

Decision No. 7657.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Empire Water Company for an order)
increasing the rates or charges for)
delivery of water through its wa-)
ter system to the users thereof;)
and for an order authorizing it)
to adopt regulations governing)
such distribution and collection)
of charges.)

Application No.2801.

Johnston & Jones and J. S. Jenks, for Italian Swiss Colony;

M. B. Harris of Harris & Harris, for East Side Land Owners;

Sullivan, Sullivan & Roche and Louis V. Crowley, for West Side Consumers;

James E. Kelby and H. P. Brown for Gridley, Perkins and others, including East Side Farms, a corporation;

Scarborough & Bowen, for Applicant.

BY THE COMMISSION:

O P I N I O N

In the above entitled proceeding the Empire Water Company, applicant herein, asks that this Commission authorize it to increase its charges for water, and establish Rules and Regulations for the distribution of water through its system and the collection of charges for water delivery.

Applicant in its petition alleges in effect as follows:

That it is a California corporation, and was declared a public utility by this Commission in its Decision No.2200 in the proceeding entitled Angal Ferrasci et al. vs. Empire Water Company,

Case No.494, decided March 5, 1915;

That it supplies water to lands within the boundaries of the Empire Ranch, near Lemoore, Kings County, consisting of 16,372.75 acres, of which 6,785.37 acres are located on the West side of Kings River and 9,587.38 acres located on the East side of the river;

That the water so delivered is derived from the following sources:

1. The South Fork of Kings River,

2. Lemoore Canal and Irrigation Company under shares of its capital stock standing in applicant's name;

That water obtained from the Lemoore Canal and Irrigation Company's system is supplied by the Commission's order, in Case 494, first, to lands located on the East side of the river, and any surplus thereof to lands on the West side of the river, and of the lands on the East side 4,036.34 acres can be supplied only from water obtained from the Lemoore stock;

That the rates which applicant now charges are fixed by a contract, dated January 8, 1906, with Empire Investment Company, then owner of all lands in the Empire Ranch. This contract provides for a charge of \$1.00 per acre per year for the delivery of water for irrigation;

That prior to September, 1911, the rate was reduced to 75 cents per acre per year, but that subsequent to that time the contract rate has been collected;

That the present rate was fixed at a time when it was thought that the expense of maintaining and operating the system would be much less than it has actually been;

That applicant has expended for maintenance and operation of the system to January 1, 1917, \$115,862.29 and its revenue has been \$74,243.17, leaving a deficit of \$39,619.12;

That the present rate furnishes no return upon the investment;

That applicant desires to increase its rates to \$1.50 per acre per year for consumers on the West side of the river, and to \$2.50 per acre per year for consumers on the East side of the river;

That consumers on the East side are assured of a better water supply than those on the West side, because of the advantage they receive through the use of water from the Lemoore system, and should therefore pay a higher rate;

That a flat rate per acre per year should be fixed rather than a measured rate on account of the ditches having a very flat grade, making it practically impossible to install and operate measured devices, and on account of the heavy expense of installing and operating such devices;

That it is necessary, in order to secure proper operation of the system, to adopt and enforce proper rules and regulations and the Commission is asked to allow applicant to adopt the rules proposed in "Exhibit F" and attached to the application, one of which provides that unpaid charges become a lien upon the land.

At the hearing in this proceeding counsel representing certain of the consumers contended that this Commission is without jurisdiction, on the ground that applicant herein is not a public utility. Much evidence was submitted on this point, both in this proceeding and in the proceeding entitled *Angal Ferrasci et al. vs. Empire Water Company*, Case 494, in which proceeding this Commission in its Decision No. 2200, decided March 5, 1915, Volume 6 of Opinions and Orders, Railroad Commission of California, page 309, held Empire Water Company a public utility, subject to the jurisdiction of this Commission. Applicant's history and a description of its system are fully set out in the above mentioned decision. However, for the purpose of this proceeding, a short resume will be here given.

The Empire Investment Company was incorporated May 4, 1905, and purchased the Empire Ranch, containing 18,712 acres of land in Kings County, including $7\frac{1}{2}$ shares of the capital stock of the Lemoore Canal and Irrigation Company, for \$20 per acre. Subsequently an additional $1\frac{1}{8}$ shares of Lemoore stock was acquired by the Investment Company.

The stockholders of the Investment Company subsequently formed the Empire Water Company, with a capital stock of \$500,000, which was afterwards reduced to \$100,000. The Empire Water Company was incorporated under the laws of the State of California on November 17, 1905.

On January 8, 1906, the Investment Company, by deed, conveyed to the Water Company certain ditches and rights of way. This deed expressly provided that no water rights, riparian or otherwise, were transferred to the Water Company, but that such rights were appurtenant to the lands then owned by the Investment Company, and that the Water Company, in its acquisition of the ditches and rights of way, secured only the right to distribute such waters to the lands to which they were appurtenant. On the same date as the execution of this deed a contract was executed between the Investment Company and the Water Company whereby it was agreed that the Water Company might, as the agent for the Investment Company, distribute water to the lands of the Empire Ranch, owned by the Investment Company. It was agreed in turn that the Investment Company, its successors and assigns, should pay annually for water thus furnished and delivered the sum of one dollar (\$1.00) per acre of land owned by them. The Investment Company acquired the Empire Ranch for the purpose of subdividing it and placing it on the market for sale. This was done; the lands were advertised and sold to a large number of purchasers, many of whom are now protestants in this proceeding. The contracts for the sale of lands by the Investment Company

contain the following provisions:

"That said land is part of a large tract of land owned by first party (Empire Investment Company) and containing about 18,712 acres, and which tract is riparian to a stream of water known as the Kings River and is entitled to use of water from said river for irrigation, stock and domestic purposes; that the Empire Water Company owns a water system extending over said tract, through which it has agreed to distribute and deliver said water to the subdivisions of said lands for the first party and its grantees, which said agreement has been recorded in Records of said Kings County, California, in Book 5, page 8 of Contract.

"It is agreed that with said land shall be conveyed its pro rata of said riparian rights, to-wit: the proportion of all the waters of said river to which said large tract is entitled, and which the acreage of the land hereby agreed to be conveyed bears to the acreage of said large tract, and all the rights granted to said land hereby agreed to be conveyed by said water contract, but subject to the rents or charges, the lien, reservations of rights of way and all other terms, covenants and conditions of said water contract, which second party, as part of said purchase, hereby assumes."

The articles of incorporation and by-laws of the Empire Water Company show that it was not organized for the delivery of water to its stockholders, as in the case of a mutual company. It is a proper conclusion to be drawn from the evidence that the Water Company was organized, properties were transferred to it, and ditches constructed for it by the Investment Company, for the purpose of creating a corporation which would perform the service of taking the water from its sources or points of diversion, and delivering it to the lands to which it was appurtenant. These lands were intended to be, and were, actually offered for sale and sold to the public generally. The Water Company therefore, having no ownership in either the lands or the water, undertook by its original contract to deliver for compensation water to that portion of the public which should thereafter become the owners of the lands to which the water was appurtenant.

Analyzing the evidence submitted in this proceeding and in Case 494 supra, it appears that applicant herein is acting as a common carrier in delivering water to its consumers, and is charging therefor in accordance with the terms of its contracts. It was contended by representatives of the consumers that applicant

is not a public utility because it had contracted for the delivery of water. As a matter of fact, until recently practically all electric power companies required every user of electric energy to sign a contract in which the rate was fixed. Even railroad companies required the traveling public and shippers of freight to sign contracts. Yet no one would claim that these power companies or railroad companies thereby avoided public utility status. We are of the opinion that this company, in thus acting as a common carrier, is clearly a public utility company, delivering water for compensation.

Furthermore, as above stated, this Commission in its Decision No.494 supra, found as a fact that applicant herein was a public service corporation delivering water for compensation, and in its order in that proceeding directed Empire Water Company to deliver and distribute the available water supply in a certain manner, which delivery and distribution affected the quantity of water delivered to each of its consumers. This decision became final, and the Empire Water Company has been operating in accordance with its terms. In this proceeding the consumers appear, after three seasons of operation under the Commission's order, and contend that Empire Water Company is not a public service corporation.

After carefully considering all of the evidence before the Commission relative to the public utility status of this Company, the Commission finds as a fact that Empire Water Company is a public utility and is transporting and distributing water to a portion of the public for compensation.

We now proceed to an analysis to determine whether or not applicant is entitled to the rate increase requested.

The Commission's auditing department made an investigation

of the actual cost of the system, as shown by the company's records. This investigation shows a total cost to applicant of its property of \$150,222.34. Mr. J. B. Lippincott, applicant's engineer, estimates that it would cost the sum of \$325,450 to reproduce the property at present. The Commission's hydraulic division reports an estimated cost new upon the historical basis, of \$166,161. A consideration of the evidence submitted herein relative to the sum upon which interest should be computed to be included in the rate base, leads us to the conclusion that at this time it is fair to the company that a rate schedule be established which will yield interest upon the sum of \$166,161. This sum more closely approximates the original cost to applicant of its properties than the sum of \$150,222 as shown by the company's records. This is due to the fact, as shown by the Commission's auditing department's investigation, that there was a failure on the part of the company to charge certain expenditures to capital. Mr. Lippincott reports that the sum of \$1,363 is a fair amount to be included for replacement of the property. This sum is computed by the 6 per cent. sinking fund method. The Commission's hydraulic engineers report the sum of \$1,366 computed by the 5 per cent. sinking fund method, and the sum of \$1,219 computed by the 6 per cent. sinking fund method, for a replacement fund.

Maintenance and operation expenses from June 1st, 1906, to December 31st, 1915, average \$10,500 per year. For the years 1915 and 1916 the expense was \$15,182 and \$13,245 respectively, or an average of \$14,213. Mr. Lippincott estimated that a reasonable allowance will be \$16,401 per year.

After carefully considering all the evidence it appears fair to include the sum of \$15,000 for maintenance and operation expenses, and \$1,566 for replacement fund, in the annual charges.

The Commission's auditing department's report shows that in no year since the inception of this company has its revenue exceeded approximately \$16,000. It is therefore apparent that the present rate schedule does not produce a revenue sufficient to return to applicant reasonable annual charges.

Summing the above mentioned annual charges we arrive at \$29,656 as the sum to be produced annually from rates.

As hereinbefore stated, consumers residing on the East side of Kings River receive water delivered from the Lemore Canal and Irrigation Company's system through the ownership of its stock by applicant. They thus get a different character of service than the consumers residing on the West side of Kings River, who receive only water diverted by the Empire Water Company from the Kings River. It appears reasonable therefore that a differential rate schedule be established to care for this condition.

It is estimated that the rate schedules set out in the following Order will yield the above annual charges.

O R D E R

Empire Water Company having applied to this Commission for authority to increase its rates and charges for the delivery of water to its consumers and for the establishment of Rules and Regulations, and a public hearing having been held and the matter now being ready for decision,

It is hereby found as a fact that the rates, rules and regulations of Empire Water Company in so far as they differ from the rates, rules and regulations herein established, are unjust and unreasonable, and that the rates, rules and regulations herein established are just and reasonable rates, rules and regulations;

And basing its order on the foregoing finding of fact and the further findings and statements of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that Empire Water Company be and it is hereby authorized to file with this Commission within twenty (20) days of the date of this order and thereafter charge the following rates:

For lands located West of Kings River, \$1.50 per acre per year;

For lands located East of Kings River, \$2.00 per acre per year.

IT IS HEREBY FURTHER ORDERED that Empire Water Company be and it is hereby authorized to file with this Commission within twenty (20) days of the date of this order, rules and regulations governing the distribution of water which it shall place in effect as amended and corrected by this Commission.

Dated at San Francisco, California, this 1st day of June ~~May~~ 1920.

Edwin C. Edgerton
H. B. Loveland
H. T. Bourdage
George M. ...
Commissioners.