

Decision No. 12279

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the Application  
of EXCELSIOR WATER & POWER COMPANY  
for an order fixing reasonable and  
non-discriminatory rates for water  
furnished two consumers claiming  
right to receive free water ser-  
vice under special agreements.

ORIGINAL

Application No. 8372.

Devlin & Brookman, by Douglas Brookman,  
for the Applicant.  
J. E. Ebert for Hugh Toland, Protestant  
W. P. Rich for Thomas Mooney, Protestant

BY THE COMMISSION:

O P I N I O N

This matter was initiated by an application on the part of Excelsior Water & Power Company, a public utility, furnishing water to lands in Nevada and Yuba Counties, alleging that certain of its consumers had refused to pay the rates established by this Commission in its Decision No. 9986, dated January 12, 1922, (Application 6427). The application further alleged that these consumers claimed to be entitled to free water service under certain contracts made many years ago by applicants' predecessors. Applicant further alleges that such service is non-compensatory and amounts to an unjust and unreasonable discrimination against its other consumers.

A public hearing upon this matter was held at Marysville

before Examiner Eddy on January 19, 1923, notice of said hearing having been sent to the consumers named in said application. At this hearing it appeared that the Company had placed in force the water rates fixed by this Commission in its said Decision No. 9986, and it further appeared that the contracts mentioned in the complaint had been made many years ago by the predecessors of applicant, granting free water service in return for rights of way across the lands of these consumers. In the case of Thomas Mooney, there was no written agreement but the testimony showed that there had been an understanding that he should have water and that he or his predecessors had actually obtained free water sufficient to irrigate ten or twelve acres since 1880. In the case of Hugh Toland, the testimony showed that the contract in question was made in 1888 by the said Hugh Toland's predecessors and that approximately ten acres had been irrigated with free water since that time. Water for acreage in excess of this ten acres has been paid for at the regular rates.

A copy of the agreement entered into between the predecessors of Hugh Toland and applicant was placed in evidence as predecessors Exhibit No. 1. It is dated May 31, 1888 and declares that whereas the Water Company is desirous of continuing the use of certain rights of way over the premises of Toland's predecessors, free water for ten acres of land will be supplied "during all the time that said rights of way are enjoyed by the party of the second part".

This Commission has frequently had under consideration cases in which free service was supplied or agreed to be supplied by public utilities in return for rights of way or other consideration. There can be no question but that such "free service" to some patrons is in its final analysis, service which the other

patrons of the utility must pay for in rates, and the position of this Commission has always been that such arrangements are unfair, discriminatory and economically unsound.

In the Application of Emma H. Rose, et al, Application No. 5713, Decision No. 9244, dated July 16, 1921 (20 Railroad Commission Reports 266, 268), we said:

"From the evidence, some fourteen consumers have been supplied free service of water in consideration of various right of way agreements and certain other privileges granted applicants. This amounts to a preferential and discriminatory rate granted by the utility to these few consumers against the others on the system, which practice this Commission has found to be unfair, and its policy has been to eliminate such preferential rate and services. Where such a condition exists, the discriminatory rates should be discontinued and all classes of consumers should be charged alike. If there remains any right of compensation in these particular cases, it is not for this Commission to adjudicate the matter."

This declaration of policy is we think, consonant with proper principles of regulation and our Order in the present matter will therefore require this applicant to cease free service of water to these consumers. As above stated, "if there remains any right of compensation in these particular cases, it is not for this Commission to adjudicate the matter."

#### O R D E R

Applicant, Excelsior Water & Power Company, having alleged that it is rendering free water service to certain consumers under the provisions of contracts made in consideration of rights of way or other privileges granted by applicant's predecessors; and that such service is non-compensatory and amounts to an unjust and unreasonable discrimination against other consumers of applicant; a public hearing having

been held and the matter having been submitted; it is hereby found as a fact that said free service of water constitutes an unfair and unreasonable discrimination against other consumers of applicant, and, therefore,

IT IS HEREBY ORDERED that Excelsior Water & Power Company charge Thomas Mooney and Hugh Toland the rates fixed by this Commission in its decision No. 9986 for all water supplied by applicant to the said Thomas Mooney and the said Hugh Toland.

Dated at San Francisco, California, this 27<sup>th</sup> day of June, 1923.

C. Seary

James M. Martin  
Eugene Shore

Commissioners.