenient and necessary to establish a maximum legal rate for Paradise's services, in the event Paradise should be found to be operating as a public utility,

since Paradise had not by statutory standards established a legal rate for its services by filing a tariff with the Commission. Of course, the actual charges made by Paradise to the extent they are shown to exceed the lawful reasonable charges are subject to future reparations.

Findings and Conclusions

1. In Decision No. 84459 we authorized Paradise to charge rates for its water service no higher than it was charging at the time of the rendering of that decision, which rates were a flat \$6 per connection per month and 90¢ per 100 cubic feet of water used.

2. In the same decision we ordered Paradise not to terminate or interfere with water service to any of its customers.

3. Paradise has been charging its customers the maximum rates set out in Finding 1.

4. Many of Paradise's customers have refused to pay the charges set out in Finding 1 which places an unnecessary financial burden on Paradise.

5. Good cause appears for modifying Ordering Paragraph 1 of Decision No. 84459 to allow Paradise to terminate the service of any of its customers who fail to pay Paradise the charges which they are billed for water service rendered after May 20, 1975 at rates not to exceed those which we permitted to be charged by Ordering Paragraph 2 of Decision No. 84459.

6. Under the circumstances the Commission has jurisdiction to establish an interim maximum legal rate for water services furnished by Paradise.

7. There is an immediate need for the relief requested.

INTERIM ORDER MODIFYING DECISION NO. 84459

IT IS ORDERED that Ordering Paragraph 1 of Decision No. 84459 is modified to read as follows:

"7. Defendants shall cease and desist from any action which would interfere with or terminate water service to any existing customer or service connection in Paradise Ranch Estates subdivision except for failure of the customer to pay a water bill, or any part of a water bill, covering any full billing period subsequent to May 20, 1975, provided, however, that no service disconnection shall be made except upon reasonable notice of arrearage and in no event shall a service disconnection be made prior to forty days from the effective date of this order."

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

Dated at San Francisco, California, this 11th day of May, 1975.

I abstain
Leonard Ross

I abstain
Robert Bateman

[Signature]
President
William F. Johnson Jr.
Vernon L. Sturgeon
Commissioners