

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

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In the Matter of the Application of  
VENTURA COUNTY POWER COMPANY for an  
order authorizing increase in rates  
for water delivered through its  
Mound System in Ventura County.

} Application No. 635.

Hiatt & Selby for applicant.  
Merle J. Rogers for certain Mound System consumers.  
Orestes Orr for George Cook and J. H. Chaffee.  
W. H. Barnes for George E. Power.  
J. C. Daly for H. H. Neel and Joseph Daly.

ESHELEMAN, Commissioner.

O P I N I O N .

The Ventura County Power Company is a public service corporation which is delivering water and distributing power in the County of Ventura.

The Mound Water Company was organized in 1904, by certain land owners in the Mound District in Ventura County, with the general power to develop, distribute and sell water and to acquire such real estate as may be incident to the purpose of the corporation. It is urged by those representing the consumers in this case that this company is a purely mutual concern organized to deliver water to its stockholders only. At the first meeting of its stockholders held on November 22, 1904, by resolution the following by-law was adopted:

"The object of this corporation shall be for the development and distribution of waters to the stockholders pro rated to the number of shares held by each individual under such rules and regulations as shall be adopted by the board of directors and sanctioned by a two-thirds vote of all the subscribed capital stock of the corporation at the stockholders' meeting."

At this same meeting another by-law was adopted empowering the board of directors "to declare dividends out of the surplus profits when such profits shall, in the opinion of the directors, warrant the same."

In 1906, by-law No. 32 was adopted, which reads as follows:

"Without injury to any right of any stockholder to the use of his share of water, the company may sell or furnish water for irrigation, preference being given to the original shareholder in the allotment."

At the same meeting a minute to the following effect is found in the report of the proceedings in the minutes of the corporation:

"The discussion of water rates, etc., was entered into quite generally; as a result Judge Daly moved, seconded by A. Price, that the summer rates be 50 cents per miner's inch for stockholders and 80 cents for non-stockholders, the summer period being the months of June, July and August, and winter rates 30 cents for stockholders and 45 cents for non-stockholders; after a heated discussion and a second ballot the resolution was adopted by the unanimous vote of all the stock present represented."

The evidence shows that water was actually sold by the Mound Water Company prior to the time the applicant herein secured control of the system, and I believe, from the evidence, that this company conducted itself when in the control of this supply of water in a way that would make it a public utility even though it had not had dealings with the Ventura County Power Company, admittedly a public utility, which led to the conveyance of its system to said Ventura County Power Company.

On February 1, 1907, a contract was entered into between Mound Water Company and the Ventura County Power Company. Certain persons, designated as stockholders of Mound Water Company, are called third parties but none of them signed the instrument. This contract recites the ownership of certain described lands by these third parties; that negotiations have been pending among the parties and that at a meeting of the stockholders a resolution was adopted, which is set out in full, authorizing the transfer of the property of the Mound Water Company to the Ventura County Power Company, and a like resolution of the board of directors; and then the contract proceeds as follows:

"Now, therefore, said party of the first part (Mound Water Company) does by these presents grant, sell, assign and transfer unto said party of the second part (Ventura

County Power Company) its successors and assigns all and singular the following property and rights, to-wit:"

Then follows a particular description of the land, wells, pumping plant, rights of way and distributing systems formerly owned by Mound Water Company, including a recital of the agreement with the Southern Pacific Company and a copy of a lease to J. V. Alvord; then follows the conveyance by the Ventura County Power Company to the Mound Water Company of certain water or water rights in the following terms:

"Said party of the second part (Ventura County Power Company) does.....hereby grant, sell, assign and transfer unto said party of the first part (Mound Water Company) for the use of said parties of the third part (stockholders of Mound Water Company).....150 miner's inches of water to be delivered by said party of the second part, its successors and assigns, and measured on said lands of said parties of the third part at and for the rate and price of twenty-five (25¢) cents per miner's inch."

In the next paragraph it is agreed that said 150 inches of water:

"herein granted to said party of the first part....is and shall be an absolute right in said party of the first part and its said stockholders to have said 150 inches of water so delivered by said party of the second part on the said lands of said parties of the third part either from the present system and source of supply of said party of the first part, or from any other water, system, or source of supply now owned or controlled or which may hereafter be owned or controlled by said party of the second part, its successors or assigns."

And in the next paragraph the penalty for the failure, refusal or neglect of the Ventura County Power Company to deliver the water to the stockholders of the Mound Water Company is provided as follows:

"Then in that event said party of the first part and said parties of the third part shall have the right and privilege to take said water from any source of supply of water owned or controlled by said party of the second part, its successors and assigns, and to convey and conduct the same to said lands of said parties of the third part by and through the conduits and system of said party of the second part at the cost and expense of said party of the second part."

Further on in the instrument the parties of the third part, the stockholders of the Mound Water Company, are given:

"The first or preferred right to purchase any additional water which the second party shall have for sale from any source whatever, and it is agreed that the price to them shall be no higher than the minimum price to others."

Whatever may have been the position of the Mound Water Company before the execution of this instrument with respect to its relation to its stockholders, still by the conveyance here discussed, by resolution of both the stockholders and the board of directors of said Mound Water Company, relationships were assumed with a public service water company, which relationships must be substituted for the relationship existing theretofore between the Mound Water Company and its stockholders; and the net result of the transfer is to place the stockholders of the Mound Water Company, as stockholders and individuals, in a position where if they did have private water rights as stockholders of a mutual water company yet they have been divested of the title to these water rights by reason of this conveyance. For the legal title to all of the property here involved was, of course, in the Mound Water Company, and it is only by reason of being stockholders in the Mound Water Company that the consumers of water have any rights in such water. It has been uniformly held that a mutual water company is the agent of its stockholders, and where, as here, with the consent of its stockholders such agent conveys all of the property of the corporation to another corporation the relationship that theretofore existed between the stockholders of the mutual company and the mutual company does not continue to exist between the stockholders of the mutual company and the purchasing company. The Ventura County Power Company, as a public utility, purchased all of this property from those legally empowered to sell, and takes such property only subject to the terms and conditions in the conveyance and not subject to the terms of any arrangement between the stockholders of the company from whom the purchase is made and such selling corporation.

Therefore, I am of the opinion that the users of water under the Mound System now occupy the relationship of consumers to the public service water company, the Ventura County Power Company, having, however, a contract for which a valid consideration was given obligating the Ventura County Power Company to act in a certain

way toward such consumers. The effect of such contracts has been discussed several times by this Commission, and we have taken the position that such contracts do not prevent this Commission from exerting the inherent power of the State to fix rates and we have proceeded to do so in the face of such contracts when the public necessity seemed to require.

In the present case, however, the evidence shows that the Ventura County Power Company purchased this property for a sum considerably less than its cost and obligated itself to continue the delivery of water to these consumers at a certain rate. No other consumers are affected by this obligation, and it is my opinion that the contract is one such as this Commission should not feel called upon to disturb. The evidence shows that approximately \$70,000.00 was expended in the construction of this system, and that the Ventura County Power Company paid \$34,066.53 for it, and no one but the contracting parties are affected. Even though the rate imposed in this contract is less than could be legally exacted if the contract did not exist, still I do not believe under all the facts of the case the Ventura County Power Company is in a position to urge its repudiation. Neither the consumers of water from this system nor any one else being adversely affected by the maintenance of the present conditions, I recommend that until such a change occurs in the conditions which now exist as will warrant a change in the rates here involved, the present rates be maintained in effect.

I submit the following order:

O R D E R .

VENTURA COUNTY POWER COMPANY having applied to this Commission for an order authorizing increase in rates for water delivered through its Mound System in Ventura County; and a hearing having been held, and being fully apprised in the premises,

THE COMMISSION HEREBY FINDS AS A FACT that said Ventura County Power Company has not justified its right to increase the rates aforesaid.

And basing this order on the foregoing finding of fact,

IT IS HEREBY ORDERED that the application herein be and same is hereby denied.

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 6th day of April, 1914.

John M. Eschleman

H. J. Lovelaid

Edwin A. Edgerton

Commissioners.