

Decision No. 22007

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SIERRA WATER SERVICE COMPANY
for (1) Order authorizing sale and
purchase of certain water service
properties jointly with Sierra Realty
Corporation; (2) Permit to issue its
shares of stock; (3) Certificate of
public convenience and necessity; and
(4) Order rescinding certificate
issued July 16, 1928, by the above
Commission on Application No. 14679-
Decision No. 20045.

ORIGINAL

Application No. 18869

Mickle and Haizlip, by Raymond Haizlip, for
applicant.
E. B. Walthall, for California Water Service
Company.
Albert Mansfield, City Attorney, and Kirkbride,
Wilson & Brooks, by E. A. Wilson, for the
City of San Carlos.

BY THE COMMISSION:

O P I N I O N

In this application the Railroad Commission is asked to
enter its order:

1. Authorizing Sierra Realty Corporation to sell and convey to Sierra Water Service Company the water properties located in San Carlos and vicinity to which reference will be made.
2. Granting to Sierra Water Service Company a certificate of public convenience and necessity to operate as a public utility water company and to exercise franchise rights.
3. Authorizing Sierra Water Service Company to issue 3900 shares of no par value common stock in payment for said water properties.
4. Rescinding the certificate of public convenience and necessity granted to Municipal Properties Company by Decision No. 20045, dated July 16, 1928, in Application No. 14679.

On May 13, 1933, Sierra Water Service Company filed a supplemental application asking in addition for an order permitting it to discontinue service for non-payment by consumers of delinquent accounts due California Water Service Company, which now is operating the water system.

A public hearing in this proceeding was held before Examiner Fankhauser on June 12, 1933. At that time the City of San Carlos filed its appearance asking the Commission to direct Sierra Water Service Company to make certain replacements of its pipe lines, to continue the hearing so far as the schedule of rates might be concerned for a period of three months, and upon such further hearing, to cancel the surcharge now being collected from customers on the system.

Because of the many questions presented in this matter and of the involved history of this utility, a review of the transactions leading up to the present application should precede a discussion of the several requests here made.

HISTORICAL SUMMARY:

The system referred to in this proceeding was installed in 1925 to furnish domestic service in what is known as Devonshire Hills, a subdivision adjacent to San Carlos. Water was purchased from Spring Valley Water Company, under a contract dated April 17, 1925, and pumped by means of four booster pumps located along the lines into two reservoirs and two tanks having a combined storage capacity of 190,000 gallons whence delivery was made through some two and one-half miles of pipe.

By Decision No. 20045, dated July 16, 1928, in Application No. 14679, the Commission granted to Municipal Properties Company, a corporation, a certificate of public convenience and necessity to operate a domestic water system under the name of Devonshire Water

Company to supply the region and also fixed a schedule of rates to be charged.

In February, 1929, Municipal Properties Company passed into the hands of a receiver, Mr. A. P. Mathews, who continued the operation of the water system until August, 1929, when service was discontinued. At the request of the Commission, San Carlos Water Company, a corporation operating in adjacent territory, undertook to continue the service to meet the emergency situation.

In an attempt to prevent San Carlos Water Company from suffering any loss by reason of its operating the Devonshire Hills water system, the Commission by Decision No. 21526, dated September 11, 1929, and by Decision No. 22004, dated January 13, 1930, provided for certain surcharges to be made to the rate schedule originally fixed by Decision No. 20045. The present rates charged are as follows:

Meter Rates:

0 to 3,000 cu. ft. per 100 cu. ft.....\$0.40 per month
Over 3,000 cu. ft. per 100 cu. ft..... .35 " "

Minimum Monthly Payments:

5/8" x 3/4" Meter (Entitling each consumer to
375 cu. ft.).....\$1.50
1" Meter (625 cu. ft.)..... 2.50
1 1/2" Meter (938 cu. ft.)..... 3.75
2" Meter (1,250 cu. ft.)..... 5.00

Emergency Surcharge (Dec. 22004-Jan. 13, 1930):

To be charged in addition to minimum payment with
the exception of Devonshire Hills Country
Club.....\$2.00 per month

Devonshire Hills Country Club Use (Dec. 22004):

A monthly charge of \$50.00 to cover minimum power charges
in addition to the payment of the monthly charges for
water used at the regular monthly quantity rates.

Municipal Use (Dec. 22004):

Town of San Carlos for fire hydrant rental in
Devonshire Hills Tract.....\$48.00 per month

On July 17, 1931, California Water Service Company succeeded, by purchase, to the San Carlos Water Company and continued the emergency operations. In Exhibit "I", filed in this application, Mr. R. E. Savage, one of the Commission's assistant engineers, sets forth the results of such operations as follows:

<u>Period</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Loss</u>
1929-Sept. to Dec.	\$ 814.22	\$ 2,479.86	\$1,665.64
1930	5,217.83	6,131.81	903.98
1931	7,007.22	6,995.14	12.08 (1)
1932	6,755.91	7,110.33	354.42
1933-Jan. to May	<u>1,986.61</u>	<u>2,449.06</u>	<u>462.45</u>
Totals.....	<u>\$21,781.79</u>	<u>\$25,156.20</u>	<u>\$3,374.41</u>

(1) Profit in 1931

PRESENT TRANSACTION:

Following the appointment of the receiver for Municipal Properties Company, the properties of the company were sold at a trustee's sale to Sierra Financial Corporation, which thereupon re-transferred them to Sierra Realty Corporation, an affiliated organization.

Sierra Realty Corporation, apparently in a desire to separate the water properties and business from its other operations, has caused the organization of Sierra Water Service Company and proposes to transfer to it the public utility business and properties and to relieve California Water Service Company from its present operations.

It appears that there are outstanding water bills due California Water Service Company in the amount of \$411.84. That company reports it is willing to be relieved from the operations of the water system to be acquired by Sierra Water Service Company on the condition that the latter company request the Commission to include in the order or otherwise grant permission for it to use its best

endeavors to collect such delinquent accounts. Sierra Water Service Company accedes to the condition and in the supplemental application, as stated, requests permission to discontinue service for non-payment by consumers of the delinquent amounts.

However, the rules and regulations covering service given by California Water Service Company specify the penalties for non-payment of water bills and prescribe the remedies for the water company. Such rules and regulations must be adopted by Sierra Water Service Company in giving service on the system here under review and, as the liability of the consumer is not changed in any way by the transfer of ownership and operation of the system, there seems to us to be no reason for making the order requested in the supplemental application. We have, of course, no objection to Sierra Water Service Company using its efforts to make collections of the sums due California Water Service Company.

ISSUE OF STOCK:

The consideration to be paid Sierra Realty Corporation for the water properties is 3,900 shares of the no par value common stock of Sierra Water Service Company.

In connection with this phase of the proceeding, there were estimates of value presented by Mr. D. V. Reeves, vice president of Sierra Water Service Company, and by Mr. Savage of the Commission's staff. Their estimates are as follows:

<u>Item</u>	<u>D. V. Reeves</u>	<u>R. E. Savage</u>	
	<u>Present Value</u>	<u>Original Cost</u>	<u>Original Cost Depreciated</u>
Land	\$ 2,700	\$ 1,500	\$ 1,500
Franchise cost	-	98	98
Physical properties	29,877	28,546	20,933
Contract	2,000	-	-
	<u>\$34,577</u>	<u>\$30,144</u>	<u>\$22,531</u>

The contract referred to was the one dated April 17, 1925, whereby the supply of water is purchased. Under it, the company will have the right to purchase 100,000 gallons of water per day, not cumulative, at the regularly established rates. There is no record of any cost expended in acquiring the contract and there appears to be no low or preferential rate charged. It does not appear to us, upon the record in this proceeding, that any value attaches to the contract which can be used as a basis for an order authorizing the issue of stock.

Of the amounts presented by Mr. Reeves, a substantial portion represent estimates made by W. G. Frost, a civil engineer. Mr. Frost was not present at the hearing and therefore could not be cross-examined about his figures. It occurs to us that we should use the estimates prepared by Mr. Savage in passing on the request to issue stock.

It has been the general policy of the Commission in passing on requests for permission to issue no par stock to provide that the stock shall not be issued for less than \$25.00 per share. We know of no reason why we should depart from that rule at this time and accordingly in the order herein will permit Sierra Water Service Company to issue not exceeding 902 shares of no par value common stock in acquiring the properties having an estimated original cost, depreciated, of \$22,531.00.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY:

In order that there might not be two certificates granted and existing for the same territory, the request is made that the Commission rescind the certificate heretofore granted Municipal Properties Company by Decision No. 20045 and in lieu thereof grant a new one to Sierra Water Service Company. The proposed service area is set forth on the map filed with the application as Exhibit "C".

In our opinion the certificate heretofore granted Municipal

Properties Company will accompany the water properties when they are acquired by Sierra Water Service Company, so that it will have permission to conduct the operations. However, we have no objection to the procedure suggested by the company and will so provide in the order.

The order will also permit Sierra Water Service Company to exercise the franchise rights granted by Ordinance No. 89 passed by the City Council of San Carlos on December 8, 1932, and Ordinance No. 387 passed by the Board of Supervisors of San Mateo County on February 6, 1933.

POSITION OF CITY OF SAN CARLOS:

In entering an appearance in the proceeding, the representatives of the City of San Carlos did not protest the transfer of the properties to Sierra Water Service Company, nor the granting of the certificate of public convenience and necessity and the order permitting the issue of stock.

They did protest the continuance of the surcharge on the rates and alleged that the principal cause of the surcharge is the waste of water due to leaky mains. It is their contention that with the leakage reduced to a minimum and the system put in a state of good repair, the surcharge could be eliminated, and they therefore request that the new operator be directed to replace at once 1700 feet of pipe line on Palm Avenue and that after a reasonable test period the rates be reviewed and the surcharge cancelled.

The contention of the city seems to be strengthened somewhat by the record in this matter. The exhibit - No. 2 - presented by Mr. Savage shows line losses of 42 per cent in 1930, of 34 per cent in 1931, of 24 per cent in 1932 and of 36 per cent in the first four months of 1933, as well as pointing out numerous necessary improvements that should be made.

The company did not appear to be opposed to the proposition of making the replacement on Palm Avenue. However, its proposition that it be given from fifteen to ninety days from the date of the Commission's order to commence and complete the work in our opinion is not reasonable. The order herein, as a condition subsequent, will require the company to complete the replacement of the 1700 feet, more or less, of pipe on Palm Avenue within sixty days from the date of this order. The record in this connection shows that Sierra Realty Corporation is able to finance the cost and the statement was made by Mr. Reeves that construction could start within forty-eight hours after the order was made. We suggest, further, that the company make the other improvements, in addition to the Palm Avenue replacement, which are set forth in Mr. Savage's report.

We do not believe that we should hold this matter open for a further inquiry into the reasonableness of the surcharge. The matter of rates is not an issue in this proceeding and the determination of the application will in no way be prejudicial to the right of the City of San Carlos, or the consumers, at any time in the future to file a complaint concerning the rates charged, or of the Commission to institute a proceeding on its own motion.

It is of record that the Sierra Realty Corporation will acquire all of the stock which Sierra Water Service Company will issue. The realty corporation is engaged in subdividing a tract known as Hidden Valley. The water company asks permission to furnish water in this territory. The testimony shows that applicant Sierra Water Service Company will charge the consumers in Hidden Valley the same rates it charges other consumers. It appears, however, that the realty corporation has or will enter into oral agreements with the purchasers of lots under the terms of which the realty corporation will reimburse the consumers in Hidden Valley for the amount of the surcharge. We

believe that such an agreement results in a discriminatory rate which is prohibited by the provisions of the Public Utilities Act.

O R D E R

Application having been made to the Railroad Commission for an order authorizing the transfer of property to Sierra Water Service Company and granting to Sierra Water Service Company a certificate of public convenience and necessity and authorizing it to issue 3900 shares of no par common stock, a public hearing having been held and the Commission being of the opinion that the application should be granted only as herein provided and that the money, property or labor to be procured or paid for through the issue of 902 shares of stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expense or to income, and that the application to issue 2,998 shares of stock should be dismissed without prejudice, therefore,

IT IS HEREBY DECLARED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA that public convenience and necessity require and will require the operation by Sierra Water Service Company as a public utility of a water system for the distribution of water for domestic and other purposes, and the exercise by Sierra Water Service Company of the rights and privileges granted by Ordinance No. 89 of the Council of the Town of San Carlos, and Ordinance No. 387 of the Board of Supervisors of San Mateo County, in that area set forth in the map filed with the application as Exhibit "C", except that portion shown on said map as now being served by the system now owned by California Water Service Company, and

IT IS HEREBY ORDERED, that a certificate of public convenience and necessity be, and it hereby is, granted in accordance with the

foregoing declaration, provided that said certificate will not become effective until the Sierra Water Service Company has filed, in form satisfactory to the Commission, a stipulation duly authorized by its Board of Directors, declaring that Sierra Water Service Company, its successors and assigns, will never claim before the Railroad Commission, or any court or other public body, a value for said rights and privileges granted by said Ordinances Numbers 89 and 387 in excess of the amounts actually paid to the grantors of said Ordinances Numbers 89 and 387, as the consideration for the grant of said rights and privileges which amount shall be set forth in the stipulation as to each of said Ordinances Numbers 89 and 387, and shall have received from the Railroad Commission a supplemental order declaring that such stipulation has been filed in form satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED, that the transfer of the water properties, referred to in the foregoing opinion and described in Exhibits "B" and "D", from Sierra Financial Corporation to Sierra Realty Corporation, and from Sierra Realty Corporation to Sierra Water Service Company be, and it hereby is, authorized.

IT IS HEREBY FURTHER ORDERED, that Sierra Water Service Company be, and it hereby is, authorized to issue, on or before August 31, 1935, in full payment for said water properties, not exceeding 902 shares of its no par value common stock.

IT IS HEREBY FURTHER ORDERED, that the certificate of public convenience and necessity heretofore granted to Municipal Properties Company by Decision No. 20045, dated July 16, 1928, in Application No. 14679, be, and it hereby is rescinded, provided that in all other respects said Decision No. 20045, as amended, shall remain in full force and effect.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted is subject to the following conditions:

1. Within sixty (60) days after the date of this order, Sierra Water Service Company shall complete the replacement, in a manner satisfactory to the Commission, of the 1700 feet, more or less, of pipe line on Palm Avenue.

2. Within thirty (30) days after the effective date of the order, Sierra Water Service Company shall file with the Commission (a) a copy of the deed, or deeds, of conveyance by which it receives title to the water properties herein authorized to be transferred, (b) a statement showing the exact date upon which it took possession of and commenced operating said properties, and (c) a statement showing the issue of the stock herein authorized, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

3. Except as otherwise herein provided, the authority herein granted will become effective twenty (20) days from the date hereof.

IT IS HEREBY FURTHER ORDERED, that the application insofar as it involves the issue of 2,998 shares of stock be, and it hereby is, denied without prejudice.

DATED at San Francisco, California, this 26th day of June, 1933.

C. L. Seavey
Leon A. Williams
W. A. Lane
W. B. Harris
W. H. Harrison
Commissioners.