

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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MRS. F. K. MORRI, et al,
Complainants,
vs.
W. S. B. LAWRIE, et al,
Defendants.

Case
No. 1635.

ORIGINAL

Messrs Marks & Launer, by Albert Launer,
Attorneys for Complainants,

Samuel L. Collins, Attorney, for
Complainants,

Jesse George, Attorney for Defendants.

BY THE COMMISSION:

OPINION AND ORDER ON REHEARING

The Commission, in its prior order in this proceeding, rendered December 23, 1921, required the defendants to make the repairs to its pumping plant and distribution system necessary to give adequate service, and also established reasonable rates at which water should be supplied to consumers for domestic uses.

An application for rehearing was filed by the defendants on January 16, 1922, a rehearing granted and the hearing thereon was held before Examiner Gordon at Los Angeles, on March 8, 1922. At the time of hearing, the defendants filed a formal answer to the complaint, in which they denied the Commission's jurisdiction to make any order concerning the operation of the pumping plant in question, upon the ground that the defendants were not engaged in public utility service. In addition to this answer, the defendants also, without waiving the objection to jurisdiction, filed a formal petition which in effect asked that the Commission, in the event it should find them to be engaged in the operation of a

public utility, to authorize an abandonment of such service. At the conclusion of the hearing, an adjournment was taken with the understanding that the matter would thereafter be submitted unless either of the parties requested further hearing on the question of abandonment. Briefs were filed by both sides but no request was made for further hearing and the matter was therefore deemed submitted and is now ready for a decision.

The evidence on rehearing confirms the conclusion reached by the Commission in its prior decision that the defendants are operating the property in question as a public utility. It appears that the pumping plant was installed in 1911, and has been used continuously ever since for the purpose of supplying water to purchasers of lots in a subdivision of land in the City of Anaheim known as the Hart Tract. In the year 1914, the service was extended to an adjoining subdivision known as the Mary Goodman Tract. The only interruptions of service down to the present time have been those occasioned by the necessity for making repairs.

Defendants further claimed that the dedication, if any, was only of the surplus water available after the irrigation of the defendants' orange orchard located on the five-acre tract on which the well is situated. The evidence shows, however, that these orange trees were planted six years prior to the date of the hearing, which would be subsequent to the time of the extension of service to the lot owners in the Mary Goodman Tract. We conclude, therefore, that the pumping plant and distribution system are dedicated primarily to public service, and that the defendants cannot legally discontinue the public service, thus voluntarily undertaken, for the purpose of using the water themselves for irrigation.

Defendants also seek to abandon service. Their right to do so depends on whether or not the system is operated at a loss and cannot be continued otherwise than at a loss. Defendants claim this is so, and support their claim by the following statement:

"Estimated monthly revenue based on present service to sixty families at rates fixed by prior order herein of \$1.50 per family \$90.00

Estimated monthly cost of operations:
 Labor, operating pump 15 days per month at \$5.00 per day \$75.00
 Repairs 5.00
 Fuel and oil 7.00
 Clerical work and collections 10.00
 Supervision and management 10.00
 Depreciation allowance 30.00 \$137.00"

These figures were given by Mr. Lawrie and were based on his past experience in operating the system. There was evidence, however, that the allowance made by him for the cost of operating the pump and for supervision and the collection of bills was in excess of the amount necessary to be expended for that purpose. Mr. Van Hoesen, one of the Commission's hydraulic engineers, basing his opinion upon knowledge of operating costs of other systems similar to this one, where the pumping plant is operated to serve both public and private use, stated that \$50.00 per month was a reasonable allowance for this item. He further testified that a new pumping plant of a capacity sufficient to serve the consumers of the system operated by defendants could be installed at an approximate cost of \$3000 and operated at a monthly cost of \$81.50, including depreciation allowance.

The evidence shows, however, that new capital cannot be obtained to install a new plant or make any extensive repairs in the present one. Mr. Lawrie testified that he had no money of his own to invest for renewals or improvements and that he had been unable to borrow any money for the investment in this utility.

Although an elderly man, he has felt obliged by his own personal efforts, to keep the system in operation and so far as possible do all the necessary repair work. It is apparent, therefore, that the further operations of this utility must depend upon the collection of sufficient revenue for water sold and the proper application of this revenue.

We are of the opinion that the following table represents a reasonable estimate of the monthly cost of operation, exclusive of depreciation allowance and taxes.

Fuel and oil	\$7.00
Current repairs	5.00
Labor, operating pump and collecting charges	<u>65.00</u>
	\$77.00

Upon this basis it is reasonable to assume that the narrow margin of \$13.00 per month between operating cost and the estimated revenues based on the rates heretofore fixed is insufficient to provide for depreciation and fair return on the investment. Although no valuation of the system has been made, the original cost, according to Mr. Lawrie's testimony, was about \$3600.00. No depreciation allowance has been set aside in the past and no sinking fund accumulated from which repairs and replacements, now badly needed, can be provided. We are of the opinion therefore, that all revenue available above operating expenses should, for a temporary period at least, be used exclusively for making repairs and replacements essential to rehabilitate and maintain the service. In order to provide a sufficient sum for this purpose, an increased rate above that previously fixed will be authorized upon the condition that the entire amount realized from the sale of water, in excess of the total amount of \$77.00 per month above indicated as allowance for operating expenses, be set aside for

such repairs, replacements and maintenance work as may be approved by the Commission. As soon as it can be shown that the system has been rehabilitated to the point of rendering reasonable and adequate service, the excess above operating costs will be made available as a fair return to the owners of the property. This, however, will require a further or supplemental proceeding which must be instituted later.

It is very clear from the record in this proceeding that the successful operation of this system depends largely upon the co-operation of the consumers in the observance of proper rules and regulations. The evidence shows that the community served is a Mexican settlement adjoining the city limits of Anaheim. The fact that many of the consumers are unable to speak English has led to many misunderstandings in matters of charges and complaints concerning poor service. It further appears that connections have been made with distributing mains by consumers themselves, often without the knowledge or authorization of defendants, and that no means were provided for cutting off the service of consumers who were delinquent in the payment of charges. In the case of a small utility of this kind the consumers should be required to pay their bills at the residence or place of business of the person operating the system and every effort should be made by them to co-operate with the owners in eliminating unnecessary operating costs. No service connections should be made except by the owners of the system and in accordance with proper rules and regulations, and in every case a means should be provided whereby the individual service can be shut off in the event of non-payment of bills.

It was suggested at the hearing that meters should be installed. It is evident from what has been said that this could only be done by requiring the consumers themselves to advance

the cost of installation. If it appears upon the resumption of service under the terms of this decision that it is practical and desirable to have a metered system, a supplemental order will be made to that effect. At the present time, however, the Commission is of the opinion that service should be continued under the rates herein specified and in accordance with such rules and regulations as the Commission shall approve.

It is further apparent from the showing made at the last hearing that by reason of the failing strength of Mr. Lawrie and the financial straits in which this utility is placed, that the continuance of service at best is precarious. We therefore recommend not only that the consumers and the utility co-operate in the continuance of this enterprise but that an effort be made to have the City of Anaheim take over the distribution system and serve the consumers of the defendants from the municipal water plant.

O R D E R

A rehearing having been held in this proceeding pursuant to an order made herein on the 27th day of February, 1922, additional testimony and documentary evidence having been received and the matter submitted, the Railroad Commission hereby finds that the defendants, W. S. B. Lawrie, Union Trust Company, Annie M. Lawrie and Sarah Mildred Lawrie are the persons owning or having an interest in and managing and operating a certain well and pumping plant located on Lot 6 of the Hart subdivision in Orange County, California, and a distributing system in connection therewith for the service of water to certain persons comprising a portion of the general public in the vicinity of Anaheim; that the service

rendered by said defendants in the operation of said system, as a public utility, has been and now is unreasonable, insufficient and inadequate; that said service can be made reasonable, sufficient and adequate by cleaning the storage tanks and making necessary repairs to the pumping plant and distributing system in accordance with conditions set forth in the order contained in this decision; that the reasonable rates to be charged and collected for service hereafter rendered under conditions similar to those which have existed and which now exist on said system are those set forth in the schedule contained in the order heretofore made in this proceeding on the 23rd day of December, 1921, Decision No. 9926; that if and when the defendants shall comply with the conditions prescribed in the following order for the rehabilitation of the service, the reasonable rates to be charged for such service will be those set forth in Schedule #2 in the following order.

Basing its order on said findings and other findings and statements of fact contained in the decision preceding this order,

IT IS HEREBY ORDERED that defendants, as the owners and operators of the water system herein referred to, be and they are hereby authorized and directed to file with this Commission and continue in effect the rates as prescribed in the prior order in this proceeding, made December 23, 1921, Decision No. 9926, and herein set forth Schedule No. 1 as follows:

"SCHEDULE NO. 1.

MONTHLY FLAT RATES

For each dwelling or lodging-house of five rooms or less, including bath and toilet	\$1.50
For each additional room15
For each automobile25
For each horse or cow15
For each store or shop	1.00
For soda fountain or soft drink establishment . .	2.00
For Barber shop with one chair	1.25
For each additional chair25
For each public dining room	2.00
For each public bath tub50

For each public lavatory \$.25
 For each public toilet25
 The use of water for irrigation will not be permitted.

MONTHLY METER RATES

From 0 to 500 cubic feet or less \$1.50
 From 500 to 1000 cubic feet, per 100 cu.ft .25
 All over 1000 cubic feet, per 100 cubic feet .15

Meters may be installed at the option of either the utility or the consumer. When installed at the option of the utility such installation shall be without cost to the consumer. When the installation is made at the consumer's request the cost of the meter shall be advanced by the consumer and the deposit shall be returned by the utility at the rate of twenty-five per cent of the monthly bills for water used until the entire amount advanced shall have been repaid.

Provided however, that in lieu of the foregoing schedule, No. 1, the defendants may, at any time, upon compliance with the conditions hereinafter set forth, and after having first obtained the approval of the Commission by supplemental order herein, file and charge the following rates:

SCHEDULE NO. 2

MONTHLY FLAT RATES

For each dwelling or lodging-house of five rooms
 or less, including bath and toilet \$2.00
 For each additional room15
 For each automobile25
 For each horse or cow15
 For each store or shop 1.00
 For soda fountain or soft drink establishment . 2.00
 For barber shop with one chair 1.25
 For each additional chair25
 For each public dining room 2.00
 For each public bath tub50
 For each public lavatory25
 For each public toilet25
 The use of water for irrigation will not be permitted.

MONTHLY METER RATES

From 0 to 500 cubic feet or less 2.00
 From 500 to 1000 cubic feet, per 100 cubic feet . .25
 All over 1000 cubic feet, per 100 cubic feet15

Meters may be installed at the option of either the utility or the consumer. When installed at the option of the utility such installation shall be without cost to the consumer. When the installation is made at the consumer's request the cost of the meter shall be advanced by the consumer and the deposit shall be returned by the utility at the rate of twenty-five per cent of the monthly bills for water used until the entire amount advanced shall have been repaid.

The rates set forth in the foregoing schedule No. 2 shall be made effective only upon the following conditions, to-wit:

1. Prior to the filing with the Commission of said schedule No. 2, and the charging of rates in accordance therewith, there shall be filed with the Commission and approved by it, a detailed statement of repairs, replacements and other work proposed to be done to rehabilitate the system and establish reasonable and adequate service; also a statement certifying that the storage tanks used in connection with the system have been thoroughly cleaned; also a stipulation signed by the defendants agreeing that the total amount received for water service by said system in excess of the sum of \$77.00 per month, shall, unless otherwise directed by the Commission, be set aside and used solely for the purpose of making repairs, installatinnns, replacements or improvements and the doing of such other work for the improvement and maintenance of said system as may be approved and ordered by the Commission. If the said statements and stipulation shall be filed and approved by the Commission a supplemental order will be made herein authorizing the rates proposed under schedule No. 2 to become effective.

2. After the rates prescribed under schedule No. 2 shall have become effective, quarterly reports shall be filed with the Commission by defendants stating the total ^{and} amount of receipts/ expenditures for the operation during preceding quarter and also expenditures made for repairs, improvements or replacements.

IT IS HEREBY FURTHER ORDERED that the application of the defendants to discontinue service be, and the same is hereby

denied, without prejudice to the rights of defendants to renew said application upon the further showing that the revenues to be received under the rates herein prescribed are insufficient to meet the reasonable operating costs of the system and to provide for reasonable replacements and improvements in accordance with the plans approved by the Commission.

Dated at San Francisco, California, this 16th day of September, 1922.

H. H. Brundage

Irving Martin

M. H. Hendrich

Commissioners.