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Decision No. 7441

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of LAKE HEMET WATER COMPANY, a corporation, for an order increasing rates to be charged and collected by it, and for service rendered and to be rendered by it in furnishing water, in the County of Riverside, State of California.

Application No. 4306.

John M. Clayton and J. J. Lermen, for Applicant
Henry Goodcell and W. G. Irving, for Protestants
Oliver P. Ensley, for City of Hemet

BY THE COMMISSION:

O P I N I O N

This application alleges in effect that Lake Hemet Water Company serves water for domestic and irrigation purposes to an area of about 7000 acres in the vicinity of Hemet, Riverside County, and that the present rates charged by applicant are inadequate and fail to return sufficient revenue to provide for operating expense and depreciation. Applicant, therefore, asks the Commission to increase the rates at which water is to be delivered to certain of its consumers.

In addition to the exhibits and briefs filed by the parties hereto, there was placed in evidence this Commission's Decisions Nos. 3804, 3806 and 3842, annual reports to the Commission of Lake Hemet Water Company and Fairview Land and Water Company for the years 1915, 1916, 1917 and 1918 and

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the testimony presented at hearings before this Commission in Applications Nos. 1842 and 1843.

The City of Hemet appeared at the hearing protesting against the fire hydrant rates fixed by this Commission, and asked for a reduction therein.

Public hearings were held in Hemet and San Francisco, briefs have been filed, and the matter is now ready for decision.

In Applications Nos. 1842 and 1843, the Commission, on October 21, 1916, made an order fixing rates to be charged by applicant for water supplied to its consumers. Subsequently, a number of the consumers, being owners of some 300 tracts, joined in a petition for a writ of review to the Supreme Court of the State of California, wherein they asked for an annulment of the Commission's order on the ground that the service of water to them by the applicant herein was pursuant to certain private contract rights held under so-called water certificates which petitioners had purchased from the applicant. The writ issued, and in its decision thereunder the Supreme Court, after holding that petitioners were, as they contended, entitled to the use of the water in question as a matter of private right and not by reason of the fact that they were beneficiaries under a system devoted to public use, concluded as follows:

> "Third, for the reason that the character of the business conducted by the Water Company and water users authorized the state to declare the same a public utility, and to provide for the fixing of rates by the Railroad Commission, whose duty it was to fix rates in due recognition of the private rights of water certificate holders in such property, and that the intervention of this court is only proper where a clear violation of such rights appears."
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> Allen v. Railroad Commission, 179 Cal. 68, 98.

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The water certificates above referred to provide for an irrigation supply of $2.00 per acre per year, except for certain certificates covering 110.36 acres, which provide a rate of $5.00 per acre per year. Both forms of certificates were similar in other respects and entitled the consumer to one-eighth of a miner's inch of water per acre accumulated over a period of 214 days, from April 15th to November 15th, each year, and to a domestic supply at the rate of $5.00 per family per year for an amount of water fixed at 500 cubic feet per month.

The primary question before the Commission in this application is the fixing of rates for water served by the applicant which is not, under the decision in the Allen case above referred to, furnished by the applicant to its consumers as a matter of private right, but, on the other hand, is a public utility service by the applicant, and, therefore, subject to regulation by this Commission.

It was admitted that water furnished by the applicant to its consumers from November 15th to the following April 15th each year, and that all water furnished in excess of the amounts fixed by the provisions of the so-called water certificates, was in the nature of a public service of water dedicated to public use, and that the rates to be charged therefor are subject to the Commission's jurisdiction. Applicant, however, contends further that the certificate holders who did not join in the petition for writ of review by the Supreme Court have, by their failure in this regard, acquiesced in the fixing of rates by the Commission, and therefore, under the rule announced by the Supreme Court in the case of Franscioni v. Soledad Water Company, 170 Cal. 221, they have impliedly consented that

their use of the water as a matter of private right under the terms of the water certificates, be converted into a public use, the rates to be charged thereon thus becoming subject to the jurisdiction of the Commission.

We do not agree that the principle of law laid down in the Franscioni case is applicable to the present instance. There, it was unquestioned that not only the company, but all of the consumers, had consented that the rates to be charged for water served by the company be regulated by public authority. Granting, for the sake of argument, that a part of such a body of water users under private contracts could, by agreement with the company supplying them, convert that portion of the service from a private to a public use, the evidence in this case does not show such consent on the part of the consumers. The mere fact that a number of consumers did not join with others in the petition for writ of review to the Supreme Court, does not justify the conclusion that they thereby acquiesced and consented to such exercise of jurisdiction by the Commission. The fact remains that vigorous opposition was made to the regulation of rates by the Commission of water served pursuant to the rights held under the water certificates. Some, though not all, of the protestants before the Commission herein joined in the petition for writ of review to the Supreme Court. This proceeding was in reality viewed as a test case by all concerned.

As above indicated, the applicant herein does furnish water otherwise than under the water certificates, and in so doing is rendering a public utility service.

The Commission, therefore, has jurisdiction to fix rates for this portion of the service.

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In arriving at a proper basis for a decision in this application, the Commission has considered the plant in its entirety and has computed the reasonable maintenance and operating expenses thereon, together with depreciation on the whole. Inasmuch as the State Supreme Court has annulled, or partially annulled, the rates previously established by this Commission, and has decided that the rates set out in the certificates shall remain in effect, it is apparent that this Commission must fix rates which shall apply only to applicant's public utility service. Obviously, the most reasonable and simple method of achieving this result will be to establish what would be a fair rate if every consumer were a public user. In so doing, it leaves out of consideration all question of actual charges or payments made under so-called water certificates, and assesses to public consumers rates in a proper proportion to fixed charges.

In the Commission's decisions on Applications Nos. 1842 and 1843, in arriving at the amount of property used and useful in the public utility functions of applicant, allowance was made for certain sums paid by the certificate holders for their certificates. No such allowance can be made in the present application for the reason above suggested, that those consumers who have certificates are now paying a rate in accordance with the terms of their contracts, and consumers of water dedicated to public use can, in no wise, be concerned with or expect to receive any beneficial allowance on account of such sums as may have been received by this utility from third parties.

Railroad Commission's Exhibit No. 1 shows that the net additions to capital from December 31, 1915, to December

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31, 1918, were $58,927; that reasonable maintenance and operating expense is $33,690 per year, and that a reasonable annuity for depreciation to cover the net additions to capital is $910.

The estimated cost new of the water system supplying applicant's consumers as determined by the Commission's engineers in former proceedings was $657,385. From this amount there was deducted $164,470 on account of overbuilding of the system, leaving a net estimated cost new of $492,915 on December 31, 1915. Net additions to capital, amounting to $58,927, bring the estimated cost new of the used and useful property of applicant up to $551,842.

Depreciation annuity as determined by the Commission's engineers in former proceedings was $4,665, and, with the addition of $910 mentioned above, gives a total of $5,575 as a reasonable annuity for this proceeding.

Necessary annual charges are computed as follows:

Interest on $551,842 - - - - - - -	$33,111
Depreciation annuity - - - - - - -	5,575
Maintenance and Operating Expense -	33,690
Total - - - - - - - - - - -	$72,376

Revenues for 1917 were $41,800 and in 1918 were $43,178.

Based upon 1918 water use, it is estimated that the rates set out in the order will yield the necessary revenues.

O R D E R

LAKE HEMET WATER COMPANY having made application for permission to increase rates, public hearings having

been held thereon, briefs having been filed, and the Commission being fully informed in the matter,--

IT IS HEREBY FOUND AS A FACT that the rates now charged by Lake Hemet Water Company for water delivered to its public service consumers are unjust and unreasonable insofar as they differ from the rates set out in the following order, and that the rates so set out are just and reasonable rates to be charged for such service, and basing the order upon the foregoing finding of fact and upon the statements of fact contained in the preceding opinion,--

IT IS HEREBY ORDERED, that Lake Hemet Water Company be, and it is hereby, authorized and directed to file with this Commission within twenty (20) days from the date of this order, and thereafter charge the following rates for water delivered to its public service consumers in Hemet and vicinity, and effective for all meter readings subsequent to January 1, 1920:

Monthly Minimum Charges

3/4 inch meters - - - - - - - - - - - - - - -	$1.00
1 " " - - - - - - - - - - - - - - -	1.50
1½ " " - - - - - - - - - - - - - - -	2.00
2 " " - - - - - - - - - - - - - - -	2.50
3 " " and larger- - - - - - - - -	3.00

Domestic Rates

From 0 to 500 cubic feet, per 100 cubic feet -	$0.20
" 500 to 1000 " " " 100 " " -	0.18
"1000 to 5000 " " " 100 " " -	0.15
Over 5000 " " " 100 " " -	0.10

Irrigation Rates

Minimum annually for 1/50 second foot (miner's inch) or part thereof in the same proportion -	$48.00

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For each 1/50 second foot (miner's inch day) or 1728 cubic feet - - - - - - - - - - - 0.40

Public Use

For water furnished for fire fighting purposes through fire hydrants, per month - - -$25.00

Other public use at metered rates.

Dated at San Francisco, California, this 19th day of April, 1920.

Edw. O. Edgerton

Frank R. Devlin

H. H. Brundage

Duncan Matheson

Commissioners.

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