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ORIGINALDecision No. 92235 SEP 18 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CRYSTAL FALLS HOME OWNERS
ASSOCIATION,

Complainant,

vs.

CRYSTAL FALLS WATER COMPANY, and
PACIFIC GAS AND ELECTRIC COMPANY,

Defendants.

Case No. 10649
(Filed August 17, 1978)

CRYSTAL FALLS WATER COMPANY,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation,

Defendant.

Case No. 10746
(Filed May 11, 1979)Neil A. Thomason, Attorney at Law, for Crystal
Falls Home Owners Association, complainant
in C.10649.Ronald D. Carter, Attorney at Law, for Crystal
Falls Water Company, defendant in C.10649
and complainant in C.10746.Robert B. McLennan and Malcolm H. Furbush,
Attorneys at Law, for Pacific Gas and Electric
Company, defendant in C.10649 and C.10746.James J. Cherry, Attorney at Law, for the
Commission staff.

O P I N I O N

The complaint of Crystal Falls Home Owners Association (Association) alleges that Crystal Falls Water Company (Crystal Falls) system was short of water in 1977 and June, July, and August of 1978, thereby requiring the Association to haul in water for domestic purposes. It is further alleged that 200 new homes were constructed during the year prior to filing the complaint and there are lots for 700 additional homes to be constructed in the future. The complaint asks that the defendants be required to provide the homeowners with an adequate supply of water for future needs.

The amended answer of Crystal Falls filed May 11, 1979 alleges that any outages suffered by the homeowners have been of short duration and caused by the necessity to repair broken pipes or valves. It is further alleged that Association has insisted on watering its golf course during a period of severe drought, thus it was necessary to temporarily interrupt the water supply to this area. The remainder of the answer refers to the complaint filed by Crystal Falls against Pacific Gas and Electric Company (PG&E) in Case No. 10746. PG&E's answer was filed on September 20, 1978. It alleges that PG&E has always and will continue to provide Crystal Falls with the 20 miner's inches that it has contracted to receive and that an additional supply can be provided if Crystal Falls is willing and able to satisfy certain reasonable requirements, which include (1) no service from Crystal Falls system below the 2,350-foot elevation, (2) meters to be installed on all services, (3) Crystal Falls to contribute to the cost of improving the PG&E ditch which supplies the Crystal Falls water system, and (4) Crystal Falls to provide a 14-day storage facility, or an additional source of water adequate to supply the contract flow for 14 consecutive days.^{1/} ✓

^{1/} Decision No. 92064 dated July 29, 1980, in Application No. 54199 (PG&E's request to increase rates for its Tuolumne Water System) found that PG&E's 14-day storage requirement is unreasonable and concluded that the condition should be removed from future resale contracts.

Crystal Falls' complaint was filed nine months after the Association's complaint. It alleges that Crystal Falls serves 962 ✓ customers, including 490 metered customers, 240 flat rate customers, Sonora Meadows Water Company with 196 customers, and Mono Vista Water Company with about 36 customers. It also serves two smaller water companies, each considered as one connection. It is further alleged that prior to filing its application to become a public utility, Crystal Falls' executives discussed water supply problems with PG&E's representatives and notified the latter that Crystal Falls and related utilities would be serving between 1,500 and 2,000 connections before the area was completely developed. It is alleged that after Crystal Falls became a public utility water company, PG&E's representatives advised the officers of Crystal Falls that it did not require a contract to insure delivery of 60 miner's inches of water per day when required; but a contract should be executed for 20 miner's inches, since this quantity was all that was needed at the time of agreement. In reliance on these representations, Crystal Falls executed a contract on January 15, 1970 for the daily supply of 20 miner's inches.

Crystal Falls acquired the water system of the Willow Springs Ranch Mutual Water Company (Willow Springs) by Commission order on July 1, 1969. This system had 235 customers in 1978 with an estimated annual growth of 15 percent. It is supplied from the PG&E ditch but is otherwise separate from the Crystal Falls system. The complaint alleges that Willow Springs signed with PG&E on July 10, 1964 for a daily supply of 15 miner's inches, which was reduced to 10 miner's inches by agreement dated June 10, 1966. The complaint notes that a demand has been made upon PG&E to supply 60 miner's inches to Crystal Falls and 15 miner's inches to Willow Springs, as previously agreed, and PG&E has refused until Crystal Falls complies with the requirements previously mentioned. The complaint further alleges

that Crystal Falls has been informed by representatives of PG&E that the contributions expected from Crystal Falls are estimated to be \$35,000 to \$40,000 for each additional miner's inch supplied, which is well over one and a half million dollars. The complaint requests that PG&E be ordered to provide Crystal Falls with a daily supply of 45 additional inches of water at the present tariff rate; that the amount of storage to be provided be left to the judgment of Crystal Falls' management; that no monies be contributed to PG&E by Crystal Falls; and that Crystal Falls be permitted to continue with its current plan of metering services without interruption from PG&E.

PG&E's answer was filed on June 13, 1979. The answer alleges that PG&E will provide the additional supply of water requested if the requirements previously noted are satisfied. It is also alleged that Crystal Falls transferred a storage reservoir (public utility property) to Association as a recreation facility ✓ in violation of the requirements of Crystal Falls' certificate. The answer alleges that tripling the quantity of water furnished to Crystal Falls without additional charge would place a financial burden on all customers on PG&E's system to the benefit of a single resale user.

A hearing was held in San Francisco on August 8, 9 and November 13, 14, 1979 before Administrative Law Judge Edward G. Fraser. Documentary evidence and testimony were presented by the Association, Crystal Falls, PG&E, and the Commission staff. Final ✓ briefs were filed on March 7, 1980.

The Evidence of Customers and Crystal Falls

A homeowner testified that Crystal Falls' Subdivisions 1 and 2 are at a 2,300-foot elevation and Subdivisions 3 and 4 are at a 3,000-foot elevation, which are above most of the system's storage. When lower storage tanks get low, a suction effect is produced and

water can be drawn out of heaters and other appliances, with resulting damage. As a doctor, he noted the possibility that contaminated water could be drawn into a sprinkler, or other outlet, and thereby into the system. He explained that the remedy consists of simply providing an adequate supply of water to maintain all storage tanks at a reasonable level. He further testified that fire danger in the summer and fall requires adequate water storage with an adequate continuing supply. He advised that the 1978 water shortage prevented Association from watering its golf course and many plants and trees had to be replaced at considerable expense. He does not favor using Association's reservoir as an additional storage facility because it is now used for boating and swimming and because septic tanks are nearby.

A former officer of the Association testified that there were other complaints from owners on the high ridges concerning the suction effect and the damage to water heaters. He noted there were periods of several hours during 1978 when the water system was shut down, apparently while repairs were made. He testified that Association received title to the lake used for recreation prior to 1972 and that the lake is maintained by water pumped from Sullivan Creek, which is owned by the developer. Twain Harte Creek naturally flows into the lake but is dry during the summertime when residents use the facility. He stated that the lake has never been used as a water supply. It has always had a dock and boats.

A lieutenant from the local volunteer fire department emphasized the necessity for a reliable water supply in fire fighting. He testified that his home was out of water twice in 1978 for three and five hours, respectively, due to breakage.

The manager and the president of the water company each testified for Crystal Falls. Both recalled that the first discussion with PG&E's representatives was early in 1967 and that an unlimited supply of water seemed to be available. The president stated that PG&E was notified as early as April 1967 (Exhibit 12-2) that Crystal Falls would ultimately require 60 miner's inches of water. Crystal Falls' engineer was also present at these early meetings and furnished the utility with all maps and sketches of the proposed subdivision, including the final map that was approved by the county.

Crystal Falls received a certificate as a public utility water company on August 29, 1967 (Decision No. 72987 in Application No. 49236) which authorized the construction and operation of a public utility water system to serve the 302 lots in "Crystal Falls Ranch Subdivision Units 1 and 2", which are located approximately two miles south of the town of Twain Harte in Tuolumne County. On July 1, 1969, Crystal Falls acquired a water system operated by Willow Springs (Decision No. 75866 in Application No. 50480) which was serving about 88 customers in a subdivision of 497 lots, located one-half mile north of the town of Soulsbyville in Tuolumne County. A Commission Resolution (W-1347) dated December 21, 1971, authorized Crystal Falls to provide the Sonora Meadows Mutual Water Company a flow of 700 gallons per minute. The record reveals that Crystal Falls was supplying 337 customers in December 1972 and 597 in September 1977.

The manager testified that the first Crystal Falls treatment plant was located at the 2,750-foot elevation, where Twain Harte and Sullivan Creeks intersect, and water was directed from the PG&E ditch down the creek to the treatment plant. It then became apparent that the plant was too far down the slope. Water was lost through evaporation and seepage, and flow was restricted. The entire plant was

moved in 1970 to the PG&E (main Tuolumne) canal at an elevation of 4,000 feet. The treatment facilities were expanded to handle 60 miner's inches and to reduce loss from evaporation. Three large filters were installed, with 8- and 10-inch mains, to accommodate the expected 60-inch flow. The president testified that the relocated plant cost about \$137,000, and was built to convince the Department of Real Estate and the Public Utilities Commission that Crystal Falls could process the required 60 miner's inches. He stated that the subdivision would not have been developed if he had been advised that only 20 miner's inches were available and that more water could only be obtained at an extravagant cost.

The manager advised that water was no problem from 1970 through 1976. A serious drought occurred in 1977, but everyone cooperated and there were no hardships. The first serious outage took place in July 1978. For two weeks the storage tanks had very little water and PG&E advised that no more would be supplied. Homeowners were out of water, and none was left for fire fighting. He conferred with local PG&E men at this time to remind them of the serious leaks along PG&E's supply ditch. He noted that water in PG&E's supply ditch is used to power a hydroelectric plant which sells its output, and some believe this is PG&E's priority service. He further advised that Crystal Falls is currently (1979) constructing a 600,000-gallon storage facility and has drilled a 500-foot-deep well which produces a flow of 70 gallons per minute. The water from the well is to be pumped directly into the storage tank. He testified that Willow Springs is not connected to the Crystal Falls system and is supplied from PG&E's Soulsbyville ditch, a smaller canal which branches off the main Tuolumne ditch and supplies a lower level. He advised that Willow Springs was serving about 250 customers in 1979 and requires the full 15 miner's

inches it was originally allotted as a mutual water company. He stated that Crystal Falls connected 70 new homes during the last 12 months and has a pressing need for the expected 60 miner's inches. Cross-examination developed that Association's recreation lake was listed ✓ as a storage reservoir in the original Crystal Falls certificate and that Sullivan Creek was listed as a source of supply. Both were disconnected from the system when the treatment plant was moved to the PG&E ditch. No Commission authority to remove the reservoir was sought or obtained. The witness also stated that flow from the PG&E ditch is used by customers below the powerhouse in addition to powering the hydroelectric plant.

The president testified that the one-time sum of \$35,000 per extra miner's inch has been requested by PG&E from other water utilities in the area. He advised that paying this amount for each extra inch of water required would bankrupt Crystal Falls. The witness admitted on cross-examination that the Agreement For Supplying Untreated Water For Resale dated January 15, 1970, is the contract for water that he signed and that it provides for 20 miner's inches. (Copy of contract is Exhibit C attached to the complaint in Case No. 10746.)

Staff's Evidence

A Commission staff engineer sponsored Exhibit 3. It includes a comprehensive description of the Crystal Falls system and an analysis of the relation between Crystal Falls and PG&E. The exhibit includes a quote from PG&E's Tariff Sheet 682-W, under Description of Service, referring to both "Town Systems" and "Ditch Systems".

"If the requirements of new customers or additional requirements of present customers are of such a nature as to require major additions to the Company's distribution facilities, the furnishing of such service will be subject to renegotiation by the customer and Company."

The exhibit states that this tariff section is the basis for PG&E's effort to charge and collect \$35,000 for each additional miner's inch to be provided to existing systems supplied by PG&E. He concludes that any effort to raise or otherwise alter a utility tariff rate should first be directed to this Commission. The exhibit further concludes that the cost of repair or replacement of parts of the supply ditch should not be imposed on small groups of customers, but considered as a necessary repair and added to rate base, to be charged to all customers. The exhibit asserts that approximately 70 percent of Crystal Falls' customers are metered. All new customers are required to have meters and an effort is underway to meter all flat rate customers. The exhibit recommends that the issue of metering customers should be left to Crystal Falls' management and should not be imposed by PG&E. The exhibit considers PG&E's condition that "services from the Crystal Falls system shall not be made below elevation 2,350 (feet elevation) USGS", to be unreasonable as an unwarranted interference with another utility's service area and management.

The fourth condition imposed by PG&E concerns the requirement that Crystal Falls provide sufficient storage or a reliable alternate source of water adequate to sustain the contract flow for 14 consecutive days. Paragraph 10 of the present PG&E water resale contract leaves the determination of the number of days of storage the water purchaser must maintain to PG&E. The staff exhibit agrees that 14 days of storage is a reasonable requirement, and suggests that the contract should be amended to provide for 14 days' storage and eliminate the provision which allows PG&E to determine what storage is necessary. The inference is made that PG&E may impose an unreasonable storage requirement sometime in the future.

The staff exhibit concludes that Crystal Falls has an inadequate water supply, and that it has contracted to sell more water to its affiliates than it can spare, thereby requiring an increased allowance. A moratorium on new connections is not favored as it would not be in the public interest. It recommends that PG&E be required to supply Crystal Falls with 60 miner's inches and Willow Springs with 15 miner's inches, as originally promised, that the four conditions suggested by PG&E not be imposed, and that paragraph 10 of the resale contract be amended to provide for a 14-day water supply as minimum storage by Crystal Falls.

On cross-examination by PG&E's counsel the staff witness admitted that costs were not considered in the staff report. He further admitted that PG&E's water requirements on days of peak use were not considered, only yearly quantities and days of average use. The witness identified the PG&E rate base as \$2,938,000. He concurred in the opinion that rate base and water rates might be raised from 350 to 1,700 percent if the costs of between \$11 and \$52 million, quoted by PG&E's witnesses for necessary repairs or replacement, were correct.

PG&E's Evidence

PG&E provided testimony from three witnesses. The manager of PG&E's Sonora office testified that he has been an employee of PG&E for 32 years, with the last 22 years in the Mother Lode area, which includes Sonora. He advised that he has represented PG&E in dealings with Crystal Falls since 1967, when representatives of Crystal Falls first came to inquire about water service for a proposed 300-lot subdivision. The quantity of water required was not discussed during the first meeting. PG&E later indicated by letter dated April 24, 1967 (Exhibit 12-2) that 60 miner's inches of water could be made available if certain information was provided and a contract prepared. He testified that the contract was finally executed and signed on January 15, 1970. It provided for Crystal Falls to receive 20 miner's

inches, rather than 60, and 20 miner's inches was selected as the maximum quantity Crystal Falls would require for an extended period. Since PG&E instituted a minimum charge for service based on the quantity of water guaranteed in the contract, (excess water not used), Crystal Falls elected to receive a lesser amount based on estimates made at the time the contract was executed. He further testified that Crystal Falls had informed PG&E that the water company intended to use two-thirds of the natural flow from Sullivan Creek as an additional source of water, and that a 40-acre-foot reservoir on Sullivan Creek would be used for storage, to maintain an adequate water supply during periods of peak use. The creek flow and reservoir were an additional reason why 20 miner's inches was considered adequate in the contract. Application No. 49236 filed by Crystal Falls on March 27, 1967 lists Sullivan Creek and the reservoir as additional sources of supply, and both are included as sources in the Commission decision issued August 29, 1967, although neither has ever been a part of the water system.

The witness further testified that water was first delivered under contract on December 8, 1970. A maximum of 6 miner's inches was delivered from this date until June 1977, when the regulator valve was readjusted (without authority) to allow an unmeasured quantity of water to be diverted to Crystal Falls. When the open valve was discovered it was resealed and adjusted to deliver 10 miner's inches, which was the maximum allowed under the temporary rules in effect during the drought of 1976-78. On July 14, 1978 the valve was opened (again without authority) and an unknown quantity of water flowed to Crystal Falls. PG&E's billing records (Exhibit 10) indicate that Crystal Falls received approximately 20 miner's inches during the months of December 1976, September, October, and November 1978, and January and July 1979.

Almost all other months registered less than 11 miner's inches. The witness also identified PG&E's other contract with Crystal Falls, (January 19, 1970), wherein Crystal Falls assumed the rights and obligations of Willow Springs to supply a maximum of 10 miner's inches a day to the Willow Springs Subdivision, which is located across the highway (State 108) from, and not connected to, the Crystal Falls system. PG&E's billing records (Exhibit 11) indicate that Willow Springs never required more than 6 miner's inches from April 1972 through June 1979, although approximately 10 miner's inches were registered during July, August, and September 1979, the last period recorded.

The witness advised that Crystal Falls supplies two other mutual water companies: Sonora Meadows Mutual Water Company under a contract dated November 20, 1971 and approved by Commission resolution December 21, 1971, and Mono Vista Mutual Water Company. A contract between Crystal Falls and Mono Vista Mutual Water Company to provide service dated August 1, 1972 was rejected by the Commission and has never been approved by the Commission. Crystal Falls has never requested additional water from PG&E to serve these two additional resale customers.

The witness advised that meetings were held with Crystal Falls' representatives as early as May 1972 in regard to providing additional water for a 1,000 space recreation camp near the Crystal Falls Subdivision. He referred to a letter dated May 21, 1974 (Exhibit 12-14) wherein Crystal Falls agreed that it would make a financial contribution for capital improvements to the ditch to recover the additional quantity of water required for the new development. All plans were canceled after the recreation development was defeated in a countywide referendum election. The cost of needed improvements was estimated to be about \$35,000 per miner's inch of water at the time of the election.

PG&E's second witness was a general office hydraulic engineer, responsible for the planning, maintenance, and operation of the Tuolumne Water System. He described the water system and divided it into four sections. Crystal Falls and Willow Springs are served by different units, since they are on opposite sides of a State highway and are two separate water systems. He advised that the series of ditches is designed to handle a continuous flow rather than periods of peak demand. If the flow was augmented to satisfy the peak demands of large customers like Crystal Falls, the current would have to be reduced as soon as the need passed, and considerable water would be lost until the canal flow was reduced to normal. He advised that capacity is adequate during nonpeak periods, but in July, August, and September when water need is greatest, the ditch capacity is fully used along with the 5,500 acre-feet of storage in Lyons Reservoir. If the ditch was required to furnish its contract capacity everyday, it is estimated that flow would have to be increased from 52 to 67 feet per second. A report submitted in 1978 recommended that the ditches be replaced with pipe and that the storage capacity of Lyons Reservoir be increased to 30,000 acre-feet. Cost was estimated in 1977 to be \$52,800,000, or \$55,100 per miner's inches a day of loss, recovered through piping the system.

The witness advised that few of PG&E's Tuolumne Water System customers have adequate storage. If Crystal Falls used its 40-acre-foot lake as a reserve, or had equivalent storage, it would have sufficient water on hand during periods of peak use. He noted that PG&E's customers who need large quantities of water are required to maintain adequate storage under the terms of the water service contracts.

The witness explained PG&E's requirement that no service be provided below 2,350 feet. The lots at the 2,300-foot level are more than two miles below the 4,000-foot connection with PG&E's supply ditch. PG&E prefers that the lower elevation be served from a subordinate ditch at a lower elevation with no change in the amount of water to be provided by PG&E.

He countered an accusation that the Tuolumne project is operated to sell power generated by the Phoenix Dam and powerhouse rather than to supply its water service customers. The powerhouse produces power for sale only when water is plentiful (December through June of most years) and Lyons Dam has a surplus released for power production. During the remainder of the year the system is operated exclusively to provide water to its service customers. The dam, powerhouse, and Tuolumne Canal are part of PG&E's electric department's rate base. The staff exhibit (page 14, Exhibit 3) noted that PG&E sold less water in 1977 and 1978 than in the preceding eight years. The witness advised that the totals are misleading because 1977 was a drought year and mandatory conservation was imposed on the water system. In 1978 a 100 percent rate increase was authorized, which prompted PG&E's customers to buy less water. He disagreed with the staff's contention that the system has adequate water for its present customers. He quoted records to show that during July and August 1979 the main Tuolumne Canal has carried water at its maximum flow (52-53 cubic feet a second) for periods of several consecutive days. He therefore concluded that additional capacity must be provided before contractual commitments can be increased.

PG&E's last witness was an economist who provides assistance to management on the economic aspects of rate and rulemaking for water utilities. He identified the two written contracts that bind Crystal Falls and PG&E. The principal contract was executed by the parties on January 15, 1970, and provides for a daily supply of a maximum of 20 miner's inches of untreated water from PG&E's main Tuolumne Canal. The second contract is an assumption by Crystal Falls of the rights and obligations of a 10-miner's-inches-a-day contract between PG&E and Willow Springs. The original contract between PG&E and Willow Springs dated July 10, 1964, called for a maximum rate of flow of 15 miner's inches, amended to 10 inches by a letter agreement dated June 10, 1966. Crystal Falls assumed the 1966 agreement on January 16, 1970.

The witness commented on the allegation that Crystal Falls considered PG&E's letter of April 24, 1967 (Exhibit 12-2) to be a contract and relied on it. Paragraphs 2 and 3 constitute the body of the letter and are quoted as follows:

"At a meeting held April 24, 1967 between David Spurgeon and Vic Gretsinger representing Crystal Falls Water Company, and A. Glenn Hicks representing Pacific Gas and Electric Company, it was agreed that 60 miner's inches of water could be delivered from the P.G.&E. Tuolumne Main Canal into Sullivan Creek or a tributary of it.

"A contract can be prepared when the information required by Schedule No. 5, Resale Service, approved by the California Public Utility Commission, is furnished."

He referred to the April 1967 letter as a notice to Crystal Falls that 60 miner's inches was available and a suggestion that a contract should be executed. As previously stated, the contracts were signed and provided for a supply of 20 miner's inches to Crystal Falls and 10 miner's inches to Willow Springs. The parties treated the agreement as a contract for more than 12 years after its execution.

He explained that if the cost of the improvements necessary to increase capacity is added to the rate base, it will probably raise the systemwide rates 100 percent. PG&E is trying to insure that the parties who benefit from the improvements pay for them. Finally, the witness declared that negotiations should be permitted without restriction under PG&E's tariff provisions. A contrary holding would require all offers and amendments to be submitted to the Commission for approval, resulting in a series of filings and amendments, before any contract could be finalized. This procedure would be wasteful of time and talent.

Position of the Association ✓

The principal complaint concerned the lack of an adequate water supply and the effect on the 200 new homes expected in the subdivision. Several retired residents wrote to advise they were living on limited incomes and could not handle a large rate increase. Testimony and letters received refer to frequent water outages of short duration (2 to 10 hours) and of a failure on the part of Crystal Falls to repair obvious leaks in the system. There were complaints of turbid or dirty water and of water leaving a black or muddy residue in tanks, water heaters, and dishwashers. Homeowners living at higher elevations complained of lack of pressure when storage tanks at a lower level are almost empty, and there were two instances of damage to water heaters due to the low pressure. A doctor who testified advised of the possibility that contaminated water on the ground may be drawn into the system during periods of extreme low pressure. Other testimony and letters referred to the necessity of replacing valuable plants and lawns due to destruction from recurring shortages of water. The period covered by the complaints extends from early 1978 through July 1979.

Position of Crystal Falls

Crystal Falls argued that PG&E was aware in 1967 that the subdivision to be served included more than 1,000 lots, that PG&E had repeatedly guaranteed that 60 miner's inches would be available whenever required, which prompted Crystal Falls to execute a contract for only 20 miner's inches as the maximum quantity needed when the contract was signed. Crystal Falls charged that PG&E's engineers had completed a study in late 1960 which predicted that a severe water shortage would occur in the 1970's and early 1980's. No preparations were made and none of the information was passed on to its customers.

It is charged that both of the PG&E water contracts with Crystal Falls were obtained by fraud. The latter relied exclusively on the representations of PG&E employees that water supply would never be a problem, and that Crystal Falls' water treatment plant was moved and reconstructed in 1970 to increase its capacity to process the expected 60 miner's inches.

Position of the Commission Staff

The staff argument is based on the premise that PG&E has violated its tariff provisions and various sections (489, 491, 532) of the Public Utilities Code by influencing its customers to accept increased water rates without first obtaining Commission authority. It is further argued that PG&E's tariff does not authorize the imposition of conditions as a prerequisite to receiving water service and PG&E's action is therefore unlawful and in violation of the named sections of the code.

The staff opposed all of PG&E's conditions. The last two are discussed in the staff's brief. The staff concludes that asking \$35,000 per miner's inch for additional water is unconscionable and

has stifled efforts of PG&E's resale customers to obtain additional water. The last condition PG&E sought to impose concerns the requirement that Crystal Falls retain a 14-day water supply in permanent storage as a standby to counter a drought, serious leakage, or for fire fighting as needed. The staff also favors a 14-day supply and has recommended that the contract be amended to provide for permanent 14-day storage.

Finally, it is suggested that Crystal Falls should pay the modest fee imposed by PG&E prior to 1970 on those who preferred to reserve more water than currently required for the extra 40 miner's inches claimed from 1970 through 1980. The staff argues that the parties will then be in the same position as if the contract had originally provided for 60 miner's inches.

Position of PG&E

Its brief explains that PG&E and predecessor companies have furnished water service in Tuolumne County since 1851. As of December 31, 1978 the system had 3,547 metered services, including 32 resale customers, and 200 flat rate services. Water for PG&E's Tuolumne Water System comes from the south fork of the Stanislaus River, is impounded in Lyons Reservoir, and is then conveyed via the 52-cubic-feet per second Tuolumne Main Canal to customers in the western portion of Tuolumne County. It is then distributed through 79 miles of ditches to the area between the south fork of the Stanislaus River and the north fork of the Tuolumne River. Untreated water is provided to customers who take water from the canal and ditches, and treated water is provided to the towns of Sonora, Jamestown, and Tuolumne.

The brief asserts that the original Crystal Falls certificate dated August 29, 1967, authorized the construction and operation of a water system to serve Crystal Falls Subdivisions 1 and 2, a total of 302 lots, and provided for the utilization of three sources of water: the main PG&E ditch, the normal flow of Sullivan Creek, and the overflow from Twain Harte Lake to be impounded in a 13,000,000-gallon (40 acre-feet) capacity earthen reservoir. The last two sources have not been utilized by the system, at least not since 1970. The brief comments that Crystal Falls has experienced a continuous growth since 1970 through the sale of lots and by absorbing adjacent water systems. Crystal Falls had requested that its water allotment be increased in 1974. PG&E responded that the contractual amount could be increased providing that Crystal Falls would meet the four conditions, but Crystal Falls withdrew when the expense of piping the ditch was revealed.

It is alleged that Crystal Falls first experienced a water shortage during periods of peak use in 1976-77 when a severe drought required mandatory conservation of water throughout the county. These peak use shortages have been occurring ever since the drought. PG&E suggests that the least expensive and most practical way to solve the problem is by the installation of meters and the provision of adequate storage. PG&E claims that it does not have sufficient water to supply all of its customers during periods of peak use. The supply is adequate at other times and for this reason the staff's report is misleading because it concludes that PG&E has surplus water on an annual basis without regard for peak use shortages.

PG&E agrees that it will be expensive to upgrade the 120-year-old system, and the question of who should bear the cost is important. It is the position of PG&E that those who benefit should pay rather than all of the customers on the system.

PG&E refers to Application No. 54199, which concerned the issues of PG&E's service, duties, plans to upgrade the system, and contractual obligations to resale customers. PG&E argues that most of the issues presented in this series of cases are already before the Commission in Application No. 54199 and that the application should be the dominant proceeding. We issued a final decision in that proceeding on July 29, 1980. (An application for rehearing has been filed by PG&E.)

Finally, PG&E's brief identifies the April 24, 1967 letter (Exhibit 12-2) as a mere offer which was never accepted by Crystal Falls. Since it was never accepted, there was no contract until a formal document was executed in 1970, which both parties have considered the contract ever since.

Discussion

1. Service Complaints and Water Quality

Pressure complaints are not easily resolved in a 120-year-old water system, which originally served a few hundred customers, and consists basically of an open ditch with a series of dams. Crystal Falls can alleviate the greater share of the problem with adequate storage and the metering of all customers. It must be inferred that there are now too many connections on the system during periods of peak use. It is obvious that shortages will become more frequent without the cooperation of all water users on the system. It is a dilemma that cannot be resolved by PG&E alone.

Discolored or dirty water, and sediment are unfortunately common complaints of customers of too many small water utilities. The equipment needed to eliminate the condition is often far too expensive for a company with only a few hundred customers.

2. The Water Supply Contracts

It is evident that all parties were satisfied with the 20 miner's inches contract until the drought of 1976-77. Conditions improved after the drought, but the attention of everyone had been forcibly directed to outages caused by leaks and a lack of pressure. The population of the area has also increased much more rapidly than expected, which has compounded all service problems.

The 20 miner's inches contract is valid and there has been no direct or indirect fraud on which Crystal Falls has relied. PG&E offered to supply 60 miner's inches in April 1967, or to provide any portion of the total, and to reserve the remainder on payment of a monthly standby fee. Crystal Falls did not accept the offer and made no effort to arrange to pay the standby fee. The offer lapsed and was canceled. Even if Crystal Falls could now pay the full 10-year standby fees, the parties would not be in the same position they would occupy if the original contract had been signed for 60 miner's inches. In the latter case, PG&E would have been reserving 60 miner's inches for Crystal Falls' use during the entire period and there would be no inconvenience to others. If the contract is altered now, disregarding the serious legal questions involved, the extra 40 miner's inches supply would have to be withdrawn from a system that is already over-extended. Crystal Falls' and PG&E's representatives were apparently friendly during the contract negotiations. This raises no presumption of fraud when Crystal Falls is bothered by a water shortage. The influx of subdividers and rapid increase in population have possibly inconvenienced almost everyone in the county, at the least through higher rates for water service.

3. The Four PG&E Conditions

The Commission staff objected to all four of PG&E's conditions to be imposed on Crystal Falls and then proceeded to adopt two of them. PG&E demanded that all services be metered before additional water could be supplied. The staff agreed that all water service should be metered as a means of conserving water. It was noted that more than 70 percent of Crystal Falls' present customers are metered along with all new customers as soon as they enter the system. PG&E demanded that Crystal Falls provide a minimum of 14 days' storage to handle emergencies. The staff agreed that storage was needed and that a period of 14 days was proper; they objected, however, to PG&E's making the demand. Crystal Falls also objected to PG&E's demand, while in the process of providing over 600,000 gallons additional storage. The third condition provides that "no service will be provided below 2,350 feet", which means that homes at a 2,000-foot elevation should be served by a water ditch at the same elevation to lessen supply and pressure problems. It seems to be the obvious solution, but the theory was not thoroughly explained.

The fourth condition is concerned with who should pay for the necessary repair or piping of the main Tuolumne County water supply ditches. This issue is already before the Commission in Application No. 58631 (PG&E's application for authority to increase its rates and charges for water service in Tuolumne County) and should be decided in the application proceeding. ✓

4. Staff Allegation That PG&E Violated Public Utilities Code and Tariff Provisions

The staff has charged that PG&E has violated its tariff provisions and various sections of the Public Utilities Code by efforts to require customers to pay \$35,000 per miner's inch for any additional water supplied. The staff alleges that this constitutes an attempt to alter the rates customers pay for water service without Commission authority.

PG&E asked those who use most of the water supplied by the ditch whether they would contribute to its repair or replacement. This query was prompted by continuous demands for more water, which the ditch could not provide. PG&E's action was logical since ditch repair or replacement is necessary to increase the water supply. The expense of repair precluded the assent of the water users, but PG&E's action was proper and involved no violation of tariff or code provisions.

The process of constructing and paying for the repair or replacement of the ditch and other facilities has been considered by the Commission in Decision No. 92064 dated July 29, 1980 in Application No. 54199. PG&E was ordered to prepare plans and cost estimates to pipe the ditch and enlarge Lyons Reservoir (Decision No. 92064, page 21). After filing said plans and sending copies to all parties, PG&E shall expeditiously undertake and initiate construction of the facilities required (Decision No. 92064, page 22).

Findings of Fact

1. PG&E's representatives conferred with officers of Crystal Falls in early 1967, prior to the latter's existence as a public utility.

2. Maps of proposed subdivisions were provided and the discussion concerned water supply for an area which would include more than 1,000 homesites.

3. Crystal Fall's authority to supply water as a public utility was issued on August 29, 1967. The authority required that the flow from Sullivan and Twain Harte Creeks be utilized as part of the water supply and that a 40-acre-foot reservoir on Sullivan Creek be used for storage. The creeks and reservoir were removed from the system in 1970 without Commission authority.

4. Crystal Falls assumed the responsibility of supplying the Willow Springs system with water on July 1, 1969, Sonora Meadows in 1971, and Mona Vista in 1972, the latter under a contract never approved by the Commission.

5. On January 16, 1970 Crystal Falls assumed the June 10, 1966 contract between Willow Springs and PG&E which provides that the former will receive a supply of 10 miner's inches per day. Crystal Falls executed a separate contract with PG&E on January 15, 1970 which provides for a daily water supply of 20 miner's inches per day.

6. From 1967 through early 1970 the Crystal Falls' water treatment plant was located at an elevation of 2,750 feet, where Sullivan and Twain Harte Creeks intersect.

7. In 1970 the treatment plant was expanded at considerable expense and moved up to the main PG&E supply ditch at an elevation of 4,000 feet. The expanded plant has the capacity to process 60 miner's inches of water per day.

8. Water supply and service was adequate from 1970 through 1976. In 1977 and 1978 mandatory conservation of water was imposed by law, due to a statewide water shortage.

9. Crystal Falls' customers suffered water shortages throughout 1977, during June, July, and August 1978, and July 1979.

10. The outages were exacerbated by leaks on the Crystal Falls' system and unauthorized use of water by Association. ✓

11. Water supply is adequate except during periods of peak use, loosely defined as the months of June, July, and August, possibly extending into September.

12. During periods of peak use each subdivision should have its own water storage to insure a minimal water supply for fire fighting.

13. As of early May 1979, Crystal Falls was serving water to 962 customers. The total includes 490 metered and 240 flat rate on the principal system and 232 from the smaller units.

14. PG&E's ditch is currently transporting water at its maximum capacity during periods of peak use. The ditch will have to be rebuilt or replaced by pipes to increase the water supply.

15. PG&E's effort to convince large customers of the need to pay \$35,000 per miner's inch for water to be supplied in excess of contractual amounts was permitted under the negotiation clause in PG&E's Tariff Sheet 682-W.

16. PG&E's letter of April 27, 1967 was not a contract. It was an offer which Crystal Falls chose not to accept.

17. The Crystal Falls-PG&E water supply contract should not be amended to require Crystal Falls to provide 14 days water storage on a permanent basis.

18. Crystal Falls used a maximum of 6 miner's inches daily from December 1970 (when water was first delivered) to June 1977. After this date no more than 11 miner's inches were consumed with the exception of December 1976, September, October, November 1978, and January and July 1979, when approximately 20 miner's inches were required.

19. Willow Springs never used more than 6 miner's inches per day during the entire period from April 1972 through June 1979, although 10 miner's inches have been required from July through September 1979, the last period recorded.

20. Crystal Falls should meter all connections as rapidly as possible and provide additional water storage within the system.

21. The completion of a 600,000-gallon water storage facility by Crystal Falls will improve water service to its customers. New wells to be drilled by Crystal Falls will also increase its water supply.

22. The allegation of Crystal Falls that its officers and representatives were induced to sign the water supply contracts in January 1970, due to reliance on the fraudulent representations of employees of PG&E, is not substantiated by the evidence. ✓

23. The issues of rates to be charged for water service, who should contribute to repair or replace the ditch, and what should be included in the Tuolumne Water System rate base are already before the Commission, and will be covered in the decision to be issued in Application No. 58631 (PG&E's application to raise rates and charges for water service in Tuolumne County). ✓

Conclusions of Law

1. The letter of PG&E dated April 27, 1967 was an offer which was not accepted, and it is not a contract.

2. The water supply contracts executed in January 1970 were not induced by fraud.

3. PG&E has not violated Sections IV or X of General Order No. 96-A, nor the provisions of its tariff, by its efforts to negotiate.

4. PG&E did not violate Sections 489, 491, or 532 of the Public Utilities Code.

5. Crystal Falls should be directed to meter all connections by June 30, 1981. ✓

6. Crystal Falls should be directed to provide not less than 600,000 gallons of water storage in addition to water storage facilities in use on February 1, 1980.

7. Crystal Falls should be directed to inform the Commission of compliance with Conclusions 5 and 6 by filing reports every three months beginning July 1, 1981.

8. The relief requested in Cases Nos. 10649 and 10746 should be denied, except to the extent provided in the following order.

ORDER

IT IS ORDERED that:

1. Crystal Falls Water Company is directed to meter all connections on or before June 30, 1981.
2. Crystal Falls Water Company is to provide not less than 600,000 gallons of water storage in addition to water storage facilities in use on February 1, 1980.
3. Crystal Falls Water Company is directed to file progress reports each quarter beginning July 1, 1981 with respect to the improvements ordered in Ordering Paragraphs 1 and 2 above.
4. All other relief requested is denied. ✓

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

Dated SEP 16 1980, at San Francisco, California.

John E. Bryan
President

Richard W. Howard
Commissioners

Clare T. ...
Commissioners

Donald W. ...
Commissioners