

Decision No. 16328.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion of the)
reasonableness of the rates, service,)
rules, regulations and practices of)
MILLER & LUX INCORPORATED.)

a corporation, in the supplying of wa-)
ter for domestic use to residents of a)
tract of land commonly known as the)
"Miller & Lux Colony", located in the)
San Joaquin Valley in the vicinity of)
Firebaugh and Mendota, Fresno County.)

Case No. 2045.

ORIGINAL

T. P. Wittschoen and Joseph C. Sharp,
and J. E. Wooley and Vincent J.
McGovern by Vincent J. McGovern,
for Miller & Lux, Incorporated.

Peckinpaugh and Carter by Rae B.
Carter, for consumers.

BY THE COMMISSION:

O P I N I O N

This is a proceeding initiated on the Commission's own motion to determine whether the rates, service, charges, practices, rules or regulations, or any of them, of Miller & Lux, Incorporated, a corporation, in the furnishing of water for domestic use to residents upon a tract of land commonly known as the "Miller & Lux Colony", located in the San Joaquin Valley in the vicinity of Firebaugh and Mendota, Fresno County, are unjust, unreasonable, discriminatory or preferential in any particular, and to determine the just, reasonable and sufficient rates, charges, service, practices, rules or regulations to be observed and enforced in connection

with such service of water by said Miller & Lux, Incorporated, and to fix same by order.

In 1921 Miller & Lux subdivided a tract of land known as the Miller & Lux Colony, containing approximately 2,890 acres situated near Firebaugh and Mendota. It sold tracts in this colony for farming purposes in parcels of ten acres or more. A water system was installed for the purpose of supplying the colony with domestic water service, the distribution system consisting of 73,380 feet of concrete pipe ranging in size from 8 to 12 inches in diameter. There are at present only 21 consumers receiving domestic service, which shows an installation of almost 3,500 feet of mains per consumer, indicating a very sparsely settled and undeveloped community and a very large investment for each consumer. The domestic water supply is obtained from two drilled wells and is elevated by two electrically driven deep well pumps into two concrete storage tanks, each of 50,000 gallons capacity. Distribution is by gravity from the tanks and all service has heretofore been rendered at flat rates.

In August, 1924, a complaint was filed with the Commission by twenty land owners and residents served by this water system, alleging in effect that Miller & Lux were illegally attempting to charge increased rates for water furnished to the colonists; that at the time of the purchase of the land, sales agents informed the purchasers that the cost of water would be approximately \$3.00 per acre per year and that this charge would include both irrigation and domestic supply, and that said Miller & Lux were attempting to coerce the consumers into converting the system into a mutual water company, demanding that each consumer purchase stock therein or forfeit the right to receive water.

Attempts by representatives of the Commission to adjust informally the matters complained of were unsuccessful for the reason that Miller & Lux contended that this water system was not and

never had been operated as a public utility and that the Commission therefore had no jurisdiction over the case. The Commission thereupon instituted this investigation upon its own motion to inquire into the practices, methods of operation and rates charged on this system.

Public hearings were held at Fresno and Firebaugh before Examiner Wheat and also before Examiner Satterwhite, after all interested parties had been notified and given an opportunity to be present and be heard.

From the evidence it appears that the consumers receiving domestic water from this system were not definitely apprised of the conditions of service or of the alleged intentions of the company until on or about the first of April, 1924, at which time Miller & Lux mailed to each consumer or colonist a letter stating that effective at once the domestic water service charge would be made at the rate of \$5 per month. One month's domestic charge was generally paid by the colonists, whereupon bills were presented for the month previous to the one for which payment had been made. The bills for this previous month were also quite generally paid. On or about June 30, 1924, however, the consumers were presented with bills for domestic water service at the rate of \$5 per month for each month since they had moved on to the land, due allowance being made for amounts previously collected. Payment of such sums was generally resisted, and in July or August of 1924 Miller & Lux attempted to induce the colonists to form a mutual water company to take over the domestic water system, and demanded that the cost of the system be assessed against and paid for by the colonists at a rate slightly in excess of \$25 per acre of land owned by them. Under this demand it was proposed that the maintenance and operation expenses were to be divided among the colonists upon an acreage

basis. Miller & Lux at this time intimated that failure to comply with the demands for the formation of the mutual water company would result in the discontinuance of further water service, although it agreed to continue to furnish water at the rate of \$5 per month to those consumers who would proceed immediately to sink wells, the offer to continue in force until their wells were completed. Thereupon a form of agreement for the organization of a mutual water company was circulated by Miller & Lux among the consumers, who were informed that those who did not sign by August 15, 1924, would have their domestic water supply discontinued. As a result of this action water was shut off at the residences of at least nine persons who refused to sign. Apparently no objection was made by the consumers to the payment of a reasonable charge for domestic service, but serious objection was made against the attempt to force upon them an additional charge of approximately \$25 per acre to acquire the domestic system under a mutual company organization, and to the attempt to force the payment of the charge of \$5 per month for service rendered in former years, prior to the date upon which notice was received to the effect that the charge for domestic service would be \$5 per month.

At the hearings herein the colonists claimed that no agreement or understanding was ever entered into between Miller & Lux and themselves regarding the formation of a mutual water company for supplying domestic water until August, 1924, at which time some of the settlers signed the agreement above mentioned, under what might almost be termed coercion. This took place about two or three years after the construction of the water system by Miller & Lux. The evidence discloses that there is nothing contained in the agreements of sale for this land which in any way refers to or implies an intent to form a mutual company to handle domestic service, although the matter of irrigation service is specifically and definitely

provided for in said agreements. It seems evident that if Miller & Lux did, in fact, not intend to operate this domestic water system as a public utility system, it did not disclose such intent to these consumers or the public generally. No such intent was ever mentioned or disclosed until service had been rendered for a number of months and until bills in regular form for water service at \$5 per month had been rendered and paid for current service.

A report covering a field investigation and appraisal of the physical properties of the company, together with a study of the maintenance and operation expenses, was presented by D. H. Harroun, one of the Commission's hydraulic engineers, in which the original cost of all the property used in rendering this service was estimated to be \$65,891, the replacement annuity, computed by the 5% sinking fund method, was set out as \$1,236, and the sum of \$7,360 was recommended as a reasonable estimate to cover maintenance and operation expense for the immediate future. This estimate of expense was based, however, upon the system as it exists which is a poor type of installation from the standpoint of service and a relatively expensive one to maintain, and cannot be considered in any sense as a final determination.

The operating revenues and expenses exclusive of charges for administration, office expense and taxes for the year 1924, and from January first to June 30th, 1925, are as follows:

	<u>1924</u>	<u>1925 to June 30</u>
Total Operating Revenue	\$2,167	\$937
Operating Expense	<u>4,984</u>	<u>3,283</u>
Deficit	\$2,817	\$2,346

The total operating expense, as shown by the records of Miller & Lux for the fiscal year ending June 30, 1925, was \$6,699.

The revenues for 1924 and the first half of 1925 included respectively \$577 and \$307 from emergency irrigation service delivered through the domestic system because of the extremely dry year, which additional revenues would not be received under normal operating conditions. Based upon the operating cost estimates of the

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Commission's engineer, the results of operation for strictly domestic service during the coming year for the 21 consumers will result in a deficit of \$7,336. but it should, of course, be understood that the rates for service under this system must be based upon the total area under the system. The rates charged by Miller & Lux are \$5 per month for domestic service and \$5 per acre for each irrigation for flooding and \$4 per acre an irrigation for furrows. The above rates are not on file with the Railroad Commission.

While the present rate of \$5 per month is considerably higher than the ordinary charge for domestic service rendered by public utilities, yet under the exceptional conditions of service existing on this system, wherein the consumers reside on small farms widely separated from each other and scattered over a very large area, we are of the opinion that the charge is not unreasonable. The rate schedule now in effect will not produce revenues sufficient to meet operating expenses and depreciation. However, at the present undeveloped state of this project and of the community served, a rate designed to meet the bare costs of operation and depreciation would be absolutely prohibitive and far more than the service rendered would be worth. There being no protests against the rate now charged, it appears that the domestic service rate of \$5 per month should be approved at this time by the Commission.

Although defendants claim that they have never operated this system as a public utility and are therefore not under the authority of the Commission, it is difficult to reconcile this contention with the acts and methods of operation pursued by this company. The evidence shows that defendants have served water for domestic purposes to all those residents of the colony who applied therefor, that since April, 1924 a charge of \$5 per month has been made for the water furnished, and that at a subsequent date the consumers were billed for all service received prior to the month of April, 1924, although no charge had been made up to that time for

water. Although defendants succeeded in obtaining the consent of many of the consumers to the formation of a mutual water company, it is significant that those consumers who accepted defendants' proposals did so under duress and the threat of losing all water service, and it is also of importance to note that the intent to form a mutual water company was first disclosed to the public after water had been served, in some cases as far back as 1921, and after charges at the flat rate of \$5 per month, without any hint of intent to be only a mutual concern, had been publicly made to all consumers. It is therefore apparent, in our opinion, that this water system is in fact a public utility water system, subject to the jurisdiction and regulation of this Commission.

In accordance with the practice of this Commission a public utility should present a bill for its service within thirty days after the service has been rendered, when the rates are based upon monthly charges. It is apparent that fair and orderly conduct of utility affairs does not permit the collection of charges for water service prior to the establishment of a definite charge for such service and the giving of proper notice thereof to the consumers. In this case these consumers were not even notified until on or about the first of April, 1924 that thereafter a charge of five dollars per month would be made for all domestic service rendered. In fairness to the consumers this company should not charge for service rendered prior to the giving of said notice, and should refund all money collected from consumers for service rendered prior to April 1, 1924, either by cash or by credit upon the water bills for service rendered subsequent to said date.

O R D E R

The Railroad Commission of the State of California having instituted an investigation upon its own motion into the reason-

ableness of the rates, service, rules, regulations and practices of Miller & Lux Incorporated, a corporation, for domestic water service to residents of a tract of land commonly known as the "Miller & Lux Colony", public hearings having been held thereon, the matter having been submitted, and it being the opinion of this Commission that the service here in question is a public utility service subject to its jurisdiction and control,

It Is Heroby Found as a Fact that the rates now charged by Miller & Lux for water supplied for domestic purposes to its consumers in the Miller & Lux Colony, located in the vicinity of Firebaugh and Mendota, in Fresno County, are just and reasonable rates to be charged for the service rendered.

And basing its order on the foregoing finding of fact and on the further statements of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED:

1. That Miller & Lux, Incorporated, be and it is hereby authorized and directed to file with this Commission within twenty (20) days from the date of this order the following rates to be charged for all service rendered its consumers through its domestic water system in the said Miller & Lux Colony:

FLAT RATE

Domestic service. \$5.00 per month.

METERED RATE

Domestic service:
 For all water delivered \$0.25 per 100 cu.ft. per month.
 Minimum \$5.00 " "

IRRIGATION SERVICE, DOMESTIC SYSTEM

Flooding, per acre per irrigation . . . \$5.00
 Furrows, " " " " . . . 4.00

2. That Miller & Lux, Incorporated, be and it is hereby directed to file with this Commission, for its approval, within thirty (30) days from the date of this order, rules and regulations to govern its relations with its consumers under this system.
3. That Miller & Lux, Incorporated, be and it is hereby directed to refund to each and every consumer under this domestic water system all amounts, if any, collected from any such consumer for domestic water service rendered prior to April 1, 1924.
4. Refunds directed to be made herein shall be made commencing with domestic water bills rendered on or after April 1, 1926, and upon the basis of a credit to the extent of the total amount of the monthly water bills of such consumers entitled thereto, continuing thereafter until the full amount of the refunds shall have been made; provided however that no refund shall exceed the total amount of the refund to which any particular consumer is entitled, and provided further that in cases where consumers who are entitled to refunds are no longer consumers on this system, the full amount of such refunds shall be paid to such consumers in cash within thirty (30) days from the date of this order.
5. Within thirty (30) days from the date of this order Miller & Lux, Incorporated, shall file with this Commission a complete list setting forth the names and addresses of all consumers entitled to refunds under the terms of this order, and the amounts of refunds due each such consumer. Thereafter said Miller &

Lux, Incorporated, shall submit to this Commission a monthly statement showing the amounts refunded to each of the consumers entitled thereto until such time as all refunds shall have been completed.

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 29th day of March, 1926.

H. B. ...
C. ...
...

Commissioners.