

Decision No.

ORIGINAL

Decision No. 3339-

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of the)
EAST SIDE CANAL AND IRRIGATION COMPANY)
for permission to restore to a consumer)
the right to demand water upon the pay-)
ment by said consumer to said Company of)
an additional penalty of 25 cents per)
acre, where said consumer has forfeited)
his right to demand water from the East)
Side Canal and Irrigation Company through)
failure to pay his water bill and penalty)
on or before April 14 of any year.)

Application
No. 2233.

BY THE COMMISSION:

OPINION.

On March 31, 1914, the Commission rendered its opinion and order in Case No. 298,- W. D. Adams vs. Eastside Canal and Irrigation Company, and Case No. 309,- In the matter of the investigation on the Commission's own initiative of the rates and practices of the Eastside Canal and Irrigation Company, reported in Volume 4, Opinions and Orders of the Railroad Commission of California, 597, in which opinion and order the Commission prescribes the rates, rules and regulations governing the service of water by Eastside Canal and Irrigation Company, Rule 16 providing:

"The failure of any consumer to pay the water rate in advance as herein provided shall exonerate the Company from any delivery of water to him during the year of the failure to so pay the rate."

On August 27, 1914, the Commission made its order denying the application for rehearing in the above mentioned proceedings (Vol. 5 Opinions and Orders of the Railroad Commission of California, 289).

Thereafter, Eastside Canal and Irrigation Company asked that Rule 16 above mentioned be amended so as to provide for a definite date for the advance payment of the rate fixed by the Commission and that failure to pay the rate at such time should forfeit the right of the consumer to receive water. The Commission believed that there was merit in the Company's suggestion and that such a regulation would insure prompt payment of the rate prescribed by the Commission and the distribution of water to the full extent of the Company's supply to the land most desiring it. A supplemental order was accordingly made on September 10, 1914, (Vol. 5, Opinions and Orders of the Railroad Commission of California, 387) amending Rule 16 above mentioned, to read in part as follows:

"The rates established in these proceedings shall be payable on or before February 1st, for use during the ensuing season, and in every case in which payment is not made on or before February 14th a penalty of 25 cents per acre shall be added to said rates, and the failure of any consumer to pay the delinquent rate plus the penalty herein prescribed on or before April 14th of the same year shall forfeit the right of such consumer to demand water from said company..."

Eastside Canal and Irrigation Company has now filed the present application referring to the rule above mentioned and asking for an order of this Commission authorizing applicant "to restore to said consumer the right to demand water upon the payment by said consumer to said company of an additional penalty of 25 cents per acre."

It is very evident that the Canal Company is now misconstruing the provision of the order referred to. There is, of course, no intention in that provision permanently to deprive any consumer of the right to receive service from the Canal Company. We are satisfied that no such intention existed when the Company asked for that provision the better to insure the receipt of revenues to which the Company was entitled, and that certainly was never the purpose or intention of the Commission in inserting that provision in the order.

The purpose of that provision was simply this: It is well known that in California there is much more land eager for water than can be supplied with water. This is true in the territory served by the Eastside Canal and Irrigation Company. It is highly desirable, therefore, that all of the water be put to use. The rates fixed for the Eastside Canal and Irrigation Company were fixed upon an annual basis payable in advance. If an existing consumer wants water for the ensuing season he must pay the rate by February 14th, or the rate plus a penalty by April 14th. The failure to pay up in accordance with the Commission's order ~~xxx~~ loses to the consumer the right and assurance of receiving water which he would otherwise have had. Having failed to make his payment, the Company properly may supply to an entirely new consumer the water to which this old consumer would otherwise have been entitled. In other words, the old consumer goes to the foot of the list of those waiting for water.

If the water which would have been supplied to the old consumer had he made his payments in advance as provided in the order, is sold to a new consumer the old consumer must wait until water is available for him in his turn, and he is then admitted to service as an entirely new consumer.

If, on the other hand, there is no new consumer demanding the water which would otherwise have been sold to the old consumer,--which case we believe will be very rare--the old consumer is still entitled to receive this water,--not as a new consumer, but as an old consumer by paying the rate plus the 25 cents penalty.

This was the original purpose in inserting in the order the provision above quoted, and is the only reasonable construction to give to that provision. In order that there can be no misunderstanding, however, we will provide a supplemental order setting forth more clearly the purpose of this provision.

SUPPLEMENTAL ORDER.

IT IS HEREBY ORDERED that Rule 16 of the Rules and Regulations of the Eastside Canal and Irrigation Company, which rule is prescribed in the supplemental order made in Case No. 289 and Case No. 309 on September 10, 1914, be, and the same is hereby, amended to include the following:

In providing that a consumer who fails to pay the rate and the penalty by April 14th of any year forfeits his right to demand water from the Company,

it must be understood that the right to receive water from the Company is not permanently lost to such consumer, but that he goes to the bottom of the list of those demanding service from the utility.

If the water which would have been supplied to the old consumer had he paid the rate by February 14th, or the rate and penalty by April 14th, is disposed of to some other party, the old consumer stands in exactly the same position as an entirely new consumer and must await his turn, and if supplied with available water shall pay the rate of a new consumer.

If, on the other hand, there is no other party demanding the water which would have been delivered to the old consumer had he made his payments in accordance with this rule, he may still demand water and the Company must deliver it to him,--not as a new consumer, however, but as an old consumer who must pay for the water, not only at the regular rate, but also the 25 cents per acre penalty which became due on account of his failure to pay the regular rate by the 14th of February.

In all other respects the application herein is denied.

Dated at San Francisco, California, this 13th

day of May, 1916.

Max Thelen
H. D. Loveland
W. G. ...

Commissioners.