

Decision No. 27240

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC COAST RAILWAY COMPANY,
a corporation,

Complainant,

vs.

FAY WATER COMPANY, a corpora-
tion,

Defendant.

Case No. 3571.

ORIGINAL

Preisker, Goble & Twitchell,
by Fred J. Goble, for complainant.

Chickering & Gregory, by Vincent I.
Compagno, for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding, Pacific Coast Railway Company, a corporation, hereafter referred to as complainant, engaged in operating a railroad in San Luis Obispo and Santa Barbara counties, complains that the rates charged by Fay Water Company for fire service to its "Old Wharf" at Port San Luis are unreasonable and excessive.

Complainant alleges that the charge of Fifty-Eight Dollars (\$58.00) per month for fire protection is unwarranted and not authorized by the Railroad Commission and that it is entitled to a continuance of free service for fire protection in exchange for the right of defendant to sell water to boats and to other persons

from said wharf, as provided for in and by a certain written agreement entered into between the predecessors in interest of complainant and defendant.

A public hearing in this proceeding was held at San Luis Obispo before Examiner Geary.

Defendant is engaged in producing, distributing and selling water for domestic and industrial purposes at Port San Luis and Avila, in San Luis Obispo County. Water is obtained by pumping from a well located in San Luis Obispo Creek Canyon about one and a half miles upstream from the ocean and is transmitted through approximately one and one-half miles of 4-inch main to two storage tanks having a combined capacity of 150,000 gallons. From the tanks water is sold at wholesale to the public utility serving the town of Avila and to the Union Oil Company's refinery and loading dock. Water is conveyed through an additional 8,100 feet of 4-inch main to complainant's "Old Wharf" and is also supplied from this main to a few domestic consumers and an oil pumping plant operated by the Union Oil Company. Defendant has an investment of approximately \$57,000, with revenues amounting to \$6,648 and operating expenses, including depreciation, \$5,975 for 1933.

Complainant claims a right to free water service under a contract. This contract was recognized by defendant for a great many years until October of 1932, at which time complainant was billed \$58.00 per month for the service rendered the wharf under a schedule of rates for this specific use filed with the Commission on the 29th day of August, 1932. Complainant has disputed this charge and each month thereafter has deposited the amount as billed with the Commission for adjustment, the sum now totaling \$1,160, which by stipulation is to be distributed in accordance with the

findings made in this proceeding.

In the early seventies John Harford and J.M. Ingalls owned the Rancho San Miguelito, a vast Spanish grant covering several miles of ocean front including the present town of Avila and the site of Port San Luis. When the San Luis Obispo and Santa Maria Valley Railroad Company¹ decided to build a railroad to tide-water, it was necessary to cross the Rancho San Miguelito to reach a point on the ocean where docks could be constructed to connect with deep sea shipping. Accordingly and on the fifth day of June, 1875, a deed was executed by and between said Harford and Ingalls and the Railroad Company for the necessary lands and rights of way, providing among other things for a water supply, in part, as follows:

"And also, The right to take and use from off the Lands of the Parties of the First part all the water necessary for the use of the Party of the second part for Rail Road purposes from Springs adjacent to the Wharf and Tract² and from the 'Arroyo del Canadita del Rancho San Miguelito' commonly known as 'Harfords Creek' and the right to lay and maintain pipes or flumes and all other works necessary to obtain and convey the said water on and across the Lands of the Parties of the first part."

The railroad was built and the wharf constructed, now locally called the "Old Wharf." Pipe lines were installed carrying water from Harford's Creek to the dock as provided for under the above deed. The Rancho San Miguelito thereafter was acquired by Luigi Marre, who decided that the increasing shipping business at the railroad terminus offered a fine opportunity to realize con-

1. Now the Pacific Coast Railway Company.

2. "Tract" apparently refers to the right of way granted to the Railroad Company by the deed.

siderable profit through the selling of water to boats and vessels. In 1893, an agreement was made by and between Luigi Marre and the Railroad Company including all the reservations of the former deed of 1875 as to water, rights of way for pipe lines, etc., and, in addition thereto, contained the following provisions:

****and, whereas Luigi Marre³ is now the owner of the lands mentioned in said conveyance, and formerly owned by said Harford and Ingalls; and whereas the Pacific Coast Railway has constructed a new pipe line and conduit for the purpose of conveying water from said lands to its wharf and track the cost of which is agreed to be paid by the parties hereto****; it is hereby agreed by and between the Pacific Coast Railway Company, a corporation, on the one hand and Luigi Marre on the other, as follows: That said Railway Company shall have the right to divert the waters from the lands and places above referred to and to maintain said pipe line or conduit, so constructed as aforesaid, and to conduct the waters so diverted through said pipes or conduits to the several places for use along its track and wharf at Port Harford and to erect tanks, reservoirs and storage places where necessary.

"It is further agreed that said Railway Company shall have the right to use, of the water diverted and conveyed by means aforesaid, what shall be necessary for railroad purposes, and the balance of said water shall belong to said Marre to dispose of as he deems fit, and without let or hindrance. And in consideration of the grant by said Marre to said Company of the right to take the waters of the Arroyo de la Canadita, beyond the lands hereinbefore referred to, the said Company grants the right to said Marre to place on the wharf or any practicable place along said waterway, a water meter or other appliance for measuring water sold by Marre, and to keep the same in repair,

3. Predecessor in interest to the Fay Water Company.

but the same shall in no way interfere with the use of, or for measuring of water used by said Company.

"That all costs hereafter incurred in keeping said pipe line and water conduit and the appurtenances thereof in repair shall be defrayed and borne by the parties hereto equally. And for the purpose of carrying out this agreement and rendering it effective, said Marre does grant to said Railway Company all rights of way and the right to divert all waters upon or over any lands owned by him at or near the place or places provided therein for carrying the same out."

The new pipe line, costing \$6,364, was constructed from Harford's Creek and paid for jointly under the above contract and Marre proceeded to sell water upon demand to ships at the "Old Wharf." On November 9, 1914, after the death of Luigi Marre, the Fay Water Company was incorporated by certain of his children and heirs and all water rights, production and distribution facilities were transferred to said corporation by the estate.

Beginning in 1910, the jointly constructed 3-inch pipe line required replacement and from this year, to and including 1915, Luigi Marre and, after his death, the defendant Fay Water Company were forced to install, entirely at their own expense, a new pipe line which was increased in size to four inches. The old line to Harford's Canyon from the tanks was abandoned and, while still in place, is no longer in use. In 1916, the original springs began to fail and the following cycle of dry years so reduced the flow that it became necessary to prospect for water from underground sources to provide for the company's several public utility consumers including the water works serving the town of Avila. In 1921, the company spent approximately Eleven Thousand Dollars (\$11,000) in an unsuccessful attempt to develop water in Dairy Canyon near

Harford's Creek and in 1922, at additional expense, it finally secured a suitable and, at least for present requirements, an adequate supply of water from a well near San Luis Obispo Creek located on a tract of land adjoining the Rancho, which tract was purchased solely for this purpose. From this well it was necessary to lay a new pipe line about one and one-half miles long to the tanks. No part of these latter expenses was borne by complainant, all costs having been paid by defendant or its predecessor, Luigi Marre.

The record shows that, in spite of the fact that the original Harford Canyon system had been abandoned and at least since 1922 no water from this source ever had been supplied to complainant, yet until 1932, for a period of thirty-nine years, defendant and/or its predecessor in interest delivered all water required by complainant at its wharf free of charge.

Testimony presented by Mrs. Tressa B. Marre, Secretary of the defendant company, showed that none of the officers of said concern had ever seen a copy of the contract under which they furnished water to the "Old Wharf," nor were they able to secure access to the copy thereof held by the Railroad Company and in its possession, until the year 1932. Apparently, both Luigi Marre and the officials of the Fay Water Company were of the opinion that the utility was obliged to furnish complainant free water at all times until in 1932 when said officials obtained a copy of the Marre agreement of 1893 and were advised by their legal counsel that no such obligation legally existed. Whereupon efforts were made to induce the Railroad Company to agree to a monthly charge for water supplied to the "Old Wharf." Informal negotiations failing and there being no tariffs covering this class of use, the utility, through its attorneys, on August 29, 1932, filed with this Commis-

sion, under Sections 15 and 63(b) of the Public Utilities Act, the following schedule of rates and thereafter proceeded to charge the complainant thereunder at the rate of Fifty-Eight Dollars (\$58.00) per month:

(a) SCHEDULE NO. 1

(b) INDUSTRIAL WATER SERVICE

Service to Pacific Coast Railway Company at "old wharf" at Port Luis, San Luis Obispo County, Calif.

(c) TERRITORY

As above.

(d) RATE

Per 1000 gallons

0 to 50,000 gallons per meter per month-----	\$.30
Over 50,000 gallons per meter per month-----	.25

(e) MINIMUM CHARGES PER MONTH

For each 3/4" outlet for domestic use-----	\$ 4.00
For each hydrant on 4" line owned by utility----	2.00
For each hydrant on 2" line owned by consumer---	1.00
Meter charge, one 4" meter per month-----	15.00

(f) SPECIAL CONDITIONS

The rate herein established applies only to service rendered the Pacific Coast Railway Company and not to water furnished others therefrom or water resold.

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While making no attempt to adjudicate or determine any of the rights of either complainant or defendant arising out of and by virtue of the above deed of 1875 and the later agreement of 1893, it is clear and undisputable from the evidence that the water system and water supply now used by defendant are not those covered or contemplated by either of the above documents. The well sources, pipe lines and other facilities are entirely new, separate and distinct and were installed at the sole expense of defendant and/or its predecessor in interest and are now solely owned, in the possession of and maintained by the Fay Water Company.

It is equally clear that, except as to the intruding rights of the Railroad Company, Luigi Marre dedicated his water service to the public generally from the inception of his water operations during or immediately following the year 1893 and that all such service is public utility in character and under the control and jurisdiction of this Commission. (Allen vs. Railroad Commission (1918) 179 Cal. 68.)

It is conceded by complainant that the Railroad Company still has the right to enter upon the Rancho San Miguelito and develop and transport therefrom water to the "wharf" from "adjacent springs" and from "Harford's Creek." However, at least since the abandonment of Harford Canyon supply in 1922, the new system has been entirely a different plant, wholly and in its entirety a public utility and under no legal requirement or necessity to serve complainant water at a free or preferential rate. Complainant, since at least 1910 having received water service at no cost to itself, has been amply repaid for whatever bounties it may now be forced to relinquish. (See Application No. 2860, Decision No. 6343, decided May 20, 1919, 16 C.R.C. 785.)

The "Old Wharf" as it now exists is 2,600 feet long, carries four narrow gauge railroad tracks, has a warehouse 233 feet long, including an office and living quarters for the wharfinger, and is estimated to have cost originally about Fifty-Five Thousand Dollars (\$55,000) and now of a present value of at least Thirty-Two Thousand Dollars (\$32,000). From the standpoint of fire insurance costs alone, not to speak of the necessity of water for general use in a territory where it is very difficult to obtain in any quantity, the immense value of having a large volume of stored

water available is obvious.

The present use of water on the wharf consists of stand-by service for fire protection purposes, water for a pile-driver required approximately sixty days each year, and for domestic and office use. There are eight 2-inch wharf-type fire hydrants connected to defendant's 1,600 feet of 4-inch main, of which six are in operating condition, and ten 2-inch hydrants installed on complainant's 1,000 feet of 2-inch main, all put in and maintained by complainant.

Applying the rate as filed to the existing facilities should result in a rate of Forty-Five Dollars (\$45.00) per month instead of Fifty-Eight Dollars (\$58.00). However, under present operating conditions, very little water is used in the office or living quarters. For present service, including fire protection and other wharf use, it appears that Forty Dollars (\$40.00) per month under the filed schedule is fair to both parties and that such amount is reasonable for the entire disputed billing period. The allocation of the impounded Eleven Hundred and Sixty Dollars (\$1,160) therefore will be made upon this basis, Three Hundred and Sixty Dollars (\$360) to be refunded to complainant and Eight Hundred Dollars (\$800) turned over to the utility.

Both parties requested the establishment of a flat rate for the entire wharf service involved herein. Although the testimony shows that at times certain trespassers have left wharf valves open and some boats have surreptitiously obtained water without permit or payment therefor, as long as neither complainant nor defendant is able to prevent such loss of water and both are willing to accept a flat rate, Schedule No. 1 heretofore filed for said wharf service will be cancelled and a flat rate charge of Forty Dollars (\$40.00) per month, which appears at this time to be just and reasonable for

the service rendered, will be substituted therefor until further order of this Commission. In connection with the reasonableness of this rate, proper consideration must be given to the fact that defendant has installed and maintains at its sole expense approximately 8,100 feet of 4-inch main from its storage tanks, used entirely in serving the "Old Wharf," two small plants of the Union Oil Company and a few domestic consumers, including fire service to an unoccupied three-storied frame hotel building.

The Public Utilities Act, Sections 15 and 63(b), provides for the filing of an initial rate without formal application. In this instance defendant filed the rate in accordance with the provisions of the Act and the charge for service was made thereunder after a thirty-day period.

A section of the 4-inch main near "Old Wharf" was carried away by a landslide in 1932 and was repaired temporarily with a 2-inch pipe. The 4-inch pipe apparently has not yet been replaced by defendant. This throttling of the main results in seriously reducing the value of the fire protection service and, if defendant has not already replaced this reduced section with 4-inch pipe, it should do so without delay and in no case should any more than sixty (60) days from the date of this Order elapse before this work is completed.

O R D E R

A formal complaint having been filed as entitled above, a public hearing having been held thereon, the matter having been submitted on briefs, and the Commission being now fully advised in the premises,

It is hereby found as a fact that under the present operating conditions the rates charged the Pacific Coast Railway Company, a corporation, for service to its "Old Wharf" by the Fay Water Company, a corporation, are unjust and unreasonable in so far as they differ from the rates herein established and that the rates herein established are just and reasonable rates to be charged for the service rendered, and

IT IS HEREBY ORDERED that Fay Water Company, a corporation, be and it is hereby directed to file with this Commission, within thirty (30) days from the date of this Order, a rate of Forty Dollars (\$40.00) per month to be charged Pacific Coast Railway Company, a corporation, for all service rendered its "Old Wharf" at Port San Luis, San Luis Obispo County.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 30th day of July, 1934.

O. C. Leaver
Leon Wheeler
M. H. P.
M. B. Harris
A. Walter Moore
Commissioners.