

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

CITY OF BERKELEY, a municipal
corporation,
Complainant,

vs.

EAST BAY WATER COMPANY,
Defendant.

Case No. 1894.

M. A. ROSS, L. E. BLOCHMAN, R. E.
JOHNSON, HELEN L. HOUGH, CLARA C.
CLARK, EMMA REAVY, EMILY S. HARRIS,
JACK HENDERSON, FRANK L. SAYLOR,
STELLA E. WOODHEAD, MRS. W. T.
CLEVERDON, IRENUS E. HAYNES, GER-
TRUDE M. JACKSON, MATTIE C. GAR-
LAND, PHILIP E. CHANDLER, CASSIE A.
SIMPSON, MRS. F. W. KERN, MRS. C.
DEEMEL, L. F. DAHNEKE, MRS. J.
MCINDOE, GEORGE H. PARENT, ARTHUR
G. BARTLETT, MARY C. ELWELL, MRS.
KAREN JORGENSEN, MRS. N. J. LIND-
QUIST, JAMES KLINGENSMITH, CHARLES
MILLER, H. J. HANEY and C. F.
MARTENS.

Complainants,

vs.

THE EAST BAY WATER COMPANY, a
corporation,
Defendant.

Case No. 1924.

M. A. ROSS,
Complainant,

vs.

EAST BAY WATER COMPANY, a
corporation,
Defendant.

Case No. 1927.

Louis Bartlett and L. D. Sanderson, for City of
Berkeley, complainant.
Miss M. A. Ross, in propria persona and for cer-
tain complainants.
E. O. Edgerton and McKee, Tasheira & Wahrhaftig,
by Arthur G. Tasheira, for defendants.

BY THE COMMISSION:

O P I N I O N

The complaint of the City of Berkeley alleges in effect that the present rates charged by East Bay Water Company are unfair and exorbitant and enable the utility to earn a return upon the cost of property not used or useful in supplying service to consumers. It is further alleged that there was an increase of fourteen per cent. in revenues for the year 1922 over those for 1921, and that future increases in consumption can be cared for with relatively small expenditures for additional equipment and with insignificant increases in operating expenses. It is asserted that the City of Berkeley is unable, on account of charter limitations, to pay the present rates for fire protection service. The Commission is asked to eliminate the "stand-by" charge for such service, to leave each of the East Bay cities free to negotiate with the utility for the installation of mains and other equipment required for fire protection; and to reduce the present rates of East Bay Water Company at least ten per cent.

In Case No. 1924, M. A. Ross and 28 other individuals allege in effect that East Bay Water Company, by use of the so-called annuity method of computing amortization and depreciation, is enabled to earn, and for a long time past has been and still is earning, a considerably higher rate of return on its investment in used and useful property than is shown in the report of the Commission's Engineering Department, filed at the initial hearing in the above entitled Case No. 1894. It is also alleged that the utility is collecting revenue from land which is neither used nor useful for water producing purposes. Further complaint is made against the provisions of some of the Commission's Rules of Procedure on the ground that they place undue burdens upon the rate payers.

The Commission is asked to investigate defendant's methods of accounting; to have redress made to complainants herein and to other consumers of the utility for all amounts erroneously collected; to make proper deductions from the utility's capital accounts; to eliminate unnecessary lands; to correct other injustices to consumers; and to provide for such changes in the Commission's Rules of Procedure as are necessary and desirable.

The complaint of M. A. Ross, in Case No. 1927, alleges in effect that East Bay Water Company is violating the provisions of law and the rules and orders of this Commission by reason of the identical acts complained of in Case No. 1924.

The answer of East Bay Water Company to the complaint of the City of Berkeley constitutes a general denial of the essential allegations of the complaint and in particular avers that the utility, during the year 1922, realized a return of not more than 7.05 per cent. on its investment in operative property. By way of answer to the complaint of M. A. Ross et al., in Case No. 1924, defendant enters a general denial of the allegations therein, and by stipulation at the hearing it was agreed that this answer should also be accepted and considered as defendant's answer to the allegations contained in the complaint in Case No. 1927.

Public hearings in the above entitled matters were held in San Francisco by the Commission, all interested parties having been duly notified and given an opportunity to be present and to be heard. In order to facilitate matters it was stipulated that the three complaints might be consolidated for hearing and decision.

The position of the City of Berkeley as indicated by argument and evidence submitted at the hearing is that the present rates of East Bay Water Company should be reduced 12.65 per cent.,

the showing being based upon what the City's representative termed the "prudent investment theory" of rate fixing, and the amount considered reasonable as a return upon the assumed investment in used and useful property being calculated upon the rates of interest actually paid upon outstanding bonds and dividend rates on outstanding stock. It should be noted that, although the City's principal exhibit includes an estimated increase in the utility's net earnings for the year 1923, no provision is made therein for the necessary additions to capital during the same year, which the evidence indicates will amount to at least one million dollars. The addition of this necessary additional capital will obviously materially reduce the City's estimate of so-called excess earnings.

To substantiate the allegations of complainants in Cases Nos. 1924 and 1927 there were submitted in evidence statements purporting to show results of operation for the year 1922, which indicated rates of return of 13.5 per cent., 16 per cent., and 19.9 per cent., depending upon various assumptions as to values of non-operative lands. It was therefore asserted that a reduction in rates amounting to at least ten per cent. is justified and that a rebate of approximately \$290,667 be made to consumers for the year 1922. It may be stated in passing that complainants in Cases Nos. 1924 and 1927 have not fully considered the basic principles of depreciation and have become confused by reason of an erroneous combination of various elements of fundamentally different methods.

An investigation of the results of operation of East Bay Water Company was made by the Commission's hydraulic engineers and by the Department of Finance and Accounts. The results of this investigation were submitted in evidence at the hearing and the following figures were shown in the engineering report:

Average Rate Base, Year 1922 \$19,845,154

Expenses, 1922:

Maintenance and Operation	\$1,268,122
Depreciation Annuity.	183,472
Total Expenses.	<u>\$1,451,594</u>

Operating Revenues, 1922 \$2,887,160

Total Expenses, 1922 1,451,594

Available for Return. \$1,435,566

Rate of Return on Average Rate Base of
\$19,845,154 7.24%

The question as to the proper amount to be excluded from rate base for non-operative lands was again made a matter of controversy in the present proceedings. This question was thoroughly considered by the Commission in Decision No. 10347, dated April 22, 1922, and the evidence submitted in the present proceedings is not of sufficient weight to indicate that the Commission's former finding of the proper amount to be excluded from rate base on account of non-operative lands should, at this time, be modified.

The Commission has very carefully considered the matters in controversy in these proceedings, including the value for rate fixing purposes of the property devoted to the public use, the proper deductions to be made for non-operative lands, reasonable allowances for maintenance and operation expense, depreciation annuity, and all other factors affecting a determination as to whether or not East Bay Water Company is enabled to earn an excessive return under its present schedule of rates. Complete discussion of all the evidence submitted, and of the underlying principles of rate fixing, is believed unnecessary as many of the matters and the principles involved have been brought to the attention of the Commission in previous proceedings in which this utility was involved and have been considered exhaustively in the

decisions heretofore rendered.

The evidence presented in the present proceedings is not sufficient to indicate that the principles heretofore established are erroneous or that a reversal of the Commission's position is justified.

The Commission is also of the opinion that the estimates of rate base, maintenance and operation expense, and depreciation annuity contained in the report of its hydraulic engineers are reasonable, and further that the rate of return upon the average fair value for rate fixing purposes of the property devoted to the public use was approximately 7.24 per cent. for the year 1922.

Obviously the question of a reasonable rate of return upon any utility property depends upon the conditions and circumstances affecting that particular property. The final determination must of necessity be largely a matter of judgment. Giving consideration to all pertinent factors the Commission is of the opinion that a rate of return of 7.24 per cent. for East Bay Water Company is not excessive at this time.

It will also be unnecessary to discuss the fundamental principles governing the establishment of rates for fire protection service as the Commission's previous decisions in the matter are clear and explicit. Reference may be made thereto for a full explanation of the methods employed in determining what portion of the total cost of rendering service should be assessed against the municipality on account of fire protection. The Commission is still of the opinion that the municipalities should pay a proper proportion of the total cost of the utility service and cannot recede from the position heretofore taken because of the fact that one consumer finds it difficult or inconvenient to pay its share of expense.

O R D E R

Dated at San Francisco, California, this 14 day of
September, 1923.

C. S. Adams
H. B. Amundson
Wing Martin
Robert Shore
L. J. Whittsey
Commissioners.