

Decision No. 23721

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
EAST SIDE CANAL COMPANY, a corporation,
for authority to increase its rates
for water service.

Application No. 16610.

McCutchen, Olney, Mannon & Greene,
by John T. Pigott and Carl I. Wheat,
for applicants.
Alfred Siemon and Jackson Mahon, for
East Side Water Users Association.
J.J. Deuel and L.S. Wing, for California
Farm Bureau Federation.

BY THE COMMISSION:

OPINION ON PETITION FOR RESCISSION

On the 11th day of June, 1930, East Side Canal Company, a corporation, together with seven other canal companies, all jointly owned and operated by Kern County Canal and Water Company, a corporation, applied to the Railroad Commission for authority to increase their rates for irrigation service furnished in Kern County, in and near the City of Bakersfield.

Public hearings were held in Bakersfield on September 4th and 5th and on November 12th and December 16th, 1930, and also on March 5th, 1931.

At the conclusion of the hearings held in September, it was apparent that the matter could not be completed for submission prior to the beginning of irrigation in 1931, since it involved complicated questions of valuation, and motion was made

on behalf of applicants for the establishment of an interim rate to be effective during the 1931 irrigation season and thereafter until a final decision could be rendered. This motion was renewed at the December hearing, at which time it was urged that a rate of \$1.00 per acre-foot of water should be fixed.

Very complete evidence was submitted by applicants on September 4th and 5th showing water use, gross revenues received and maintenance and operation expenses, exclusive of depreciation, over varying representative periods of years. This data indicated that, under the then existing base rate of $37\frac{1}{2}$ cents per acre-foot, none of the applicant companies were realizing anything like their bare operating expenses, exclusive of depreciation. At the hearing on December 16th, engineers of the Commission presented the results of an extensive investigation made by them into the revenue and operating expenses of the utilities. Their conclusions also indicated the companies were operating at a substantial out-of-pocket loss. Thereafter, based almost entirely upon the report and testimony of its engineers, an interim rate of 85 cents per acre-foot was established by the Commission in its Decision No. 23345, issued on the 2nd day of February, 1931. The rate was designed to yield only bare out-of-pocket operating costs upon the basis of average use of water taken over a period of years last past, together with a possible allowance for depreciation.

Thereafter, on the 7th day of February, 1931, East Side Water Users Association filed a petition for rehearing upon the grounds that said interim rate was unfair and confiscatory and would make it impossible for the majority of users to conduct farming operations except with the certainty of ultimate

loss. This petition for rehearing was denied in Decision No. 23419, issued February 16, 1931, and the order became final.

A further hearing in these proceedings was held in Bakersfield on March 5th, 1931, when evidence was submitted by the utilities covering the actual operating costs and revenues for the season of 1930. This indicated that the 1930 revenue and operating expense closely approximated the average upon which the interim order was based.

On the 13th day of April of this year, said East Side Water Users Association filed a petition asking the Commission to rescind its interim order made herein, advancing grounds therefor not mentioned or suggested in the petition for rehearing. This petition alleged that said interim order was granted without proper notice to petitioners and that no opportunity whatever had been given petitioners to cross-examine the witnesses submitting data on operating expenses nor to submit in their own behalf evidence covering such costs. It was further alleged, among other things, that the petitioners had been led to believe that no such interim order would be so established by the Commission and that therefore said order was an arbitrary ruling and deprived them of their property without due process of law.

The Commission, considering this latter petition to be one arising under the provisions of Section 64 of the Public Utilities Act, gave notice to the utility and set the application for hearing at Bakersfield on the 5th day of May, 1931, at which time it was stated that the Commission would hear any

evidence any one might desire to present upon the question of revenue and operating expense.

The petitioner, notwithstanding the fact that it was extended an opportunity to indulge in such cross-examination as it desired and to present such testimony as it wished, declined to do either and argued that the order should be rescinded.

Inasmuch as the order attacked became final following the denial of the petition for rehearing, the Commission would not be justified in now setting it aside without a definite showing that under the facts the order did something it was not intended to do. The Commission could not, of course, by a further order or action require or force the utility to serve its consumers at an out-of-pocket loss or cost.

Everything in the record indicates that the old 37½-cent per acre-foot rate fell far short of meeting out-of-pocket costs and that as to this particular utility the 85-cent rate will not, even under the most extreme assumptions, produce revenue in excess of such costs during the present year.

Revenue of the East Side Canal Company for the period 1925-29, inclusive, under the old rate averaged but \$5,224 a year, according to the report of the Commission's engineers. The actual revenue in 1930 under the old rate was almost identical with the average, being \$5,231. Out-of-pocket operating costs for the five-year period were reported by the Commission's engineers to have averaged \$14,656, while the 1930 actual as reported by the company at the hearing on March 5th was \$15,822.

At the argument it appeared that the company, at petitioner's request, had furnished it a breakdown of the 1930 operating expenses, and since the hearing and while the matter has been under submission the secretary of the petitioner has written the Commission enclosing the statement. (Copy of this letter was sent to the utility for its information and comment.) From this statement and from evidence in the record, it appears that the East Side Canal Company purchases its water from the Kern Island Canal Company under an old contract at \$4,500 a year. City and county taxes in 1930 were \$2,127. These two items alone exceeded the average, or the 1930 revenue, by over \$1,000. The statement referred to

1. The statement is as follows, except for accompanying detail as to K.C.C. & W. Co. general expense, K.C.C. & W. Co. water measure expense, general expense South Side Canal and B. V. L. R. expense:

<u>EAST SIDE CANAL COMPANY</u>			<u>Total</u>
<u>Analysis of Operating Expenses for 1930</u>			
<u>T&D SYSTEM OPERATING</u>			
9% of Supt., Clerk & Foreman's Salaries		\$441.35	
Zanjero	\$313.41		
Auto Hire Zanjero	<u>368.99</u>	682.40	
9% of Rental of So. Side Auto, first 6 months		48.60	
Rotation Schedule		332.32	
Crop Acreage		<u>24.64</u>	\$1529.31
<u>REPAIRS TO T&D SYSTEM</u>			
Clean Canal - Labor	\$2,384.62		
" " - Truck Hire	109.75		
" " - Auto Hire	<u>2.50</u>	2,496.87	
.81% Credit Balance of K.I. Team Opr. Exp. (Based on Work done)		(17.25)	2479.62
<u>REPAIRS TO SERVICES</u>			
Gates & Weirs - Labor	\$73.26		
Lumber	91.72		
Auto Hire	7.57		
Truck Hire	<u>1.58</u>	174.13	
Inspect Weirs		3.52	
2.29% Lumber Operation Balance from K.I. (Based on Lumber Used)		<u>10.59</u>	188.24

showed other items of expense, such as zanjero salary and auto expense \$682.40, cleaning canals \$2,479.62, as well as various other small items incident to service of water and general office expense bringing the aggregate to the reported total.

Because of extremely severe water conditions the water crop for the current year is almost certain to be less than the five-year average, or the 1930 crop, and resultant revenue will tend to be less than that assumed in the interim order. If the water crop is no larger than that of 1924, the revenue under the 85-cent rate will be only \$7,225.00, but if the water supply this year should equal the five-year normal or average, it would yield a revenue of \$11,390.00. Indeed, to

I. (Cont'd.)

GENERAL EXPENSE

Office Rent		\$300.00	
Bind Books		4.50	
Mimeographing		2.85	
Abstract of Title		350.00	
5.2% of B.V.L.R. Assn. - Operation & Maintenance		178.02	
9% General Expense - South Side		960.96	
6% General Expense - K.C.C. & W. Co.		2,486.36	
6% Water Measure - K.C.C. & W. Co.		474.05	
			<u>\$4,756.74</u>

TAXES

County	\$1,853.56	
City	<u>273.20</u>	2,126.76

WATER PURCHASED FOR RESALE

Under Annual Contract from K.I.		<u>4,500.00</u>
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(Revenue Received \$5,231.50)

\$15,580.67

Operating Expense does not include cost of replacement of structures (estimated as 70% of structure maintenance), legal and consulting engineer's fees and other expenses incidental to Railroad Commission Rate Proceedings, or Depreciation.

The above is exclusive of two charges included on Exhibit 102 for a total of \$241.83, found to have been expended immediately above the intake of the East Side Canal.

justify the conclusion that the present rate will yield in 1931 out-of-pocket costs requires the assumption that the Commission's engineers in reporting average operating costs were in error by from 29 to 103 per cent, depending upon whether the water yield will equal the five-year normal or correspond to 1924.

Revenue and operating expenses of a relatively small utility such as this are not particularly complicated or involved or difficult of ascertainment. There is nothing mysterious in a contract price of water of \$4,500 a year, of county and city taxes, of salary to a zanjero and auto expense, of cost of canal cleaning, of office rent and general expense of administration, and it should not require a long period of time and indefinitely prolonged hearings to determine these items with sufficient accuracy to fix a rate to cover, or partially cover, outlays incident to water service.

The petition should be denied. There is no justification for keeping this petition open further to allow petitioner to make up its mind whether it wishes to cross-examine witnesses or present evidence. The hearings on September 4th and 5th, November 12th and December 16th of last year and of March 5th and May 5th of the present year afforded sufficient and reasonable opportunity to inquire as to revenue and expense. If petitioner is still dissatisfied, it may request that the main case affecting this utility be advanced for hearing when all questions - valuation, rate base, rate of return, depreciation, revenue and operating expenses, and spread of rates - will be open to inquiry and the whole matter will be conducted as expeditiously as may be to final determination.