Decision No. 2112

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

In the matter of the application of)
NORTH MONETA GARDEN LANDS WATER COMPANY) Application
for an order authorizing an increase) No. 1283
in rates for sales of water.)

Ingell W. Bull for applicant.
Charles M. Ackerman for consumers.

THELEN, Commissioner.

O P I N I O N

This is an application for an order authorizing an increase in the rates for water delivered for both domestic and irrigation uses.

The petition alleges in effect that North Moneta Garden Lands Water Company, hereinafter referred to as the Water Company, is a corporation engaged in supplying water for domestic and irrigation purposes to persons residing in Section 15, Township 6 South, Range 14 West, S.B.B. and M.; that about 50 homes are located on the property served by petitioner; that the present rate for domestic water is a flat rate of $1.00 per month; that the present rate for water for irrigation purposes is 20 cents per hour through a two-inch stand pipe attached to a four-inch lateral; that said rates are not sufficient to pay the expenses of maintenance and operation, interest on the investment and depreciation; that in order to meet these expenses it will be necessary to increase the rate for domestic water from $1.00 to

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$2.50 per month, flat rate, and the rate for irrigation purposes from 20 cents to 50 cents per hour through a two-inch stand pipe attached to a four-inch lateral; that in addition to these rates petitioner desires to collect $1.00 per month from each acre lot to which petitioner's mains are connected and on which water is not actually being used; that a mortgage on petitioner's entire property was foreclosed on or about January 1, 1914, and that unless relief is granted, petitioner can no longer operate its water system; and that petitioner wishes to install meters when desired by petitioner or its patrons, and to charge a rate of 10 cents per 100 cubic feet of water supplied through the meters so installed. Petitioner asks that this Commission make its order authorizing petitioner to increase its rates for water to $2.50 per month, flat rate, for domestic water through a 3/4 inch pipe attached by a reducer to a four-inch main, 50 cents per hour for water supplied for irrigation purposes through a two-inch stand pipe connected with a four-inch lateral and 10 cents per 100 cubic feet for water sold for irrigation purposes through a meter. Petitioner also asks that it be authorized to charge a flat rate of $1.00 per month for each acre lot to which its mains are connected, on which lots no water is actually being used.

A public hearing on this application was held in Los Angeles on January 19, 1915.

The evidence shows that petitioner is the owner of a water system consisting of one well, one 75 horsepower motor, one centrifugal turbine pump, one-half mile fourteen-inch mains, one mile twelve-inch mains, six miles four-inch laterals, one 50,000 gallon tank, one 40,000 gallon tank, one 10,000 gallon tank and some five acres of land on which the well is located, all situated in Section 15, Township 3 South, Range 14 West, S.B.B.

and M., in Los Angeles County, near Inglewood, adjoining Hawthorne on the south. The water system was installed primarily for the purpose of aiding in the sale of lands owned by its incorporators in said Section 15. These lands were subdivided into lots containing about one acre each and petitioner's mains were laid to each lot. A two-inch standpipe was attached to the lateral in the rear of each lot, for irrigation purposes, but the 3/4 inch standpipes for domestic service are installed only as needed. The evidence shows that out of some 480 lots only 50 have been built upon and use water for either domestic or irrigation purposes.

A number of consumers from this water system appeared at the hearing and protested against any action by this Commission, on the ground that petitioner is strictly a mutual water company and that this Commission has no jurisdiction over it. Attention must first be directed to this point.

Petitioner was incorporated under the laws of this state on February 11, 1904. The articles give the corporation power, among others, "to carry on the business of a water company, in all its branches, for the supplying of any lands in said section fifteen (Section 15, Township 3 South, Range 14 West, S.B.B. and M.), and the occupants thereof, with water for irrigation or domestic uses, or both." The articles do not state that the company is to be a mutual water company or that water is to be delivered only to stockholders. The company is authorized to issue 1400 shares of capital stock of the par value of $25.00 each.

The company's by-laws provide that if stock is issued appurtenant to land, one share of stock shall be issued for each acre and that the certificate of stock shall on its face show the lot or lots to which the water is made appurtenant. There is no

provision, however, that all stock issued must be made appurtenant to land. Even if one share of stock should eventually be issued for each acre of land in this section, the total shares so issued would not exceed 640, whereas the company was incorporated for 1400 shares, and has issued its entire authorized stock. Thus the control of the company may at all times be vested in outside parties, as has actually been the case continuously since its incorporation. Petitioner's records show that not to exceed 266⅔ shares have been issued to landowners in this section and that the remaining 1133⅓ shares have been issued to Berlin Realty Company, the Land Company, and are now held by the Los Angeles Trust and Savings Bank as collateral security. These conditions are inconsistent with the existence of a mutual water company.

The question whether petitioner is a public utility or a mutual water company is of importance in several aspects. In January, 1913, the Water Company purported to mortgage all its property to the Berlin Realty Company, the owner of a majority of its capital stock, as security for the payment of a promissory note for moneys advanced. The note was not paid and the Berlin Realty Company thereafter secured a foreclosure of this purported mortgage.

If petitioner is a mutual water company, all its consumers may now find themselves in the position of having been sold out by the majority stockholder. On the other hand, if petitioner is a public utility, the mortgage and all proceedings thereunder are absolutely void, for the reason that petitioner did not secure this Commission's authority to mortgage its property as provided in Section 51 of the Public Utilities Act.

Again, if petitioner is a mutual water company, the Land Company, owning the major portion of the capital stock, can levy assessments ad libitum, and the minority stockholders can

secure no help from this Commission. Nor can the Commission assist them if petitioner fails to render good service.

Section 2 of Chapter 80 of the Laws of 1913 contains the most recent definition by the Legislature of California of a mutual water company. The section reads as follows:

> "Whenever any private corporation or association is organized for the purpose solely of delivering water to its stockholders or members, at cost, and delivers water to no one except its stockholders or members at cost, such private corporation or association is not a public utility, and is not subject to the jurisdiction, control or regulation of the railroad commission of the State of California."

Petitioner does not come within this definition. On the evidence as introduced in this proceeding, I find that petitioner is a public utility subject to the jurisdiction of the Railroad Commission.

While compelled to make this finding, I am convinced that the most satisfactory method of handling the water problem of this section would be the ownership and operation of the system by the landowners themselves. In my opinion, the Land Company should turn over the system to the people for a small consideration, and the system should thereafter be owned and operated by those who are directly interested therein, either as a mutual company or an irrigation district.

I shall now address myself to the request for an increase in rates.

Petitioner gives its revenue for 1914 as follows:

TABLE I

Revenue for 1914.

Domestic	$1011.11
Irrigation	236.20
Connections	4.50
Total	$1251.81

Of this revenue, $204.25 was paid by the owners of a tract of land known as Central Acres. The use of water by this tract will soon be discontinued. The revenue for the year 1914, after subtracting the sums paid by the owners of the Central Acres tract, amounted to $1047.56.

Petitioner waives all interest on its investment and asks only rates sufficient to pay operating and maintenance expenses and depreciation. The operating and maintenance expenses for 1914, as claimed by petitioner, are as follows:

TABLE II.

Operating and Maintenance Expenses for 1914.

(As claimed by petitioner)

Materials and supplies	$160.93
General repairs	22.40
General expenses	40.51
Telephone	28.00
Taxes	60.18
Power and Salaries	1313.65
Bad debts	12.04
Total	1637.71

An analysis of these costs shows that the item "materials and supplies" and $5.50 of the item "general expenses" are properly chargeable to capital account and not to operating expenses. The item "power" and

salaries," consists of the salary of the engineer who operates the plant and the cost of electric energy used by the pump. In 1914, petitioner paid its engineer $70.00 per month during the first seven months and $40.00 per month during the last five months. The present engineer receives rent free and has certain perquisites such as the right to cut hay. I consider $50.00 per month a reasonable allowance to be made for the engineer's salary.

Petitioner's statement, as corrected, shows a total of $1398.09 properly chargeable for operation and maintenance. It thus appears that the revenue secured in 1914, barring the revenue from the Central Acres, fell $350.43 short of paying even operating and maintenance expenses, with no allowance for interest on the investment or depreciation.

Petitioner also claims an allowance for depreciation. Mr. H. F. Clark, one of this Commission's assistant hydraulic engineers, estimated that it would cost $23,000.00 to reproduce new this system, except the real estate, and that the depreciation would amount to about 5 per cent per annum on the sinking fund basis on the items which depreciate. As already pointed out, only fifty lots out of a total of at least 480 lots for which this system was constructed have as yet been built upon. It is elemental that in the beginning of a water utility's operations the rates frequently cannot be made high enough to pay the normal allowance for depreciation. If an attempt were made to charge the first few consumers rates high enough to cover this charge, they could not afford to take water or to settle on the land. Of course, in the long run, the utility must receive an adequate allowance for depreciation, if fair judgment was used in the construction of the system. The present consumers of applicant's system cannot reasonably be called upon to pay the amount for depreciation which will be paid by the consumers when the system is more fully utilized.

I find on the evidence in this proceeding that the rate for domestic water should be increased from $1.00 to $1.50 per month, flat rate, but that it would be unjust to the present consumers to make any further increase in this rate.

No order will be made at the present time with reference to the rate for irrigation or the rate for metered water for the reason that the evidence is insufficient to justify an order. If petitioner will present additional data showing how much water flows per hour through the two inch irrigation stand pipes and full data with reference to the water intended to be metered, the Commission will make such supplemental order as may seem proper in the premises.

The Commission has no jurisdiction to compel the owners of lots in this section to pay for water which they do not use. Petitioner's counsel frankly concedes this point, but asks authority for his company to receive payment from owners of unimproved lots, if the latter desire voluntarily to make such payments to add to petitioner's revenues. This Commission's order, however, is not necessary to enable kindly disposed individuals to make gifts to public utilities and no order under this head need issue in this proceeding.

I submit the following form of order:

O R D E R.

North Moneta Garden Lands Water Company having applied for an order of the Railroad Commission authorizing the company to increase its rates for water supplied for irrigation and domestic purposes, as set forth in the petition herein, and a public hearing having been held upon said application and the Railroad Commission finding that petitioner is a public utility and that the rates herein established are just and reasonable rates,

IT IS HEREBY ORDERED that North Moneta Garden Lands Water Company be and the same is hereby authorized, effective March 1, 1915, to charge for domestic water through a 3/4 inch pipe attached by a reducer to a four inch main, the flat rate of $1.50 per month.

IT IS FURTHER ORDERED that North Moneta Garden Lands Water Company may present further evidence to the Railroad Commission in the matter of the rate for irrigation and for metered service, as indicated in the opinion herein.

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 29th day of January, 1915.

Max Thelen

H. D. Loveland

Frank R. Devlin

Commissioners.

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