

Decision No. 92706 FEB 18 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wonder Acres Mutual Water Company,)
Complainant(s),)

vs.)

Ulberg's Petro Lock, Inc.,)
Defendant(s).)

Case No. 10884
(Filed July 1, 1980)

O P I N I O N

By this complaint the Wonder Acres Mutual Water Company (complainant) requests that Ulberg's Petro Lock, Inc. (defendant) be declared a public utility and that defendant be ordered to return to complainant all monies the Commission determines were wrongfully collected during the period beginning January 20, 1979. The complaint alleges that since January 20, 1979 defendant has sold water to complainant at costs ranging from approximately \$300 per month to the present rate of \$775 per month for 1,437 acre feet. It is alleged that this charge is much greater than the amount charged by nearby Mohave Public Utilities District (\$4.50 per 5,000 gallons) and the California City Services District (\$6.00 per 2,000 cubic feet). The complaint also alleges that defendant's board of directors believe that complainant must pay the high rate since defendant is the only purveyor of water in the area. Finally, it is averred that defendant has advised that service will be discontinued unless the charges are paid.

The answer filed July 17, 1980 states that defendant's correct name is Petro Lock, Inc. In praying for dismissal defendant denied the allegations stating that: (1) As a result of foreclosure proceedings upon a trust deed and promissory note, defendant gained

title to certain real property and improvements thereon, including a well previously belonging to complainant: (2) since January 1979 complainant and defendant have entered into successive monthly agreements whereby complainant agreed to pay defendant the latter's cost of supplying water to complainant: (3) complainant in turn supplies water to the various shareholders in complainant's corporation: and (4) complainant is substantially in default on payment to defendant. For an affirmative defense, the answer states that: (1) Defendant is not a public utility and therefore not subject to the Commission's jurisdiction: (2) the complaint fails to state a cause of action in that no violation of the Public Utilities Code is alleged; (3) there is a pending action in the Superior Court in the county of Kern between the parties: (4) complainant's conduct waives any recovery; and (5) complainant is estopped by its conduct from asserting any wrongful collection of monies.

On August 4, 1980 defendant filed its motion to dismiss, based on the affirmative defenses contained in its answer. The motion was duly served on complainant.

On August 12, 1980 the assigned Administrative Law Judge advised complainant that, based on the pleadings, it appeared a decision could be issued without a hearing and asked that complainant respond to the motion by September 10, 1980. On August 17, 1980 complainant requested an extension of time in which to respond to defendant's motion. The time to respond was extended to September 17, 1980.

On December 2, 1980 defendant filed an amendment to its motion to dismiss. It states the amendment was filed to provide further factual and legal background in support of its motion. It states that: (1) the water supply by defendant to complainant has never been contemplated as a permanent arrangement by either party, (2) the water has been supplied at cost only as an accommodation

on a temporary month-to-month basis, and (3) the arrangement has continued even though complainant is in arrears in payments. It further states that the property in question has never been dedicated to public use and that defendant owns a gasoline station and a house which receives water from this source.

The complainant did not respond to the Administrative Law Judge's request.

Notwithstanding the allegations in the complaint, the issue presented is whether defendant is operating as a public utility water company subject to the Commission's jurisdiction.

Section 2704 of the Public Utilities Code provides that the owner of a water supply not otherwise dedicated to public use who sells or delivers a portion of such supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available is not subject to the jurisdiction, control, and regulation of this Commission.

It is clear from the pleadings herein that complainant has no other source of supply and that the water is supplied as an accommodation at defendant's cost to provide such service.

Findings of Fact

1. Defendant has been supplying water to complainant since January 20, 1979 on a monthly basis.

2. Defendant supplies water to complainant as an accommodation. Complainant has no other source of supply.

Conclusion of Law

Defendant is not a public utility subject to this Commission's jurisdiction. The complaint should be dismissed.

O R D E R

IT IS ORDERED that Case No. 10884 is dismissed.
The effective date of this order shall be thirty days
after the date hereof.

Dated FEB 18 1981, at San Francisco, California.

John E. Bryan
President
Richard D. Hoopelle
James W. Haines

Commissioners