

Decision 88 03 010 MAR 09 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard Humphrey, Kenneth Brooks,)
Cindi Brooks,)

Complainants,)

vs.)

Vince Garrod,)

Defendant.)

Case 87-08-030
(Filed August 18, 1987)

OPINION DISMISSING COMPLAINT

Statement of Facts

Vince Garrod is a member of the Garrod family, locally prominent in Saratoga. A Garrod family trust doing business as Garrod Farms, among other activities, operates an extensive horse boarding and riding business on property it owns in the rolling foothill terrain bisected by Mt. Eden Road in the area between the City of Saratoga and the coastal range to the west.

Mt. Eden Road is a macadamized two-lane county road which extends northwestward from Pierce Road in Saratoga to the Stevens Creek County Park, a distance of approximately a mile and a quarter. The Garrod Farms, at 22600 Mt. Eden Road, is approximately three-quarters of a mile from the Pierce Road junction. Beyond the Garrod Farms entrance, Mt. Eden Road follows a serpentine course through increasingly broken hilly terrain to the Park.

There are a number of horse boarding and riding operations located along Mt. Eden Road, all smaller than the Garrod Farms operation. From its entrance address at 22600 Mt. Eden Road, the Garrod Farms operation covers acreage extending eastward across

country in the vicinity of Quarry Road and Vaquero Court off Pierce Road in Saratoga.

Water is the limiting factor in the development of the Mt. Eden Road area. The San Jose Water Company (SJWC), a large water purveyor which for the past 122 years has been providing public utility water service in extensive portions of Santa Clara County, provides water service to the populated areas of Saratoga. A SJWC main in Pierce Road, which extends on a northeast-southwest axis along the western periphery of Saratoga is the nearest potential source to the Mt. Eden area. From Pierce Road there are a number of short stubs on some dead-end courts and streets off Pierce Road. Among these is that on Quarry Road. Recently a developer has extended service approximately a half-mile out Mt. Eden Road as far as Damon Road to serve a small development of large expensive homes being constructed. But further extension beyond Damon, even though most of the area is within SJWC's filed service area, will be expensive. Beyond Damon the route is liberally laced with ravines and hills. Most of the property owners and horse boarding operations further out Mt. Eden Road depend upon wells, some pumping by large windmills.

On the other hand, extending eastward across country as it does, Garrod Farms obtains its water from a 1-inch meter at the junction of Quarry Road and Vaquero Court off Pierce Road, and is thereby served by SJWC. Garrod Farms has a service line and pumps to a 90,000-gallon reservoir on its property which provides for its requirements. Assertedly there is no surplus available beyond that provided to one neighbor who pays his proportionate share of the cost.

For ten years efforts have been made to organize an assessment district to extend service. SJWC had prepared plans and drawings which included a new large central storage tank to be sited on Garrod Farms land to serve the area. However, passage of

the 1986 Tax Reform Act so substantially changed the costs to the utility as to terminate the effort.

At present, besides the Garrod Farms service, there are three other private services with meters in the vicinity of Quarry Road and Vaquero Court providing similar service to their owners. One of these, the Cocciardi service, is being expanded to provide service to a development of 23 quarter-acre home sites extending along an extension of Quarry Road to debouch onto Mt. Eden Road east of the Garrod Farms entrance.

On August 18, 1987, Richard Humphrey, Kenneth Brooks, and Cindi Brooks, who also own and operate a horse boarding and riding business from a location stated to be 22599 Mt. Eden Road, filed the present complaint against Vince Garrod, alleging that Garrod owns and operates a water supply business in the area, purchasing water from SJWC, and reselling it to residents of the area for profit. Assertedly Garrod sold water to the previous owners of complainants' property. Complainants assert Garrod refuses to sell to them in order to damage complainants' business in the 1987 drought situation in the area, thereby discriminating against them. They seek an order that Garrod be ordered to supply water at fair rates.

By Garrod's verified answer, filed September 23, 1987, he states that not he but the Garrod trust owns the water supply. He further asserts that the supply has reached maximum capacity. Citing Public Utilities (PU) Code § 2704,¹ he alleges that

1 "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

(Footnote continues on next page)

neither he nor the trust is subject to the jurisdiction, control, and regulation of the Commission, and asks that the complaint be dismissed.

In view of the Commission's practice to liberally construe its Rules of Practice and Procedure to secure just and inexpensive determination of the issues presented, rather than merely dismiss this complaint on the technical ground that the complaint is being brought against the wrong defendant, only to have the complaint amended or refiled, the administrative law judge took advantage of Rule 10 to refer the matter to Senior Utilities Engineer Ernst Knolle of our Commission Advisory and Compliance Division's Water Branch, for possible informal resolution. Knolle's investigation initially was stymied when complainants either could not be reached or failed to return phone calls. However Knolle ultimately obtained the foregoing information from his investigation. The address stated in the complaint as 22599 Mt. Eden Road, apparently "next door" to the Garrod Farms on the southeast or closer in to Pierce Road (addresses on Mt. Eden Road ascend as one leaves Pierce Road) did not physically exist. Subsequently it developed that claimants' property is located further out Mt. Eden Road from the Garrod Farms property. One

(Footnote continued from previous page)

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."

complainant stated she had observed swimming pools full of water on other resident's properties and assumed the water must have come from Garrods. Another stated that he understood that the former owner (now living elsewhere than this area) had purchased water earlier from Garrod. He also stated that complainants were finishing work on reconstituting their well which earlier had failed, and were hopeful it would prove adequate for the future. He agreed to contact the previous owner and to obtain an affidavit of such earlier service if such were the case. Although two months have passed there has been no further response. SJWC reported that the 1-inch line to the Garrod Farms tank was at maximum capacity. SJWC's representative stated the utility stood ready to furnish service in similar fashion to others on Mt. Eden Road pursuant to the terms of the utility's Main Extension Contract, but that because of the distance and terrain the cost was necessarily high.

Discussion

It is our conclusion that this complaint must be dismissed without prejudice without further proceedings for lack of jurisdiction. Apart from the technicality of the wrong defendant, even should Garrod Farms be substituted as defendant, and be found to be delivering water, not merely as claimed as an accommodation to a neighbor to whom no other supply of water is equally available (PU Code § 2704), but rather to others for compensation (PU Code §§ 2701 and 2702), and thus be determined to be a public utility subject to the jurisdiction, control, and regulation of this Commission, it would not avail complainants to obtain the relief they seek.

While a public water utility has an obligation to maintain and extend an adequate water service to all users in its service territory (Citizens Utility Co. v Superior Court (1963) 59 C 2d 805), and cannot discriminate as to who it will serve within that service territory (PU Code § 493), that obligation applies only to those users and would be users within that utility's

service territory. The dedication concept is still valid California public utility law (Cal. Community Television Assoc. v Gen. Tel. Co. (1970) 70 CPUC 123), and a public utility cannot be compelled to render service where it has not dedicated itself to serve (Cal. Wtr. and Tel. Co. v PUC (1959) 51 C 2d 489).

Had complainants been able to offer some tender of evidence, beyond a mere lingering "understanding," that Garrod Farms in fact had delivered water to the former owner of their property, not as an accommodation pursuant to PU Code § 2704, but for compensation pursuant to either PU Code §§ 2701 and/or 2702, the requisite dedication to embrace that property within a service territory might have been shown, thereby clothing Garrod Farms with public utility status and bringing complainants' property within a service territory. Complainants did not do this. Once a water system has been dedicated to the public use, its status thereafter cannot be altered without prior permission from the Commission (Beckner v Otto (1947) 47 CPUC 480).

Finally, our engineer has ascertained that the 1-inch line pumping facility and storage tank presently serving the Garrod Farms system appears barely adequate to accommodate the requirements of the existing users. This professional opinion is also held by SJWC. A water utility will not be permitted to extend its service area when to do so would endanger the supply of existing users (Sweetwater Water Corp. (1928) 32 CRR 428).

Findings of Fact

1. It appears that the defendant in this proceeding should be other than the named defendant Vince Garrod.

2. Staff investigation reveals that complainants merely understood and concluded that the owner of the water system at issue is doing other than delivering water as an accommodation to a neighbor to whom no other source of water is equally available; however, complainants are unable to provide any basis or

significant evidence for such understanding and conclusions, although given opportunity to do so.

3. Complainants' conclusions, insubstantially based as they are, do not constitute a sufficient pleading of specific acts upon which the Commission will provide a hearing.

4. Even should Garrod Farms, the apparent owner-operator of the water system at issue, be determined to be a public utility, the area served by the system does not encompass complainants' property, and there was no significant foundation offered or provided to sustain a pleading that the system had also dedicated itself by past actions to serve complainants' property.

5. Public utility water service, similar to that provided Garrod Farms and others in the area, is available albeit at considerable cost, through a main extension contract from SJWC, the public utility water utility serving this area including Garrod Farms.

Conclusion of Law

The complaint should be dismissed without prejudice.

O R D E R

IT IS ORDERED that Case 87-08-030 filed August 18, 1987 is dismissed without prejudice.

This order is effective today.

Dated MAR 09 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

[Handwritten Signature]
Victor Weisser, Executive Director