

ORIGINAL

Decision No. 6454

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the matter of the application)	
of CITIZENS WATER COMPANY OF SAN)	
JACINTO, a corporation, to change)	Application No. 4024.
and increase its rates for water)	
service.)	

Herbert J. Goudge and W. J. Williams
for applicant.
Ray Bruce for protestants.

BY THE COMMISSION:

O P I N I O N

Citizens Water Company of San Jacinto applies for authority to increase and adjust its rates charged for irrigation water distributed in the vicinity of San Jacinto, Riverside County.

Public hearings upon the application were held by Examiner Westover at San Jacinto and Los Angeles.

Protestants hold Class "A" water certificates issued by San Jacinto/^{Valley}Water Company, applicant's predecessor in title, and Class "B" water certificates issued by applicant. Their written protest filed by leave long after the hearing, is on the ground that neither applicant nor its predecessor dedicated the water to public use and that protestants do not consent thereto; that prior to the purchase of the system by applicant there was sufficient

water available to supply the 800 acres then irrigated but that applicant made extensions of its system for the purpose of supplying about 1000 acres of land acquired by San Jacinto Land Company, whose stock was held by applicant's stockholders in the identical proportions in which they held applicant's stock; that sufficient compensation for such improvements to the system was received by applicant's stockholders in the increased price for which the adjacent lands were sold; that the lands irrigated are underlaid with an abundant supply of water which can be developed and pumped at less than the rates fixed in the water certificates; and that the original cost of the system was equalled by the price paid by the holders of Class "A" certificates.

The prayer is that the Commission find the rates set forth in the contract just and fair and that the property has not been dedicated to public use; that the contracts or certificates represent private vested rights and that neither the certificates nor property are subject to the regulation and control of the Commission.

The position of applicant is that practically all of the protestants appeared as protestants at the hearing of applicant's previous petition to increase rates in which the Commission fixed the present rates; that no consumers or certificate holders applied for rehearing but all have ever since paid the present rates without protest, thereby submitting to the jurisdiction of the Commission. To this the protestants make reply in their brief that the rates prescribed did not exceed those set forth in the certificates, and therefore there was no occasion to protest.

Class "A" certificates issued by San Jacinto Valley Water Company provide that the holder is entitled to receive a continuous flow of one-fifth of an inch of water to each acre of land to which it shall be devoted, as designated on the certificate, for the seven summer months commencing March 15th and ending October 15th yearly, upon payment in advance of \$3.00 per acre for the use of water during each irrigation season. An inch of water is defined as ^{ing} equal/12,960 gallons for every 24 hours. It is provided that the interest represented by the certificate shall not become appurtenant to or pass with any land upon which it may be used but certificates shall be transferred only by surrender of certificate and issuance of a new certificate.

The Class "B" certificate issued by applicant, differs from the Class "A" certificate, in that it provides for a ^{service} of one-seventh of a miner's inch per acre instead of one-fifth, and provides a ^{maximum} rate of 15¢ per inch per 24 hour day, with annual dues of \$3.00 for each acre of land served, payable in advance on March 15th of each year, to be credited on water charges for water used during the current irrigation season.

At the hearing upon applicant's earlier petition to increase rates, Application No. 994, most of the protestants appeared by counsel and filed written protest, making the same points in relation to jurisdiction which they now raise, but urging that if the Commission concluded that it had jurisdiction that it require the company to place measuring weirs and fix a schedule of rates suggested by protestants, and that in determining rates the investment

in the system be disregarded for the reason that the amounts realized from the purchase of water certificates would equal the investment. The Commission held that it had jurisdiction to fix rates and authorized the present rates. (See Vol. 9, Opinions and Orders of the Railroad Commission, p. 261.) Other protestants in that proceeding took the position that the Commission had jurisdiction.

Protestants did not seek a rehearing but acquiesced in the Commission's decision. Pursuant to the authority contained in the decision applicant filed its present schedule of rates October 18, 1916, which have been in effect ever since that time and which all protestants and all other consumers have paid, and paid without protest, as shown by the undisputed testimony. Applicant has never limited its service to its stockholders but has always sold water to non-stockholders.

In *Francioni v. Soledad Land and Water Company*, 170 Cal. 221, the defendant, engaged in distributing water for irrigation for private use, applied under Statutes 1885, p. 95, to the Board of Supervisors to fix its rates. This was done by ordinance establishing rates and rules, to which defendant conformed for six years.

Judge Shaw, writing the opinion of the court en banc, holds that by applying for regulation, defendant admitted that it was a public service corporation administering a public use, and that plaintiff and his grantor had acquiesced in the new rates and rules and in the change in the character of the use; and that the evidence of acquiescence supported the finding that defendant was supplying a public use. The judgment of the trial court to the same effect was affirmed.

In Allen et al. v. Railroad Commission, 56 Cal. Dec. 326, relied upon by protestants, the Supreme Court says of the Francioni case at page 333:

"Manifestly the applicant did not become a public utility merely by itself fixing the rates and charges for the water which it sold, nor could its submission to the jurisdiction of the Railroad Commission and its declaration that it was a public utility in the slightest affect the previously vested rights of these petitioners. Herein this case is broadly differentiated from that of Francioni v. Soledad Land & Water Co. 170 Cal. 221. In the last named case a private corporation had been delivering water for private use under contract. It petitioned the proper authority to fix the rates to be charged for this service. The land owners who had been receiving water under private contract acquiesced in this petition and the rates were fixed. These rates were acted upon by all the parties in interest without question or dissent."

It does not appear from an examination of the record in the Francioni case that any consumers were among the "not less than 25 inhabitants who are tax payers" who joined in the petition to the board to fix rates, as required by the Statute of 1885; nor is it expressly alleged or found by the trial court that the rates authorized by the court were paid by consumers. It does not appear that they protested to the board or took steps to have different rates established, either then or at the end of the year or later, as they might have done under the statute.

In the case before us the protestants and consumers refrained from taking action against the rates after they had been authorized by the Commission either by petitioning for rehearing as to their reasonableness or appealing to the courts on the question of the

Commission's jurisdiction; but they actively acquiesced by receiving service, conforming with the rules and regulations established, and by paying without protest the rates fixed.

Long after the Francioni case arose the Public Utilities Act and Chapter 80, Statutes of 1913 were adopted. These enactments provide that a water company which sells water, whether under contract or otherwise, to others than its stockholders or members at cost, is a public utility subject to the jurisdiction, control and regulation of the Railroad Commission.

Under the facts and the law set forth above, applicant is a public utility and the Commission has jurisdiction in this proceeding. We therefore pass to a consideration of rates and the other points raised by protestants.

Under Application No. 994, by Decision No. 3154 of February 29, 1916, the Commission authorized applicant to establish rates per miner's inch day continuous flow of 10¢ for water used between March 15th and June 15th; 17½¢ for water used between June 15th and October 15th, and 5¢ for water used during the remainder of the year; with a minimum charge of \$3.00 per year for each 1/7 of a miner's inch continuous flow.

It will be noticed that these rates were not less than those set forth in the certificates, as claimed by protestants as a reason for not protesting, but constituted an increase in previous rates, as under Class "A" certificates the rate was but \$3.00 per acre per year; while under Class "B" certificates it was "at a rate not to exceed

15¢ for a run of 12,960 gallons for 24 hours" (defined therein as a minor's inch) with an annual charge of \$3.00 per acre per year, to be credited on water bills for the current year.

Applicant diverts surface water from the San Jacinto River, intercepts the subsurface flow by a series of timbered tunnels in a cienega adjacent to the river, and also pumps large quantities of water. The water is distributed by ditches and flumes and served for irrigation in and about San Jacinto. A considerable portion of the water is delivered at an elevation higher than the ditches, such service requiring extra pumping.

The estimated cost new of applicant's physical properties, including real estate, as used by the Commission in said Decision No. 3134 was \$153,283. This has been corrected for betterments and retirements, bringing the total estimated cost new of applicant's physical properties now used and useful, to the total sum of \$190,481. Suitable sinking fund annuity for replacements is computed as \$2155. It is unnecessary to discuss herein the claimed value of water rights, or the appraisal, or whether certain other properties are used or useful; as the rate requested by applicant will probably not produce sufficient revenue to meet operating expenses, depreciation and return upon a rate base of \$190,481.

Applicant's annual operating expenses for 1917 and 1918 appear from its books to be \$8,269.05 and \$12,126.62 respectively. The year 1918 was admittedly an exceedingly dry year, necessitating an abnormally high pump-

ing expense. There are included in the figures given a number of small repairs not apt to recur, which were incident to but not included in the earthquake damage hereafter referred to as represented by the sum of \$1792. After eliminating the expense of operating the booster pump to serve higher levels, which is taken care of herein by a separate rate, the legitimate annual operating expense for 1918 is \$10,318. For the purpose of this proceeding the average annual operating expense is estimated at \$9500.

Applicant expended large sums for extensive and unusual repairs necessitated by an extraordinary flood which occurred in the spring of 1916 and by earthquake damage in 1918. These extraordinary maintenance expenses should be distributed over a period of years intended to cover the period of their probable recurrence. However, there is but meagre data available to indicate when either may be expected to recur, if ever. We use a 10-year period which we consider equitable as between the utility and its consumers. The earthquake damage was \$1792 and the flood damage \$14,462. We therefore add to the annual charges \$1625, or 10% of the total estimated cost of damages attributable to both causes.

At the time of hearing Application No. 994 on which Decision No. 3124 was rendered, approximately one-third of applicant's system was used and useful, about 1322 acres being irrigated at that time. The Commission therefore allowed a return on one-third the valuation of its system, which justified the rate requested and authorized. Some 3000 acres are now being served and the system's present capacity is needed to care for fluctuations in demand and probable increases in business in the immediate future.

A return should now be allowed upon the entire rate base representing the physical system now used and useful.

The annual charges to be produced by rates are therefore as follows:

Operating expenses	\$9500.
Amortization of extraordinary expense	1625.
Annuity for replacements	2135.
Return on \$190,481 @ 8%	15238.
Total	<u>\$28498.</u>

Applicant's gross revenue for the last three years was \$17,011.59 for 1916, \$16,453.57 for 1917 and \$19,796.83 for 1918. It is apparent that applicant must have additional revenue if it is to maintain its system in condition to render the high-class service which the Commission requires of utilities. It suggests the advantages to it and its patrons of stimulating a greater use of water for irrigation during the winter and spring seasons by low rates for such service; that occasional users of water should pay more than regular users; that the rates should be graduated monthly between March 15th and June 15th, reaching their maximum in July and subsequent months of the irrigation season, and that extra pumping service should be covered by a higher rate. A rate varying monthly we believe would be found to be cumbersome and impracticable. The rate schedule found in the order is designed to produce the required revenue, and will meet the other suggestions. Under it the occasional user of water will pay a higher rate than the regular consumer. It also provides a higher rate for water pumped above the level of the ditches, which was shown to cost approximately 15¢ per miner's inch day additional.

As to the investment in the extension of the system to serve 1000 acres additional required by the auxiliary land company referred to in the protest, the only testimony on the question shows that the land and water companies are separate with different stockholders. Increase in area served naturally tends to reduce the cost of service, so that rate payers will not be injured by such extension.

In determining upon the rates found in the order we have given careful consideration to the cost of service by individual pumping plants and whether or not the applicant will probably suffer a loss in revenue through the development of private pumping plants incident to an increase in rates. It will be found that the cost of operating such plants when the elements of return on investment, depreciation, cost of power and labor are all taken into full account, will equal or exceed the cost to the consumer of service from applicant's system under the rates herein authorized.

Finally protestants urge that as they advanced much of the capital invested in the system through the purchase of water certificates prior to the amendment of the constitution in 1911 and the adoption of the Public Utilities Act in 1912, providing for regulation and control by the Railroad Commission, the rates contracted for should not be increased and the investment so provided by certificate holders should not be included in the rate base. These and similar questions affecting such contracts have been before the Commission on several occasions in which the decisions of the court have been exhaustively reviewed and the conclusion reached that no contract affecting the relationship between utilities and their patrons and affecting the public could prevent appropriate

regulation by the Commission; that a public service water company cannot confer upon its consumers preferential rights to the use of its water; nor charge for a water right in addition to the established rates, as a condition precedent to service; but such charges might be viewed as advances on account of rates. (See cases reviewed in the matter of Murray and Fletcher, Opinions and Orders of the Railroad Commission, Vol. 2, p. 464, at 501; and Vol. 7, p. 334 and 373. Also in re Sutter Butte Canal Company, Vol. 15, p. 425 at 452.) However, there is no need here for a differential to avoid discrimination and procure uniformity in rates, because applicant's consumers were all originally served under water certificates or contracts. Water sold to occasional users who are non-certificate holders, will take the higher rate provided in the new schedule, so that they will not be favored.

O R D E R

CITIZENS WATER COMPANY OF SAN JACINTO having applied for authority to increase rates for serving irrigation water in and about San Jacinto, Riverside County; public hearings having been held thereon and the matter being submitted and now ready for decision,

IT IS HEREBY FOUND AS A FACT that the present rates charged by applicant are unreasonable and not compensatory, and that the rates hereinafter set forth are just and reasonable rates for such service.

Basing its order upon the above findings of fact and upon the other findings of fact contained in the

opinion preceding this order.

IT IS HEREBY ORDERED that Citizens Water Company of San Jacinto be and it is hereby authorized and empowered to file within 20 days after the date hereof and thereafter to charge and collect for water served after March 14, 1919 the following schedule of rates:

Minimum: \$3.00 per acre per year, payable on or before March 15th of each year.

For water used between March 15th and June 15th:
0 to 10 miner's inch days per acre, 21¢ per miner's inch day.
Above 10 miner's inch days per acre, 18¢ per miner's inch day.

For water used between June 15th and October 15th:
0 to 15 miner's inch days per acre, 29¢ per miner's inch day.
Above 15 miner's inch days per acre, 22¢ per miner's inch day.

For all water used between October 15th and March 15th:
10¢ per miner's inch day.

For all water furnished to lands above the level of the ditch, to which applicant pumps water, 15¢ per miner's inch day in addition to the rates hereinabove established.

A miner's inch day as used in this schedule means a continuous flow of 1/50 of a cubic foot per second for 24 hours or 12,960 gallons.

IT IS HEREBY FURTHER ORDERED that applicant file with said schedule of rates, for approval by the Commission, its rules and regulations governing the service of water; providing therein among other things, how the minimum charge of \$3.00 per acre per year is to be applied.

Dated at San Francisco, California, this 26th day of June, 1919.

Edwin D. Edgerton

Frank R. Devlin

James Martin
Commissioners.