

Decision 88 03 066 MAR 23 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MICHAEL & SANDRA PERUGINI,)
 JAMES & DIANE DEARINGER,)
 EDMOND & BETSY SMITH,)
)
 Complainants,)
 vs.)
)
 RIVER GROVE WATER COMPANY)
 (U-413-W),)
)
 Defendant.)

ORIGINAL

Case 85-02-038
(Filed February 14, 1985)

Michael A. Perugini and Diane and James Dearinger,
 for themselves, complainants.
Richard Ernst and Ronald F. and Kim R. Gehrman,
 for River Grove Water Company, defendant.
Andrew and Elizabeth Shabetai and Donald T. and
Shawn G. Casavant, for themselves, interested
 parties.
Robert Penny, for the Commission Advisory and
 Compliance Division, Water Utilities Branch.

OPINION

Statement of Facts

River Grove Water Company (RGWC) is a small water company located in Santa Cruz County, west of State Highway 9 and immediately south of Felton. The service area measures about 1/2 mile north to south and 1/2 mile east to west. The terrain is steep, mountainous, and heavily forested. There are presently about 25 customers connected to the system. RGWC is presently not regulated by this Commission.

On February 14, 1985, Michael and Sandra Perugini, James and Diane Dearinger, Edmond and Betsy Smith et al. filed a complaint with the Commission requesting an order for quality water and service at reasonable rates. On March 26, 1985, RGWC filed its

answer to the complaint stating that it permits water users to draft a surplus of water from a certain water source and that the Commission in Decision (D.) 43560, dated November 29, 1949, in Cases 5079 and 5100 found that the owners had not dedicated the water system to public use and dismissed a similar complaint. RGWC contends that it has and continues to operate RGWC in a manner consistent with D.43560.

Initial hearing on this matter was held on August 15, 1985 in Santa Cruz before Administrative Law Judge K. Tomita. At the hearing complainants expressed concern about RGWC's recent rate increase from \$12 to \$15 a month and possible future increases of up to \$45 to \$50 a month and requested that the Commission regulate the company to protect the customers. It was apparent from the testimony offered that recent purchasers of property were not aware of the unregulated status of the water company nor of the type of water service being provided and had made no real inquiry until the purchase of the property was completed. Complainants also testified that there were problems related to water outages, muddy water, low pressure, surging, water lines lying above the ground, and also with RGWC's requirement for installation of a holding tank, filter, and pressure pump.

Richard Ernst, the owner of the water company at the time the complaint was filed and father-in-law of the current owner, Ron Gehrman, testified that the water rights had changed hands six times since the issuance of D.43560 in 1949. He stated that his immediate predecessor (Sohl) took the same position with respect to the water rights as did R. A. Stanley in 1949 when the Commission determined there was no dedication to public use of the water rights. Similarly, when Ernst obtained the water rights in 1977 he stated that he took the same position. He testified that he mailed out letters to customers stating he was not a public utility and that use of his privately owned water rights would be permitted on

a month-to-month basis with such privilege subject to withdrawal at any time without any liability to the owner of the rights.

In view of the Commission's reluctance to allow the formation of small uneconomic water utilities as expressed in Resolution M-4708, the parties were advised to attempt to work out a reasonable settlement of their differences at the conclusion of hearings on August 15, 1985. If the problems could not be resolved, the parties were requested to advise the administrative law judge. Having received no response, a letter was sent to the parties on April 3, 1987 stating that the matter would be dismissed unless the parties indicated otherwise. Subsequently, letters were received from several complainants and customers requesting that the matter not be dismissed.

The Water Utilities Branch of the Commission was requested to undertake an investigation and prepare a report. Further hearings were held on November 23, 1987 at which time the staff report was introduced into evidence as well as additional testimony from both complainants and defendant. Subsequent to the filing of the complaint a sale of the water system and water rights from Richard Ernst to Ronald Gehrman (Ernst's son-in-law) took place. Ernst however represented RGWC at both hearings.

Senior Utilities Engineer E. G. Knolle sponsored the Water Utilities Branch Report and reached no conclusion as to whether RGWC should be declared a public utility under the jurisdiction of the Commission. The report described the facilities providing water service to customers; the fact that General Order (G.O.) 103, Rules Governing Water Service, does not cover cooperative water systems whereby under an expressed agreement the purveyor restricts his services to source of supply and transmission; the rates charged by other water purveyors near the service area; and Commission policy on certificating operations likely to prove unviable or marginally viable. The Water Utilities Branch concludes that: it would be costly to bring the existing

system up to G.O. 103 standards; RGWC's service is adequate; RGWC is located close to a public utility which has offered service to complaining customers and which is already serving 27 former customers. The report further states that the owner of RGWC has offered to sell the water system, but the customers have not expressed a desire to buy the system.

Position of Parties

Complainants - Complainants request Commission regulation of the water system in order to provide users with reasonable service at reasonable rates. Users state that they need protection from arbitrary rate increases which are currently not subject to any state or county control. Complainants have investigated the possibility of connecting to Citizens Utilities Company of California (Citizens) but found the cost prohibitive.

RGWC - RGWC contends that it has been providing water to the users on an accommodation basis in accordance with D.43560. RGWC agrees with the concerns expressed by the Commission in Resolution M-4078 and recommends that the users of RGWC be transferred over to an existing viable water purveyor. RGWC states that it cannot continue to subsidize the existing water users and furthermore has plans to use the water for some other venture. Ernst stated at the November 23, 1987 hearing that RGWC was placing its customers on notice that it does not intend to provide water service after January 1, 1988. By letter dated November 23, 1987, Gehrman, the current owner, stated that the notice of termination of service given at the hearing was to stress the fact that time was of the essence in resolving the water problem rather than an actual notice for termination of service.

Ernst testified that he is contemplating filing a law suit against certain customers of the water company for their actions in filing complaints with the County of Santa Cruz and the Commission about water quality and service. He indicated that such actions resulted in Gehrman reducing his offering price for the

water system from \$56,000 to \$36,000 because of the cloud placed on the status of the water rights.

Water Utilities Branch (Staff) - Penny speaking on behalf of the Staff stated that although RGWC claims it has been providing water service on an accommodation basis, the amounts charged for water service suggest that RGWC may in fact be operating as a public utility and subject to regulation. While the Staff would assist RGWC in transferring its operations to a viable water utility, it believes that the users of the system should be protected until such transfer can be accomplished. Staff further argued that the proposed or contemplated lawsuit concerning certain customers of the company by Ernst could be considered as intimidation of the customers.

Discussion

In this proceeding we are confronted with a situation in which this Commission in 1949 by D.43560 in Cases 5079 and 5100 dismissed a similar complaint on the ground that there had been no dedication of the water supply to the public and that service was being provided only as an accommodation. Defendant claimed that his position with respect to the water rights is the same position taken by his predecessors since 1949. He further stated that a majority of customers who were easy to serve have left the system for service from Citizens and that the remaining customers in the hilly area were left to be served by RGWC.

The question at issue is whether RGWC has changed its method of operations since 1949 and, if so, should it now be considered a public utility pursuant to PU Code Sections 216(b) and 2701 or do RGWC's operations fall under the provisions of PU Code Section 2704 which exempt it from the jurisdiction of this Commission. Also at issue is how Resolution M-4708 would affect our decision to regulate an obviously uneconomic system if we determine that RGWC is in fact a public utility.

Ernst believes that his actions since acquiring the water system in 1977, as evidenced by the series of correspondence mailed to his customers indicating that users will be permitted to take water on a month-to-month basis as an accommodation, are consistent with D.43560. However, other actions taken by the owners of RGWC in increasing water rates from \$25 a quarter in 1977, to \$12 a month in 1980, to \$15 a month in 1985, and to \$33 a month by the time of the November 1987 hearings do not appear to be consistent with accommodation type service, but rather a water operation run as a business. The magnitude and frequency of such increases in rates, plus additional billings for a portion of the repair expenses incurred by the owner of RGWC, are not typical of what would be expected when water is provided under Section 2704. The record is clear that RGWC delivers water to its customers for compensation, although RGWC does not believe that the compensation received covers its cost of providing service. RGWC in Exhibit 101 claims that it costs approximately \$90 a month per customer to provide water service before consideration of any return on its investment.

The evidence further indicates that RGWC has charged hook-up fees of as much as \$10,000 to a contractor in order to receive water service at a residence to be constructed in RGWC's service area. A contractor or builder is required to show that there is a water purveyor willing to provide water service to the property before the county would authorize the issuance of a building permit. Such hook-up fees were to be used to provide better or additional storage which would benefit all users on the system and not necessarily benefit the owner of the water system. The collection of hook-up fees and the acceptance of RGWC as a suitable water purveyor by the county are again another indication that RGWC is considered to be providing water service on a permanent basis rather than on an accommodation basis as RGWC contends. It does not appear reasonable to believe that the county

would consider water service provided under an accommodation basis and subject to possible discontinuance at any time as the type of water service that would meet the county building permit requirements.

The evidence further indicates that on January 7, 1985, RGWC in its letter to its customers stated that the last four hook-ups to RGWC were sold between \$5 and \$10 thousand per hook-up. The letter further indicates that three hook-ups have been returned to the water company by people whose property is no longer inhabitable and that these three hook-ups are available for sale to prospective builders in the service area.

We are of the opinion that RGWC by its own actions, sometime subsequent to D.43560, has dedicated the water system to public use by offering hook-ups to prospective builders and by the magnitude and frequency of its rate increases. We believe the conditions which resulted in D.43560 no longer hold true.

Although Resolution M-4708 expresses the Commission's concern about regulation of small water utilities and the need to discourage the formation of uneconomic water utilities, the governing provisions as to whether a water system is subject to Commission jurisdiction are contained in PU Code Sections 216(b) and 2701. Section 216(b) states "Whenever any...water corporation...performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received..., [it] is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part." In addition PU Code Section 2701 further states "Any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system within this State, who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public

utility, and is subject to the provisions, of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission, except as otherwise provided in this chapter." Clearly RGWC is a public utility and subject to this Commission's jurisdiction.

Resolution M-4708 sets forth this Commission's policy considerations when we are presented with an option to either assume or deny jurisdiction over a small water company. The evidence is compelling that we must assume jurisdiction over this water company if the customers are to be protected from arbitrary increases in rates, arbitrary charges for service hook-ups, and intimidation of customers for filing complaints with the Commission. Hopefully, RGWC will eventually be sold or merged into an economically viable water system. Customers should be aware that Commission regulation of a substandard water system like RGWC will not necessarily result in low rates nor better service. Customers should, however, benefit from the fact that rates can be increased only after Commission approval and that rules and regulations for service must be reasonable and not capriciously applied.

Findings of Fact

1. RGWC's service area measures about 1/2 mile north to south and 1/2 mile east to west in Santa Cruz County, west of Highway 9 and immediately south of Felton. The terrain is steep, mountainous, and heavily forested. RGWC serves approximately 21 customers.
2. In D.43560 dated November 29, 1949, the Commission dismissed the complaint filed by customers and stated that there had been no dedication of the water service to public use and that the water service is an accommodation service.
3. In the early 1960's, a neighboring utility, Citizens Utilities Company of California, Inc., took away customers on the lower portion of the system leaving the customers located at higher elevations still dependent on RGWC for water service.

4. Since 1949, when the charge for water service was \$1 a month, the rates have increased from \$25 a quarter in 1977 to \$12 a month in 1980, to \$15 a month in 1985, and to \$33 a month by the time of the hearings in November 1987 with further increases proposed for the future. The increase to \$33 a month took place subsequent to the filing of the complaint.

5. Customers are required to have installed at their dwellings a storage tank of at least 750 gallons, a filter, and a booster pump to receive water service, although not all customers have met this requirement.

6. RGWC's purveyor-customer cooperative water system is not covered by G.O. 103 and it would be costly to bring the system up to G.O. standards.

7. The owner of RGWC has offered to sell or lease the water system and is no longer interested in providing water service to its customers; however, the customers have not expressed a desire to buy or lease the system.

8. RGWC has charged hook-up fees of \$10,000 to a contractor and has agreed to provide water service in order to enable the contractor to obtain a county building permit.

9. In 1985 RGWC indicated that it had three hook-ups returned to the water company which are available for sale to prospective builders in the service area.

10. Sometime after the complaint was filed by complainants, the water company was sold by Ernst to Gehrman, his present son-in-law. However, Ernst has continued to represent RGWC at the hearings.

11. RGWC has indicated that it no longer desires to provide water service to its customers and wants to use the water for a private venture.

12. Ernst indicated that he is considering civil litigation against certain customers of RGWC pending the outcome of these hearings.

13. Although Ernst has attempted to notify customers that he is providing water only as an accommodation, his actions in providing water hook-ups to contractors to enable them to obtain county building permits and the frequent and substantial increases in rates he has effected no longer are consistent with an accommodation type service.

14. RGWC has no tariffs on file with this Commission and should file the requisite tariffs to maintain the \$33 rates in effect on November 23, 1987.

15. Any future change in rates must be made through the filing of an application or advice letter filing, whichever is appropriate.

Conclusions of Law

1. RGWC is a public utility as defined in PU Code Sections 216(b), 241, and 2701.

2. The Commission has jurisdiction over RGWC as a public utility.

3. RGWC should be required to file the requisite tariffs and system map and be required to conform to applicable statutes and rules and regulations of the Commission.

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

ORDER

IT IS ORDERED that:

1. River Grove Water Company (RGWC) is declared to be a water corporation as defined in PU Code Section 241 and subject to the jurisdiction of this Commission.

2. Within 60 days after the effective date of this order RGWC shall file with the Commission the flat rate service tariff schedule attached here as Appendix A, tariff rules, and a tariff

service area map acceptable to this Commission in accordance with the requirements of General Order (G.O.) 96-A.

3. Future water system improvements shall conform to the standards and requirements of G.O. 103.

4. RGWC shall, within 60 days of the effective date of this order prepare, file 2 copies, and keep current a system map as required by paragraph 1.10.a of G.O. 103.

5. RGWC shall maintain its accounting records in conformity with the Commission's Uniform System of Accounts.

6. RGWC shall remit user fees as set forth in PU Code Section 401, et seq. under user number U-41*3-W.

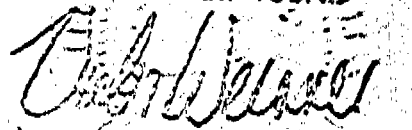
This order becomes effective 30 days from today.

Dated MAR 23 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 APPROVED BY THE ABOVE
COMMISSIONERS TODAY


Victor Weiss, Executive Director

APPENDIX A

Schedule No. 2R

FLAT RATE SERVICE

APPLICABILITY

Applicable to all residential service.

TERRITORY

An area of approximately 1/2 square mile located west of State Highway 9 and immediately south of Felton in Santa Cruz County.

RATES

	<u>Per Connection Per Month</u>
For each connection	\$33.00

(END OF APPENDIX A)