

Decision No. 26351

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

The Berkeley Olive Association,  
Complainant,

vs.

California Water Service Company,  
Defendant.

**ORIGINAL**

Case No. 3558.

In the Matter of the Investigation on  
the Commission's own motion into the  
rates, charges, service, rules, regu-  
lations, classifications, contracts,  
practices and operations, or any of  
them, of the water system owned and  
operated by California Water Service  
Company, a corporation, in and in the  
vicinity of Oroville, County of Butte,  
California.

Case No. 3612.

S.T. Harding, for Complainant.

McCutchen, Olney, Mannon & Greene,  
by Carl I. Wheat, for Defendant.

Raymond L. Leonard and Hubert Townsend,  
by Hubert Townsend, for Thermalito  
Irrigation District and Table Mountain  
Irrigation District, Interveners.

George F. Jones, City Attorney, for  
the City of Oroville.

WEITSELL, COMMISSIONER:

O P I N I O N

In the above Case No. 3558, Berkeley Olive Association,  
a corporation organized as a cooperative, agricultural associa-

tion composed of twenty-five, more or less, owners of certain lands located in the immediate vicinity of Oroville, in the County of Butte, alleges that the irrigation rates charged to said Association by the California Water Service Company, a corporation, are unjust and discriminatory and asks that these rates be reduced to the level of those assessed against the Thermalito Irrigation District and that such order be made effective as of May 1, 1933. It is further asked that the costs of rendering irrigation service from the Company's Powers Canal be established and that the irrigation rates be further reduced in accordance with such determination.

In its answer, the California Water Service Company denies generally the allegations set forth in the complaint and asks that it be dismissed. At the outset of the hearings held herein, a motion was filed by defendant asking that the complaint be dismissed upon the grounds that it did not conform to the provisions of Section 60 of the Public Utilities Act of the State of California which, among other things, provides as follows:

\*\*\*\*\*no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers or prospective consumers or purchasers, of such gas, electricity, water or telephone service."

As there are less than twenty-five separate and independent irrigation consumers on this system resulting in some uncertainty as to the status of the instant complaint, the Commission instituted a proceeding upon its own motion into the rates, charges, service,

rules, regulations, classifications, contracts, practices and operations, or any of them, in effect on this water system in order to provide complainant full and ample opportunity to present its evidence without further grounds of objection by reason of technicalities of the law. This proceeding is Case No. 3612. However, the presentation of evidence in this latter case was confined to matters involving irrigation rates and service and also to the question of possible unfair discrimination.

Public hearings in these proceedings were held in Oroville.

The source of water supply for both irrigation and domestic service in Oroville and vicinity is the West Branch of the West Fork of the Feather River, diverted by the Pacific Gas and Electric Company, a corporation, and conveyed by means of the Miocene Ditch, thereafter passing through the Lime Saddle and Coal Canyon Power Houses, after which the water is delivered to defendant at the intake of the Powers Canal. The delivery of water to defendant is made under and in accordance with the terms and provisions of a certain contract entered into in 1927 by and between the defendant herein and the Pacific Gas and Electric Company, in which year the said Powers Canal and the Oroville domestic water system were purchased and acquired by defendant. Water is conveyed through the Powers Ditch to the City of Oroville for domestic use and also for irrigation purposes to ten consumers, including the Thermalito Irrigation District and the Table Mountain Irrigation District. During the six months of the irrigation season, approximately seventy-seven per cent of the total water supply is used for agricultural irrigation purposes and the remainder for domestic uses in and near Oroville.

The Berkeley Olive Association is an organization composed of the owners of five hundred acres, more or less, consisting of lands devoted to olive culture and situate near the head of the said Powers Canal. Irrigation service is rendered under a contract entered into by and between the said Association and the Pacific Gas and Electric Company under date of June 22, 1918, said company having sold its Oroville water system to defendant.

Complainant contends that its Association should be considered as a wholesale customer and entitled to the same rate as is now charged to the two irrigation districts, namely, six cents (6¢) per miner's inch day of twenty-four hours. It is claimed that the Berkeley Olive Association is an operating and managing corporation which handles the farming affairs of approximately twenty-five independent landowners in the business of raising olives and has installed a complete private irrigation system throughout its holdings receiving service from seven outlet boxes but paying for irrigation service as a single consumer.

Complainant states that the charges for irrigation water supplied to it are unfair, unjust and discriminatory and asks for reparation for all service rendered from and after the first day of May, 1933. The original contract involving water service to the lands now controlled by the Berkeley Olive Association was entered into with the predecessors in interest of said Association and the Oro Water, Light and Power Company, a corporation. After purchase of the properties of this corporation by the Pacific Gas and Electric Company, a new contract, above referred to, for irrigation service was entered into by said company and the Berkeley Olive Association wherein and whereby a preferential right to 150 miner's inches of water was purported to be given said Association

for a period of 150 days beginning the first day of May of each year for a consideration of the payment of ten cents (10¢) per miner's inch day of twenty-four hours (a miner's inch being the equivalent to one-fiftieth of a cubic foot of water per second). This agreement, among other things, provided that the Association was to install its own private distribution system throughout its land holdings and was to receive water and be responsible for the payment therefor as a single consumer, and furthermore was to pay for a minimum of 150 miner's inches of water whether or not it actually used the entire amount.

The Thermalito Irrigation District receives irrigation water from defendant through a single outlet at the rate of six cents (6¢) per miner's inch<sup>(1)</sup> day of twenty-four hours for 364 miner's inches per day for a period of 150 days. Table Mountain Irrigation District similarly receives irrigation water from defendant but is restricted to the delivery of surplus waters only, which waters are available mainly during the spring months of the year and are not dependable throughout the entire irrigation season. The charge for this water is six cents (6¢) per miner's inch<sup>(1)</sup> day of twenty-four hours, established by this Commission in its Decision No. 14687, dated the twenty-third day of March, 1925 (26 C.R.C. 140). It is contended by complainant that these various rates and charges clearly indicate an unfair and unreasonable discrimination against it in irrigation service.

The record in this proceeding reveals the fact that the territory now embraced within the confines of the Thermalito Irrig-

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(1) This miner's inch is the equivalent to one-fortieth of a second foot of water.

gation District formerly was served by the Pacific Gas and Electric Company. In order more adequately to supply irrigation water to this territory, two irrigation districts were formed, the Thermalito Irrigation District and the Table Mountain Irrigation District. A contract was entered into in 1923 by and between the Thermalito Irrigation District and said Pacific Gas and Electric Company wherein and whereby the Thermalito Irrigation District, at the expense of said District jointly with the Table Mountain Irrigation District, was to construct the so-called Concow or Wilcox Reservoir and to convey the waters impounded therein through the Pacific Gas and Electric Company's Miocene Ditch at no cost to said Districts and was to permit the said electric company to use such waters for the generation of electric energy through its Lime Saddle and Coal Canyon Power Houses for a consideration of the payment by the company at the rate of one-quarter of a cent per kilowatt hour of energy developed, in return for which the above mentioned 364 miner's inches of water were to be delivered to the Thermalito Irrigation District at a charge of six cents (6¢) per miner's inch day. In these negotiations also was included the sale and transfer of the electric company's irrigation system supplying the lands included within the external boundaries of the Thermalito Irrigation District to said District for the nominal consideration of one dollar (\$1.00). Upon the acquisition of the water distribution facilities in the Oroville area by defendant California Water Service Company, this purchaser succeeded to certain of the rights, privileges and obligations of said electric company under the above agreement.

The record in this proceeding shows that in 1905 and 1906 deliveries of water for irrigation service were computed upon

the basis of a miner's inch being the equivalent to one-fortieth of a cubic foot of water per second. Although the rates filed with this Commission in 1912 governing this service in compliance with General Order No. 15 of the Railroad Commission of the State of California set forth the charges upon a basis of one-fiftieth of a cubic foot of water per second for each miner's inch, yet the actual deliveries apparently were billed at the one-fortieth rate and, in addition thereto, the rates refiled by the present owner in 1931, defendant herein, subsequent to its acquisition of these properties provide for the computation of irrigation water deliveries upon the basis of forty miner's inches being the equivalent to one cubic foot of water per second. This is the present effective charge for regular irrigation service to consumers other than complainant herein.

Counsel for the Thermalito and Table Mountain Irrigation Districts intervened upon the grounds that the rates for irrigation service to their respective Districts were founded upon contractual obligations in which valuable consideration was given by said Districts and several hundred thousand dollars thereupon have been expended by them in conformance with the terms and provisions of said agreement and that upon the face thereof the service is in no manner whatsoever comparable, and request therefore is made that, as to them, the rates for irrigation service in all fairness should not be considered upon a parallel basis. There is, of course, obvious merit to the claims of the interveners.

On behalf of Berkeley Clive Association, Professor S.T. Harding presented testimony to the effect that the revenues derived strictly from irrigation deliveries upon his segregation of operating costs between domestic and agricultural irrigation water

service indicated that complainant was reasonably entitled to a substantial reduction in rates.

The issues involved in this proceeding admittedly are seriously complicated by the diversity of interests involved therein; however, it must be conceded that the rights and interests of the two irrigation districts supplied by defendant cannot fairly be considered or adjudged as upon a basis comparable with and to the service rendered to complainant. The Berkeley Olive Association does not wish to have its present water contract abrogated but seeks to retain those provisions therein advantageous to it, especially as to the purported right to preferential service over other consumers. At the same time, it requests the Commission to set aside and modify the rates fixed therein. This agreement admittedly was entered into subsequent to the dedication of the service involved therein to the public use and therefore is subject to and under the jurisdiction and control of the Railroad Commission.

The record in this case, however, shows that complainant is entitled to some relief. The contract in question without doubt is subject to the rulings of this Commission in the exercise of its jurisdiction over public utility rates, rules and regulations, and service. Complainant properly should not be required to pay for the allocated amount of water (150 miner's inches) whether used or not; neither should the regulations of service be onerous. Disregarding therefore the terms, conditions and provisions of the contract under which complainant heretofore has been served, it appears to the best interests of the public that agricultural ir-



irrigation water hereafter should be delivered to complainant upon the basis of a charge of ten cents (10¢) per miner's inch day of twenty-four hours upon the actual amount and quantity of water applied for and delivered under the regular rules and regulations for agricultural irrigation service approved by the Railroad Commission and in effect throughout this defendant's Oroville system, computed upon the basis of one miner's inch being the equivalent of one-fortieth of a cubic foot of water per second. Complainant thereby will be the recipient of a reduction of twenty per cent in the rates now being charged it for agricultural irrigation service, which reduction the record herein shows to be just and reasonable.

With reference to the prayer of complainant that it be granted reparation to the extent of the difference between the rate heretofore charged it for agricultural water service and the rate established herein for that period commencing the first day of May, 1933, to date, it is sufficient to observe that said complainant is now and has been for many years last past receiving service under the terms and conditions of a written agreement under which it seeks to be relieved only of the provisions therein which it deems to be unfavorable to itself. Having been so served under such a contract and under such circumstances for so many years, it is clear that this is not such a case as legally would warrant the Railroad Commission in directing defendant herein to grant reparation.

As to all other matters presented, I recommend that the complaint be dismissed.

Good cause appearing, the following form of Order is

submitted.

O R D E R

Berkeley Olive Association having filed a formal complaint against the California Water Service Company, a corporation, as entitled above and the Commission having instituted an investigation on its own motion into the operations of the California Water Service Company to cover the issues raised by the Berkeley Olive Association, public hearings having been held thereon, the matters having been submitted and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that defendant California Water Service Company, a corporation, be and it is hereby directed to charge Berkeley Olive Association for all irrigation water delivered to it subsequent to the thirtieth day of September, 1933, from defendant's Powers Canal at the rate of ten cents (10¢) per miner's inch per day (one miner's inch being considered to be the equivalent to one-fortieth of one cubic foot of water per second for the purposes of the Order herein).

IT IS HEREBY FURTHER ORDERED that California Water Service Company, a corporation, hereafter and until further order of this Commission shall serve the Berkeley Olive Association under its regular rules and regulations in effect and approved by the Railroad Commission for irrigation service rendered to its regular irrigation water users on its Oroville system.

IT IS HEREBY FURTHER ORDERED that in all other respects the above entitled proceedings be and they are hereby dismissed.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18<sup>th</sup> day of September, 1933.

C. J. Sawyer  
Leon A. Dill  
W. A. Cunniff  
M. B. Harris

Commissioners.