

Decision No. _____

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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Decision No. 2528

FAIRMOUNT WATER COMPANY,
Complainant,

vs.

CUYAMACA WATER COMPANY, JAMES A.
MURRAY and ED FLETCHER,
Defendants.

ORIGINAL

Case No. 716.

Haines & Haines for complainant.
Sweet, Stearns and Forward, by F. W. Stearns,
S. B. Robinson and A. E. Chandler, for
defendants.

THELEN, Commissioner.

O P I N I O N .

The amended complaint herein alleges in part that complainant is engaged in the business of purchasing water as a public utility at wholesale from the defendants and of distributing the same through complainant's distributing system to consumers in the City of East San Diego; that James A. Murray and Ed Fletcher, as co-partners, own and operate the public utility water system known as the Cuyamaca system; that the rates at which complainant is supplying water to its consumers are, for domestic use 25 cents per thousand gallons, with a minimum charge of \$1.25 per month, the complainant to furnish meters and cost of installation of all facilities and consumer to furnish pipes upon his own premises; that in Decision No. 764 rendered by the Railroad Commission on July 1, 1913, the rate to be paid by Pacific Building Company, complainant's predecessor, for water supplied by the Cuyamaca Water Company, hereinafter referred to as the Cuyamaca Company,

was established as 18 cents per thousand gallons up to a total consumption of 9.875 miner's inches per annum; that on August 18, 1914, the Railroad Commission rendered its Decision No. 1738 in Case No. 631, in which decision it was ordered that Cuyamaca Company establish as rates to be charged to domestic water consumers in every instance where water is not delivered at the expense of the Company to the property line of the individual consumer, to-wit, minimum monthly payment during use, 75 cents, with a charge of 15 cents per thousand gallons when meters are installed; that said rates were made applicable, among other wholesale purchasers, to an associated group of consumers on the tract known as the Granada Park in the immediate vicinity of the tract served by complainant under substantially identical conditions under which complainant serves its water from the Cuyamaca Company; that no reason exists why complainant should pay 18 cents per thousand gallons while the Granada tract pays only 15 cents per thousand gallons; that complainant claims that the terms of said Decision No. 1738 apply to it and that under said decision the legal rate applicable to complainant since the effective date of said decision has been 15 cents and not 18 cents per thousand gallons; that complainant operating under said rate has incurred substantial losses in the year from July 1, 1913 to June 30, 1914; and that said rate of 18 cents per thousand gallons heretofore established by the Railroad Commission is excessive and confiscatory. The complainant asks that the Railroad Commission reduce the rate to be paid by it for water to the Cuyamaca Company from 18 cents to 9.92 cents per thousand gallons and that it be determined that the complainant became entitled to the benefit of the rate of 15 cents per thousand gallons from and after August 27, 1913.

Defendants deny that the rate of 18 cents per thousand gallons charged by them to complainant is an excessive or unreasonable rate.

This case was consolidated for hearing with the other so-called Cuyamaca proceedings, being Application No. 1231, Application No. 1432, Application No. 1482, Supplemental Petition in Application No. 118 and Case No. 724, in all of which proceedings decisions are this day being rendered.

This case presents three issues as follows:

1. The reasonableness of the rate.
2. The proper interpretation of this Commission's Decision No. 1738, rendered on August 18, 1914, in Case No. 631.
3. Discrimination in charges.

In order to determine the issue as to the reasonableness of the rate per se it will be necessary to consider the entire operations of the Cuyamaca Company. In the decision this day being rendered in Application No. 1231, being the application of the Cuyamaca Company for authority to increase its rates, the Commission points out why it is inadvisable at the present time to pass upon the request for an increase in rates. Attention is drawn in said decision to the fact that the property is about to be acquired by a public authority and also that the Cuyamaca Company has not as yet shown by practical demonstration that it is now able to meet fully the requirements of its consumers. It is provided in said decision that the question of the reasonableness of the rates shall be left in abeyance until at least November 15, 1915. The Commission could not decide the issue of the reasonableness of the rate charged to the complainant herein unless it went into the entire matter which is to be held in abeyance.

With reference to the issue as to the proper interpretation of the Commission's Decision No. 1738 in Case No. 631, rendered on August 18, 1914, I find that the complainant's contention is correct. While it is true that the order recites that the rates to be charged

by the Cuyamaca Company to the Fairmount Water Company had theretofore been established by the Commission, the Cuyamaca Company is directed to establish the following rates for domestic water consumers as defined by Rule 8:

"In every instance where water is not delivered at the expense of the company to the property line of the individual consumer, to-wit, minimum monthly payment during use, 75 cents."

"When meters are installed, per one thousand gallons, 15 cents."

The opinion in that proceeding shows that the higher rates theretofore established for the Cuyamaca Company for domestic consumers were to be charged only where the Cuyamaca Company delivered water to the consumers through its own distribution system. In the present case the Fairmount Water Company is under the necessity of using its own distribution system for the purpose of delivering to its consumers the water purchased from the Cuyamaca Company. The Cuyamaca Company does not deliver water to the property line of the individual consumers under the system of Fairmount Water Company but delivers the water from its mains directly to Fairmount Water Company without the intervention of any distributing system.

The decision in said Case No. 631 provides that the rates therein established should be considered to apply upon and after July 1, 1914, and that all payments made or to be made for the use of water during the intervening period should be adjusted accordingly. This date was later changed to August 27, 1913. I find that the rate of 15 cents per thousand gallons, when meters are installed, to be charged for domestic water applies to Fairmount Water Company, and that the Company is entitled to recover from the Cuyamaca Company all excess amounts paid for water sold subsequent to August^{27,} 1913.

Entirely apart from the question of the proper interpretation of this Commission's decision in Case No. 631, the Fairmount Water Company would be entitled to a recovery on the issue of discrimination. The evidence shows that water is being sold by the Cuyamaca Company for domestic use to the Granada tract at 15 cents per one thousand

gallons; that the Granada tract is situated in the immediate vicinity of the meter through which the Fairmount Water Company receives its water from the Cuyamaca Company; and that the Granada tract is substantially in the same condition as the tract supplied with water by Fairmount Water Company, in so far as affects service from the Cuyamaca Company. The Fairmount Water Company has established a clear case of discrimination. The delivery of water by the Cuyamaca Company to the City of San Diego, at 10 cents per thousand gallons, further relied upon by Fairmount Water Company in proof of its claim of discrimination is not comparable with the delivery of water to Fairmount Water Company for the reason that the City of San Diego is receiving only surplus flood waters, while the Cuyamaca Company is under obligation of supplying water to Fairmount Water Company throughout the entire year entirely irrespective of surplus flood waters.

I find that Cuyamaca Water Company should be directed to re-imburse Fairmount Water Company for all moneys paid for water delivered subsequent to August²⁷, 1913, in excess of 15 cents per thousand gallons, and also that the legal rate to be henceforth charged by the Cuyamaca Company for water sold to Fairmount Water Company is 15 cents per thousand gallons.

I submit herewith the following form of order:

O R D E R .

A public hearing having been held in the above entitled matter, and the Railroad Commission being fully advised in the premises,

IT IS HEREBY ORDERED that Cuyamaca Water Company repay to Fairmount Water Company all moneys collected for the sale of

water delivered subsequent to August²⁷, 1913, at a rate in excess of 15 cents per thousand gallons, and that the rate to be henceforth charged by Cuyamaca Company for water sold to Fairmount Water Company shall be 15 cents per thousand gallons.

In all other respects the above entitled complaint is hereby dismissed without prejudice.

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 26th day of June, 1915.

Max Thelen
Alfred A. Stovall
Alex. Gordon
Edwin O. Edgerton
Frank R. Kirby

Commissioners.