

Decision No. 22289

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION NO. 16255**ORIGINAL**

WHITTIER WATER COMPANY,

a corporation, and

MURPHY OIL COMPANY,

a corporation,

Applicants.

APPLICATION FOR ORDERS:

- a. To dedicate water for use on particular property for compensation and to execute an agreement in respect thereto.
- b. To compromise and settle an action in respect to an obligation to deliver deeded water.
- c. To establish rates for the transportation and delivery to deeded and compensated dedicated water.

Finlayson, Bennett & Morrow and James S. Bennett,
for Whittier Water Company.

Kenyon F. Lee, for Murphy Oil Company.

LOUTTIT, COMMISSIONER:

O P I N I O N

In this proceeding Whittier Water Company, a corporation, being a public utility under the jurisdiction of the Railroad Commission, asks approval of a contract entered into by and between said company and Murphy Oil Company, a corporation, wherein and whereby, for the purpose of compromise and settlement of certain litigation now pending between said parties over the obligation to deliver water, it is agreed that said water company shall grant, by deed, title to 15-5/12 miner's inches of water, continuous flow, and shall, in addition thereto, deliver 50 miner's inches of water, continuous flow, to lands of said oil company in consideration of the payment by the latter of the sum of \$25,000. and for the additional payment of certain specified charges for the transportation and delivery of all said waters

so furnished. The Commission is further requested to establish rates for the transportation and delivery of deeded and compensated dedicated water.

The evidence in this proceeding shows that on or about May 2, 1902, the East Whittier Land and Water Company, a corporation, executed to one Simon J. Murphy a deed to 25 and 13/20 miner's inches of water for use on any and all lands then owned or which might thereafter be acquired by said Murphy within the boundaries of the East Whittier Rancho. Murphy Oil Company has succeeded to the title to the above lands and now owns 15 and 5/20 miner's inches of said water. The Whittier Water Company was incorporated in 1907 and succeeded to certain of the rights, interests and obligations of the above East Whittier Land and Water Company by memorandum of agreement under date of March 16, 1908, by and between said companies. From said March 16, 1908, to the 2nd of August, 1919, Murphy Oil Company did not demand or require the delivery of any water under the above deed to Simon J. Murphy. A dispute arose between the water company and the Murphy Oil Company over the rights of the latter to receive water under the above agreement and on the 9th day of August, 1926, said oil company commenced an action in the Superior Court of Los Angeles County to require said Whittier Water Company to deliver to it 15 and 5/12 miner's inches of water, continuous flow. It is in settlement of this litigation that the proposed contract has been entered into by and between the above litigants whereby, for the sum of \$25,000. to be paid to the water company by the oil company, the title and rights to the above contested 15 and 5/12 miner's inches are recognized and conceded and, in addition thereto, the company will dedicate an additional 50 miner's

inches continuous flow to be used on lands of said oil company in Orange and Los Angeles Counties. For the delivery in heads of not less than 25 miner's inches of the above water, charges will be made upon the basis of one hundred and ten dollars (\$110.00) an inch-year for gravity flow from the Whittier Water Company's main pipe line at the intersection of Whittier-Santa Ana Highway and Colusa Road, or at other points on said water company's main pipe line westerly and northerly of said intersection, and one hundred and seventy-five dollars (\$175.00) per inch-year for deliveries thereof made at the end of the pipe line at Sixth Street and Euclid Avenue in East Whittier.

As the result of a court decree in 1917, the title to water of the Whittier Water Company was established at a total of 1,500 miner's inches from three separate sources. Thereafter, from time to time, said company has sold or otherwise disposed of most of this 1,500 miner's inches, reserving sufficient supply for utility and other demands exclusive of the right to develop at any time necessary an additional 100 miner's inches. The data upon system demands submitted indicate that this company has a surplus of approximately 144 miner's inches over and above that required for the Murphy Oil Company herein including, however, the above undeveloped 100 miner's inches.

The Whittier Water Company delivers water to consumers who have deeded rights to certain established quantities of water, to consumers who have for compensation paid the company or its predecessors in interest for the right to receive water designated as "compensated dedicated water," and to users who have no such rights but who receive water owned by the company and who are considered to be public utility consumers receiving

service under rates established by formal order of this Commission. For each of the first two classes of consumers the company claims the right to make a charge for the delivery of the water through its pipe lines, ditches and other facilities. The company also contends that, in delivering this water, it is acting as a common carrier thereof and is transporting said water as a public utility and, as to this phase of the service, is under the jurisdiction of the Railroad Commission as to the rates to be charged therefor. For this reason the Whittier Water Company, in this proceeding, requests the Commission to establish a transportation and delivery rate for the above so-called "dede'd" and "compensated dedicated water" in East Whittier Rancho at the same wholesale rates for gravity and pumped service as are set out in its agreement with the Murphy Oil Company with the additional request that, where heads less than 25 miner's inches, continuous flow, are used, the rate therefor be established at one hundred and twenty dollars (\$120.00) per miner's inch-year and at one hundred and ninety dollars and eighty cents (\$190.80) per miner's inch-year, continuous flow, for deliveries in heads of less than 25 miner's inches where the water is required to be re-pumped.

The status of the service rendered to many of the consumers claiming dede'd or contract rights to water was before the Commission in connection with Application No. 4815 filed by the Whittier Water Company requesting an increase in rates. Decisions Nos. 9171 dated June 28, 1921, 9675 dated October 28, 1921, and 9975 dated January 9, 1922, were issued in connection with the above application. In Decision No. 9171 (20 C.R.C. 120) the Commission took the position that furnishing of water under

the contracts and deeds therein mentioned was not a public utility service subject to regulation by the Commission under the provisions of the Public Utilities Act and declined to establish rates for such service. Unquestionably, however, the Public Utilities Act does grant to the Railroad Commission the power and authority to regulate and establish rates for the transportation of water where a concern holds itself out or obligates itself to furnish this class of service as a public utility. Whatever the status of the Murphy Oil Company may have been in the past, the contract presented herein voluntarily establishes the oil company as a user of this class of water transportation service which this water company contends it now holds itself out to serve, and the Commission may very properly accept for filing the rates for such service as therein agreed upon.

There is, however, insufficient evidence presented in this proceeding to enable the Commission to properly establish the status of the other water users under the above mentioned deeds and contracts. The evidence presented herein indicates that Whittier Water Company has available sufficient surplus and undeveloped water to take care of the requirements under its contract with the Murphy Oil Company to dedicate to lands owned by the latter certain specific quantities of water without injury to its public utility water consumers. It appears that so much of the instant agreement as relates to the recognition of the right of the Murphy Oil Company to receive certain specified quantities of water for use upon its lands is in settlement of litigation over private claims and interests and is inherently private in character and, involving, as it does, no public utility

interests other than the disposition of non-operative property, for that reason requires no permission from this Commission for its consummation. It will therefore be unnecessary in the following order for this Commission to go further than to authorize the entering into, by and between the Murphy Oil Company and Whittier Water Company, of the contract insofar as it relates to the establishment of the rates to be charged for the transporting and delivering of the waters therein specified.

The following form of order is recommended.

O R D E R

Application as above entitled having been filed with this Commission, a public hearing having been held thereon, the matter having been submitted and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that Whittier Water Company, a corporation, be and it is hereby authorized to enter into an agreement with Murphy Oil Company, a corporation, for the transportation and delivery of water at the rates and under the terms and conditions as set out in the contract and in Exhibit "A" attached to the application filed in this proceeding, and Whittier Water Company shall file with this Commission, within thirty (30) days from the date of this order, a schedule of rates conforming thereto.

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

The foregoing opinion and order are hereby approved

