

Decision No. 15926.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
EXCELSIOR WATER AND POWER COMPANY,)
a corporation, to sell and NEVADA)
IRRIGATION DISTRICT to purchase a)
water system.)

Application No. 12201.

Nilon & Nilon by Frank Nilon; Devlin and
Brookman by Douglas Brookman, and W. G.
Allen for Excelsior Water & Power Company.

C. F. Metteer and Aubrey L. Wisker for
Nevada Irrigation District.

BY THE COMMISSION:

O P I N I O N

In this proceeding Excelsior Water and Power Company, a corporation, serving water for irrigation and domestic purposes in Nevada and Yuba Counties, asks for authority to transfer its properties for a consideration of \$350,000 to the Nevada Irrigation District, which joins in the application. A public hearing in this proceeding was held at Nevada City before Examiner Wheat, all interested parties having been notified and given an opportunity to appear and be heard.

Excelsior Water and Power Company is engaged in the business of supplying water as a public utility for irrigation purposes to about 2500 acres of land of which about 1000 acres are located in Nevada County and are within the boundaries of the Nevada Irrigation District, and 1500 acres more or less are in Yuba County and will be outside the present area of the Dis-

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trict. This company's present rate for water is sixteen cents per miner's inch per twenty-four hours, the rate having been voluntarily reduced by the company from twenty-five cents per miner's inch per twenty-four hours for the purpose of stimulating the use of water. The reduction in rates however did not produce the anticipated increase in water sales and revenue, a fact which may be attributed very largely to the lack of water storage on the system, with the accompanying uncertainty of the water supply. The development of proper impounding facilities to insure a dependable water supply for continuous irrigation throughout the season will require the expenditure of large sums of money which under the circumstances existing in this section cannot reasonably be expected of this utility but can only be economically carried out by an irrigation district.

According to the testimony the Nevada Irrigation District includes approximately 200,000 acres of land of which 125,000 acres may be irrigated by gravity and 30,000 additional will be capable of irrigation by the installation of pumping plants. This project is already under construction and it is expected that by 1927 it will be completed to the extent that water can be supplied for the irrigation of 40,000 acres of land. The plans of the District will provide a dependable and adequate water supply for all lands within its boundaries and in addition will provide amply for the requirements of those present consumers of the Excelsior Water and Power Company located in Yuba County and outside of the boundaries of the District.

Representatives of the District testified that they understand that the District must assume the present obligations of the utility in continuing the service of water at a reasonable rate to present consumers of the selling utility whose lands lie outside the District boundaries, and to this end a resolution was passed by the Board of Directors of the District to the

effect that the rate to be charged those consumers of the Excelsior Water and Power Company outside of the District would not exceed the present rate of sixteen cents per miner's inch day of twenty-four hours for the irrigation season of 1926.

It is clear that it is the duty of the Commission in passing upon requests for the transfer of public utility properties to an organization such as an irrigation district, adequately to safeguard and protect the rights of any consumers remaining outside of the boundaries of the district. This is particularly true because this Commission possesses no control or jurisdiction over irrigation districts, and there exists no state authority for the fixing of rates for such outside service. The present officials and Board of Directors of the Nevada Irrigation District have however evinced an entire willingness to avoid even the appearance of discrimination against those consumers of this water company whose lands lie outside the District, and have agreed and stipulated to the following conditions, to be attached to and made a part of the terms of the transfer:

The District will not decline to accept and act favorably upon applications to be included within the District of the lands which lie outside the boundaries of the District, but which have received service of water from the Excelsior system during any irrigation season since January, 1921, provided such applications be made within the period of one year from the date of the order authorizing the transfer.

At no time shall the charge for water supplied to lands outside the District be at a rate in excess of that which will produce an amount sufficient to return to the District 8 per cent. upon the investment of the District in its irrigation system, properly allocated to the lands outside the District, plus reasonable operating expenses to render the service in question, and a proper allowance for depreciation of such property properly allocated for service to the lands outside the District.

Concerning the above stipulations and in spite of the fact that there were no protests filed by any of the present consumers residing outside the District against the granting of

this transfer, it appears to the Commission that a period of one year within which the District will agree to accept and include within its boundaries the lands of these outside consumers is not a reasonable or sufficient period of time. The irrigation problems of the consumers in Yuba County are so complicated and involved with serious difficulties that at least two years should be allowed these consumers to determine their future course of action.

The past experience of the Excelsior Water and Power Company, as well as its predecessors in interest, has been that the revenues from irrigation service over the entire system have not paid operating expenses and depreciation, not to mention a return by way of interest upon the capital invested. In view of this fact, it might seem unnecessary to include the second stipulation above mentioned, but we are of the opinion that in view of the varying situations which may arise in the future, we should include it, if only as an expression of a fair measure of a reasonable rate. It insures the right of the consumers outside of the District to receive a water supply at a fair price; and the right to enter the District within a reasonable time, if they should so desire, is insured by the other stipulation, above mentioned.

The consideration for the transfer of this system to the District is proposed to be \$350,000, less an amount equal to 5 per cent. per annum for the number of days less than 60 days from and after the twenty-fifth day of November, 1925, that payment therefor is made.

From a consideration of the evidence presented herein the Commission is of the opinion that the public interest will be served by authorizing the sale of the properties of the Excelsior Water and Power Company to the Nevada Irrigation District, provided reasonable requirements be imposed upon the purchasing District to enable those consumers under the system and now outside

of the boundaries of the District to enter their lands in said District or secure their water supply from another source, and to insure them the continuance of service at a fair rate.

O R D E R

Excelsior Water and Power Company, a corporation, having made application to transfer its properties in Yuba and Nevada Counties to Nevada Irrigation District, which joins in the application; a public hearing having been held thereon; the matter having been submitted, and the Commission being now fully informed in the matter,

IT IS HEREBY ORDERED that Excelsior Water and Power Company, a corporation, be and it is hereby authorized to transfer to Nevada Irrigation District its irrigation system and water properties as more particularly described in and subject to the terms and conditions of Exhibit "A" attached to the application herein and made a part hereof, and upon the following further conditions:

1. That Nevada Irrigation District shall include within its boundaries the lands of any land owner, user or consumer whose lands lie outside the District, and who has received irrigation service from the system of the Excelsior Water and Power Company at any time subsequent to January 1, 1921, who applies to said District for the inclusion of his lands therein within two years from the date of this order.
2. At no time shall the charge for water supplied to lands outside the District be at a rate in excess of that which will produce an amount sufficient to return to the District 8 per cent. upon the investment of the District in its irrigation system,

properly allocated to the lands outside the District, plus reasonable operating expenses to render the service in question, and a proper allowance for depreciation of such property properly allocated for service to the lands outside the District.

3. That during the year 1926 Nevada Irrigation District shall not increase the rates now in effect on this system for irrigation service rendered to consumers outside the boundaries of said District, and that at no time during a period of two years from and after the date of this order shall the Nevada Irrigation District charge those consumers outside of the District a greater rate for irrigation service than the rates charged to its consumers within the District.
4. The authority herein granted shall apply only to such transfer as may have been made on or before May first, 1926, and a certified copy of the instrument of conveyance shall be filed with the Commission by Excelsior Water and Power Company, a corporation, within thirty (30) days from the date on which it is executed.
5. Within thirty (30) days from the date of this order Excelsior Water and Power Company, a corporation, shall file with the Railroad Commission a certified statement indicating the date on which it relinquished control and possession

of the properties herein authorized to be transferred.

The authority herein granted shall become effective on the date hereof.

For all other purposes the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 9th day
^{February}
of ~~January~~ 1926.

H. A. Rindiga

Chasey

Grand Auto

Leon White
Commissioners.