

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the Operations and Practices of Ponderosa Sky Ranch Water Company and its Owner and Operator, Orville Figgs, and Order to Show Cause why findings should not be entered by the Commission under Public Utilities Code Section 855

FILED
PUBLIC UTILITIES COMMISSION
March 21, 2002
San Francisco Office
I.02-03-023

ORDER INSTITUTING INVESTIGATION
AND TO SHOW CAUSE

I. INTRODUCTION

The California Public Utilities Commission's (CPUC) Water Division, believes, as supported in the Declaration of Donald McCrea, attached hereto, that Ponderosa Sky Ranch Water Company, Inc. ("PSR"), and its owner Orville Figgs, Jr. ("Figgs") ("Respondents") are unwilling or unable to adequately serve PSR's ratepayers and have effectively abandoned PSR. The purpose of this proceeding is to allow the Respondents to show cause why the Commission should not make findings under Public Utilities Code¹ § 855² for the purpose of appointing a receiver for PSR.

¹ Unless otherwise noted, all statutory references herein are to the California Public Utilities Code.

² Section 855 provides:

"Whenever the commission determines, after notice and hearing, that any water or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the commission,

(continued on next page)

As required by this statute, the presiding officer of the administrative law division will set a hearing on this matter no later than April 19, 2002.

Attached to this order is a declaration by Commission Senior Utilities Engineer-Supervisory, Donald McCrea (McCrea), documenting the events that have initiated this proceeding. The events set forth in the McCrea declaration include a series of complaints about PSR's billing practices. The declaration sets forth a description and chronology of actions taken by the Commission in response to the complaints against PSR and the response of PSR to each Commission action. The declaration also sets forth the proceedings and actions of the Department of Health Services and the Tehama Tax Collector with regard to PRS.

II. BACKGROUND

Commission Proceedings and Actions

In 1958 an area about 20 miles east of Red Bluff in Tehama County was subdivided as Ponderosa Sky Ranch. (McCrea declaration, para. 2). Orville A. Figgs, Sr. and Katherine Figgs acquired the subdivision prior to 1964. (McCrea declaration para. 3). On September 23, 1969, three customers filed a formal complaint, C.8970, alleging that PSR was a private water company not operating under the CPUC's jurisdiction. (McCrea declaration para. 4). On March 31, 1970, the Commission issued Decision 77019 declaring PSR a public utility subject to

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the commission may petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of the property and to operate its system upon such terms and conditions as the court shall prescribe. The court may require, as a condition to the appointment of such receiver, that a sufficient bond be given by the receiver and conditioned upon compliance with the orders of the court and the commission, and the protection of all property rights involved. The court shall provide for disposition of the facilities and system in like manner as any other receivership proceeding in this state.

Commission regulation and setting PSR's rates. (McCrea declaration, para 5 and Exhibit 1 of McCrea declaration). In September of 1997, ownership of PSR transferred from Orville A. Figgs, Sr. to Orville A. Figgs, Jr. and Kevin Figgs. (McCrea declaration, para. 30).

PSR has received two informal advice letter general rate increases since 1970, one in 1977 and one in 1982. (McCrea declaration, para. 7). In the 1982 rate case, resolution number W-3022 authorized a 99% increase of \$9,040 providing an 11.7% return on rate base, an annual revenue requirement of \$18,170 and net revenues of \$4,100. (McCrea declaration, para. 8, and exhibit 2). At that time the utility served 76 metered and 6 flat rate customers. A review of the records found that the 1997, 1998, 1999, and 2000 Annual Reports have not been filed, but the 1996 report shows the utility serving 80 customers. (McCrea declaration, para. 10). It appears that PSR is currently providing water to only slightly more customers than it had in 1982, at rates set 20 years ago.

Beginning in 1998 to the present the Consumer Affairs Branch of the Consumer Services Division has received complaints from PSR's customers about irregular billing. One consumer complained of receiving one bill for the period October 1998 to October 1999. (McCrea declaration para 11). CAB requested that PSR respond to these complaints but PSR has not provided a response to date. (McCrea declaration, para. 12). On November 27, 2000, Dean Evans, Director of the Water Division, sent a letter to PSR again requesting that PSR respond to the CAB complaints. (Exhibit 3 to McCrea declaration). The letter also informed PSR of its non compliance with DHS's orders to file annual reports and send its customers the consumer confidence report as required by Federal law. PSR has not responded to Mr. Evans' letter to date. (McCrea declaration, para. 14).

In February 2001, Ponderosa Sky Ranch Homeowners Association (PSRHA) communicated with the Water Division (Division) stating PSRHA had received numerous complaints from its members who are customers of PSR. The

complaints were about the irregular billing practices of PSR. The customers complained specifically that several quarters would pass without a bill from PSR. When the bill did arrive it required immediate payment for the quarter or quarters that had not been previously billed. (McCrea declaration, para. 15).

On March 1, 2001, the Division sent a letter to Figgs describing the customer complaints and requesting a report on how the utility planned to work with customers who were unable to pay bills that were higher than they would normally be due to PSR's irregular billing practice (Exhibit 4 to McCrea declaration). The letter cautioned if PSR "does not respond, to this request, the Division will recommend that the Commission initiate a formal investigation into the operation and billing practices of PSRWC. Any violations found in the investigation could result in fines and penalties."

On April 9, 2001, PSR sent a letter to the Division requesting emergency rate relief due to the recent PG&E rate increase. (Exhibit 5 to McCrea declaration). PSR requested that rates be increased by 250% but did not include justification for the request other than a copy of a PG&E bill. The letter did not contain any calculations showing how the bill related to the rate increase. A second letter of the same date responded to the March 1, 2001, letter from Dean Evans and requested additional funding for a full-time office manager and a full-time secretary, claiming that the customers had requested these additional employees. (Exhibit 6 to McCrea declaration). Because many years had passed since the last GRC, and because PSR had not filed annual reports, on May 4, 2001, McCrea sent Figgs a letter requesting PSR fill out and send in an Informal Rate Change Workbook (a two page listing of present expenses and facilities in use). (Exhibit 7 to McCrea declaration). McCrea supplied the workbook to the utility, so that the Division could do a general rate case and design proper rates. PSR responded partially. (McCrea declaration para. 20). The Division offered to assist

the utility in filling out the remaining workpapers but PSR has been non-responsive to this offer. (Exhibit 8 to McCrea declaration).

On November 1, 2001, the Division received word from Figgs that PG&E was going to cut off power to the well pump because PSR had not paid its electric bill since the previous July. (McCrea declaration, para. 22). Later the Division heard that PG&E had cut off the power. On that same day the Division received calls from customers that they were out of water. (McCrea declaration, para 23). The Division attempted to contact PG&E to get power turned back on, by going through the Commission's Customer Affairs Branch (CAB). The effort was unsuccessful. Finally the Director of the CPUC Energy Division contacted PG&E and the power was turned back on. (McCrea declaration para. 24).

Apparently PSR was unable to pay its electric bill because Figgs had not been reading meters and billing customers, and therefore had no cash to pay the bills. Figgs reported to Water Division that he asked his customers to give him some cash as an advance on the future water bills and that he used that cash to pay PG&E. (McCrea declaration, para. 25).

Figgs represented to the Division that he was committed to making payments to bring the PSR electric bill current. Based on this commitment, the Division was able to secure PG&E's agreement to a payment plan. (McCrea declaration, para. 26). The payment plan was reduced to writing in a letter by CAB to PSR. (Exhibit 9 to McCrea declaration). Pursuant to the payment plan, Figgs agreed to:

Pay \$1,500 by 11-16-01

Pay \$3,400 by 11-25-01

Pay 1/3 of the balance remaining (~\$2,600 + current) by 12/25/01

Pay 1/3 of the balance remaining by 1/25/02

Pay the final 1/3 of the balance remaining by 2/25/02

PG&E also wanted a \$4,000 deposit since they had to turn PSR off and then back on again. Although Figgs did not agree to this, and probably did not have sufficient funds for the deposit, PG&E agreed to keep PSR's service turned on.

Despite Figgs commitment to the above referenced payment schedule, he has failed to adhere to it. McCrea has attempted to contact Figgs by telephone but Figgs has not responded to any voicemail messages to date. (McCrea declaration, para. 28). On February 21, 2002, McCrea visited Figgs house to determine the status of the water system's financial condition and to provide assistance if necessary. The television set was on and the house seemed occupied, but no one answered the door. (McCrea declaration, para. 29). On March 7, 2002, McCrea sent a letter by certified mail to Figgs noting that he had left messages on Figg's answering machine, but had not received a call back. The letter requested that Figgs contact the Commission within 10 days. (Exhibit 8 to McCrea declaration). No response has been received. (McCrea declaration, para. 30).

B. Department of Health Services Proceedings and Actions

Respondents have a history of non-compliance with Department of Health Services (DHS) Rules and Orders. A chronology of PSR's non-compliance is set forth in paragraph 30 of the declaration of Donald McCrea. Briefly the water system has consistently failed to meet bacteriological standards, file annual reports and conduct the required monitoring of the system beginning in 1994 to the present. Figgs owes \$2,217.31 in outstanding fees and penalties to DHS.

C. Tehama County Tax Collector Proceeding

Respondents have apparently failed to pay the property taxes for seven years for the parcel where PSR's source of supply well is located. The County Tax Collector apparently intends to auction the property on May 17, 2002, because of Figgs' failure to pay property taxes. (McCrea declaration, para. 31 and exhibit 10).

III. DISCUSSION

The Division believes, based on the record, that Figgs is unable to operate the water system, which includes meeting regulatory requirements, and unwilling to work with the Division to determine the rates necessary to meet PSR's financial obligations. Figgs inability or unwillingness to pay PSR's property taxes has caused the Tehama County Tax Collector to schedule an auction for the parcel where the supply well is located. Because it is vital that proper rates are calculated, electricity costs be covered and water be delivered, it is necessary to replace Figgs with someone who will communicate with the Commission. Figgs failure to adequately serve PSR's ratepayers cannot be allowed to continue. Figgs' conduct constitutes an effective abandonment of the water system.

Based on our experience with other small water utilities the Division believes that it may be financially impossible for PSR to pay its electric bill at its present rates, but, without the cooperation of its owner, the Commission cannot fulfill its legal mandate to assure that rates are just and reasonable. This level of inaction is unacceptable, and to the extent it results in underpayment, dangerous to the supply reliability of PSR. The Division sees no alternative to requesting that the Superior Court appoint a receiver.

Under § 701, this Commission is "empowered to supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." (See also Cal. Const., Art. 12, § 6.) In the case of utilities serving in competitive markets, the Commission can revoke a certificate of public convenience and necessity (CPCN) and require the problematic entity to cease utility operations. However, in the case of a water company, that remedy would leave the innocent captive customers, dependent on water service as a basic need of life, in an untenable situation. Hence, § 855 provides one course of action that this Commission can elect to ensure that basic

orders of the Commission are followed and the public convenience and necessity are served.

An order to show cause has been described as “in the nature of a citation to a party to appear at a stated time and place to show cause why the requested relief should not be granted.” (*Difani v. Riverside County Oil Co.* (1927) 201 Cal.210, 213-214; 6 Witkin, Cal Proc. (4th ed. 1997) Proceedings Without Trial, § 55, at 454.) In an order to show cause proceeding, the burden is on the respondent to show good cause why the proposed legal action should not go forward. Here, the action in question is a petition to superior court under § 855 for the appointment of a receiver to assume possession of PSR’s property and to operate its system. Unless PSR can show good cause why the Commission should not file such a petition, due process requires no hearing before the Commission, as a full hearing may be had in Superior Court. The Declaration of Donald McCrea illustrates the factual history of Figgs inability and unwillingness to serve PSR’s ratepayers and his effective abandonment of the water system, thereby demonstrating good cause why the Commission should issue a Show Cause Order against PSR.

Under § 855, PSR is entitled to notice and a full hearing in superior court, in which it will receive an opportunity to explain why the allegations set forth in any declaration are insufficient grounds for the court to rely on. Therefore, PSR is ordered to appear before this Commission at the date and time to be set, and show cause why the Commission should not find that Figgs is unable to serve PSR’s customers adequately, that Figgs has effectively abandoned the water system and petition the superior court of Tehama County under § 855 for the appointment of a receiver.

IT IS ORDERED that:

1. Ponderosa Sky Ranch City Water Company, a corporation, and its President, Orville Figgs, Jr., are named as Respondents herein, and are hereby

afforded an opportunity to show cause before the Commission why the agency should not enter findings that their conduct falls into one or more of the following categories:

- a. Ponderosa Sky Ranch Water Company is unable or unwilling to adequately serve its ratepayers;
- b. That Ponderosa Sky Ranch Water Company has been actually or effectively abandoned by its owners; or
- c. That Ponderosa Sky Ranch Water Company is unresponsive to the rules or orders of the Public Utilities Commission.

2. The underlying facts in the effort to obtain Figgs' cooperation to adequately serve PSR's ratepayers and bring the water system's rates current are set forth in Mr. McCrea's attached Declaration. The Respondents actions to providing water service to PSR's ratepayers have been inadequate and Respondents have effectively abandoned the system by their failure to obtain rates that allow for the effective operation of PSR. Thus, this proceeding is limited to the question of whether the Respondents can show that their operational and financial conduct does not fall into one or more of the categories listed in Ordering Paragraph 1, above.

3. The presiding officer of the administrative law division will set a hearing no later than April 19, 2002 at which respondents will appear before the Commission and show cause as required by this order.

4. This ordering paragraph suffices as the "preliminary scoping memo" required by rule 6 (c) of the Commission's Rules of Practice and Procedure. This proceeding is categorized as a ratesetting proceeding and is set for hearing solely on the order to show cause. This matter is not an enforcement proceeding, as Respondents will not be made subject hereby to fines or other enforcement

penalties imposed by the Commission. Its purpose and effect are thus limited to determining whether the next step should be pursued in the statutorily designated court. The issues to be resolved in this proceeding are framed in the preceding ordering paragraphs, and are limited to the question of whether good cause can be shown why the Commission should not petition the superior court under § 855. This order, as to categorization of this proceeding, is appealable under the procedures in Rule 6.4. Any person filing a response to this Order Instituting Investigation shall state in the response any objections to the Order regarding the need for hearings, issues to be considered, or proposed schedule. However, objections must be confined to jurisdictional issues that could nullify any eventual decision on the merits, and not on factual assertions that are the subject of the hearing. The proceeding may be expedited as an emergency matter in order to protect Ponderosa Sky Ranch's ratepayers.

6. The Executive Director shall cause personal service of this Order to be made on Orville Figgs, Jr. and Ponderosa Sky Ranch Water Company either by delivering a copy to Orville Figgs or by leaving a copy of the Order during usual office hours in Ponderosa Sky Ranch's office at 33851 Ponderosa Way, Paynes Creek, CA 96075, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the Order (by first class mail, postage prepaid) to Ponderosa Sky Ranch Water Company at the place where the copy of the Order was left. Service of the Order in this manner is deemed complete on the 5th day after mailing. This Order will also be mailed to Kent Wallace, President Ponderosa Sky Ranch Homeowners at 33542 Sessna Avenue, Paynes Creek, CA 96075.

This order is effective today.

Dated March 21, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

DECLARATION OF DONALD McCREA

DONALD McCREA declares as follows:

1. I am employed as a Senior Utilities Engineer-Supervisory with the California Public Utilities Commission, Water Division. In my position, I am responsible for the monitoring of and processing of general rate increases for water utilities including Ponderosa Sky Ranch Water System (PSR).

2. In 1958, an area about 20 miles east of Red Bluff in Tehama County was subdivided as Ponderosa Sky Ranch.

3. The Ponderosa Sky Ranch subdivision and PSR were acquired by Orville A. Figgs, Sr. and Katherine Figgs in or about 1964

4. On September 23, 1969, a formal complaint was filed, C.8970 alleging that Ponderosa Sky Ranch Water System (PSR) was operating without a license as required by law

5. In March 1970, the Commission issued Decision 77019 that declared PSR a public utility subject to Commission regulation and set PSR's rates.

6. Attached as exhibit 1 is a true and correct copy of Decision 77019.

7. PSR has received two informal advice letter general rate increases since 1970, one in 1977 and one in 1982.

8. In the 1982 rate case, resolution number W-3022 authorized PSR a 99% increase of \$9,040 providing an 11.7% return on rate base, an annual revenue requirement of \$18,170 and net revenues of \$4,100.

9. Attached as exhibit 2 is a true and correct copy of resolution number W-3022.

10. In 1982, PSR served 76 metered and 6 flat rate customers and a review of the records found that the 1997, 1998, 1999, and 2000 Annual Reports have not been filed, but the 1996 report shows PSR serving 80 customers.

11. Beginning in 1998 to the present, the Consumer Affairs Branch of the Consumer Services Division has received complaints from PSR's customers about irregular billing by PSR, including the receipt of one bill for the period 10/98 to 10/99.

12. CAB requested that PSR respond to these complaints during the 1998 to current time period, but PSR has not provided any responses to date.

13. Attached as exhibit 3 is a true and correct copy of the November 27, 2000, letter from Dean Evans to PSR.

14. No response was received from PSR to Dean Evans letter of November 27, 2000.

15. In February 2001, Ponderosa Sky Ranch Homeowners Association (PSRHA) communicated to the Water Division that it had received numerous complaints from members about PSR's billing practices.

16. Attached as exhibit 4 is a true and correct copy of the March 1, 2001, letter from Fred Curry of the Water Division to PSR.

17. Attached as exhibit 5 is a true and correct copy of a letter dated April 9, 2001, from PSR to Water Division requesting emergency rate relief.

18. Attached as exhibit 6 is a true and correct copy of a letter dated April 9, 2001, from PSR responding to Fred Curry's letter of March 1, 2001 and requesting additional funding for office staff.

19. Attached as exhibit 7 is a true and correct copy of a letter dated May 4, 2001, from Water Division to PSR.

20. PSR filed a partial response to the Water Division request for information to do a general rate case.

21. Attached as exhibit 8 is a true and correct copy of a letter dated March 7, 2002, from Water Division to PSR.

22. On November 1, 2001, Figgs informed Water Division that PG&E was going to cut off PSR's power because it had not paid its electric bill since July

2001. Later that day Figgs informed Water Division that the power had been turned off by PG&E

23. On November 1, 2001, Water Division received telephone calls from PSR customers that they were not receiving water.

24. Through the intervention of the Commission, PSR's power was restored on November 1, 2001.

25. Figgs reported to the Water Division that he asked his customers for advance payment on their future water bills in order to pay PSR's delinquent electric bill.

26. After getting Orville Figgs commitment to a payment plan with PG&E I talked to PG&E (Linda Joyner (415) 973-3749) and she asked that Karen Dowd of CAB write a letter to Mr. Figgs outlining the agreement.

27. Attached as exhibit 9 is a true and correct copy of the payment plan agreed to by Figgs to bring PSR's PG&E bill current.

28. Figgs has failed to adhere to the payment schedule agreed to with PG&E. McCrea has attempted to contact Figgs by telephone but Figgs has not responded to any voicemail messages to date.

29. On February 21, 2002, I visited Figgs house to determine the status of the water system's financial condition and to provide assistance if necessary. The television set was on and the house seemed occupied, but no one answered the door.

30. The following information was provided by the California Department of Health Services:

July 1993 On July 1, 1993, the Department of Health Services assumed jurisdictional authority over the Ponderosa Sky Ranch water system.

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L/jmc/pds

- December 1993 By letter dated December 31, 1993, the Department issued domestic water supply permit No. 01-02-93P52058 to the water system.
- August 1994 A letter, dated August 31, 1994, was sent to the water system concerning the water system's failure to perform proper bacteriological sampling and reporting with the distribution system.
- November 1994 A Boil Water Notice was issued subsequent to a water sample that was found to be positive for the presence of *E. coli* bacteria. The water system (Orville Figgs II) did not return phone calls to the Department. The Department implemented the Boil Water Notice initially by calling individual residences within the service area.
- Compliance Order No. 01-02-94(O)52005 was issued to the water system for failure to properly sample and report bacteriological samples to the Department. The water system refused to receive the certified mail from the Department transmitting this compliance order and the order was returned by the U.S. Postal Service to the Department.
- December 1994 On December 12, 1994, a representative of the Department personally served Orville Figgs II with Compliance Order No. 01-02-94(O)52005. During this month, the Boil Water Notice was rescinded.

- January 1995 The Tehama County Public Administrator's Office was directed by a judge to assume operational responsibility for the water system that was owned by the estate of Orville Figgs I. On January 8, 1995, the submersible pump in the well serving the system (the only water source) failed as the result of electrical problems. Due to heavy winter rains, the well site could not be accessed with equipment needed to remove and replace the submersible pump. So that water users could flush toilets and homes would not have to be evacuated, non-potable water (from shallow seasonal ponds) was placed into the water system and water users were notified that the water was not for consumptive use. Water trucks were brought to the site and dispensed potable water for several weeks.
- February 1995 After the submersible pump was replaced and the system was extensively flushed, the water system was returned to potable status and the water users were so notified.
- October 1995 The system failed bacteriological standards for the month.
- January 1996 The system failed bacteriological standards for the month.
- September 1997 Letter received from an attorney stating that the water system ownership was transferred to Orville Figgs II and Kevin Figgs.
- November 1997 The system failed bacteriological standards for the month.

July 1998 Letter sent to the water system for failure to submit an Annual Report to the Department for calendar year 1997.

November 1998 Citation issued to the water system for failure to submit an Annual Report to the Department for calendar year 1997.

September 1999 Citation issued to the water system for failure to submit an Annual Report to the Department for calendar year 1998.

October 1999 Citation with a \$250.00 fine issued to the water system for failure to submit an Annual Report to the Department for calendar year 1998.

October 1999 Letter sent to the water system for failure to submit an Annual Report to the Department for calendar year 1997.

November 1998 The system failed bacteriological standards for the month.

January 2000 Letter sent to the system regarding non-compliance with various monitoring and reporting issues.

May 2000 Letter sent to the system regarding failure to submit an Annual Report to the Department.

October 2000 Citation issued for failure to submit an Annual Report to the Department.

- February 2001 Outstanding fees and penalties due the Department total \$2,217.31.
- July 2001 Jurisdiction over water quality passes from the Department to the Tehama County Department of Environmental Health. Letter sent from the Department to the water system regarding no return of the MTBE vulnerability assessment form to the Department and a letter sent to the system by the Department regarding the system's failure to collect and report a bacteriological sample for the month of June 2001.

31. Figgs has apparently failed to pay the property taxes for seven years for the parcel where PSR is located. The County Tax Collector apparently intends to auction the property on May 7, 2002, because of Figgs' failure to pay property taxes.

32. Attached as exhibit 10 is a true and correct copy of an email dated March 18, 2002 from DHS to the Water Division.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of March, 2002, at San Francisco, California

/s / DONALD MCCREA
Donald McCrea