

Decision No. _____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the collection)
by Spring Valley Water Company)
of meter charges for water)
supplied in the City and County)
of San Francisco.)

Case No. 1027.

Decision No. 3980

Warren Olney, Jr., and A. Crawford Greene, for
Spring Valley Water Company.
Robert M. Searls, Assistant City Attorney, for
City and County of San Francisco.
C. D. Saffield, for Haight and Ashbury Improvement
Association, North of Panhandle Improvement
Club, Water Bill Payers Protective Association.
John J. Dailey, for Water Committee of Civic League
of Improvement Clubs.
Louis A. Colton, Ben Schloss and S. W. Molkenbuhr,
for Park and Presidio Improvement Association.
J. W. Pembroke, for Apartment House Owners Association.
Mattie Lois Fest, for West of Fillmore Street
Improvement Club.
E. P. E. Troy, for Public Ownership Association.
Daniel O'Connell, for Richmond Heights Improvement
Association.
Mrs. Louise Sorbier, for Arguello Boulevard Improve-
ment Club.
R. H. Norton, for Fillmore Street Improvement
Association.
Josephine Brown, for Jordan Park Improvement Club.
J. E. White, Henry B. Lister, Patrick A. Dolan,
Dr. C. F. Buckley, E. P. Arbaugh, Henry
Warfield, W. A. Sutherland, John T. Quigley,
in propria persona.

BY THE COMMISSION.

O P I N I O N.

This is a proceeding brought on the Railroad Commission's
own initiative for the purpose of considering and passing upon a
request of Spring Valley Water Company for a modification of the
directions contained in letter of November 2, 1916, from the Rail-
road Commission to Spring Valley Water Company.

Public hearings herein were held in San Francisco on
December 27 and 28, 1916, before the Railroad Commission en banc.

The proceeding was submitted for decision on December 28, 1916.

Spring Valley Water Company is engaged in the sale of water, as a public utility, to the City and County of San Francisco and the inhabitants thereof and to other customers.

The rates of Spring Valley Water Company now in effect were established by the Board of Supervisors of the City and County of San Francisco by Ordinance No. 3346 (New Series), passed on June 29, 1915, and effective July 1, 1915. As provided by law, these rates were filed by Spring Valley Water Company with the Railroad Commission on or about August 8, 1915, when the revised Public Utilities Act became effective. Ever since July 1, 1915, these rates have been and they are now the legal and effective rates to be charged by Spring Valley Water Company for water sold to the City and County of San Francisco and to the inhabitants thereof.

None of these rates were established by the Railroad Commission and the Commission has not had any opportunity to pass on any of them, nor has the Commission approved any of said rates.

Ordinance No. 3346 (New Series) of the Board of Supervisors established rates for both flat (i.e. unmetered) and metered service of water. The rates established for metered service were limited to specified classes of service, as will appear hereinafter in greater detail. Prior to the middle of 1916, Spring Valley Water Company had metered a large number of its business customers, and some 800^{to}/900 residence customers whose services were metered under special provisions of said Ordinance No. 3346 (New Series) and similar earlier ordinances.

Beginning with July 31, 1916, however, Spring Valley Water Company ~~was~~ metered a large number of its residence customers until on December 15, 1916, 14,836 additional meters had been installed on residence services. Spring Valley Water Company is still

engaged in installing additional meters on its residence services. The Company contemplates the installation of approximately 25,000 meters on residence services subsequent to July 31, 1916.

The record herein shows agreement by practically all interests that, with certain possible exceptions, Spring Valley Water Company's water system should be metered in its entirety. The principal water companies in the United States, whether owned by private individuals or by municipalities or other public authorities, have, with few exceptions, metered all or the major portion of their systems. Metering conserves water and hence is in the public interest, particularly when the supply is not abundant. Furthermore, metering is fair as between consumer and consumer because it enables each consumer to pay for what he gets and prevents the careless or wasteful consumer from penalizing the consumer who is careful in the use of water. In the case of Spring Valley Water Company, there are particular additional reasons, to which it is not necessary to refer in this proceeding, why every reasonable precaution should be taken to conserve the use of water.

The Railroad Commission announced at the hearing herein that the Commission believes that the Spring Valley Water Company's system should, with certain possible exceptions, be metered in toto. This position, however, is subject to three distinct conditions: (1) the meter rates must be just; (2) the minimum charge for metered service must be reasonable; and (3) the measuring devices must be reliable.

The installation by Spring Valley Water Company of meters on residence services on and after July 31, 1916 resulted in many difficulties with reference to the charges to be collected from the consumers whose services were thus being metered. These difficulties resulted partly from excessive or wasteful use of water due to carelessness, leaky fixtures and other causes, partly from the

fact that landlords and others had not made their arrangements in contemplation of metered services, partly from the form of the rates established by said Ordinance No. 3346 (New Series) of the Board of Supervisors, and partly from the fact that the Railroad Commission has had no opportunity to pass upon the reasonableness of the flat rates or the meter rates or the minimum rates for metered service established by said Ordinance No. 3346 (New Series) of the Board of Supervisors.

As the result of these difficulties, the Railroad Commission on November 2, 1916, wrote the following letter to Spring Valley Water Company:

November 2, 1916.

"Spring Valley Water Company,
San Francisco, California.

Gentlemen:

The Railroad Commission is in receipt of many informal complaints to the effect that the charges of your Company for water supplied through the meters which you have installed in San Francisco are considerably higher than the flat rates heretofore in effect.

At the time you started metering your water system in San Francisco, you made the distinct representation to the Railroad Commission that your only purpose in doing so was to conserve the water supply of San Francisco and that there was no intention on your part to increase your revenue.

From the data so far available, our Hydraulic Department reports that your Company has derived a substantial increase in revenue during the first month in which you have collected meter rates.

The meter rates now in effect in San Francisco were established by the Board of Supervisors and the Railroad Commission has had no opportunity to pass upon the reasonableness of these rates. Although a formal complaint against your rates was filed with this Commission by the City and County of San Francisco, ~~the City and County of San Francisco~~, the City has been unable thus far to proceed and has asked the Railroad Commission to hold the matter in suspense until further advised by the City. No other formal complaint affecting your rates has been filed with the Railroad Commission.

While metered service under proper rates is undoubtedly desirable, we are of the opinion that it is neither fair nor proper that you should begin charging meter rates until the consumer has had an opportunity to adjust himself to the new situation and until the Railroad Commission has had an opportunity to pass upon the reasonableness of the meter rates established by the Board of Supervisors and now in effect.

Accordingly, you are hereby directed to bill your subscribers according to the flat rates heretofore in effect and not to bill them under meter rates until February 1, 1917, or the further order of the Railroad Commission. Such meter rates as you may already have collected in excess of the flat rates should be adjusted on the basis of the flat rates heretofore in effect.

You should notify your metered customers monthly of their meter readings and of their charge in case the metered rates were effective.

We shall appreciate early advice from you stating that the instructions herein contained will be carried out.

Yours truly,

Railroad Commission
of the State of California,

By Max Thelen

President."

Thereafter Spring Valley Water Company requested that the directions contained in the letter of November 2, 1916, be modified so as to provide, in effect, that whenever a meter has been installed for three months, Spring Valley Water Company shall have the right to charge meter rates to be established immediately by the Railroad Commission, without waiting for February 1, 1917, or the further order of the Railroad Commission.

Spring Valley Water Company represents that it does not desire to increase its gross revenue from metered residence services over the revenue which would have been secured under the flat rates heretofore in effect and offers to enter into arrangements with the Railroad Commission, from time to time, as may be necessary, to

readjust the rates to be initially established for metered service so that the gross revenue shall not be increased.

In support of this request for modification, Spring Valley Water Company presented a number of arguments which we shall hereinafter consider. First, however, an analysis should be made of the rates established by said Ordinance No. 3346, (New Series) of the Board of Supervisors.

This ordinance establishes rates as follows:

- Section 1 - Flat rates for buildings occupied by one or more families.
- " 2 - Flat rates for bathing tubs.
- " 3 - Flat rates for horses and cows.
- " 4 - Flat rates for boarding and lodging houses.
- " 5 - Flat rates for the irrigation of private gardens and private grounds.
- " 6 - Flat rates for water closets.
- " 7 - Flat rates for urinals and stationary washstands.
- " 8 - Flat rates for building purposes and meter rates or the equivalent thereof for stores, banks, bakeries, offices, warehouses, saloons, groceries, eating houses, barber shops, butcher shops, ~~book binderies~~, book binderies, blacksmith shops, confectioneries, hotels, lodging houses, boarding houses, churches, halls, laundries, photograph galleries, printing offices, steam engines, greenhouses, markets, market stalls, horse troughs, soda fountains and other places of business.
- " 9 - Meter rates for pipes used specially for fire protection.
- " 10 - Meter rates for all purposes not before specified, including shipping.
- " 11 - Flat rates for public hydrants.
- " 12 - Meter rates in cases of waste or excessive use.

Under this ordinance, the only lawful meter rates for water in effect in the City and County of San Francisco are for (1) places of business (Section 8), (2) pipes used specially for fire protection (Section 9), (3) water furnished for any and all purposes not embraced in the first nine sections of the ordinance, including water for shipping (Section 10), and (4) wasteful and excessive use (Section 12).

Apart from the question of wasteful or excessive use, to which we shall hereinafter give further consideration, the rates prescribed for dwelling houses and all uses incidental thereto, are prescribed in the first seven sections of the ordinance and are all flat rates. Furthermore, Section 12 specifically provides as follows:

"In no case where the fixed rates above provided other than meter rates, are applicable, shall any charge for water be made by meter rates, it being the purpose of this ordinance to provide for all dwelling houses a fixed monthly rate which shall not be increased by the person, company or corporation supplying water."

Hence, apart from the question of wasteful or excessive use, it conclusively appears that under the rates prescribed by this ordinance Spring Valley Water Company does not at this time have any lawful right to make any meter charges whatsoever for water supplied to "dwelling houses".

Section 12 further provides that meters may be installed "for the purpose of discovering and repressing waste or excessive use" and that "for waste or excessive use thereafter occurring" in excess of such an amount of water as shall exceed by 50 per cent the number of cubic feet which at regular meter rates amount to the consumer's rated bill, the water company may charge "at regular meter rates", by which we assume that the meter rates prescribed

in Section 10 of the ordinance are meant. The section contains a proviso that the charge for wasteful or excessive use shall not exceed \$2.00 for the first month, \$4.00 for the second month and \$5.00 for any following month. The section contains other provisions to which it is not now necessary to refer.

It thus clearly appears that, apart from the question of wasteful or excessive use, there is no provision in the ordinance by which Spring Valley Water Company can lawfully charge a meter rate in connection with any of the meters on dwelling house services which have been metered on and subsequent to July 31, 1916, or, in fact, in connection with its service to any "dwelling house" whatsoever.

The request of Spring Valley Water Company accordingly resolves itself into a request that the Railroad Commission now establish meter rates which rates shall be applicable to all dwelling houses after the meter has been in service for three months. The request is not that such rates be established and effective after the usual rate proceeding has been initiated, carried forward, submitted and decided, but that such rates be established by the Railroad Commission in advance of such proceeding and in the absence of the presentation of the detailed and exhaustive evidence which must be offered and analyzed before the Railroad Commission can establish rates which will be sustained by the courts. In other words, the Railroad Commission is asked to establish some sort of meter rates immediately, without knowledge of the facts on which alone the Railroad Commission could base a judgment as to their justice and reasonableness, and to modify them, month by month, if it appears that the meter rates thus established yield a gross revenue greater than if the flat rates for dwelling houses heretofore and now in effect, had continued to be applicable.

This is not a case of asking the Railroad Commission to permit a meter rate to become effective when the ordinance provides alternative flat and meter rates for dwelling house service. The ordinance here under consideration expressly refuses to provide meter rates for service to dwelling houses except with reference to wasteful or excessive use.

The suggestion that justice will be done if the gross revenue from such meter rates does not exceed the gross revenue from the flat rates applicable to the same dwelling houses is not persuasive for the reason that the Railroad Commission does not know whether the flat rates are just and reasonable and can not know until complete evidence bearing on just and reasonable rates has been presented in the usual formal rate proceeding and carefully considered in its entirety by the Railroad Commission.

That the substitution of meter rates for the existing flat rates applicable to dwelling houses will increase the charges paid by at least a portion of the consumers of Spring Valley Water Company is admitted and in the very nature of things must be so unless the gross revenue from the dwelling house consumers as a whole is to be reduced below the gross revenue from the existing flat rates.

Section 63 (a) of the Public Utilities Act reads as follows:

"No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified."

How can the Railroad Commission, in advance of the necessary evidence, make a finding that "such increase is justified"?

The Railroad Commission is asked to take the affirmative action of establishing temporary meter rates for dwelling houses.

where no meter rates for dwelling houses now exist, and to do this without evidence as to the value of the property used and useful in the public service, reasonable maintenance and operating expenses, a just allowance for a depreciation annuity and the other elements which a rate making body must know before it can act intelligently, justly or constitutionally. How could the Commission, either in the consciences of its members or in the courts, defend rates thus made?

Nothing short of a most extraordinary situation would justify the granting of the request of the Spring Valley Water Company. We shall now consider the arguments urged by Spring Valley Water Company in order to ascertain whether such extraordinary situation actually exists.

First, Spring Valley Water Company urges that, with certain possible exceptions, its entire water system in the City and County of San Francisco should be metered. On this point, the Railroad Commission is in accord with Spring Valley Water Company, provided that meter rates shall not be charged unless such rates are fair, the minimum charge for metered service just and the measuring devices reliable. There is no reason, however, why Spring Valley Water Company should not proceed to install meters on all its remaining services which should be metered, even if the Railroad Commission refuses to grant the request herein. The Railroad Commission has publicly announced that it believes that, with possible exceptions, the system of Spring Valley Water Company should be metered and that as soon as possible the Commission will establish meter rates to apply wherever meters are installed. There is nothing in the first argument of Spring Valley Water Company necessitating the granting of the Company's request.

Second, Spring Valley Water Company urges that in order to prevent waste or excessive use, it is necessary for the Company not merely to install meters but also to collect at meter rates.

The Company suggests that if meters are installed without the charge of meter rates, its customers will continue to be wasteful or to use excessive quantities of water. This conclusion by no means follows. Under Section 12 of Ordinance No. 3346 (New Series), of the Board of Supervisors, companies engaged in the sale of water in the City and County of San Francisco are specifically authorized, not merely to install meters, but also to charge at meter rates for all water running through the meters in excess of the quantities therein specified. Hence, Spring Valley Water Company has the power, under the water rates now in effect, to charge for water used wastefully or excessively and in this manner to take care of this particular situation. While said Section No. 12 provides for a certain margin of water which may be used before the penalty for wasteful or excessive use attaches, we are not as yet in a position to say whether, on the final establishment of just and reasonable rates, at least a portion of this water may not be found justly due to the consumers under the compensation now charged by Spring Valley Water Company. It will be assumed, of course, that Spring Valley Water Company will continue to take all reasonable steps to develop such additional water as may be needed to take care of the growing population of San Francisco.

Third, Spring Valley Water Company insists that it will not be possible in the formal rate proceeding which will hereafter be instituted, to fix and determine just and reasonable meter rates for residence services unless, in the meantime, practically all residence services have been metered and payment has been made on such services at meter rates. This contention of Spring Valley Water Company leaves out of consideration the fact that for some time prior to July 31, 1916, some 800 to 900 meters have been installed on residence services in San Francisco, that between

July 31, 1916, and the present time, much additional valuable data has already been accumulated in connection with the meters which were installed during that time on residence services and that further valuable data will be secured between the present time and the submission of the formal rate proceeding which will hereafter be filed. This contention also leaves out of consideration the fact that even if meter rates should now be charged on all residence services, the amounts of water consumed through such meters would not necessarily be an accurate indication of the amounts of water which would be consumed at meter rates different from the meter rates which might now be established for such service.

Mr. William Mulholland, the builder of the Los Angeles aqueduct and now the manager of the water system of Los Angeles, a witness called by Spring Valley Water Company, was not in harmony with this contention of Spring Valley Water Company when he testified as follows:

"I believe that there are probably sufficient data to enable a pretty wise conclusion as to what would be the proper thing to do right now."

As far as the gross revenue of Spring Valley Water Company is concerned, the Water Company will not be injuriously affected if the present flat rates for dwelling houses are continued, for the reason that the company will continue to collect exactly the same rates which it has heretofore collected and its gross revenue will be exactly as large.

The Railroad Commission has publicly announced that in its opinion the only permanent solution of the water rate problem in the City and County of San Francisco is to have the Commission, after complete and detailed evidence has been submitted, establish all the rates, both flat rates and meter rates, to be charged by Spring Valley Water Company in the City and County of San Francisco.

Spring Valley Water Company has announced its purpose of filing a formal application asking the Railroad Commission to establish all its rates. Until such application has been decided, no material injury can accrue to anyone by permitting the present flat rates for dwelling houses to continue in effect, subject to the right of Spring Valley Water Company to charge metered rates for wasteful or excessive use of water, as provided by Section 12 of the ordinance adopted by the Board of Supervisors and now in effect.

In view of the fact that the status quo is to be maintained as established by the ordinance passed by the Board of Supervisors, until the Railroad Commission can permanently fix the rates to be charged by Spring Valley Water Company, we are of the opinion that no good purpose would be served by compelling Spring Valley Water Company to send to each customer each month a statement of what his bill would be if meter rates were in effect. The conclusive answer to such proposition is that at the present time there are no meter rates for dwelling house service, and the Railroad Commission does not have the evidence necessary to establish such rates. Hence nobody knows what meter rates Spring Valley Water Company should show on its bills if it sent them out showing the charges under assumed meter rates. We suggest, however, to Spring Valley Water Company that wherever the meters show an apparently abnormal use of water, the company's representatives should draw the matter to the attention of the consumer so that the cause of such excessive use may be ascertained and thereafter prevented.

Having reached the conclusion that it would be inadvisable to grant the request of Spring Valley Water Company, this proceeding should be dismissed.

O R D E R

A public hearing having been held in the above

entitled proceeding and the Railroad Commission being fully advised,

IT IS HEREBY ORDERED that Spring Valley Water Company charge and collect the rates for water prescribed by Ordinance No. 3346 (New Series) of the Board of Supervisors now on file with the Railroad Commission, that the request of Spring Valley Water Company for a modification of the letter of November 2, 1916, be and the same is hereby denied, and that the above entitled proceeding be and the same is, in all other respects, hereby dismissed.

Dated at San Francisco, California, this 6th day of January, 1917.

Max Thelen
W. H. Valand
Edwin O. Edgerton
Frank R. Dyer
Commissioners.