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ORIGINAL

Decision No. 91376

MAR 4 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ST. FRANCIS OF THE WOODS  
CONDOMINIUM,

Complainant,

vs.

LUKINS BROTHERS WATER CO.,

Defendant.

Case No. 10750  
(Filed May 30, 1979)

James H. French, Attorney at Law, for St. Francis  
of the Woods Condominium, complainant.  
Charles T. Clay, Attorney at Law, for Lukins  
Brothers Water Co., defendant.

OPINION AND ORDER

By this complaint, St. Francis of the Woods Condominium (St. Francis) requests the Commission to: (1) determine that the correct rate to be charged St. Francis for public utility water service by defendant Lukins Brothers Water Co. (Lukins) is the apartment rate as published in Lukins' tariff (Appendix A) and not the single-family residence rate and (2) return to St. Francis all funds deposited with the Commission in connection with the complaint, an amount totaling \$4,580.62.

Defendant responds that: (1) it is charging the proper rate because St. Francis is not an apartment/motel but is a complex of single-family residences, and (2) in response to an informal complaint against Lukins by James M. Gaiser, treasurer for St. Francis, involving the charges herein at issue, the Commission's Consumer Affairs Branch advised Mr. Gaiser on May 9, 1978 that Lukins was billing St. Francis under the proper schedule, i.e., as single-family residences.

Complainant did not accept the informal adjudication of the matter by the Consumer Affairs Branch and filed this formal complaint May 30, 1979. The matter was properly noticed and a hearing was held before Administrative Law Judge Albert C. Porter on October 2, 1979 and was submitted subject to concurrent briefs to be mailed no later than October 19, 1979.

We find the following to be the undisputed facts of the case.

Findings of Fact

1. St. Francis of the Woods Condominium is a condominium conversion project located in the city of South Lake Tahoe, California.
2. The project was constructed in 1973 and consisted of four separate buildings containing 50 individual living units.
3. Before conversion to its present condominium ownership, St. Francis was operated as a combination motel/apartment as Forest Lodge Motel and Apartments.
4. On May 7, 1976 Gordon M. Clancy, acting for Forest Lodge Motel and Apartments, requested and received a letter (Exhibit 3) from Lukins which detailed the charges for water service as St. Francis was then operated and which totaled \$1,305 per year.
5. For reasons unknown to anyone associated with this record, Mr. Clancy returned to Lukins in the afternoon of May 7, 1976 and requested and received a second letter (Exhibit 4) which detailed the charges for water service if St. Francis were operated on the basis of single-family residences and which totaled \$2,466 per year.
6. A representative of Lukins voided the office copy of the first letter referred to in Finding No. 4 in the presence of Mr. Clancy.
7. In the prospectus prepared for the California Department of Real Estate in connection with the St. Francis conversion, the estimate of \$1,305 for water service was used.
8. St. Francis was converted from single-entity ownership to condominium ownership on August 18, 1976.

9. Upon conversion to condominium ownership there were no major changes in the structure of the complex. One unit was converted to two units, resulting in a total of 51 units instead of 50.

10. Before its conversion to condominium ownership St. Francis was charged for water service under the tariff schedule applicable to "Hotels, apartments or motels". (See Appendix A.)

11. Because of the change to condominium ownership, Lukins changed St. Francis to the tariff schedule applicable to "single family residences". (See Appendix A.)

12. The change in rate schedules resulted in St. Francis, as a total complex, being charged \$2,466 per year in lieu of \$1,305.

13. The individual living units at St. Francis are not separately metered for water service.

14. Each unit at St. Francis is billed separately for property taxes, gas, electricity, and Cable TV. There is a common sewer tax for the complex and garbage collection is accomplished by a large, common "dumpster".

15. Each of the living units at St. Francis contains a kitchen and a bathroom.

16. A majority (70-80 percent) of the units at St. Francis are available for rent on, variously, a short-term or long-term basis.

17. Only a few units are occupied by owners on a permanent basis.

18. Complainant has deposited \$4,580.62 with the Commission pending a final determination of the complaint.

Complainant's Evidence and Argument

Complainant produced two witnesses in support of its major argument that Lukins changed the rate for St. Francis solely because of the change to condominium ownership. Complainant claims the rate change is not proper because the ownership change did not change the use of St. Francis. The first witness testified that he personally uses his unit at least one weekend a month and rents it out the rest

of the time as much as possible. He estimated that in 1978 he rented it about 70 percent of the time and is doing better than that in 1979. The second witness said he never rents his, keeping it only for personal use because he did not want renters tearing it up. Testimony of either or both of the witnesses support many of the findings previously made.

Complainant argues that the term condominium is a term used to denote a type of ownership and cites in support thereof Civil Code Section 783 which defines a condominium as follows:

A condominium is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an apartment, office or store. A condominium may include in addition a separate interest in other portions of such real property.

Such estate may, with respect to the duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, or (3) an estate for years, such as a leasehold or a subleasehold.

Complainant maintains that it follows that a mere change in the way St. Francis is owned does not signal a change in its use and, therefore, warrant a change in the method of charging for water.

Complainant cites the definition of "apartment house" from Section 402 of the Uniform Building Code (a code published by the International Conference of Building Officials which has been adopted by the State of California as its official building code and is also used by most California political subdivisions) as supporting its contention that St. Francis is an apartment house. That definition is:

APARTMENT HOUSE is any building, or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence

of three or more families living independently of each other and doing their own cooking in the said building, and shall include flats and apartments.

The Uniform Building Code contains no definition for "condominium". Complainant deems that this is because it is a term that does not describe a structure but a form of ownership.

Defendant's Evidence and Argument

Defendant maintains that St. Francis is a complex of single-family residences and should be charged accordingly. Defendant called the general manager of Lukins as its only witness. The general manager testified that in his opinion St. Francis is no different from a duplex, triplex, or any other multiple-unit structure containing a number of dwelling units. Lukins now assesses the residential rate for all such multiple-unit structures except those that are actually operated as motels or apartments. The test that the witness puts to a structure to determine if it is an apartment house and not a collection of single-family residences within the meaning of the tariff was described thusly: "Well, what we look to is (sic) generally an apartment house is, if the agencies in the Lake Tahoe area specifically say it's an apartment house, we follow the zoning ordinances or zoning codes of either the City of South Lake Tahoe, CRPA, which is California Regional Planning Agency, South Lake Tahoe, or the agency zoning in regards to it." (TR 76.) The witness concluded, based on that test, that if the structure is not a hotel, motel, apartment, business, or industry, then it would come under the single-family residential rate. The general manager maintained that the reason for the lower rates per unit for apartments, hotels, and motels is that Lukins is on a flat rate basis and the usage at that type of abode per unit is expected to be less than for a single-family residence.

Defendant argues that even if "condominium" is a form of ownership and does not describe a structure, the owner of a condominium unit owns an individual residence which can be bought, sold, or

mortgaged separately from any other unit in the complex. Therefore, it must be an individual, single-family residence or dwelling, the owner of which has all the rights and obligations that the owner of a single-family detached dwelling would have plus a few more having to do with those areas held in common with other owners in the complex.

Discussion

The issue to be decided can be stated simply: For the purpose of applying the water rate tariff of Lukins to St. Francis, is the complex a cluster of single-family residences or is it an apartment house? The decision is not so simple.

If we were to reverse the sequence of events for St. Francis and ask what rate would have been charged if the complex had been built as a complex of individual dwelling units for sale to individuals as residences to do with as they please, i.e., live in, rent, lease, whatever, we are inclined to believe that the rate for single-family residences would have been applied. We cannot conceive of coming to any other conclusion if the complex had been constructed as a series of closely spaced but noncontiguous houses. Outwardly, St. Francis appears to be an apartment house, the function it was designed for and first used for; inwardly, it is now a series of living units each individually owned. It may be true that the change to condominium ownership<sup>1/</sup> did not change the use of St. Francis, that is, as a place where people live, but it did change the way ownership is exercised. Instead of one manager renting or leasing the living units, there are now 51, each in charge of an individual unit, all doing as they please as evidenced by complainant's witnesses, one who rents as much as he can and the other who never rents.

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1/ It is noted with some amusement that the term "Condominium" is used in the title of complainant's complex, probably to denote a building or buildings.

The bureaucratic thicket of definitions the parties have presented us with offers little help in making our decision. Witness the following from Sections 402, 405, and 409 of the Uniform Building Code in addition to the one previously cited, which is repeated for ready reference.

APARTMENT is a room or suite of rooms which is occupied or which is intended or designed to be occupied by one family for living and sleeping purposes.

APARTMENT HOUSE is any building, or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the said building, and shall include flats and apartments.

DWELLING is any building or any portion thereof, which is not an "Apartment House" or a "Hotel" as defined in this Code, which contains one or more "Apartments" or "Guest Rooms," used, intended, or designed to be built, used, rented, leased, let, or hired out to be occupied, or which are occupied for living purposes.

HOTEL is any building containing six or more rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

And then, these from the South Lake Tahoe City Code which, incidentally, does not contain a definition for "apartment" or "condominium".

- (18) Dwelling. Any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons.
- (19) Dwelling, single-family. A detached building designed or used exclusively for residence purposes by one family or housekeeping unit.

- (20) Dwelling, two-family or duplex. A building designed for or used exclusively for residence purposes by two families or housekeeping units.
- (21) Dwelling, multiple. A building or portion thereof designed for or used exclusively for residence purposes by three or more families or housekeeping units.
- (22) Dwelling unit. One or more rooms in a building or portion thereof designed, intended to be used, or used for occupancy by one family for living and sleeping purposes and having only one kitchen or kitchenette.
- (30) Hotel/motel units. Rental units not having more than 10% of the total number of units with kitchen facilities.

And, finally, this partial definition of "condominium" from Webster's Third New International Dictionary (1976 Edition):

c(1) : individual ownership of a unit in a multi-unit structure (as an apartment building) (2) : a unit so owned (3) : a building containing condominiums.

After consideration of all that is before us in this case, we come to the rule that has been stated many times. Where there is an ambiguity in a tariff, any doubt in its interpretation is to be resolved against the utility responsible for the ambiguity. (Apex Smelting Co. v So. Cal. Gas Co. (1962) 60 CPUC 74, 75, and Civil Code Section 1654.) Therefore, we will find for complainant.

In connection with his preparation for testifying in this proceeding, Lukins' general manager made an inspection of the premises at St. Francis during which he discovered that under either tariff interpretation, the billings to St. Francis had not been properly made. This came about because the number of units had changed from 50 to 51, there were additional outside faucets in use, and additional fire hydrants. Accordingly, at the request of the ALJ, Lukins provided late-filed exhibits to be used to properly account for all charges during the billing period 1977-79, inclusive. The



recalculation based on billing under the apartment schedule shows that \$3,292.25 is due Lukins from St. Francis (Appendix B) and that the correct billing for St. Francis for the calendar year 1980 and years thereafter under the tariff now in effect, and treating St. Francis as an apartment building, is \$3,942.00 (Appendix C). St. Francis has on deposit with the Commission \$4,580.62. Therefore, those funds should be disbursed as follows: \$3,292.25 to Lukins and \$1,288.37 (\$4,580.62-\$3,292.25) to St. Francis.

Additional Findings of Fact

19. Defendant, Lukins Brothers Water Co. is a public utility under the jurisdiction of this Commission.

20. Complainant, St. Francis of the Woods Condominium is a customer of Lukins.

21. The correct category of billing for St. Francis by Lukins is under "Hotels, apartments or motels."

22. Lukins improperly billed St. Francis for water service for the calendar years 1977, 1978, and 1979 because of an ambiguity in its tariff.

23. St. Francis owes Lukins an additional \$3,292.25 for water service for calendar years 1977, 1978, and 1979.

24. Of the \$4,580.62 on deposit with the Commission by St. Francis pending settlement of this complaint, \$3,292.25 should be disbursed to Lukins and \$1,288.37 to St. Francis.

25. Under the present physical configuration of St. Francis, the correct charge for water service to St. Francis by Lukins for the calendar year 1980 and years thereafter under the tariff now in effect is \$3,942.00.

Conclusion of Law

Complainant is entitled to the relief indicated by Findings Nos. 24 and 25 above.

IT IS ORDERED that:

1. Of the \$4,580.62 on deposit with the Commission by St. Francis of the Woods Condominium, the Executive Director shall disburse \$3,292.25 to Lukins Brothers Water Co. and \$1,288.37 to St. Francis of the Woods Condominium.

2. Case No. 10750 is concluded.

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

Dated MAR 4 1980, at San Francisco, California.

John E. Byron  
President  
Richard P. Stebbins  
Michael D. Harde  
W. Paul F. Schick  
James W. Smith  
Commissioners

APPENDIX A  
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## Schedule No. 5

GENERAL FLAT RATE SERVICE  
(Effective September 9, 1970)APPLICABILITY

Applicable to all water service rendered on a flat rate basis.

TERRITORY

Lukins Tract and vicinity near State Highway 89 and U.S. Highway 50 in the City of South Lake Tahoe, California. (T)  
(T)

RATES

	<u>Per Service Connection</u>	
	<u>Per Season</u>	<u>Per Year</u>
For each single-family residence including premises .....	\$36.00	\$66.00
For each additional residential unit on the same premises served from the same service connection	25.00	45.00
For each store, market, or office ...	36.00	66.00
Hotels, apartments or motels:		
For first room or unit .....	36.00	66.00
Next 3 rooms or units, each ...	25.00	45.00
Next 6 rooms or units, each ...	15.00	28.00
Over 10 rooms or units, each ...	10.00	18.00
In addition to the above charges, for each outdoor faucet during summer season only .....		<u>Per Month</u> \$2.50

SPECIAL CONDITIONS

1. Consumers may take service under this schedule for either (a) the summer season, May 16 to October 15, inclusive, (b) the winter season, October 16 to May 15, inclusive, or (c) for the complete calendar year.
2. The summer and winter seasonal flat rate charges are payable in advance on or before May 16 and October 16, respectively. Annual charges are payable in advance on or before January 1.
3. Meters may be installed at option of utility or consumer for above classifications in which event service thereafter will be rendered only on the basis of Schedule No. 1, Seasonal Metered Service, or Schedule No. 2, Annual Metered Service.

APPENDIX A  
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Schedule No. 2A

ANNUAL FLAT RATE SERVICE  
(Effective February 1, 1979)

APPLICABILITY

Applicable to all water service rendered on a flat rate basis.

TERRITORY

Lukins Tract and vicinity near State Highway 89 and U.S. Highway 50 in the City of South Lake Tahoe, California.

RATES

	<u>Per Service Connection</u> <u>Per Year</u>	
For a single-family residential unit, including premises .....	\$125.00	(I)
For each additional single-family residential unit on the same premises and served from the same service connection .....	71.00	
Hotels, apartments, or motels: For first room or unit .....	125.00	
For each additional room or unit on the same premises and served from the same service connection .....	58.00	
For each store, market, or office .....	125.00	(I)

SPECIAL CONDITIONS

1. The above flat rates apply to a service connection not larger than one inch in diameter. (N)
2. For service covered by the above classification, if the utility so elects, a meter shall be installed and service provided under Schedule No. 1A, Annual Metered Service, effective as of the first day of the following calendar month. Where the flat rate charge for a period has been paid in advance, refund of funds advanced for the remainder of the year shall be determined by multiplying the annual charge by one three-hundred-sixty-fifth (1/365) of the number of days remaining in the calendar year. (N)

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APPENDIX B  
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Accounting Sheet Not Billed Motel Rates

Subject: St. Francis of the Woods Condominiums

1/1/77-12/31/77 (Per Schedule #5 & #6 Motel rates	\$1,736.00
Paid 3/3/77 Check # 187	- 1,000.00
	<u>736.00</u>
1/1/78-12/31/78 (Per Schedule #5 & #6	1,736.00
Paid 5/15/78 Public Utilities check # 06804 8294	- 305.00
Paid 5/30/78 Ch # 421	- 1,305.00
	<u>862.00</u>
1/1/79-12/31/79 (Per Schedule Per. Schedule # 2 A)	<u>3,735.25</u>
	4,597.25
Paid 2/8/79 Check # 574	- 1,305.00
	<u>\$ 3,292.25</u>

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Motel Rates per Schedule No. (5) General Flat rate service Year 1977

1- single family residence including premises per yr.		66.00
For first room on unit	per yr.	66.00
Next 3-room on unit, each	\$45.00 per yr.	135.00
Next 6-room on unit, each	\$28.00 per yr.	168.00
Over 10-room on unit, each (41)	\$18.00 per yr.	738.00
		<hr/>
		\$1,173.00

22- Outdoor faucets during summer season only \$2.50 per month each

(5) month = \$12.50 per year each

275.00

12-fire Hydrants @ \$2.00 per month each 12-month

288.00

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\$1,736.00

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Motel Rates Year 1978 per Schedule No. (5) General Flat rate service

1-single family residence including premises per yr		66.00
For first room or unit	per yr	66.00
Next 3-room or unit, each	\$45.00 per yr	135.00
Next 6-room or unit, each	\$28.00 per yr	168.00
Over 10-room or unit, each (41)	\$18.00 per yr	738.00
		<u>\$1,173.00</u>

22-Outdoor faucets during summer season only \$2.50 per month each

(5) month = \$12.50 per year each

12-fire Hydrants @ \$2.00 per month each 12-months

275.00

288.00

\$1,736.00

APPENDIX B  
Page 4 of 5Motel Rates per Schedule 2-A Annual Flat rate service February 1, 1979

1- single family residence including premises per yr	\$ 125.00
For first room or unit per yr	125.00
For each additional room or unit served from the same service connection	
50- @ \$58.00 per yr each	<u>2,900.00</u>
	\$3,150.00
Jan 79 prorated adjustment credit	<u>- 164.75</u>
	\$2,985.25

## Private Fire Protection Service Per Schedule No. 4

Rate Feb. 1, 1979 - 12/31/79

For each inch of diameter of service connection per month \$3.00	
3-6" diameter service connection (3) 6" fire hydrants @ \$18.00 per month each \$18.00 x 3 = \$54.00 per month 11 months	594.00
1-4" diameter service connection (9) 2" fire hydrants 11-months @ \$12.00 per month each	132.00

## 1978 Rate Jan. 1, 79 - 12/31/79 Per Schedule No. 6

12-fire hydrants 1-month @ \$2.00 per month each	<u>24.00</u>
	\$3,735.25



APPENDIX B  
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Additional Charges to Basic Flat Rate Service

Private Fire Protection Service Schedule No. 4

Rate for each inch of diameter of service  
connection per month \$3.00

3-6" diameter service connection (3) 6" fire  
hydrants at \$18.00 per month each \$18.00 X  
3 = \$54.00 per month X 12 months

\$648.00

1-4" diameter service connection (9) 2" fire  
hydrants. 12 months at \$12.00 per month

144.00  
\$792.00

APPENDIX C

ANNUAL CHARGES DUE UNDER APARTMENT RATES

Annual Flat Rate Service Per Schedule No. 2A

1--For a single-family residential unit, including premises	\$ 125.00
1--For first room or unit	125.00
50--For each additional room or unit on the same premises and served from the same service connection at \$58.00 per unit	2,900.00
	<u>\$3,150.00</u>

Additional Charges to Flat Rate Service Private Fire Protection Service Per Schedule No. 4

Rate for each inch of diameter of service connection per month \$3.00	
3-6" diameter service connection (3) 6" fire hydrants at \$18.00 per month each \$18.00 X 3 = \$54.00 per month X 12 months	\$ 648.00
1-4" diameter service connection (9) 2" fire hydrants. 12 months at \$12.00 per month	144.00
	<u>\$ 792.00</u>
Total Annual Charges	\$3,942.00