Decision No. 9294.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

- - - - -

ORIGINAL

P. N. ASHLEY, HARRY A. DUTTON, SHELLY LEE, C. H. JOHNSON, G. G. BLYMER, MARY S. GERHART, and MRS. R. B. MOORE,
COMPLAINANTS,

vs.

SUTTER-BUTTE CANAL COMPANY,
DEFENDANT.

CASE NO. 1352.

John S. Partridge and Arthur B. Eddy, for Complainants.
Isaac Frohman, for Defendants.

BY THE COMMISSION:

O P I N I O N

The complainants in the above entitled proceeding ask that the defendant, Sutter-Butte Canal Company, be required to refund certain amounts advanced by them to cover the cost of constructing a ditch known as the Crocker Lateral which was built to supply complainants with water for irrigation purposes. For a history of the Sutter-Butte Canal Company and a description of its system reference is made to Decision No. 5227, dated March 25th, 1918, Case No. 909, E. L. Munn, et al., vs. Sutter-Butte Canal Company (combined with others matters for hearing and decision), Page 425, Volume 15, Opinions and Orders of the Railroad Commission.

It is stated by complainants that they are owners of 1740 acres of land lying west of the Cherokee Canal, Butte County, and that early in 1918 they entered into negotiations with the

defendant Sutter-Butte Canal Company to supply water to their lands for the purpose of irrigating rice. In order to convey water to complainants' lands it was necessary to construct approximately seven miles of ditch and as a condition precedent to the construction of the ditch and the furnishing of service, complainants were required to enter into contracts with defendant in accordance with the terms of which complainants advanced to the utility the estimated cost of constructing the ditch and the securing of the necessary rights-of-way, amounting to $12,730.00, the amount so advanced to be rebated at the rate of 1/7 of total annual revenue derived from the ditch. Such repayments were to begin after the second year the ditch was in operation and were to continue four years thereafter. Complainants contend that defendant should rightfully have constructed the ditch at its own expense without requiring them to advance the cost thereof, inasmuch as sufficient revenue was assured at the time the ditch was constructed to make it compensatory; that the ditch has proven to be a paying one and will continue as such in the future. Complainants ask, therefore, that the amount deposited by them with the utility be ordered returned at once, together with interest at the rate of 8% per annum.

Defendant in its answer denies that it is assured an adequate revenue from this lateral, basing its denial on the fact that the only crop of importance adaptable to the soil in this vicinity and needing irrigation is rice, and that the planting of rice will vary according to market conditions. It is alleged in the answer that the actual amount expended in connection with the construction of the lateral greatly exceeded the amount advanced by complainants, due to the extraordinary increase in the cost of labor and material that occurred during the war; that in order to convey a sufficient amount of water to the head of Crocker Lateral to supply

the consumers thereon, it was necessary to enlarge a ditch known as "Richvale Colony 7" ditch, which empties into Crocker Lateral, at a considerable additional expense.

Public hearings were held in this matter before Commissioner Devlin, at San Francisco, on December 15, 16 and 22, 1919, and January 12, 1920, and briefs were later filed.

From the evidence it appears that the historical occurrences are substantially as related in the complaint--not passing for the present upon complainants' views relative to the ditch from a remunerative standpoint.

Much testimony was introduced pertaining to the cost of constructing the canal. Defendant's original estimate was $12,730, while the actual cost it contends will be in the neighborhood of $20,000.

Mr. Charles T. Tulloch, defendant's engineer and general manager, testified that the reason the actual cost of the work had so greatly exceeded the estimate was the unprecedented increase in the cost of labor and material due to the emergency created by the war. Mr. Tulloch in his testimony stated in justification of the apparent high cost of construction, that early in 1918, at the time the construction of the canal was proposed, the complainants had urged him, regardless of cost, to rush the work to completion in order that they mighthave water to irrigate the rice crops which they were preparing to plant to assist the government in the production of food. Therefore, although the soil was not in proper condition, he proceeded with the work of constructing the canal. Numerous obstacles were encountered, such as wet condition of the soil, scarcity and high price of labor and materials, thus greatly increasing the cost of the work. The contracts entered into between complainants and defendant provided that in the event that the cost of the canal exceeded the estimate, then complainants would advance such excess. However, it was stipulated by defendant at the hearing that complainants would not be

asked to advance further amounts.

We now come to the question of revenues. The evidence shows that the income for the first two years the canal was in operation was as follows:

1918	$12,220.00
1919	23,973.60
*1920	27,958.00
Gross Revenue. . . .	$64,151.60

*Estimate based upon applications for water for season of 1920 filed up to the time of the hearing herein.

It is argued by counsel for complainants that by deducting the expense of operating the Crocker Lateral from the gross income the balance will constitute a net profit to the utility. In other words, the utility reports its operating expenses on the Crocker Lateral for the years 1918 and 1919 as $1,002 and $3,532, respectively. Counsel estimates the expense for 1920 to be the same as in 1919. Therefore it is argued that by deducting the approximate operating expense for three years, or about $8,000, from the total income of approximately $64,000, the company will earn a net revenue in three years of $56,000.

The conclusions of plaintiffs' counsel are erroneous for the reason that he has only included the cost of operating the lateral itself, whereas the expense of conducting the entire system of the utility should properly have been taken into consideration.

When this Commission established the present rates of this utility in its Decision No. 5227, supra, such rates were of course based on the assumption that each acre of land served by the utility should contribute its proper portion of the revenue which it was found the utility was entitled to receive. This portion, in the case of land devoted to the culture of rice, was found to be $7.00 for each acre. This rate was intended to yield to the company maintenance and operating expense and to provide an amount to be set aside each year

to cover depreciation of its equipment and a proper return on its investment. It will be seen, therefore, that when the company receives $7.00 for a season's supply of water for the irrigation of an acre of rice land, it does not follow that by merely subtracting the expense of operating the immediate lateral the balance of the $7.00 is in any way net profit to the company. On the contrary the entire $7.00 is used up as explained above, in the general system costs of maintenance, operation, depreciation and interest.

Much discussion was had relative to the prospects of future revenues to be derived from the lateral. It was contended by complainants that the utility is assured of an income that will increase year by year. Defendant, on the other hand, maintains that the amount of the future revenues is decidedly uncertain, due to the fact that the only crop which this soil is adaptable to and needing irrigation is rice and that the extent to which this industry will be engaged in in the future is decidedly problematical, and that the revenue that would be received from other crops than rice would be negligible. It was further contended by defendant that even though the rice industry were continuously engaged in, that on account of the obstacles encountered in the raising of rice it is the usual custom to allow the land to rest three years out of five in order to eradicate foul growth, such as water grass. Therefore it was contended that the best the company can expect is a revenue from the acreage served under this lateral three years out of five.

It was brought out during the proceedings that P. N. Ashley, the principal complainant herein, had arranged to obtain water for the irrigation of 100 acres of land which was then being irrigated by water received from the Sutter-Butte Canal Company, by installing a pumping plant and pumping water from a drainage ditch. Mr. Ashley, in his testimony, stated that he later hoped to obtain sufficient water to supply his entire place of approximately 400 acres from the same

source. This would cut off from the defendant company an important portion of the revenue from this extension.

A copy of the form of contract which was entered into between complainants and the Sutter-Butte Canal Company is attached to the complaint. As heretofore stated, this contract provides in part that 1/7 of the annual revenue derived from the Crocker Lateral shall be repaid to the consumer, such repayment to commence the second year after the date of the signing of the contract and to continue for four successive years. In other words, the utility agrees to return to the consumer 1/7 of the gross annual revenue derived from the lateral for four years, provided that the amount advanced has not been fully returned before the expiration of the four-year period. If on the other hand at the expiration of the said period the full amount has not been returned then the consumer is not entitled to further rebates. On April 30, 1919, the company filed with this Commission a revised set of rules and regulations in which was included Rule 3, which makes provision for the financing of extensions from the company's system. This rule was amended in certain respects on December 1, 1919, and as at present in effect provides as follows:

> "Rule 3. The company will make all reasonable enlargements or extensions of its ditches at its own expense, provided that if the proposed enlargement or extension is non-compensatory or the future use of water uncertain, the Company may require that its estimated cost, including rights-of-way, be deposited with it by the prospective consumer. Any excess of deposit over cost will be returned to the depositor. If the cost of the enlargement or extension is greater than the deposit, the difference must be deposited by the consumer. The amount deposited and not previously returned shall be returned without interest at the rate of one-seventh of the gross revenue received from the extension, payable in annual installments until the entire amount deposited has been returned; the first installment being payable from the revenue derived from charges of the second year's operations. If the service to any consumer or consumers who have made such deposits is discontinued

> before the return of the deposit can be completed as above provided, the consumer or consumers shall not be entitled to any further payment of credits from the company for or on account of the deposits. After any such enlargement or extension of the company's ditch or ditches is completed, as above provided for in this paragraph "3", should an owner of land, who has not contributed towards the cost of such enlargement or extension, as herein provided, desire water for the irrigation of his land by or through such enlargement or extension, then, before serving the land of such owner with water, the company shall require such owner to first pay his just or fair share of the cost of such enlargement or extension for the benefit of those consumers who originally advanced and deposited with the company the cost of such enlargement or extension."

The provisions in the above rule relating to rebates are very similar to the conditions in the contracts entered into with the consumers, the latter conforming with the utility's rules in effect at the time. The rule, however, is more favorable to the consumers in that the repayments begin after the 1st year instead of after the second year, and further, in that such rebates continue until the entire amount is refunded. In the case of the contracts and the former rules the rebates were made only for four years.

The utility in its dealing with the complainants has already substituted this rule for the contracts heretofore mentioned and we understand is making rebates accordingly.

After carefully considering the evidence submitted in this connection, it is our belief that this entire matter is based on two questions; first, whether or not Rule 3 of the utility governing extensions of service is a reasonable rule; second, whether or not the rule in question should apply in this case.

It is a common mistake to presume that when a public utility is permitted by its rules and regulations filed with this Commission to require applicants for service to advance the cost of

unremunerative extensions of mains or ditches to supply such applicants, that the utility is necessarily the sole beneficiary thereby. In this case we have a water system that has been dedicated to public use. If the system is wisely managed and economically operated the consumers will be benefited by being assured good service at reasonable rates. On the other hand, if the system were poorly managed, or if the company invested much capital unwisely in numerous non-paying extensions the result would be an unprofitable system and a deficit would probably be shown in its operations. To make up such deficit the utility would eventually come before the Commission for an increase in rates. Hence it can be seen that if the utility were required to extend its system without considering the remuneration to be received, the consumers of the company would be the ultimate sufferers.

Of course a utility serving a given district, the larger portion of which is thickly populated, can usually afford to extend to consumers residing in less thickly populated sections of the district at its own expense. However, if the utility were required to extend too far we would have the situation suggested in CLARK vs. HERMOSA BEACH WATER COMPANY, Vol. 2, Opinions and Orders of Railroad Commission of California 149, Page 152, referring to the effect of certain extensions on rates:

> "If a utility were operating in a valley and was providing water by gravity flow to people in the valley and the utility were compelled to install a service at the top of a mountain, the expense of which installation and the cost of producing the service was twice the cost and expense on the rest of the system, manifestly, to charge this consumer on the top of the mountain the same rate as is charged in the valley would result in the necessity of tremendously increasing the rate in the valley in order to take care of the loss suffered in the service of the mountain top."

In the case of the Sutter-Butte Canal Company's Rule No.3,

the utility makes extensions to applicants for service at its own expense where the extension is estimated to be remunerative. Where it is considered that the extension will not be immediately a paying one or where there is some doubt about its continuing to be a paying one, then the applicant for service is required to advance the cost thereof to be returned in a portion of the annual revenues collected from such extension. If the extension proves to be a paying one, the amount advanced is soon returned and all that the consumer loses is the interest on the deposit. But the fact should not be lost sight of that the value of the land supplied with water will be greatly enhanced. We consider Rule No. 3, of the defendant utility, to be a just rule to both the utility and its consumers.

We will now consider the question of whether or not Rule No. 3 should apply to complainants herein as applicants for irrigation service. The Commission is not convinced, from the evidence in this case, that rice will continue to be planted to such an extent in the future as it was during the years 1918, 1919 and 1920. Let us presume that the planting of rice on the lands under this extension should be totally discontinued. In such an event the utility may be called upon to furnish a negligible amount of water for such purposes as grain irrigation, sprouting of water grass, etc. The revenues that would be collected from such sources would probably be insufficient to pay operating expenses on the extension. Again, we have the case of Complainant Ashley pumping water from a drainage canal to irrigate a large portion of his place, thereby discontinuing the supply of the defendant utility and his statement to the effect that it is his intention to discontinue the supply of the Sutter-Butte Canal Company altogether. There is nothing in the record indicating that other consumers intend to follow this course, but the possibility of their so doing is of course suggested.

We believe that the interests of the consumers on the Sutter-

Butte Canal Company will best be served by the utility being permitted to rebate the amount advanced by the complainants in the manner provided by the company's rules. The complainants would not appear to be unduly burdened by the utility being permitted to follow this course inasmuch as it is shown hereinbefore that if the revenues from the extension should continue as they did during 1918, 1919 and 1920, the total amount advanced by complainants will have been returned in about three years, the only loss to complainants being interest on the money so advanced. If the revenues should decline then, of course, a greater length of time would elapse before the money will have been returned. In either event, no injustice is done to either party, and the application of such a principle makes for a stabilization of the financial affairs of the utility, which, in turn, is reflected in a dependable and proper service to the consumers.

O R D E R

Complaint having been made by P. N. Ashley, Harry A. Dutton, Shelly Lee, C. H. Johnson, G. G. Blymer, Mary S. Gebhart, and Mrs. E. B. Moore, against Sutter-Butte Canal Company, public hearings having been held and the matter submitted and ready for decision,

IT IS HEREBY ORDERED that said complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 30th day of July, 1921.

H. D. Loutsenhiser

N. S. Lovelace

Irving Martin

Commissioners.