

Decision 88 01 015 JAN 13 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Stanley Burns, Gullmai Burns,  
Diana Hosmer, et al.,

Complainants,

vs.

Dino Bozzetto doing business as  
Los Guilicos Water Works  
(U-412-W),

Defendant.

Case 86-11-002  
(Filed November 3, 1986)

H. Stanley Burns, for complainants.  
Kevin McCullough, Attorney at Law, for  
 Dino Bozzetto, doing business as Los  
 Guilicos Water Works, defendant.  
Robert E. Penny, for the Commission  
 Advisory and Compliance Division.

OPINION

This is a complaint by 26 customers (complainants) of a water system owned and operated by Dino Bozzetto (Bozzetto) and known as Los Guilicos Water Works (Los Guilicos).

A duly noticed public hearing was held before Administrative Law Judge (ALJ) Orville I. Wright in Kenwood in the afternoon and evening of July 20, 1987.

H. Stanley Burns and other water users testified on behalf of customers and Bozzetto testified on his own behalf.

The Commission's Water Utilities Branch (staff) conducted a field investigation of Los Guilicos and prepared a report which was distributed to all persons attending the public hearings and received into evidence.

Parties were given until September 15, 1987 within which time to file briefs or statements. Bozzetto was the only party

filing a brief, but his brief drew letter responses from several customers, the last letter being received in October 1987.

In order to accommodate the customer letters, we extend the submission date to October 5, 1987.

Pleadings

The complaint alleges that Bozzetto is a public utility under the Commission's jurisdiction, that Bozzetto proposes a substantial general rate increase without a public hearing, and that the Commission should intervene to stay the rate rise and determine its validity.

Defendant's answer alleges need for the proposed rate increase by reason of increased insurance and labor costs. Additionally, Bozzetto questions whether the Commission has jurisdiction of his water system. He cites Public Utilities (PU) Code § 2704 which provides that the owner of a water supply not otherwise dedicated to public use and primarily used for domestic or industrial purposes by him, who 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.

Los Guilicos has not heretofore filed tariffs with the Commission, and the threshold issue in this proceeding is whether the water system is subject to Commission jurisdiction. If Los Guilicos is subject to Commission jurisdiction, we should order the filing of tariffs of existing rates. Those rates were set forth in the staff exhibit and are included as Appendix A to this decision. Bozzetto may then elect to file for a general rate increase pursuant to regulatory procedures.

Record

The record in this proceeding consists of the sworn testimony of Bozzetto, customers, and staff witness given during the course of the afternoon and evening hearings in Kenwood. It

also includes the declaration of Bozzetto filed with his brief, and the letters sent to the Commission in response to the Bozzetto brief.

While Bozzetto's declaration and the customer letters technically should be presented in a reopened hearing, we consider further hearings to be unnecessary in this case. The additional factual allegations of both sides of the controversy are not contradictory as between the parties or with respect to the formal record. We accordingly rely, in part, on the declaration and correspondence in this proceeding (Rule 87, Rules of Practice and Procedure).

#### Service Area

Los Guilicos service area is approximately 19.5 acres in size and is currently zoned as a resort by the Sonoma County Planning Commission. It is located approximately 2-1/2 miles south of Kenwood, Sonoma County, and provides domestic water to about 26 customers. The lots average 3,000 square feet in area.

#### Public Utility Status

While the Los Guilicos service area was originally developed as a warm springs resort prior to 1946, the evidence is overwhelming that it has long been a water corporation delivering water to a portion of the public for which compensation is received. As such, Los Guilicos is a public utility subject to the jurisdiction, control, and regulation of this Commission (PU Code (§§ 216(b), 241, and 2701).

Bozzetto's evidence is that he purchased the resort in 1979 for the purpose of operating it as a resort. Approximately 90% of the water supplied by an artesian well on the property is used to supply the resort and its swimming pools, with about 10% being used to supply domestic water to the 26 customer complainants.

Defendant further states that he has never sold real property in the area with the representation or inducement of water

service or entered into any agreement to supply water to the neighbors of the resort. Since acquiring the resort and water system, Bozzetto reports that he has added only one new customer to Los Guilicos in a spirit of neighborly cooperation rather than for profit. Bozzetto's water rates are based upon the rates of nearby water utilities and have not returned a profit to the owner, according to Bozzetto.

Defendant argues that there is no evidence to show that he held himself out to the general public to provide water service at a price to any persons who might apply.

Complainants' evidence reaches back beyond Bozzetto's acquisition of the system and shows clear dedication to public use.

Harold Morton (Morton) owned Los Guilicos from 1946 until 1979, when he sold the resort and water system to Bozzetto. Morton's evidence is that, during the time of his ownership, he sold lots to the general public with the representation that the lots would receive water service from his water system. He states that he actively promoted the water system in order to secure additional customers so as to make providing water worthwhile.

The relevant circumstances are summarized by Morton, as follows:

"When we purchased the Guilicos Warm Springs Resort in 1946 there were eleven customers. By 1979, when Morton Warm Springs Park was sold to Mr. Bozzetto, we had twenty customers. During the time I owned the water works I added a 16,000 gallon tank high on a hill at the back of the resort that provided 50 pounds of pressure. At the suggestion of the PUC, I also added meters. Prior to the meters, I used a blanket billing on a per month basis. At that time, since I was following PUC suggestions, which included using other water works rates as a basis for mine, I assumed that the Los Guilicos Water Works was solidly under the aegis of the PUC."

Taking Bozzetto's entire testimony at face value, it remains evident that Los Guillicos' customers take water as a matter of right and not by way of accommodation. Los Guillicos is a public utility under Commission jurisdiction (Perrotta v Jones, 1981, 6 PUC 2d 701; Ponderosa Sky Ranch v Figgs, 1970, 70 PUC 845).

Defendant also cites Commission Resolution M-4708, dated August 28, 1979, which sets forth our policy considerations when we are presented with an option to either assume or deny jurisdiction over a small water company. In this case, however, the uncontroverted evidence compels us to assume jurisdiction.

No other issues require discussion.

#### Findings of Fact

1. Los Guillicos service area is approximately 19.5 acres in size and is currently zoned as a resort by the Sonoma County Planning Commission. It is located approximately 2-1/2 miles south of Kenwood, Sonoma County, and provides domestic water to about 26 customers. The lots average 3,000 square feet in area.

2. At all times since its inception, the owners of Los Guillicos have provided water service for compensation to a small, but growing, group of residential customers.

3. Since it first began serving water to domestic customers prior to 1946 Los Guillicos' water system has been dedicated to public utility use.

4. There were 11 customers of Los Guillicos water system in 1946; there were 20 customers of Los Guillicos' water system in 1979.

5. Owners of Los Guillicos sold lots to the general public with the representation that the lots would receive water service from the water system.

6. Members of the public purchased lots from the owners of Los Guillicos in reliance upon the owners' inducement that they would be supplied water as a matter of right and not by way of accommodation.

7. Owners of Los Guilicos built storage tanks and other improvements in order to serve water to domestic customers.

8. Owners of Los Guilicos charged regular rates for water service and based the rates on those of nearby utilities.

9. Owners of Los Guilicos have always attempted to follow procedures established by the Commission. At least one owner believed that Los Guilicos was a public utility under Commission jurisdiction.

10. Los Guilicos has no tariffs on file with the Commission.

Conclusions of Law

1. Dino Bozzetto, doing business as Los Guilicos Water Works, is a public utility water company as defined in the PU Code (§§ 216(b), 241, and 2701).

2. The Commission has jurisdiction over Bozzetto as a public utility, and he should be ordered to file the requisite tariffs and system map and be required to conform to applicable statutes and rules and regulations of the Commission.

3. Applicant should be subject to the user fee requirements set forth in PU Code § 401, et seq. The surcharge for fiscal year 1987-1988 is 1.5%.

4. The Commission should retain continuing jurisdiction over this matter.

ORDER

IT IS ORDERED that:

1. Dino Bozzetto (Bozzetto), doing business as Los Guilicos Water Works, is declared to be a water corporation as defined in PU Code § 241 and subject to the jurisdiction of this Commission.

2. Within 60 days after the effective date of this order Bozzetto shall file with the Commission the metered service tariff schedule attached as Appendix A, and rules, and a tariff service area map acceptable to this Commission in accordance with the

requirements of General Order 96-A. Such rates, rules, and tariff service area map shall become effective upon the acceptance of the filing by the Commission.

3. Within 120 days after the effective date of this order Bozzetto shall file with the Commission four copies of a comprehensive map, drawn to an indicated scale not smaller than 800 feet to the inch, delineating by appropriate markings the tract of land and territory served, the principal water production, storage and distribution facilities, and the location of his various water system properties.

4. Bozzetto shall keep his books in accordance with the Commission's uniform system of accounts and shall determine the accruals for depreciation by dividing the original cost of utility plant less estimated future net salvage less depreciation reserve by the estimated remaining life of the plant. He shall review the accruals as of January 1st of 1988 and thereafter when major changes in utility plant composition occur and at intervals of not more than five years. Results of these reviews shall be submitted to this Commission.

5. Applicant shall remit user fees as set forth in PU Code § 401, et seq. under user number U-412-W.

6. The Commission retains continuing jurisdiction over this matter.

This order becomes effective 30 days from today.

Dated JAN 13 1988, at San Francisco, California.

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

Commissioner Stanley W. Hulett  
being necessarily absent, did  
not participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Victor Weiss*  
AB Victor Weiss, Executive Director

APPENDIX A

Schedule No. 1

METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The subdivisions known as Morton Warm Spring Resort and vicinity, located 2-1/2 miles south of Kenwood, Sonoma County.

RATES

Quantity Rates:	Per Meter Per Year
All use, per 1,000 gallons.....	\$ 1.55
Service Charge:	
For 5/8 x 3/4-inch meter.....	39.30
For 3/4-inch meter.....	43.20
For 1-inch meter.....	58.95
For 1-1/2-inch meter.....	78.60
For 2-inch meter.....	106.10

The Service Charge is a readiness-to-serve charge, which is applicable to all metered service and to which is to be added the monthly charge computed at the Quantity Rates.

(END OF APPENDIX A)



Decision \_\_\_\_\_

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