Decision No. 407

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of the CALIFORNIA-MICHIGAN LAND AND WATER COMPANY, a corporation, for permission to exercise franchise, and for extensions.

Application No. 273.

ORIGINAL

B. J. Bradner for applicant;
Edwin C. Cribb for Cribb-Brodek Light and Water Company.

O P I N I O N.

LOVELAND, Commissioner.

Applicant desires to supply water for domestic and irrigation purposes to residents on what is known as the Cribb-Brodek Tract of land, Los Angeles county, California, and makes application herein, under section 50 of the Public Utilities Act, for the requisite certificate of public convenience and necessity. It proposes to develop the water supply upon its own lands which are adjacent to the Cribb-Brodek Tract.

The Cribb-Brodek Light and Water Company is at present distributing water upon this tract and has been engaged in the business for a number of years.

The existing company opposes the invasion of its field of operation by applicant.

Applicant contends that the source of water supply of respondent is inadequate to the needs of the community; that the rates charged are excessive; and that the property owners upon the tract, in consequence, have been unable satisfactorily to develop their lands. In support of this contention, the petition sets forth that about eighty (80) of the property owners, approximately seven-eights of all those residing upon the tract, have contracts with applicant to be supplied with water for a period of three years at rates and upon terms and conditions prescribed in the contracts.

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Furthermore, that these contracts were made upon the part of applicant in reply to a demand of the consumers voiced at a mass meeting held by them for the purpose of discussing the water situation, and that applicant stands ready to furnish the water at the rates agreed upon, although it does not believe there will be any profit in the business until the community becomes more thickly settled and the consumption of water greater.

The sole question before the Commission is whether "the present or future public convenience and necessity require or will require " (Section 50, Public Utilities Act) the construction by applicant of its proposed water distribution system and the exercise of the rights and privileges under the franchises granted by the local authorities, pursuant to which it obtains the privilege of furnishing water in this district.

The determination involves consideration (1) as to whether the supply of water now furnished by the existing company is adequate; (2) has the existing company discharged its duty to the public by giving efficient service and reasonable rates; (3) If either of these propositions is decided in the negative, can the situation be improved by permitting applicant to exercise its franchise rights to enter into competition with the existing company; and (4) is applicant in position, financially, and by reason of possessing an ample supply of water, to construct, equip and maintain a plant or system to adequately supply the consumers and water users of the tract in question at reasonable rates.

A hearing was had in Los Angeles November 21, 1912, following which, briefs and supplemental papers were filed and an examination made into the entire situation by the Commission's Engineering Division. Upon the evidence introduced and all the

documents in the matter, the facts may now be presented.

California-Michigan Land and Water Company, a domestic corporation, was incorporated December 21, 1910, with the primary object of engaging in real estate transactions, but having the chartered right to develop and sell water and other substances. Subsequently it acquired certain property in Los Angeles county known as the Michillinda Tract, comprising about 167 acres, which the company proposes to subdivide and sell in small lots for suburban residential purposes. According to engineering estimates, submitted by applicant, some two hundred inches of water may be developed upon this tract, which amount is stated to be largely in excess of the subdivision requirements.

Upon application of this company, the Board of Supervisors of Los Angeles county, California, granted it a franchise under date of May 13, 1912, to construct a water distributing system upon certain streets and highways in said county of Los Angeles, California, and to distribute and sell water for domestic and irrigating purposes for a period of forty years. The area covered in the franchise consists of about five thousand acres, mostly undeveloped and with a scattered population. Within this area, however, are several tracts under cultivation by individuals owning small acreages therein. One of these is the Sunny Slope Vineyard Tract, the residents upon which are supplied with water by the Sunny Slope Water Company. Another, is the Cribb-Brodek Tract. It is applicant's present desire to distribute water only to those residing in the Cribb-Brodek Tract.

In addition to its present supply, which the Commission is satisfied is abundant for the purposes stated, applicant has made arrangements to purchase water from another source in the amount of several hundred inches and stands ready to develop this source if necessary.

The Cribb-Brodek Light and Water Company has between eighty (80) and one hundred (100) consumers. At the hearing twenty of these appeared as witnesses for applicant and gave evidence as to the inadequacy, inefficiency and unreasonable rates of the Cribb-Brodek Light and Water Company. This evidence substantially is to the effect that the inadequacy of supply, the low pressure and the high rates charged, all combine to make impracticable the agricultural development of their lands; that when the company was requested to better the service, the consumers were told that the water operations were not profitable, and the threat was made to shut down the plant. They also testified that some of the consumers had invested in the capital stock of the Sunny Slope Water Company, a mutual concern, in order to obtain rights to water that went with such ownership.

The prices charged by the respondent company have varied from time to time and have not been adhered to with respect to all consumers alike. When the consumers began negotiations to obtain water from applicant, respondent was charging a minimum monthly rate of One and 50/100 (1.50) Dollars for fifteen hundred (1500) cubic feet (11250 gallons) for irrigation, with Eight cents per hundred cubic feet for all used in excess of the minimum, and had served notice of its intention to increase the minimum rate to Two (2) Dollars for fifteen hundred (1500) cubic feet.

Applicant proposes to make a minimum monthly charge of Two (2) Dollars for ten thousand (10,000) gallons (the equivalent of 1333-1/3 cubic feet), with a flat rate of Three and one-fourth (3¼) cents per hundred cubic feet for all in excess of the minimum. With this proposed rate, the consumers have evidenced their entire satisfaction by entering into contracts for service. The Commission does not in this proceeding pass upon the reasonableness of said charge or rate, nor does it pass upon any of the contracts for service.

The Cribb-Brodek Light and Water Company purchased its

water system from the Cribb-Brodek Land Company, paying therefor approximately Fourteen Thousand (14,000) Dollars. This system consists of a well upon the tract in question, a lift pump, the distributing system on the tract and two cement-lined reservoirs. With the water system also was acquired several small separate parcels of land which were subsequently sold for Five Thousand, Five Hundred (5,500) Dollars and a parcel of land in the Sunny Slope Vineyard Tract which respondent still owns. This latter property is water bearing land and is retained in anticipation of developing and distributing the water, for which purpose a franchise has been obtained from the local authorities permitting the conveyance to and distribution of such water upon the Cribb-Brodek Tract, among other lands.

The testimony shows that the well is about five hundred feet deep and the water which stands in it to within about eighty feet of the ground surface, furnishes a supply of not exceeding thirty inches; that through improper handling, this well has sanded to a depth of twenty-four feet and the sand, at times pumped with the water, seriously interferes with good service; that respondent has been delivering into its system a small quantity of water obtained from the Sunny Slope Water Company, which in itself is an admission of the inadequacy of its own source of supply.

For the twelve months ended October 31, 1912, respondent's gross earnings from water operations were Two Thousand, Five Hundred Fifty-eight and 45/100 (2,558.45) Dollars; its expenses, including taxes and seven per cent interest on Ten Thousand (10,000) Dollars, bonds, Two Thousand, Two Hundred Thirteen and 76/100 (2,213.76) Dollars, leaving a net revenue of Three Hundred Forty-four and 69/100 (344.69) Dollars without deducting the maintenance charges, deprecia-

tion, or reserve for sinking fund.

The weight of evidence leads to no other conclusion than that respondent has been greatly remiss in its obligations to the public. Its consumers are entitled to adequate service at all times and at reasonable rates. Its failure to render adequate service at reasonable rates has been gross and inexcusable. Owning, as it claims to do, an ample additional supply of water, and holding a franchise which would permit it to develop and distribute from such source, it has elected to follow a policy of indifference to the needs of its patrons. By reason of inconsistent charges, insufficient and poor service, it has prevented its consumers from improving their lands and has compelled those who were in a position to do so to obtain service elsewhere. It has by its conduct aroused generally an antagonistic feeling toward it. Some improvements to its system have been made but not of an extent and character to make the plant as a whole equal to the fair requirements of the community.

It satisfactorily appears that California-Michigan Land and Water Company, the applicant herein, is possessed of water beyond its own needs; that the excess is amply sufficient for the purposes stated; that it is prepared to construct the necessary distributing system; and that it has secured, as customers, at prices satisfactory to them, substantially all of the customers of respondent. Every reason exists why the application should be granted except for the consequent effect upon the value of the property of the existing company against which is outstanding a bonded indebtedness.

This naturally brings up the question as to what attitude this Commission should and will assume in situations where, by granting the application of a public utility to serve the public in a territory or section already occupied by a like

public utility, when the latter has been remiss in its duty to its patrons, and the granting of such application will tend to reduce the value of the property of the company already in the field, and incidentally cause loss to the holders of bonds which have been issued against such property.

In this particular case it happens that the bonds are largely owned by the same parties who control the protesting company, and who are responsible for the failure to supply sufficient and adequate service at reasonable rates to the tract comprehended in the application; but the Commission believes that the attention of bondholders generally should be called to the fact that failure upon the part of the company whose bonds they hold, to perform its duty to the public by rendering adequate service at reasonable rates, will ordinarily result in this Commission's permitting competition with such delinquent company with the probable result that the property upon which the bonds are a lien will be depreciated in value.

Bondholders have such an interest in the property of a public utility, that they should exercise whatever influence they have to see that such utility adequately performs its duty toward the public.

In Case No. 269, Pacific Gas & Electric Company v. The Great Western Power Company, heretofore decided by this Commission, it was held, and the principle was announced, that public utilities must not wait "until competition is at their door", before improving inefficient service and correcting unreasonable rates. I quote from the language of that decision:

> "If any territory served by an existing utility is afflicted by such utility with excessive rates or inefficient service, and a second utility of the same kind desires to enter such territory, and this Commission

should say to the existing utility: 'Although while you had matters your own way, you lost sight of your duty to the public, yet we still reserve for you this territory in consideration of your future good behavior,' in how many instances does any one suppose a new utility would apply to enter a territory served by an existing utility, when the only effect of all its trouble and expense would be the cheapening of the rate and the improvement of the service of the existing utility?

* * * * * * * *

"Rather do we announce the rule that only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons, that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission or other governmental authorities to accord to the communities of this state those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates, they may have the privilege of entering therein if they are willing to accord fair treatment to such territory."

I believe that principle is sound and should be adhered to in this case, and I therefore find that public convenience and necessity require and will require the granting of the application of the California-Michigan Land and Water Company to exercise its franchise rights and serve water for domestic purposes and for irrigation to the residents and water users of that section or tract comprehended in this application now served by the Cribb-Brodek Light and Water Company. I recommend that the following order be issued:

O R D E R

The California-Michigan Land and Water Company having heretofore filed with this Commission its application under Section 50 of the Public Utilities Act, for a certificate of public convenience and necessity and for permission to exercise

its franchise rights and privileges under a certain franchise heretofore, to-wit: on May 13, 1912, granted to it by the Board of Supervisors of the county of Los Angeles, California, to construct, maintain and operate a distributing system for the purpose of supplying water for domestic purposes and for irrigation, to the residents and water users of a certain tract or section in Los Angeles county, California, known and described in this application as the Cribb-Brodek Tract;

And the case having been regularly heard, and it appearing from the testimony that the Cribb-Brodek Light and Water Company, which company has heretofore served and is now serving the said Tract, has been remiss in its duty to the public and failed to give to its consumers adequate service at reasonable rates, and that through such failure residents of the Cribb-Brodek Tract have been unable to secure water either in sufficient quantity or at reasonable rates, to improve their lands, while some have been compelled to arrange with other adjacent companies for water to save their crops and lawns, and that said Cribb-Brodek Land and Water Company has been repeatedly requested in the past to improve its service and reduce to a reasonable figure its rates for water for irrigation, but has ignored and disregarded such request;

And it appearing further that the California-Michigan Land and Water Company is in condition, financially, to install a system and serve the residents and water users of the Cribb-Brodek Tract, and that it has or can develop an ample supply of water for that purpose in addition to that which it will require to adequately serve other sections covered by its franchise or franchises, and that it has offered to serve water to the residents and users of the Cribb-Brodek Tract at a minimum

monthly charge of two dollars ($2.00) for ten thousand gallons (equivalent to one thousand three hundred thirty-three and one-third (1,333-1/3) cubic feet), with a flat rate of three and one-fourth (3-1/4) cents per hundred (100) cubic feet for all in excess of the minimum, with which rate the consumers have evidenced their satisfaction by entering into contracts for the service.

NOW THEREFORE, be it ordered that the California-Michigan Land and Water Company be, and it is hereby granted permission to construct, equip and maintain a plant or system for the distribution of water for domestic purposes and for irrigation in the tract known and described as the Cribb-Brodek tract in the county of Los Angeles, state of California;

PROVIDED that said California-Michigan Land and Water Company shall supply water to the residents and users of said tract at the rate of not to exceed two dollars ($2.00) per month for ten thousand (10,000) gallons (one thousand three hundred thirty-three and one-third (1,333-1/3) cubic feet) and three and one-fourth (3-1/4) cents per hundred (100) gallons for all water used in excess of the ten thousand (10,000) gallons per month; and,

PROVIDED FURTHER, that should said California-Michigan Land and Water Company supply any of its customers, regardless of where they are located, at a rate less than the rate above mentioned to be charged the consumers of the Cribb-Brodek Tract, then the rate to said consumers of said Cribb-Brodek Tract shall immediately be reduced to such lower rate.

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, this 15th day of January, 1913.

John M. Eshleman
H. D. Loveland
Wm. Thelen
Alex Gordon
Edwin O. Edgerton

Commissioners.