

Decision No. 86568

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James V. White,
Complainant,

v.

Albert Sterkin and Mary Jane
Sterkin,
Defendants.

Case No. 10175
(Filed September 20, 1976)

Larry Bacon, Attorney at Law, for James V. White,
complainant.

Harry A. Hammond, Attorney at Law, for Albert and
Mary Jane Sterkin, defendants.

Mary Carlos, Attorney at Law, for the Commission
staff.

INTERIM OPINION

Albert and Mary Jane Sterkin (defendants) are the owners of the Oberlin Road Water System serving 26 customers in the vicinity of Yreka.

James V. White (complainant) is a customer of the Oberlin Road Water System. The complaint alleges that customers of the Oberlin Road Water System have experienced a lack of water service for varying periods of time due to an inadequate source of supply and because of losses in the system resulting from lack of maintenance; that defendants have not complied with orders of the Commission which required the installation of improvements and have failed to provide proper maintenance of the system; that meters have been removed placing customers on a flat rate schedule, causing increases in water rates; and that defendants have failed to make refunds of customer deposits when due.

The complaint requests that the Commission order defendants either to make necessary repairs and improvements, including development of an adequate water supply, or to turn the system over to existing customers to operate as a mutual water company.^{1/}

Public hearing was held before Examiner Mallory at Yreka on October 8, 1976. Evidence was presented on behalf of complainant, defendants, and the Commission staff.

Exhibit 1 is a copy of a letter dated October 7, 1976 from defendants' counsel to counsel for complainant, reading as follows:

"I am now authorized by Mr. and Mrs. Albert Sterkin to advise you that they will pay the cost of the formation of a mutual water association and upon the same being formed, they will transfer the fee title to the association of the 2.9 acres where the wells are situated as well as the easements along the streets of the Oberlin Road tract wherein the pipes are located and also convey title to the pumps, meters, motors and other equipment of the Oberlin Road System.

"This offer is made upon the basis that the present complaints with the Public Utilities Commission and the State Division of Industrial Safety are withdrawn, and that your client will refrain from filing any action against Mr. and Mrs. Sterkin."

Confirmation of the offer set forth above was made by Mrs. Sterkin. Mr. White testified that his complaint would be satisfied upon transfer of the water company property to the mutual. Mr. White also testified that he had assumed responsibility for the day-to-day

^{1/} Public Utilities Code Section 2725 defines "mutual water company" as any private corporation or association organized for the purposes of delivering water to its stockholders and members at cost. Under Section 2705, a mutual water company is not a public utility and is not subject to the jurisdiction, control, or regulation of this Commission.

operation of the water system; that no improvements have been made in the system for twenty or more years; and that maintenance is poor because of lack of money. Complainant stated that he had attended meetings at which a majority of the customers of the water system had agreed to form a mutual water company.

A customer of the water system testified that he had requested refund of his customer deposit of \$20 and that such a refund had not been made. He requested that defendants be ordered to refund all customer deposits.

An associate utility engineer from the Commission staff presented Exhibit 2, which contains the results of his investigation into the operations, service, and practices of defendants. The report recites the long history of the failure of defendants and their predecessors to provide adequate water service and of the failure of defendants to provide needed improvements to the system as directed by prior Commission orders. The exhibit shows that the improvements ordered in the most recent proceeding (Decision No. 71883 in Application No. 49370 and Case No. 8509) were never accomplished. The report recommends that if the system continues to be operated as a public utility, the following improvements be made:

- a. Defendants should proceed immediately with the installation of the 5,000-gallon elevated storage tank as directed in previous orders of this Commission, or
- b. In the alternative defendants should proceed with the installation of hydropneumatic tank(s) to provide this storage capacity.

- C. Defendants should start a three-year program to upgrade the facilities in the water system to meet the requirements of the Commission's General Order No. 103 - Rules Governing Water Service Including Minimum Standards for Design and Construction.

The staff engineer estimated that the total cost of installing the needed facilities using contractors to complete the work would range from \$40,000 to \$50,000. The witness indicated that the cost would be substantially less if the greater part of the work was done by the customers of this system.

Agreement was reached between the parties to the complaint and the Commission staff that an interim order should issue directing defendants to proceed immediately with the formation of a mutual water company, which company would consist of all current water customers; that within thirty days defendants should notify all existing customers (a) of their intention to transfer the property of the public utility water system to the mutual water company; (b) that upon said transfer the Commission will approve the transfer; and (c) that thereafter the system will be owned and operated as a mutual water company as defined in Section 2705 of the Public Utilities Code. We will approve the agreement except that rather than declare an abandonment we will approve the transfer.

Findings

1. Defendants have not complied with prior orders issued by this Commission directing installation of additional facilities and improvement of the Oberlin Road Water System.
2. Defendants have not provided adequate management or supervision of the Oberlin Road Water System and have required customers to operate the water system.

3. The quantity of water furnished and the level of service provided by defendants are inadequate to meet the needs of the customers of the Oberlin Road Water System.

4. Defendants have offered to transfer the property of the Oberlin Road Water System to a mutual water company.

5. The majority of the customers of the Oberlin Road Water System have met informally and have concurred in the formation of a mutual water company as defined in Section 2705 of the Public Utilities Code.

6. Transfer of the property of the Oberlin Road Water System to a mutual water company whose members will consist of the existing customers will satisfy the complaint.

7. Said transfer of property will be in the public interest.

Conclusions

1. Defendants should be ordered to inform existing customers of their plans to organize a mutual water company and to transfer the property of the utility to the mutual.

2. Defendants should be ordered to refund customer deposits in accordance with the utility's filed tariff.

3. Upon notification to the Commission of the completion of the transfer, the transfer will be approved and by subsequent order defendants will be relieved of their duty to operate a public utility water company and furnish water to existing customers of that system.

INTERIM ORDER

IT IS ORDERED that:

1. Albert Sterkin and Mary Jane Sterkin, owners of the public utility water system known as the Oberlin Road Water System in the vicinity of Yreka, are hereby directed, within thirty days of the effective date of this order to: (a) complete the formation of a mutual water company as more specifically set forth in Exhibit 1 in

this proceeding, and (b) notify existing customers that upon the formation of the mutual water company, defendants intend to transfer the physical properties of the Oberlin Road Water System to said mutual, and that upon said transfer, the system will be operated by its existing customers as a mutual water company (Sections 2705 and 2725 of the Public Utilities Code).

2. Within thirty days after the effective date of the order, Albert Sterkin and Mary Jane Sterkin are directed to notify the Commission of the completion of the formation of a mutual water company consisting of the existing customers of their public utility water company. Immediately upon completion of the formation of the mutual water company, Albert Sterkin and Mary Jane Sterkin are authorized and directed to transfer the physical properties of the Oberlin Road Water System to said mutual water company substantially in accordance with the agreement set forth in Exhibit 1 and to notify the Commission of the transfer of that property.

3. Upon completion of the transfer, Albert Sterkin and Mary Jane Sterkin shall refund customer deposits for water service in accordance with rules set forth in their tariff filed with this Commission.

4. The Executive Director of the Commission shall serve a copy of this order on the attorney of record for Albert Sterkin and Mary Jane Sterkin, which shall constitute service on defendants who reside outside of the State of California.

The effective date of this order shall be the date of service upon defendants or upon their attorney of record.

Dated at San Francisco, California, this 26th day of OCTOBER, 1976.

[Signature]
President
William J. [Signature]
Kenneth L. [Signature]
[Signature]
Robert [Signature]
Commissioners