BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Decision No. 5731

In the Matter of the Application of WILLIAM F. FOWLER, Receiver of the property of Sacramento Valley West Side Canal Company, for an order authorizing an increase in rates for water for irrigation.

Application No. 3369.

BY THE COMMISSION:

OPINION ON PETITION FOR REHEARING.

On January 25, 1918, the Railroad Commission made its order herein (Decision No. 5071) establishing rates, rules and regulations applicable to the service of water by petitioner herein for the irrigation of lands in Glenn and Colusa Counties and directing petitioner to make such improvements and to incur such expenditures as may be necessary so that the irrigation system of Sacramento Valley West Side Canal Company will develop during the irrigation season of 1918 sufficient water to irrigate at least 26,000 acres of rice land and 15,000 acres of land planted to general crops. A petition to increase the rates heretofore in effect was denied.

William F. Fowler, receiver of the property of Sacramento Valley West Side Canal Company, now petitions for a rehearing, or at least for a modification of the order hereinbefore made, on the following grounds:

1. That the order, in so far as it directs petitioner to make such improvements and incur such expenditures as may be necessary so that the irrigation system of Sacramento Valley West Side Canal Company will have developed during the irrigating season of 1918 sufficient water to irrigate at least 26,000 acres of rice land and 15,000 acres of land planted to

general crops, compels the petitioner "to engage in a new and additional enterprise requiring the expenditure of money" and "to dedicate its property to a new use" and hence amounts to a "taking" of the property "without compensation" in violation of the Constitution of California and the Constitution of the United States and particularly the Fourteenth Amendment of the Federal Constitution.

2. That the order should be modified with reference to the ascertainment of the area of land for the irrigation of which payment is to be made.

3. That the petition for an increase of rates should have been granted.

4. That the order should be modified so as to make it clear that the receiver may exercise his discretion in accepting or refusing promissory notes in lieu of cash in payment for rice rates.

We shall consider these points in order.

1. The 10,000 additional acres of rice land.

The order herein, in part, directs petitioner to make such improvements and to incur such expenditures as will enable this system to irrigate 10,000 acres of rice land in addition to the lands of all crops irrigated in 1917.

The petition alleges, in this respect, that the owners of at least 10,000 acres of additional land will require water during the year 1918 for the purpose of growing rice; that petitioner is supplying water to the full present capacity of its system; and that to supply additional requirements it will be necessary to install additional pumping plants and to make enlargements in certain portions of the main canal at a cost of at least $100,000 to supply 10,000 additional acres of rice land. While the petition alleges that petitioner doubts

his ability to secure enough pumping machinery to supply more than 4,000 additional acres of rice land, evidence presented by witnesses for the petitioner at the hearing shows that the additional machinery to meet the requirements of the full 10,000 additional acres of rice land can very probably be secured.

The petition further alleges that it is "the purpose of petitioner" if his rates are increased sufficiently to enable him to do so, to devote all moneys received by him over operating and legal expenses "to the installation of a pumping plant and enlarging of the main canal, so as to enable him to supply as much additional land as possible during the season of 1918 and also to prepare for a still further increase during the season of 1919". "In other words", says the petitioner, "your petitioner does not intend to devote any additional revenue that may come to him, as such receiver, by reason of the increase of rates, to the payments of dividends, but intends to, subject to the approval of the Court, apply the same to extending the pumping plant and ditch system so as to bring into cultivation a larger quantity of land."

At the hearing, petitioner filed an exhibit showing that the total cost of making the necessary improvements so that petitioner will be able to irrigate 10,000 additional acres of rice land will be $117,000, of which amount $12,300 was paid in 1917. The Railroad Commission accepted this estimate and added thereto an item of $8,700 for additional transformer installation at the pumping plant.

Mr. W. F. Fowler, the petitioner, testified that he already has authority as receiver to sell $40,000 additional receiver's certificates and that the bondholders' committee has agreed to purchase the same, the proceeds to be applied on the

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improvements as proposed and now actually being installed. He also testified that the bondholders have agreed to permit the $25,000 of receiver's certificates heretofore issued to remain outstanding. The receiver testified that what he primarily desired was that the Railroad Commission should authorize financial assistance from rates, so that he could pay for the remaining portion of the contemplated improvements. The Railroad Commission did so, by providing that the initial installment of rates, payable on February 15, 1918, should be increased from 10% to 20%, thus assuring the receiver of $42,400 from this source some little time prior to the completion of the improvements.

It clearly appears that the improvements as proposed will enable petitioner to irrigate said 10,000 additional acres of rice land; that the estimates of cost, presented by petitioner and accepted by the Railroad Commission, will cover the work; that the receiver is assured of sufficient funds to pay for the work; and that the work is actually being done.

Nevertheless petitioner now objects to the order herein, which was made to remove any possible uncertainty as to what would be done and to establish a definite basis on which to estimate petitioner's gross revenue for 1918.

Petitioner does not urge that he is not a public utility or that he is not subject to the jurisdiction of this Commission. Nor could such a contention reasonably have been made in view of the decision of the Supreme Court of California in Byington vs. Sacramento Valley West Side Canal Company, 170 Cal. 124 holding that this water system is a public utility; the decision of the Railroad Commission in Cases No. 597 and 673 (Vol. 7, Opinions and Orders of the Railroad Commission of

California, p. 113) holding that this petitioner, the receiver, is a public utility; Section 23 of Article XII and Section 1 of Article XIV of the State Constitution and Section 2 of the Public Utilities Act; and a number of formal proceedings before the Railroad Commission in which the petitioner herein has,. on his own initiative, asked relief on the theory solely that he is a public utility. In this very proceeding, petitioner asks permission to increase his rates and thereby clearly concedes his public utility character.

Conceding that he is a public utility and subject to the Railroad Commission's jurisdiction, petitioner nevertheless urges that the order herein provides for a "taking" of property "without compensation", by reason of the fact that it directs a public water utility to make improvements to irrigate an increased acreage of land.

The facts show clearly that the land for which water is now demanded is all part of the lands for the irrigation of which the main canal operated by petitioner herein was planned and has been partly constructed. The facts appear fully in the testimony in said Cases 597 and 673, which testimony was by stipulation made a part of the record in this proceeding, and in the decision of the Railroad Commission made on June 14, 1915, in said cases. The main canal was planned to irrigate all the lands in the old Central Irrigation District. The right to divert water from the Sacramento River for this project was secured from the Federal Government and the notices of appropriation under which petitioner claims were posted, for the purpose of securing water to irrigate at least all the lands in the Central Irrigation District. With this same purpose in view, Central Canal and Irrigation Company, a public utility and one of petitioner's predecessors, extended the main canal to the

Sacramento River and served water through it. South of the Irrigated Farms Check, being a point about three miles northeast of Willows, to the southerly end of the main canal, it has been excavated to grade and can carry all the water originally contemplated. North of the Irrigated Farms Check to the Sacramento River, the main canal throughout a portion of its extent has not heretofore been excavated to grade; along another portion its sides have not been raised in accordance with the original plan; nor have the pumps heretofore installed had a sufficient capacity. What the petitioner contemplates doing and what the order directs him to do is simply to make improvements in the northerly portion of the main canal by increasing the pumping installation, excavating a portion of the canal and raising the banks on another portion of the canal so as to enable the main canal to fulfil more nearly the purpose for which it was planned and constructed and to irrigate more nearly the acreage of land within the Central Irrigation District for the irrigation of which this entire project was created. The 10,000 additional acres of rice land which now desire water are all within the Central Irrigation District and are adjoining and in part almost surrounded by lands which have been irrigated from this water system.

Section 36 of the Public Utilities Act specifically confers on the Railroad Commission the power, when it finds after hearing that a public utility ought reasonably to make extensions, repairs or improvements to its existing plant, equipment or other physical property, to direct the public utility to make such extensions, repairs or improvements. The Section reads in part as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof."

The duty of a public utility to make such improvements and extensions as are reasonably necessary to give adequate service to the community which it has been constructed to serve is so clearly established as to make a citation of authorities surplusage. The principle is stated and a few of the cases are referred to in Wyman, Public Service Corporations, Section 797.

The most recent decision of the Supreme Court of the United States to this effect is People ex rel New York and Queens Gas Company v. McCall, decided on December 10, 1917. In this case, the Supreme Court upheld an order of the Public Service Commission of the First District of New York directing a gas company to extend its gas mains and service pipes in such a manner as to serve with gas a community which was located about 1½ miles beyond the then terminus of the company's gas mains, but within the borough of Queens. The Supreme Court, speaking through Mr. Justice Clarke, said in part:

"Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve, and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render."

Attention may be directed to the fact that in the present proceeding, the Commission did not direct petitioner to make any extension whatever of the existing canal. The order simply directs the petitioner in part to deepen and in part to raise the banks of the existing canal where now "choked" and to increase the capacity of the pumps accordingly.

Petitioner relies in this regard on Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission, 173 Cal. 577; Del Mar Water Company v. Eshleman, 167 Cal. 666; and Pacific Telephone and Telegraph Company v. Eshleman, 166 Cal. 640. None of these cases support petitioner's contention. In the Atchison, Topeka and Santa Fe Railway Company case, the Court, at page 585, expressly concedes the right of public authority to compel water, gas, electric and telephone companies to make extensions. The Court distinguishes these utilities from a railroad company which is being directed to build "a new line of railroad" off from its existing line of railroad. The Del Mar case, so far from supporting petitioner, is direct authority in support of the order herein, for the reason that the additional lands which are to receive water under the order herein are all "within the district, or area, to the use of which the water owned or controlled by that company, is dedicated." The Pacific Telephone case was decided in favor of the Railroad Commission on every point except one, namely, that the Commission has no power, without awarding "compensation" for the "taking" to direct one telephone company to render long distance service to another telephone company which is a competitor of the first company in local exchange service. The case has no bearing on the facts of the present proceeding.

We conclude that in the present proceeding the order merely directs petitioner to improve the property so as to render more adequate service to the community for the service of which the system was constructed and to the service of which the property is obligated, that there is here no "taking" of property and no "compensation" to be paid for any "taking" and that the order in this respect violates no constitutional or statutory provision.

2. Area of Land for which Rates are to be Paid.

Petitioner objects to certain language in the opinion herein stating that payment should be made only for the net area of the crop and not for sloughs and other areas included within the exterior boundaries of a tract but not irrigated for crops. Petitioner alleges that he must know in advance how much water will be required for the irrigating season and that it would not be reasonable to have a landowner apply for water for a specified acreage and thereafter, toward the end of the season when it is too late to sell the unused water to another irrigator, refuse to pay for part of the acreage on the ground that it is a slough or other non-irrigated land.

We made no order on this subject. We agree with petitioner that when application is made for water to irrigate a designated tract and the application is granted, the irrigator should, in the absence of some very unusual circumstance, be required to pay for all the land applied for. On the other hand, he should have the right, when making application for his tract, to exclude the acreage covered by the slough or other land not to be irrigated.

The matter can readily be covered by the rules and regulations which it will be necessary for petitioner to file herein.

3. Just and Reasonable Rates.

Petitioner urges that its application for an increase in rates should have been granted.

This matter was fully examined and considered in the opinion and order of January 25, 1918, herein. As there shown, petitioner will secure from the 10,000 additional acres of rice land, hereinbefore referred to, an additional gross revenue of $70,000 at flat rates. The net operating deficits of over $70,000 in 1914 and in 1915 and the net operating revenue of $5,941 in 1916 and $24,252 in 1917 are to be converted into a net operating revenue of $77,000 in 1918, a sum sufficient to yield a just and reasonable return on the fair value of the property.

While we are satisfied that the flat rates will yield to petitioner a just and adequate return, we desire to direct attention again to the fact that as an alternative to the flat rate of $7.00 per acre for rice and $2.00 per acre for general crops, we have also authorized meter rates which on the evidence in Cases 597 and 673 and herein should yield petitioner a substantially increased revenue over the flat rates, besides preventing waste of water and conserving water for the irrigation of additional lands, thus still further increasing petitioner's revenue.

We are convinced that petitioner has no just ground for complaint at the rates herein established.

4. Acceptance of Notes in Lieu of Cash on Rice Rates.

Section 5 of the order herein reads in part as follows:

> "When the flat rate is in excess of $2.00 per acre, such payments may be evidenced by promissory notes dated the first day of each month, beginning May 1, 1918, all payable November 1, 1918, such notes to be secured by a crop mortgage, which shall be a first lien on the crop, or, in case such crop mortgage can not be given, then other security shall be given to the satisfaction of the utility, such notes to bear interest at the rate of 7 per cent per annum."

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Similar language was inserted, at the suggestion of the petitioner, in the orders heretofore made establishing rates, rules and regulations for the seasons of 1916 and 1917.

No request for a change was made in the original petition herein nor was this change in any way suggested by petitioner at the hearing, although, the presiding commissioner asked petioner to present all suggested changes in the rules and regulations heretofore in effect. In view of these facts, we do not believe that any change should be made in this rule as heretofore suggested and agreed to by the petitioner.

In case of dispute with reference to the character and sufficiency of the security in lieu of a crop mortgage, the matter may be referred to the Railroad Commission, and provision to that effect shall be inserted in petitioner's rules and regulations.

After careful consideration of each point urged by petitioner in his petition for rehearing herein, we see no good reason for holding a rehearing or modifying the order heretofore made herein.

O R D E R

WM. F. FOWLER, receiver of the property of Sacramento Valley West Side Canal Company, having filed herein his petition for rehearing, careful consideration having been given to the same and no good reason appearing why a rehearing should be held,

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IT IS HEREBY ORDERED that said petition for re-hearing be and the same is hereby denied.

Dated at San Francisco, California, this 18th day of February, 1918.

Max Thelen

H. D. Loveland

Alex Gordon

Frank R. Devlin

Commissioners.