

Decision No. 16329

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Investigation, )  
 on the Commission's own motion, of )  
 the reasonableness of the rates, )  
 service, rules, regulations and )  
 practices of the SUBURBAN MUTUAL )  
 WATER COMPANY, a business trust, in ) Case No. 2074  
 the supplying of water for domestic )  
 use within the State of California. )

ORIGINAL

Maurice C. Sparling, for Suburban Mutual Water Company.

Harry W. Powers, in propria persona.

John H. Harrington and John E. Coryell,  
on behalf of the West Hollywood Civic Body.

BY THE COMMISSION:

O P I N I O N

On the Commission's own motion, an investigation was ordered and conducted to determine whether the rates, services, charges, practices, rules or regulations or any of them of the Suburban Mutual Water Company, a business trust, in the furnishing of water for domestic use within the State of California, were unjust, unreasonable discriminatory or preferential in any particular, and to determine the just, reasonable, and sufficient rates, charges, services, practices, rules or regulations to be observed and enforced in connection with such service.

A public hearing was held upon the matter before Examiner Satterwhite in Los Angeles on January 21, 1925. Evidence, both oral and documentary, was received, the matter was submitted without briefs, and is now ready for decision.

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It appears from the evidence submitted that one R. W. Sparling, owns and conducts in the City of Los Angeles a business of manufacturing and selling power and pumping machinery and pipe systems. In a number of instances where a tract of land in the vicinity of Los Angeles was being subdivided and offered for sale to the public, negotiations were entered into between Sparling and the realty company handling the subdivision regarding the purchase of pipe mains and pumping equipment, the boring of wells, and the installation of a system necessary to serve the tract with water. As a result of these negotiations in each instance, a contract was entered into between Sparling and the particular realty company concerned, whereby the realty company agreed to purchase from Sparling all the necessary equipment, to have him drill the well and install the system complete with mains and pumping plant ready for service. This contract also provided that upon completion of the installation of the system Sparling would arrange to have either a mutual water company or a public utility water company formed to provide a continuous service of water on the tract, and that in return for this undertaking on his part, the realty company would convey to him the title to the entire system including the well and the lot upon which the pumping plant was constructed. Sparling testified that the original cost of the equipment was paid to his supply company by the subdivider, and that his interest in the construction and operation of the system was to provide a proper and equitable way for the subdivider to provide for a continuous water service upon his tract. He further testified that he made his profit in putting in the equipment and laying the pipe lines, and that he entered into these negotiations to increase his business of manufacturing and selling power and pumping equipment and installing systems and to make a profit out

of the whole deal including the furnishing of water.

The first of these contracts was entered into with reference to subdivision of a tract known as the "Colonia Moderna" near the Town of Watts. The complete system was there sold and installed by Sparling and, pursuant to the terms of the contract above outlined the entire system and the lot with the wells and pumping plant was then conveyed to Sparling. Sparling then executed an "Agreement and Declaration of Trust", whereby there was created the "Suburban Mutual Water Company, a business trust", with himself and four employees of his manufacturing business named as trustees. Contemporaneous with the execution of this trust agreement, Sparling leased the entire water system together with the well and the lot upon which was erected the pumping plant to himself and the four other trustees in trust for the use and benefit of the "Suburban Mutual Water Company", for the term of ten (10) years at a monthly rental of \$125.00. Immediately following the execution of these two instruments the so-called "Suburban Mutual Water Company" applied to the State Corporation Commissioner for permission to sell at \$10.00 each 2,000 shares of the total of 5,000 of its units and in due course a permit was issued to the five trustees carrying on the business under the fictitious name of "Suburban Mutual Water Company" to sell and issue 2,000 units or certificates of beneficial interest at par.

Since the initial transaction at the Colonia Moderna Sparling has sold the equipment, bored the wells and installed complete water plants in five other subdivisions in the vicinity of Los Angeles, and in each instance the same procedure has been followed with respect to the conveyance of the systems to him by the particular realty company and the lease of the same by him to the above mentioned trustees in trust for the use and

benefit of the "Suburban Mutual Water Company." At the present time, therefore, this so-called "Suburban Mutual Water Company" is serving water to six different tracts of land as follows: 2 at Norwalk, 3 at Watts, and 1 at Culver City. Each of these tracts is served by said company by means of an entirely separate and distinct well and water system, but the income derived from all systems as well as any and all other income of the company is pooled in a common fund called the "Trust Fund". The certificates of beneficial interest, above referred to, represent units of beneficial interest in this "Trust Fund". There is no segregation of the accounts of the several systems, nor is there any segregation of the members of the company with respect to the particular tracts or systems, all being simply unit holders in the common trust fund.

The principal question for determination by this Commission in this investigation is whether the so-called "Suburban Mutual Water Company" is in fact a mutual company or is engaged in a public utility business.

The "Agreement or Declaration of Trust" provides, among other things that the principal business of the trust is "to acquire, develop, construct, perfect, maintain, manage and operate a system of wells, pumps, reservoirs, pipe lines and other works for the development, storage and disposition of water on or for use for irrigation, domestic, and all other lawful purposes;\*\*\*\*". It vests in the trustees full, absolute, and exclusive control over the acquisition, management, and disposition of all the property of the trust or company without interference, vote or participation by the unit holders and it expressly declares that ownership of units in the company shall not entitle the unit holder to any title in or to the trust property whatsoever, nor the right for partition or division thereof or an accounting therefor. Paragraph 6

of this instrument provides:

"The Trustees shall have full power at all times, to purchase, rent and/ or acquire materials, machinery, power, supplies, and property of all kinds needed to establish, develop, operate, enlarge and in any respect complete the prosecution of the work and business of the Trust; to acquire water and water rights and to deal with the same as fully as with any other property of the Trust Estate to develop water reservoirs, build the same and all necessary adjuncts thereof, including distributing systems for irrigation, power or domestic purposes, to sell, license, lease and otherwise deal with and in the water accumulated, the reservoirs, ditches, flumes, conduits and all other parts and machinery, devices and property connected therewith; to appropriate water under such laws as may be established relating to the same and to use or sell the same as they may any of the property of this Trust."

The trustees are also authorized to make, adopt, amend or repeal such by-laws, rules and regulations as they may deem necessary and to elect the officers of the trust or company from among themselves.

Although the Declaration of Trust declares that the trust or company is to be operated as a mutual water company for the use and benefit of its members only, and that it shall not engage in the general business of supplying water by sale or rental to the public or persons or corporations other than unit holders, and that it shall not be considered to be organized for profit or in any sense organized for public service - yet, in spite of all these declarations, it no where provides for supplying water to water users of each system at cost, but on the contrary provides, in paragraph one, that the "Trustees shall hold all of the funds and property<sup>\*\*\*</sup> together with the rents, issues and profits therefrom," and authorizes them, in paragraph 5, "to charge, collect and receive a reasonable compensation for the management, contract and disposition of the said water to unit holders herein". This "reasonable compensation." it appears from the Membership Applications and the Monthly Service Statements of the company, is fixed in advance at \$1.25

per month, for each unit holder, regardless of the amount of water he uses or the system from which he received it, or the actual cost of supplying it.

The unit holders have absolutely no voice or vote in the management of the company, nor in the selection of those who do manage or control it; yet the witness Sparling asserted that they are equally liable, by assessment, for the losses incurred on the system 15 miles away ( or on any other of the five systems) in which they have no interest, and from which they derive no benefit, as they are for the losses which might occur on the system which supplies their lands. In short, they are, in legal effect, simply subscribers to the service of an organization formed for the purpose of supplying water to an indefinite number of tracts of land by means of an indefinite number of separate water systems-- an organization which may, so far as the unit holders are concerned, engage in the furnishing of water in any or all sections of the state and according to the founder of the organization, may subject those unit holders to liability for the possible losses incurred in those extensions without any vote or approval from them upon the subject. We are of the opinion that this situation shows an utter lack of any mutuality among the various unit holders or between them and the five trustees who are, in fact, the company.

The legal recognition which has been extended to those corporations or associations organized solely for delivering water to their stockholders or members at cost, i. e., the true mutual companies, has been but the natural development of the recognized right that inheres in any individual to acquire water to be used on his own land. It was early recognized by the courts that with such a right existing in the individual there could be no objection in law to several individuals associating themselves together in corporate form to acquire water to be used on their own

lands. (McFadden v. Los Angeles, 74 Cal. 571). This principle was predicated upon the theory that, the water itself being owned by the several individuals, the corporation formed by them became simply their agent for the purpose of more conveniently diverting and distributing the water among themselves. And since they were the only contributors to the corporate funds, the only owners of the property, and the only persons to receive the benefits and share the burdens of the system, they were deemed to be the logical judges of the management and control of the company and the only proper persons to determine the rates they should pay to maintain and operate the system. It is upon this theory that the courts and the Legislature have declared, in effect, that, the general public having no interest in the rates or service of such an organization, the ordinary regulatory bodies possess no jurisdiction over them.

When these principles are applied to the situation presented in this proceeding it becomes clear that this so-called "Suburban Mutual Water Company" is not in fact a mutual water company within either the letter or the spirit of section 2 of Chapter 80, Statutes of 1913, or within the doctrine laid down in the McFadden case, supra, and the cases which follow it. None of the property of this trust or company-- not even any property interest in the water or in the systems belongs to the unit holders in any proportion or degree, for the Declaration of Trust expressly declares that ownership of the units shall not entitle the holder thereof to any title in or to the property whatsoever. No part or voice in the management or control of the trust or company inheres in the unit holders because the Declaration of Trust vests in the trustees the absolute and

and exclusive control of all affairs of the company including the selection of officers and the fixing of salaries. In the matter of reasonableness of rates or adequacy of service, the unit holders also have no voice, but must depend entirely upon the trustees, who may change the by-laws, the Declaration of Trust, or any rule or regulation as they deem necessary, and who, with the exception of the defendant, Sparling, own no property in the tracts, receive no water from any of the systems, and apparently have no real interest in the trust or company except in a managerial or trustee capacity. Upon all matters relating to the affairs of the trust or company, of which the unit holders are alleged to be members, including the fixing of rates, the levying of assessments, improvements or extensions in the service, etc., the trustees are vested with supreme authority to the absolute exclusion of the unit holders. Obviously, there can be no mutuality in such a situation.

While the by-laws of this so-called mutual company state that the units and the water thereby represented are appurtenant to the lands for the benefit of which they are sold, they contain no provision limiting the proportion of water to be delivered to a unit holder or to a specific lot or parcel of land, and that the units and the water are not considered appurtenant to the lands is shown by the testimony of Sparling, who testified that ownership of a lot in the tract was not the measure of a person's right to water, but that "we do not care whether they are actually owners in the lots, they simply come in to us as water users." He further testified that in a



few cases members had been taken into the company who were not even on the particular subdivision, but who were adjoining, where they could not otherwise get service.

It appears that the situation here presented, in reality, is one in which R. W. Sparling owns the fee to six separate and distinct water systems, which he has leased to the so-called "Suburban Mutual Water Company"; that trustees named by him (all of his own employ) under the trust created by him, are controlling, operating, and managing these water systems for compensation; that from these water systems water is delivered and furnished for compensation to that portion of the public residing on these tracts. In other words, this group of five individuals, is supplying water to approximately 1500 people located in widely separated sections of Los Angeles County without any regulation and without any voice or vote by those 1500 people as to the reasonableness of the rates, or the adequacy of the service. Under the broad powers vested in the trustees to change as they deem necessary the By-Laws, the Declaration of Trust, and Rules and Regulations, the rates to be charged for this water could be fixed at an arbitrary figure and the users would be without redress.

From a careful consideration of all the evidence before it in this matter, the Commission is of the opinion that the so-called "Suburban Mutual Water Company, a business trust" is not in fact a mutual water company, but is being operated as a public utility as defined in the Public Utilities Act and in Chapter 80, Statutes of 1913, and the same is hereby found to be a public utility.

It follows from the foregoing opinion that the Suburban Mutual Water Company has been, and is at the present time operating contrary to law inasmuch as it has not heretofore filed

with the Commission its schedule of rates and charges or rules and regulations as required by law, or otherwise submitted to the jurisdiction of the Railroad Commission.

O R D E R

A public hearing having been held in the above entitled proceeding, evidence having been introduced, the matter having been duly submitted, and the Commission being now fully advised, and basing its order upon the findings and statements of fact as contained in the opinion preceding this order:

IT IS HEREBY ORDERED that the Suburban Mutual Water Company within thirty (30) days from the date of this order file with the Railroad Commission a schedule of its rates and charges, and a copy of its rules and regulations.

The effective date of this order is hereby fixed at twenty (20) days from the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup> day of March, 1926.

H. B. ...  
C. ...  
Leon ...  
Commissioners