

Decision No. 28272  
28272

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

TEMESCAL WATER COMPANY, a  
corporation,  
  
Complainant,  
  
vs.  
  
WEST RIVERSIDE CANAL COMPANY, a  
corporation,  
  
Defendant.

ORIGINAL

Case  
No. 3564.

Walter S. Clayson, for complainant.  
C. L. McFarland, for defendant.

BY THE COMMISSION:

O P I N I O N

Defendant corporation operates an irrigation canal in Riverside County. It acts solely as a carrier of water. Its organization and purpose are described in Re West Riverside Canal Co. (1917), 12 C. R. C. 339. (Decision No. 4040, Applications Nos. 2641, 2654.) Complainant, a mutual water company, acquired 160 shares of its stock in 1928. According to defendant (Witness E.L. Williamson), each share of stock entitles the owner to transport one miner's inch of water through the canal.

Complainant did not receive any water through the canal during the years 1930 to 1933, inclusive. However, it received bills each year for \$1,440 (160 shares at \$9.00 per share), totalling \$5,760.<sup>(1)</sup>

1. Defendant concedes that through inadvertence it assessed complainant one dollar per share more than it should have, but maintains that the correct amount due is \$5,120 (160 shares at \$3.00 per share), based upon Article XVI $\frac{1}{2}$  of its By-laws, discussed infra.

None of these bills have been paid. Complainant alleges that such demands are for charges not authorized by law and in violation of Section 17(b) of the Public Utilities Act.<sup>(2)</sup> It asks that the Commission determine "that the said charges demanded by defendant, and the whole thereof, are illegal, and that it be further determined that this complainant is not indebted to defendant in any sum whatever, together with all other proper relief in the premises." Defendant asks that the Commission determine "that complainant is indebted to defendant in the sum of \$5,120.00."

In 1917 (Decision No. 4040, 12 C.R.C. 339) the West Riverside Canal Company was authorized by the Commission to acquire and operate as a utility an existing irrigating canal in which various persons then possessed a right to the transportation or flowage of water. Most of these persons thereupon exchanged such flowage rights for stock of the West Riverside Canal Company upon the basis of one share for each inch of water flowage right entitled. The Commission then pointed out, however, that since the new corporation was professedly undertaking to serve as a public utility, it could not henceforth limit the use of the canal to the transportation of water for its stockholders only. The Commission also authorized the issuance of certain securities, and to establish the rates following;

"West Riverside Canal Company is authorized to collect the following rates:

On or before January 10th of each year ----\$5.00 per inch  
On or before May 10th of each year----- 1.50 per inch  
On or before August 10th of each year ----- 1.50 per inch

Total each year -----\$8.00 per inch"

2. Public Utilities Act, Section (17(b)), reads in part as follows:  
"\*\*\*no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time,\*\*\*."

It was further ordered that the company file with the Commission "the rates hereby authorized to be charged, together with its rules and regulations." The above rates, together with a set of rules and regulations governing service, were filed on February 10, 1917.

On May 19, 1922, a second set of rules and regulations was received, identical with the 1917 rules except that at the end thereof the following appears:

"BY-LAWS

Article XVI $\frac{1}{2}$

(Pertaining to Rates)

Each stockholder shall pay a stand-by charge of Eight (\$8.00) Dollars per share each year, which shall be credited on the amounts authorized by the Railroad Commission, to be charged for carrying water through the Canal of the Company. Said stand-by charge shall be paid as follows:

\$5.00 on or before January 10th of each year.  
\$1.50 on or before May 10th of each year.  
\$1.50 on or before August 10th of each year.

No certificates of stock will be transferred or water carried until all such charges are paid."

In 1926 the company was authorized to increase rates.

Re West Riverside Canal Co., 28 C.R.C. 44 (Decision No. 16488, Application No. 12051).(3) The Order of the Commission provided in part as follows:

"It is hereby found as a fact that the rates charged by West Riverside Canal Company, a corporation, for transporting water 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.

3. "According to the evidence, applicant has always operated on a basis of actual cost to the shareholders, has never attempted to operate at a profit, and does not at this time desire to earn a net return upon its invested capital. Applicant, however, does desire the establishment by this Commission of such a rate as will enable it to meet its current operating and maintenance expenses, together with its depreciation charges and financial requirements."

"Basing its order on the foregoing finding of fact and on the further statements of fact contained in the opinion which precedes this order;

IT IS HEREBY ORDERED that West Riverside Canal Company, a corporation, be and it is hereby authorized and directed to file with this Commission, within twenty days from the date of this order, the following schedule of rates to be charged for all water delivered to its consumers on and after the fifteenth day of April, 1926:

Yearly Transportation Charge.

\$9 00 per inch per year, payable -  
\$6 00 on or before January 10th each year,  
\$1 50 on or before May 10th each year,  
\$1 50 on or before August 10th each year."

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The above rates were filed on April 23, 1926, and are the present lawful rates. Said Decision No. 16488 found that the existing rates "for transporting water" were unjust and unreasonable, and authorized the nine-dollar rate "to be charged for all water delivered to its consumers," as a "yearly transportation charge." The rates so established were limited to the carriage of water through defendant's canals, and the charges applicable thereunder are to be measured solely by the quantity of water transported. Clearly, they did not provide for any stand-by or minimum charge. Unless, therefore, defendant is authorized under the provisions of the by-law or regulation filed on May 19, 1922, to collect the charges claimed for stand-by service, there is no tariff in existence permitting it to do so.

When this by-law was filed, the rates and regulations then in effect contained no provision permitting a charge for stand-by service; they, like the rates established in 1926, were applicable only to water transported through the canal. To the extent that the by-law purported to establish a minimum charge, where none had existed before, it operated to increase the rates

above those which previously had been in effect. But this the defendant was not authorized to do without first obtaining the consent of the Commission, the statute expressly providing that without the Commission's sanction no change can be made in any rule or regulation which would result in increasing the rates.<sup>(4)</sup> Since defendants failed to procure such approval for the increases sought to be accomplished through this change in the by-law, the minimum or stand-by charges never became effective, and, in the absence of any lawfully established tariff authority, the defendant is not entitled to collect from complainant the stand-by charges which it claims.

In view of our conclusion it is not necessary to pass upon the contention of the complainant that the rates established in 1926 pursuant to Decision No. 16488 operated to abrogate the stand-by charges provided in the by-law if they ever became effective.

While the defendant corporation was organized as a public utility and has since so operated, it is obvious that in the imposition of the so-called stand-by charge of \$9.00 per inch upon all its stockholders it has assumed something of the aspect of a purely mutual company. In all that has been said above, we have necessarily considered only the relationship between a public utility and its patrons or consumers. As a public utility, defendant is under the duty of adhering strictly to its lawfully published rates. We need not here determine whether or not its tariffs should provide for some form of stand-by charge to be assessed against those who are entitled to the use of the canal but do not regularly do so, since the matter of tariff revision

4. Public Utilities Act, Section 63(a), reads as follows:

"No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified."

should be considered only in a proceeding in which all patrons have an opportunity to appear.

O R D E R

The complaint as above entitled having been filed, a public hearing having been held before Examiner Geary at Riverside, California, the matter having been submitted and the Commission being now fully advised in the premises, and the Commission finding that the defendant, West Riverside Canal Company, has charged and assessed plaintiff, Temescal Water Company, at rates in excess of those provided in its lawfully published tariffs, therefore,

IT IS HEREBY ORDERED that the West Riverside Canal Company charge and bill the plaintiff, Temescal Water Company, for any public utility service rendered in the transportation of water at the rates set forth in its tariffs lawfully on file with this Commission.

Dated at San Francisco, California, this 7<sup>th</sup> day of October, 1935.

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*Mr. A. Carr*

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*M. B. Lewis*

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*Walter H. ...*  
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*John R. ...*  
Commissioners.