Decision No. 608

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the rates and service of the San Gorgonio Water Company and The Beaumont Land and Water Company.) Case No. 308

Waters and Goodcell for San Gorgonio Water Company and Beaumont Land and Water Company.
E. A. Miller representing some of the complaining water users.

EDGERTON and LOVELAND, Commissioners.

O P I N I O N

On May 27, 1912, John Johnson filed a complaint with the Commission against the San Gorgonio Water Company and the Beaumont Land and Water Company, which case was assigned No. 275, in which he complains against the rates and certain phases of the service of these companies, and alleges that he has been refused water for irrigation except on payment of $50 per acre for a so-called water right.

On June 5, 1912, Mrs. May M. Gray filed a complaint with the Commission against the San Gorgonio Water Company, in which she complains against the rates and service of that company.

On September 30, 1912, the Commission made its order calling in question the rates and service of the San Gorgonio Water Company and the Beaumont Land and Water Company. and assigned to this investigation Case No. 308. This order states that the complaints heretofore filed by John Johnson and May M. Gray are merged into the investigation of the Commission.

A hearing was duly held in the City of Beaumont in said Case No. 308, at which the testimony of the above complainants and other complaining consumers against the rates and service of

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the defendant companies was introduced.

Inasmuch as these companies are separate corporations, organized under Articles of Incorporation which specify different purposes, and as their status with relation to the jurisdiction of this Commission is alleged to be different, it is best to consider them separately.

It is admitted that the San Gorgonio Water Company is a public utility corporation serving water to the citizens of the City of Beaumont, California. But it is argued by counsel for said company that it is not under the jurisdiction of the Commission, because subsequent to March 23, 1912, the date of the going into effect of the Public Utilities Act, this Town of Beaumont was incorporated and became a city of the sixth class. The contention is that immediately upon the incorporation of a town or city this Commission is ousted of jurisdiction over rates of utility corporations operating within the borders of such new town or city, because the act under which the town or city incorporates gives the power to fix rates of utilities to the municipality. Section 23, Article XII of the Constitution reads in part as follows:

> "From and after the passage by the Legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this State, or in any commission created by law, and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over any public utility vested in any city and county, or incorporated city or town as, at an election to be held pursuant to laws to be passed hereafter by the Legislature, a majority of the qualified electors voting thereon of such city and county, or incorporated city or town, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the Railroad Commission as provided by law; and provided, further that where any such city and county or incorporated

city or town shall have elected to continue any powers respecting public utilities, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the Railroad Commission in the manner to be prescribed by the Legislature; or if such municipal corporation shall have surrendered any powers to the Railroad Commission, it may, by like vote, thereafter reinvest itself with such power. Nothing in this section shall be construed as a limitation upon any power conferred upon the Railroad Commission by any provision of this Constitution now existing or adopted concurrently herewith."

It is earnestly urged by defendant that the language of this proviso extends to incorporated cities coming into existence after this section was put into effect by the enactment of the Public Utilities Act.

The word vested used in this section, must be given its usual significance, which is that every act necessary to be done has been done and the right or privilege is now finally placed. It cannot be said that every act has been done to vest rights or privileges in a city which is not in existence. Clearly no right can vest in the absence of an entity which is the subject of the vesting.

It must be admitted that the result and only result of this proviso in section 23 is to prevent the taking from incorporated cities and towns, jurisdiction over utilities. The contention of counsel for defendants that there is now vested in every potential or possible future incorporated city the right to regulate its utilities, leads to one of two conclusions, either the Legislature can utterly defeat this interpretation of the section by repealing the law under which cities are incorporated, and re-enacting this law with a specific inhibition against the control of utilities by cities incorporated thereunder, or that the Legislature cannot repeal the incorporation act because there is vested in cities which may be created thereunder the right to regulate utilities and the repeal of the statute would be an invasion of such right.

Therefore, we hold that the San Gorgonio Water Company is a public utility under the jurisdiction of this Commission.

The San Gorgonio Water Company obtains its water from the Beaumont Land and Water Company under a contract dated October 26, 1907, by which the San Gorgonio Water Company acquired from the Beaumont Company thirty inches of water to be supplied only in that portion of the platted townsite of Beaumont lying north of Third Street, West of Michigan Avenue and East of Olive Street, and in addition it acquired from the same company thirty inches of water for irrigation purposes only upon 300 acres of land belonging to the Beaumont Land and Water Company in the townsite of Beaumont lying north of the Southern Pacific railroad tracks, in the amount of not exceeding one inch of water under four inch pressure to each ten acres of land, and under a contract dated May 4, 1911, the San Gorgonio Water Company acquired the right to purchase ten inches of water from said Beaumont Company for irrigation purposes solely within the platted limits of Beaumont, subject to prior appropriation of the Beaumont Land and Water Company of 218 inches. Of said last mentioned ten inches, the San Gorgonio Water Company has purchased one inch.

The complaints against this company may be summarized as follows:

1. That it charges the customer for making the connection between the main and his property. (See Rule XI.)

2. That the company arbitrarily places meters on a service or permits the flat rate to apply. (See Rule XVII.)

3. That the rate for irrigating trees, lawns, gardens, etc., is so high as to be prohibitive. (See Rule I, attached to rate schedule.)

4. That the company, in some instances, locks the boxes containing the meters, thus preventing the customer from ascertaining how much water he is using.

5. That it makes a preliminary charge of $50 per acre for a so-called water right before

it will deliver irrigating water at its regular rates.

This Commission decided in Application No. 5, Hawthorne Electric and Water Company, Decision No. 356, that the company should make connections and install meters at its own expense and for like reasons this rule should be applied to this company.

The determination of whether the flat rate is to be charged or the service metered and the meter rate charged, should not be left entirely to the company. The consumer on principle has the right to select the lowest existing rate for a given service, but we believe that in this case the metered or measured service is the fairest to all concerned. Therefore, to expedite the metering of all services, we recommend that the putting in of a meter be made optional with either the consumer or the company.

The company introduced the testimony and reports of experts on the physical value of its plant. This evidence was checked by the experts of the Commission who also made an inspection of the plant, and while the value found by the Commission's engineer is less than that found by the company's engineers, the report of the Commission's engineer shows clearly that the present rates of this company do not produce income sufficient to leave, after proper deduction for operating expenses, etc., more than a reasonable return on the plant value.

The only objection made by the consumers to the rates is that the domestic meter rate is too high to permit of irrigation for fruit and vegetables growing near their houses. Many of the consumers' lots contain one-quarter acre, and it is their contention that they should have an irrigation rate where they desire to grow crops upon these lots. The service which is rendered to a consumer occupying a house upon a lot of this size, cannot be considered as other than domestic service. The small incidental amount of irrigation which may be practiced by such a

consumer, is not irrigation in the general conception of the term, or as practiced by the irrigation users. Such incidental domestic irrigation requires only comparatively small volumes of water, and should consequently pay a higher or domestic rate over and above the large irrigation consumer who uses large volumes, and may consequently be entitled to a wholesale rate.

The customer has a right at any time to inspect the meter placed on his service and there should be a rule safeguarding this right.

The preliminary charge of $50 per acre made by the company before it will deliver water for irrigating purposes is objectionable and should not be allowed.

If this is a public utility with water available, it must on demand furnish to a consumer water at its established rates. A public utility is such on the theory that every one under its system has a right to its service and this theory is violated when this right must be paid for. If it be contended that it is part of the rate it is objectionable because any considerable advance payment of rates is unjust. First, it exacts payment in advance for a service which may never be performed or be only partially performed, next, it is a burden which should be spread over a period and not imposed at one time. Finally, if it be part of the rate, it does not appear in the schedule filed with this Commission and any charge therefore, is unlawful.

A main of the San Gorgonio Water Company runs in the street bordering John Johnson's property, and he is now receiving domestic water service from this company. The president of the company testified that there was available for irrigation purposes under the system approximately six miners inches of water.

We recommend that the San Gorgonio Water Company be ordered to furnish John Johnson with water for irrigation purposes, and to furnish irrigation water to lands under their system upon

demand to the limit of water available, and that no charge be made for the right to receive such water other than the established rates.

The other defendant, the Beaumont Land and Water Company, was incorporated in August, 1907, and it has been distributing water for profit since. In view of the serious contention of the attorney for this company that it is not a public utility, we will briefly consider the status of this company.

Counsel argues that said company is not a public utility subject to the jurisdiction of this Commission because it is not serving the public with water, but is only serving water for use on lands owned or sold by it, that its Articles of Incorporation specifically limit it to such distribution of water and that it is only distributing water under contracts which fix the price to be paid for such service.

The Articles of Incorporation do not fix any rate or compensation to be paid for water but limits the distribution of water by this corporation to lands owned or sold by it and for the purpose of supplying not exceeding 70 inches of water to the San Gorgonio Water Company under contracts made before the said Articles of Incorporation were filed.

It need not be decided in this case whether the Commission is bound by the limitation in the Articles of Incorporation providing that water shall be served only to land owned or sold by the corporation, because no complaint has been made against this company for failure or refusal to distribute water. The request of complainant Johnson is directed to both companies, and inasmuch as he may be more conveniently served by the San Gorgonio Water Company it may be considered that his request does not apply to the Beaumont Land and Water Company. This leaves for consideration and determination the question of whether this Commission may fix rates and control service on water distributed and to be distributed by the Beaumont Company, regardless of the contracts

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heretofore made with consumers.

This question has been squarely decided by this Commission in the matter of the application of James A. Murray and Ed Fletcher for an order authorizing and permitting an increase in the rentals, tolls and charges for water furnished by them and service rendered by them in furnishing water in the County of San Diego, State of California, Application No. 118, Decision No. 536.

This decision contains an exhaustive review of the authorities on this question and the determination of the Commission was that contracts, in which the price of water was fixed or attempted to be fixed, either by the payment of an original sum for a so-called water right, or for a fixed sum or monthly charge, or both, were subject to the power of this Commission to fix rates for the water furnished under such contract, regardless of the rates or compensation set out therein.

It may be urged as a distinction between the facts in that case and this, that in that case it was admitted by all parties that the corporation in question was a public utility, whereas in this case it is contended that the company is not a public utility, and the Thayer case is relied upon as authority for this contention.

We can dispose of this contention by calling attention to the fact that the Thayer case was instituted December 20, 1910, and at that time section 23 of the Constitution as it now stands and the Public Utilities Act had not been enacted. Section 23, Article XII of the Constitution provides in part:

> "Every private corporation and every individual or association of individuals owning, operating, managing or controlling * * * any canal, pipe line, plant or equipment or any part of such canal, pipe line plant or equipment within this State * * * for the production, generation, transmission, delivery or furnishing of * * * water * * * is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature and every class of private

corporations, individuals, or associations of individuals hereafter declared by the Legislature to be public utilities shall likewise be subject to such control and regulation."

The Public Utilities Act which became effective March 23, 1912, provides, subsection X of Section 2:

"The term 'water corporation' when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever owning, controlling, operating or managing any water system for compensation within this State."

We may safely assume that the Supreme Court in its decision applied the law which it found in existence as of the date of the institution of the Thayer case and we may indulge the hope that upon a presentation to the Supreme Court of a case arising subsequent to the constitutional declaration of the people and the legislative enactment referred to above, the decision may be very different.

At any rate, we conceive it to be the duty of this Commission to give full force and effect to the solemn act of the people in adopting a constitutional provision and the carrying out of the provisions of such constitutional declaration by a legislative enactment, until the Supreme Court specifically rules otherwise.

Therefore, we hold that Beaumont Land and Water Company is a public utility corporation subject to the jurisdiction of this Commission.

The complaints against this company are:

1. That it charges the consumer for making a connection between the main and his property.

2. That the company arbitrarily places meters on a service or permits the flat rate to apply.

3. That the rate for irrigating trees, lawns, gardens, etc., is so high as to be prohibitive.

The rules of this company are practically identical with those of the San Gorgonio Water Company, and what is there stated about similar complaints against similar rules applies to this company, and we recommend that as to the three classes of complaints against this company above enumerated the same findings be made and the same rule applied as is recommended for the San Gorgonio Water Company.

We submit herewith the following form of order:

O R D E R

This Commission having made its order dated September 30, 1912, calling in question the rates and service of the San Gorgonio Water Company and the Beaumont Land and Water Company, and a public hearing having been duly held and being fully advised in the premises,

THE COMMISSION HEREBY FINDS AS A FACT that the following rules, regulations and rates of the San Gorgonio Water Company and the Beaumont Land and Water Company are unjust and unreasonable, to-wit:

1. Charging the consumers with the cost of installing meters and the making of connections between the mains of the company and the curb line of the street and where there is no curb line, the property line of the consumers.

2. Placing meters on the service of consumers only at the option of the company.

THE COMMISSION FURTHER FINDS AS A FACT that the San Gorgonio Water Company has sufficient water in its possession with which to serve John Johnson with water for irrigation purposes and that such service will not unreasonably deplete the supply of present consumers.

THE COMMISSION FURTHER FINDS AS A FACT that the charge of

the San Gorgonio Water Company of $50 for the right to receive irrigating water from said company is unjust and unreasonable.

The COMMISSION FURTHER FINDS AS A FACT that the following rules, regulations and rates are just and reasonable rules, regulations and rates to be adopted and charged by the San Gorgonio Water Company and the Beaumont Land and Water Company, to-wit:

1. Meters shall be placed either at the request of the consumer or the companies, and such meters and their placement shall be at the expense of the companies.

2. Service connections between mains of the company and curb line of the street, and where there is no curb line the property line of consumers, shall be made at the expense of the companies.

3. No charge shall be made to a consumer by the San Gorgonio Water Company for the right to receive water by such consumer.

THE COMMISSION FURTHER FINDS AS A FACT that with the exception of the items hereinabove declared to be unjust and unreasonable, the rules, regulations and rates of the Beaumont Land and Water Company and the San Gorgonio Water Company as filed with the Commission on April 18, 1912 in pursuance of the Commission's General Order No. 15, are just and reasonable rules, regulations and rates.

IT IS HEREBY ORDERED that within twenty days from the date of this order the San Gorgonio Water Company and the Beaumont Land and Water Company shall file with this Commission schedules of rules, regulations and rates in conformity with the findings hereinabove set out.

IT IS HEREBY FURTHER ORDERED that within thirty days from the date of this order the San Gorgonio Water Company furnish John Johnson with water for irrigation purposes under the rates,

rules and regulations herein ordered to be put in effect.

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 25th day of April, 1913.

John M. Eshleman

H. D. Loveland

Alex Gordon

Edwin O. Edgerton

Commissioners.