

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 1386

In the matter of the rates charged and service rendered by H. R. ATWOOD, also doing business under the name of ENCANTO MUTUAL WATER COMPANY, for water supplied to his customers at Encanto, San Diego County, California.

Case No. 547.

C. J. Novotny for H. R. Atwood.
L. A. Wright and Allan Brant for Encanto Water League.
Tyndale Palmer for Guy D. Loomis.

THELEN, Commissioner.

O P I N I O N.

This is an investigation on the Commission's own motion into the rates charged and the service rendered by H. R. Atwood, also doing business under the name of Encanto Mutual Water Company, for water supplied to his consumers at Encanto, San Diego county, California.

Encanto consists of unincorporated territory on the mesa east of the city of San Diego. The territory served with water by H. R. Atwood consists of that portion of Encanto which is shown on a map of a subdivision thereof, known as Encanto Heights, and filed in 1907, together with five or six customers who receive their water within the limits of this tract, but convey it through their own pipes to territory located outside of the tract. The Encanto Heights tract consists of some 1000 or 1100 acres. In 1913, Atwood had a total of 260 taps and 320 meters within this territory, including the five or six outside customers.

The water mains formerly owned by the Southern California Mountain Water Company and now the property of the city of San Diego run through the Encanto Heights tract. The water system operated by Atwood secures water from this main by means of three meters. Atwood's system consists of:

1 reinforced concrete reservoir,
 2/25,000 gallon redwood tanks,
 2/ 8,000 " " "
 1/ 5,000 " " tank,
 1/ 25 horse power motor and pump,
 1/ 5 " " " "
 1200 ft. 3/4 inch pipe,
 5200 " 1 " "
 800 " 1 1/4 " "
 12,000 " 1 1/2 " "
 65,000 " 2 " "
 14,000 " 3 " "
 9,000 " 4 " "
 2 small pump houses,
 1 small office building,
 1 shop. The land for the reservoir, tanks,
 office building and shop.

While a portion of Atwood's territory can be supplied by gravity flow, it is necessary, to supply the higher portions, to do considerable pumping into the reservoir and tanks, thus materially increasing the operating expenses.

Heretofore, in Application No. 461, this Commission rendered its Decision No. 621, dated April 29, 1913, on the application of the Encanto Mutual Water Company to increase rates for service of water to its patrons at Encanto. Reference is hereby made to the opinion and order in said proceeding. It appears from the opinion therein that the legal rate to be charged by the Encanto Mutual Water Company to its customers ^{prior to} ~~on~~ the date of the hearing was 10¢ per thousand gallons. The applicant drew to the Commission's attention an ordinance of the Board of Supervisors of San Diego county, dated September 12, 1911, purporting to increase the rate to be charged for water by the Southern California Mountain Water Company, from whose system the applicant secured its water, from 10¢ to 20¢ per thousand gallons. The applicant represented that it could not possibly sell water at 10¢ per thousand gallons while it was paying therefor 20¢ per thousand gallons, with no consideration given to operating expenses. The applicant represented that it would be willing for the time to accept a rate of 25¢ per thousand gallons, with a minimum of \$1.30 per month, this having been the rate which applicant had been collecting prior to the time its attention was drawn to the fact that the legal rate was only 10¢ per thousand

gallons. The Commission, acting in the belief that the legal rate to be charged by the city of San Diego was 20¢ per thousand gallons and that the operating expenses would be at least 5¢ per thousand gallons, accordingly made its order authorizing Encanto Mutual Water Company to charge 25¢ per thousand gallons, with a minimum of \$1.30 per month. After the decision in said proceeding had been rendered, it appeared that the ordinance of the Board of Supervisors of the county of San Diego, adopted on September 12, 1911, was not to become effective until subsequent to October 10, 1911. As the Public Utilities Act provides that the utilities subject to the jurisdiction of this Commission shall file their rates not to exceed those in effect on October 10, 1911, and as the said ordinance would not become effective until after October 10, 1911, and as the rate charged to the Encanto Mutual Water Company by the Southern California Mountain Water Company prior to October 10, 1911, was only 10¢ per thousand gallons, it follows that the legal rate to be collected by Southern California Mountain Water Company and by its successor, the city of San Diego, from the Encanto Mutual Water Company until some change is made therein by this Commission, is the sum of 10¢ per thousand gallons. This matter was drawn to the attention of the Southern California Mountain Water Company and also of the city of San Diego by Mr. Atwood, with the result that the Southern California Mountain Water Company has refunded to him down to the basis of 10¢ per thousand gallons for all the water supplied by the Southern California Mountain Water Company to February 1, 1913, on which day the city of San Diego took possession of the system. Subsequent thereto, on May 2, 1913, the City of San Diego settled with Mr. Atwood on the basis of 10¢ per thousand gallons for all the water which had been supplied to him by the city of San Diego, except for the period between February 1st and February 15, 1913, for which period Atwood had paid at the rate of 20¢ per thousand gallons.

At the hearing on Application No. 461, at which time it was believed that the legal rate to be charged by the city of San Diego was 20¢ per thousand gallons, the consumers of the Atwood system were told that as soon as the Commission had established the rate to be charged by the city of San Diego to its customers outside of the limits of the city, the Commission would again investigate the Encanto situation and determine, after full investigation, a just and reasonable rate to be paid by the Encanto consumers. Although hearings have already been held in the matter of the rate to be charged by the city of San Diego, the final hearing has not as yet been held. In the meantime, the Commission, acting under its promise to the people of Encanto, has instituted this investigation on its own initiative, so as to reach as early a determination as possible on the questions at issue between Mr. Atwood and his customers. The order in this proceeding will be based on the rate of 10¢ per thousand gallons to be paid by Atwood to the city of San Diego, this being the rate at present in effect. If ^{as} the result of the hearing on the application of the city of San Diego to establish the rates to be charged by it for water supplied to its outside consumers, the rate of 10¢ per thousand gallons be altered, a corresponding change will be made in the rate to be paid by Mr. Atwood's customers. Before proceeding to a detailed investigation into the facts surrounding the Encanto situation, I desire to draw particular attention to the fact that the Commission in its decision on Application No. 461, did not find that 5¢ is a reasonable charge to be paid for the operating expenses on Atwood's system. Everyone having even a superficial knowledge of water conditions in San Diego county, knows that 5¢ per thousand gallons is not sufficient for this purpose on a system such as that operated by Mr. Atwood. The Commission tentatively adopted the sum of 5¢ per thousand gallons because that was all Mr. Atwood asked for and because the adoption of a higher rate would have resulted in a rate unreasonably high from the point of

view of the consumers. In the present proceeding a careful inquiry has been made into all the facts and it now becomes necessary to determine accurately what allowance shall be made for investment, operating expenses and depreciation, in addition to the 10¢ per thousand gallons paid by Atwood to the city of San Diego.

The hearing in this proceeding was held in the city of San Diego on March 4th and 5th, 1914, and an extensive investigation was made into all the facts which bear on the proper solution of the question now at issue.

The solution of the Encanto situation involves the establishment of principles applicable to many of the water utilities of this State. At the same time, this particular case has features of its own which makes it one of unusual interest to a rate fixing authority.

During or just prior to the year 1907, all or the major portion of the unsold property in the general territory known as Encanto was purchased by the Richland Realty Company, which proceeded to subdivide the land so purchased into smaller lots, and to place the same upon the market. At that time there was no water on these lands. In order to secure a water supply for the land, and in that way to dispose of it at more advantageous prices, the incorporators of the Richland Realty Company early in 1907 entered into a contract in the name of the Richland Realty Company with the Southern California Mountain Water Company, under which contract the Southern California Mountain Water Company agreed to supply water up to a maximum of one million gallons per month, at prices ranging from 10¢ to 8½¢ per thousand gallons, this water to be used by the Richland Realty Company in the development of its property. Thereafter, on January 27, 1908, the incorporators of the Richland Realty Company filed in the office of the County Clerk of San Diego county, articles of incorporation of the Encanto Heights Mutual Water Company, which company was formed for the purpose of taking care of the water business of the Richland Realty Company. The articles of incorpora-

tion provide that the corporation is to be a mutual corporation supplying water for domestic and irrigation purposes and for any and all beneficial uses "to its stockholders and to its stockholders only, at cost and not for profit." The articles provide that the expense of constructing pipe lines, conduits, flumes, ditches, canals, aqueducts and distributing systems, as well as the expense of ordinary repairs and of the operation and management of the system and of its running expenses shall be paid from charges collected from the actual users of water pro rata, according to the amount actually used "in accordance with the by-laws and rules and regulations." Apparently, no by-laws, rules or regulations were ever adopted. A few certificates of stock in this corporation were issued to purchasers of land from the Richland Realty Company, but the project was not successful, for the reason that the purchasers of land from the Richland Realty Company did not desire to have imposed upon them the burden of maintaining the water system. The corporation has failed to pay its taxes to the State of California and has now become defunct.

Thereafter, to induce intending customers to buy land at Encanto, the owners of the Richland Realty Company issued agreements in the following form:

"For a valuable consideration received from the Richland Realty Company, a corporation, receipt whereof is hereby acknowledged, the Encanto Heights Mutual Water Company, a corporation, hereby agrees to supply water for domestic purposes and irrigation to _____, or his assigns, for use upon (describing property) of Encanto Heights, county of San Diego, State of California, and will deliver a sufficient supply thereof so long as it can obtain such water from its present source of supply and supply pipes of the system of said corporation, in the street in front of said lot, at the usual rate fixed by said corporation for the delivery of water in said vicinity, which said rate shall in no event be in excess of the sum of ten cents per thousand gallons.

"In Witness Whereof, the Encanto Heights Mutual Water Company, a corporation, has caused these presents to be executed in its corporate name, under its corporate seal, and by its proper officer this _____ day of _____ 19_____.

ENCANTO HEIGHTS MUTUAL WATER COMPANY.

By _____

There is some dispute as to the number of these agreements which were issued. The agreement introduced in evidence bore the number "44." Mr. George J. Bach, the principal stockholder of the Richland Realty Company, testified that some 50 might have been issued but that some of them might have been turned back to the company. The evidence also shows that a number of customers bought land in Encanto Heights without a written agreement, but under the distinct representation that they were to secure water at 10¢ per thousand gallons.

In order to promote the sale of its lands, the Richland Realty Company supplied the funds with which the water system at Encanto was constructed. Mr. Bach testified that the relations between the Richland Realty Company and the Encanto Heights Mutual Water Company were so closely connected that it was impossible to say whether the water system was owned by the Richland Realty Company or by the Encanto Heights Mutual Water Company. For reasons which will hereinafter appear, it becomes unnecessary in this proceeding to determine this question. The evidence, however, shows clearly that the water system was constructed from funds furnished by the Richland Realty Company for the purpose of promoting the sale of its land and that the system was to be operated without profit to the owner thereof. The purchasers of property at Encanto Heights understood that the increased price which they were paying for the land was paying for the water system, and, in my opinion, this understanding is both legally and morally correct. The incorporators of the Richland Realty Company themselves expected to make no profit out of their water system, and the evidence shows clearly that they did not expect to receive water rates more than enough to pay them for the actual operating expenses of the system.

For a number of years the system was operated in the name of the Encanto ~~Mutual~~ Heights Mutual Water Company. Bills were sent out in the name of that company and payments for water were made to that company. George J. Bach and his associates tried in numerous

ways to dispose of the water system. The testimony shows that at the time hereinafter referred to, when Mr. Atwood took possession of the plant, he estimated that it was worth between \$25,000 and \$30,000. He testified further that Mr. Bach had told him that the system had cost \$50,000. Mr. F. M. Faude, one of this Commission's hydraulic engineers, testified that the cost of reproducing the system now was \$37,750.00, and that its present value is \$30,924.00. Nevertheless, the testimony shows that Mr. Bach and his associates made strenuous efforts to dispose of the system. They offered to turn it over to the people of Encanto without any payment whatever for the system, if the people would operate and maintain it, but this offer was not accepted. At other times, Mr. Bach offered to sell the system for \$1.00 to anyone who would take it. The reason for this attitude is entirely obvious. Water was being sold at the rate of 10¢ per thousand gallons, which was the sum which was being paid for the water to the Southern California Mountain Water Company. The local water system was standing all the loss from leakage and evaporation and the entire operating expenses in excess of the sum ~~of~~ of 10¢ per thousand gallons. The Richland Realty Company, realizing this situation, was apparently attempting to get rid of the system so as to escape the obligations which the company had incurred to the purchasers of its land. Mr. Bach testified that the object in selling and disposing of the plant was that there was nothing in it, that he was heavily engaged in other interests and that he could not give his time to it. These facts must all be carefully borne in mind in establishing the proper rate. The public authority charged with the duty of establishing a fair and reasonable rate should certainly not permit this system to pass from the hands of its owners free from the obligations which are clearly attached to the system. Whatever may have been done by land companies in this State prior to the effective date of the Public Utilities Act, this Commission should certainly see to it, in so far as lies in its power, that people who organize water companies for the purpose of selling land, and thereafter sell their land on the representations

of low water rates, should not be able, after they have sold their land and pocketed the proceeds, to get out from under the water system in such a way that the grantee of that system ~~xxxxx~~ is able to take the system discharged of its express and implied obligations, and thereafter collect from the people who have already virtually paid for the system, water rates increased by a return on the very capital which the purchasers of land have already paid. In my opinion, there are few situations in this State which more imperatively call for effective State supervision for the protection of the public than the practises which have been indulged in by land companies in the organization of water companies and the sale of their lands on conditions with reference to the sale of water which the land companies thereafter tried to repudiate.

I come now to Mr. Atwood's connection with the system.

It appears that after the owners of the Richland Realty Company had tried to dispose of the system as hereinbefore indicated, they finally offered it to H. R. Atwood. The transactions between these parties appear from a number of interesting documents which were introduced in evidence at the hearing.

On October 23, 1912, the Richland Realty Company and H. R. Atwood entered into an agreement by which the former agreed to sell to the latter the real property in Encanto Heights upon which the water reservoir and water tanks are located. The sum to be paid was \$600.00, of which \$17.00 was payable on April 23, 1913 and \$17.00 per month was payable during each month thereafter until the purchase price was paid in full. The buyer agreed to pay all taxes and assessments.

On October 31, 1912, a similar agreement was entered into between the same parties with reference to Lot No. 18 in Block 4, being the lot on which Atwood's office and shop are now located. The price to be paid for this lot was \$575.00, of which \$25.00 was to be paid down and the remaining price was to be paid in monthly installments of \$10.00 per month, with interest at the rate of 7% per annum, payable quarterly.

On October 25, 1912, a letter signed by Encanto Heights Mutual Water Company was addressed to Mr. Atwood, stating that in accordance with the arrangement entered into with him, the Water Company will

"for an indefinite period and until such time as the sale of the Water Company to you is completed, appoint you as general manager of the Encanto Heights Mutual Water Company, or if a sale is consummated to a company or corporation which you represent, this appointment is made until that sale is provided. In the meantime you have authority to collect all water accounts on and after November 25, 1912, and it will be part of this arrangement for you to take care of any accounts or bills that may occur under your management from October 25, 1912. This will especially have reference to the settlement with the Southern California Mountain Water Company for water purchased through their water system, and also all accounts for fuel for the pumping of water at Encanto."

A postscript to this letter reads as follows:

"Any profits that may occur in the conduct of this business belong to Harry R. Atwood, and any losses to be borne by Harry R. Atwood."

It appears further, that on November 21, 1912, the Richland Realty Company executed a document disclaiming any right or title to the pipes, pipe lines and water distributing system

"laid in the roads and streets of the tract of land known as Encanto, which said pipes, pipe lines and distributing system were put in and laid by the Encanto Heights Mutual Water Company, and the said Richland Realty Company, waives and abandons all its right, if it ever had any such right to the possession and use of said pipes, pipe lines and distributing system in favor of Harry R. Atwood."

These documents reveal a curious situation. It is evident that the owners of the Richland Realty Company were trying to get rid of the property, but that they were not sure whether the Richland Realty Company owned it or whether the Encanto Heights Mutual Water Company owned it. The Richland Realty Company accordingly agreed to sell the real estate and quit-claimed the pipe lines and water distributing system laid in the streets. In order, however, to meet the contingency that the title might be vested in the Encanto Heights Mutual Water Company, this company, assuming that it was still in existence, undertook to appoint Mr. Atwood as its general manager, so that in any event, he would be in a position to operate the system

and to relieve its owners of this obligation. No deed has ever been executed by the Richland Realty Company conveying the real estate to Atwood. Atwood has paid nothing on the first agreement for the sale of real estate hereinbefore referred to, and on the second he has paid only \$135.00. In addition to this sum, he paid \$150.00 for tools, so that his entire payment on the system as he found it when he took possession on October 25, 1912, was \$285.00. While Mr. Bach testified that, in his opinion, the title to the system is in Mr. Atwood, and while Mr. Atwood claimed title, it is clear that the title to no part of this system has passed to Mr. Atwood and that it still vests in its original owner., whether ~~it is~~ the Richland Realty Company or the Encanto Heights Mutual Water Company (or its trustees) or both. This conclusion results from the fact that under the provisions of Section 51 (a) of the Public Utilities Act, effective on March 23, 1912, no water utility may sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its system, necessary or useful in the performance of its duties to the public, without having first secured from this Commission an order authorizing it so to do. As no application has been made to this Commission for authority to transfer the title of the water system at Encanto, and as no order has been made authorizing such transfer, no title has passed. I shall accordingly proceed to an analysis of the elements entering into the rate, on the basis of the title to this property still vesting in the original owners thereof.

I shall now address myself directly to the question of the rate and of the service. In considering the rate, I shall consider the following matters:

1. Investment;
2. Depreciation;
3. Operating expense and maintenance;
4. The Rate.

I. INVESTMENT.

The owners of this water system, prior to October 25, 1912, cannot in good conscience or in law, claim any return on their investment. They distinctly undertook to supply water without profit, and the capital invested in the water system has been repaid by the purchasers of land in Encanto Heights. Atwood can claim no return on the same investment for the reason that he does not own the property and ~~that he~~ has paid nothing for it except \$285.00. In order to be fair to Mr. Atwood, he should be allowed a return on the money which he has actually invested since he undertook the operation of this system. This money is as follows:

Paid on contract for purchase of lot for office and shop.....	\$135.00
Tools.....	150.00
Erection of office and shop buildings.....	200.00
Construction and installation of 2 new pumps....	758.21
Construction of 6-inch main in connection with new pump.....	450.15
Total.....	\$1693.36

As some additional new construction will have to be performed, I recommend that a return be allowed on the sum of..... \$2000.00 and that a rate of return of 8% be established.

2. DEPRECIATION.

As depreciation follows capital account, and as the capital of this system is almost exclusively owned by people who have no right to claim a return on capital account, I shall recommend a return for depreciation only on the depreciable portion of the investment which has been made by Atwood himself. The sum of \$50.00 will be allowed for this purpose.

3. OPERATING EXPENSES AND MAINTENANCE.

The principal item of operating expense is the amount paid to the city of San Diego for water. During the year 1913, the meters on the city of San Diego's mains showed a delivery to Atwood of 27,369,341 gallons of water. During the same period, Atwood's

own meters showed the sale to his customers of only 21,388,422 gallons. The difference represents loss of water ~~franklin~~ by evaporation and leakage from the point at which it is received by Atwood to the point of delivery to his customers. The loss thus shown is far larger than can reasonably be expected and is to be accounted for in part by a large loss through leaky tanks into which the water was ^{last summer} ~~run~~ run for the purpose of causing the staves to swell and make the tanks water tight. While it is to be presumed that through proper operation of the plant, the amount of this loss can be diminished, I nevertheless recommend, in order to be entirely fair to Mr. Atwood, that he should be allowed as operating expenses under this head, the amount which he paid last year to the city of San Diego, amounting to \$2,736.94.

The principal dispute at the hearing under the head of operating expenses was in connection with Mr. Atwood's salary as manager, bookkeeper and meter reader. He has been charging a salary of \$150.00 per month. Mr. Faude testified that, in his opinion, \$75.00 per month would be reasonable, bearing in mind the ability of the consumers to pay for the services of a person performing Mr. Atwood's duties. Mr. Atwood testified that all his time had been devoted to the water business and that he had worked long hours over the usual hours of labor. While it is true that he has had to contend with serious difficulties during the last year, I believe that these difficulties are now largely a matter of the past and that during the ensuing year he will not have to devote, by any means, all of his time to the business of the water system. I recommend that an allowance of \$100.00 per month be made for his salary.

The sum of \$60.00 per month is paid as salary to an employee who operates the pumps, makes repairs and performs other manual labor on the system. This item should be allowed.

An allowance should also be made of \$480.00 for power, \$360.00 for materials for repairs to pumps, motors, pipes and meters, \$120.00 for office supplies, telephone, stamps, etc., and \$180.00 for horse hire. The evidence shows that legal expenses amounting

to \$550.00 have been incurred during the last year. These are extraordinary expenses which it is not expected will recur each year. I recommend that this expense be spread over a number of years and that the sum of \$150.00 be included at this time.

No insurance has been effected but an item of \$15.00 should be allowed for this purpose. Mr. Atwood has paid no taxes. If any taxes have been assessed they have been assessed to the Richland Realty Company, which company will continue to pay them if they are assessed. I recommend that \$20.00 be allowed to cover taxes on Atwood's own property.

Finally, I recommend that the sum of \$100.00 be allowed for miscellaneous items, such as extra help, loss from bad accounts and other matters which may not have been covered in the preceding items.

The following table shows the items which should be allowed in establishing the rate:

TABLE No. 1

Interest on investment.....	\$160.00
Depreciation.....	50.00
Water.....	2736.94
Salary of manager, bookkeeper and Meter reader..	1200.00
Wages for operating pumps and repairs.....	720.00
Power.....	480.00
Repairs to pumps, motors, pipes and meters.....	360.00
Office supplies, telephone, postage, etc.,.....	120.00
Horse hire.....	180.00
Legal expenses.....	150.00
Insurance.....	15.00
Taxes.....	20.00
Miscellaneous.....	100.00
	<u>\$6291.94</u>

4. THE RATE.

The water used, by months, in gallons from Atwood's water system for the year 1913, was as follows:

TABLE No. 2.

<u>MONTE</u>	<u>ENCANTO HEIGHTS</u>	<u>BEVERLY</u>	<u>ALL OTHER OUTSIDERS</u>	<u>TOTAL.</u>
Jan.	918,838	16,410	9,684	944,932
Feb.	875,130	9,290	8,020	892,440
March	972,421	11,220	5,046	988,687
April	2,406,168	33,390	22,819	2,462,377
May	2,675,382	41,720	24,500	2,741,602
June	2,275,445	33,990	21,303	2,330,738
July	2,415,275	36,450	16,112	2,467,837
August	2,390,524	54,510	18,011	2,463,045
Sept.	2,444,804	92,380	21,013	2,558,197
October	1,885,358	32,960	21,137	1,939,455
November	896,839	14,210	5,631	916,680
December	670,245	7,290	4,897	682,432
Total -	20,826,429	383,820	178,173	21,388,422

The revenue derived by Atwood from his customers from the above consumption at the rate of 25¢ per thousand gallons, with a minimum of \$1.30 per month, was the sum of..... \$6,313.00.

Before establishing the rate, it becomes necessary to consider the claims of Guy D. Loomis, whose mother owns the property at Beverly, located about one half mile ~~sixxxxx~~ west of the west line of Encanto Heights. Loomis asked and was granted the right to intervene and to present considerations which he claimed were peculiar to his case,, and demanded a different rate for the water supplied to Beverly. This water is supplied at a point within the limits of Encanto Heights, and is then conveyed to Beverly for distribution to some 17 families through a pipe line constructed, operated and maintained by the owners of the Beverly tract. This tract consists of about 560 acres, which were subdivided during the latter part of 1908 or in the early part of 1909. Water for the tract was first secured under an arrangement made on October 5, 1909, between Mr. F. S. Loomis and the San Diego Land Improvement Company, a subsidiary of the Richland Realty Company. Under this arrangement, the latter company agreed to sell to Loomis from its water system at Encanto, water to the amount of one million gallons in any month, to be consumed during the year beginning November 1, 1909, and ending August 5, 1910. The agreement also reads in part as follows:

"We will also agree to extend this arrangement as much farther beyond the above date as we are able to secure it from the Southern California Mountain Water Company, and upon such terms and conditions as we are able to secure from them, provided always that the arrangement now being entered into is satisfactory and agreeable to you and ourselves and also to the Southern California Mountain Water Company. The price of the water to be furnished to you is to be in accordance with what we pay the Southern California Mountain Water Company, as shown by our contract with them, which you are at liberty to inspect."

The San Diego Land Improvement Company agreed to extend the Encanto water system to the west line of Encanto Heights so that Loomis could make connections, and Loomis agreed to pay \$500 "for this agreement." In accordance with this agreement, Loomis constructed his pipe line and received water from the Encanto system. The arrangement thereafter became unsatisfactory to the Richland Realty Company, which thereupon ~~increased~~ increased the rate for water to 15¢, and thereafter to 25¢ per thousand gallons, which increase was paid, but unwillingly. I am inclined to the view that the contract entered into on October 5, 1909, became unsatisfactory to the San Diego Land Improvement Company and that this company had the right to alter its terms, and did so, and that Mr. Loomis has no right now to demand that he receive water at the price of 10¢ per thousand gallons, ~~and that the city of San Diego~~ ~~is not bound by the contract~~ ~~of the city of San Diego~~. Even if such contract were still existing, I find that it would be an unreasonable contract from the point of view of Atwood and all his other customers. The bargain which was entered into by Loomis was an advantageous one from his point of view, for the reason that it enabled him to sell his land. Instead of now complaining of the arrangement, he should consider himself fortunate in having a source of water supply to put on his lands, while ^{many} other people in this general vicinity have none for theirs. I find that there is no merit in the claim of Loomis that the sum of \$500 was an advance payment for water to be delivered under the arrangement hereinbefore referred to. The evidence shows that this amount in no sense constitutes an advance payment, but that it was paid because of the trouble and possibility of loss in connection with the transaction.

Mr. Loomis further asks that this Commission make an order compelling Atwood to receive his water distributing system as a gift, and thereafter to operate and maintain it. Mr. Atwood refuses to take the system for the reason that he does not desire to be under the obligation of maintaining it and of making the necessary extensions in Beverly. The system cost something over \$3,000. The system which is now operated by Atwood has never been held out as distributing water to customers in Beverly. The only obligation which the system has undertaken with reference to Beverly is to deliver water in Encanto Heights to Loomis, who thereupon assumed the full responsibility of conveying it to Beverly and of distributing it there, and of maintaining and operating the local distribution system. While it is true that Mr. Loomis testified that he does not desire to be a water utility and that he would like to escape the responsibility of such utility, this is not a sufficient reason for compelling someone else to take over his system and to perform the obligations which Mr. Loomis has undertaken toward those who have purchased land at Beverly. While Mr. Loomis has been selling water at Beverly at 10¢ per thousand gallons, he claims that he has never agreed to continue to deliver water at this rate and that he is under no obligation to do so. Under these circumstances, there would seem to be much reason in favor of permitting Mr. Loomis to increase his rate to such amount as may be fair and reasonable, in view of the amount which he must pay to Atwood and of his own services in connection with the distribution and delivery ~~of the water.~~ of the water. In my opinion, it would be very desirable to have Mr. Atwood take over this system and operate it as a part of the Encanto system. At the same time, I am of the opinion that this Commission has no power to compel Mr. Atwood to take over the system against his protest, and that it would not be reasonable, under the circumstances as they now appear, to compel him to do so.

The only contention of Mr. Loomis in which I find merit is that he should be given a lesser rate for water than the other consumers from the Encanto system, for the reason that his consumption is much greater than that of any other consumer and that the operating expenses of the system chargeable to him are considerably less per thousand gallons of water consumed. I find that any consumer under this system who consumes 15,000 gallons of water per month is entitled to a rate of 5¢ less per thousand gallons than other consumers. During the year 1913, Loomis would have come within this classification during 9 months of the year, and no other consumer during any month.

The following table shows the actual revenue received by Atwood during the year 1913; the revenue which he would have received at a rate of 25¢ per thousand gallons, with a monthly minimum of \$1.25; and the total revenue to which he is entitled:

TABLE No. 3.

Revenue received, 1913--25¢ per thousand gallons, with monthly minimum of \$1.30.....	\$6,313.00
Revenue which would have been received in 1913, at 25¢ per thousand gallons with a monthly minimum of \$1.25.....	6,150.00
Revenue to which Atwood is entitled.....	6,291.94

The testimony shows that during the year 1913, Atwood had 260 taps and 320 meters, and that during the preceding year he had 240 taps and 280 meters. Atwood testified that, in his opinion, there would be a continued healthy growth at Encanto. This growth, together with the probability of a material diminution in the amount of water lost between the point of receipt on the city of San Diego's mains and the point of delivery through Atwood's meters, should be taken into consideration in establishing the rate in this case.

After a careful consideration of all the facts in this case bearing on the question of the rate, I find that the present rate is unreasonable in so far as it differs from the rate hereinafter

established and that a just and reasonable rate to be charged for water by H. R. Atwood to his consumers is the sum of 25¢ per thousand gallons, with a monthly minimum of \$1.25, provided, that for a consumption through any one meter in excess of 15,000 gallons per month, the rate shall be 20¢ per thousand gallons for the ^{amount} entire.

With reference to the service, it appears that during the year 1913, many complaints were made to this Commission regarding inadequate water service furnished to Atwood's consumers. Acting under the orders of this Commission, Atwood in the fall of 1913 made extensive changes in the pumping arrangements, so that it is to be expected that no further trouble of this kind will be experienced. No complaint was made at the hearing in this proceeding that the service is not satisfactory. Considerable friction, however, has been occasioned between Atwood and his consumers due to the fact that no printed rules and regulations have been in force. Atwood complains of the fact that certain consumers do not pay their bills promptly, but has adopted no rule or regulation regarding advance payments for future delivery in case of customers who do not pay their bills. This Commission's hydraulic department has prepared a tentative set of rules and regulations, which will be sent to each party in this proceeding. Within 20 days, suggestions concerning these rules may be sent by letter to the Commission. The Commission will thereupon issue a supplemental order establishing such rules and regulations for this system as in its opinion will seem just and reasonable.

While the rate established in this proceeding differs but little from the rate now in effect, it is the result of a careful and thorough investigation into all the elements entering into the rate. The people of Encanto have now had the benefit of a painstaking investigation into their entire relations with the existing water system and it is to be hoped that both parties will now be satisfied and that there will be no further difficulties

arising in connection with this system. As hereinbefore stated, if a change is made in the rate charged by the city of San Diego to its consumers outside of the city limits, it will be necessary to make a corresponding change in the rate herein established.

I submit herewith the following form of order:

O R D E R.

The RAILROAD COMMISSION, having instituted on its own motion an investigation into the rates charged and service rendered by H. R. ATWOOD, also doing business under the name of ENCANTO MUTUAL WATER COMPANY, for water supplied to his consumers at Encanto, California, and a public hearing having been held on such investigation, and the matter having been submitted and being now ready for decision,

The Railroad Commission hereby finds as a fact that the existing rates for water are unreasonable, in so far as they differ from the rates hereinafter established, and that a just and reasonable rate for water to be charged by H. R. Atwood is the sum of twenty-five cents (25¢) per thousand gallons, with a monthly minimum of one dollar and twenty-five cents (\$1.25), provided, that if the consumption through any one meter for any one month is in excess of fifteen thousand (15,000) gallons, the rate for the entire amount of water delivered through said meter for said month shall be twenty cents (20¢) per thousand gallons.

Basing its order upon the foregoing finding and on the other findings of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that within twenty (20) days from the receipt of a copy of this opinion and order, H. R. Atwood, also doing business under the name of Encanto Mutual Water Company, shall file with this Commission a rate for water delivered by him to his consumers of twenty-five cents (25¢) per thousand gallons, with a

monthly minimum of one dollar and twenty-five cents (\$1.25), provided, that if any consumer consumes through any one meter during any one month an amount of water in excess of fifteen thousand(15,000) gallons, the rate in such event shall be for the entire amount of water going through said meter during said month the sum of twenty cents (20¢) per thousand gallons, said rates to become effective on and after May 1, 1914.

AND IT IS FURTHER ORDERED that the petition of Guy D.Loomis be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of March, 1914.

John M. Ackerman
H. J. Loveland

Max Thelen
Edwin O. Edgerton

Commissioners.