Decision No. 28701

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LUCERNE on the LAKE, INC., a corporation, et al., Plaintiffs, vs. J.L. ANNETTE, an individual doing business under the firm name and style of LUCERNE WATER, LIGHT & POWER COMPANY, Defendant.	Case No. 4069 (Amended)
In the Matter of the Investigation on the Commission's own motion into the rates, rules, regulations, charges, classifications, contracts, practices, operations, service, and transfers of property, or any of them, of J. LOWELL ANNETTE and LILLIAN C. ANNETTE, doing business under the name and style of LUCERNE WATER, LIGHT & POWER COMPANY, and operating a public utility water and electric system in Lake County, California.	Case No. 4077

ORIGINAL

Carl W. Wynkoop and Cyril E. Saunders, for complainants.
H.G. Crawford, for defendants.
Lea Bleakmore, for defendants.

BY THE COMMISSION:

O P I N I O N

In this proceeding Lucerne on the Lake, Inc., and thirty-one individuals allege that the defendants, J. Lowell Annette and Lillian C. Annette, operating a water works in Lake County under

the fictitious firm name and style of Lucerne Water, Light & Power Company, are not making a uniform application of their rates and that the charge for water served to the golf course owned by Lucerne on the Lake, Inc., is exorbitant. A special and reduced rate is requested and reparation asked for amounts in excess of the special rate.

Defendants in their answer deny generally the allegations of the complaint and allege that the service to the golf course is not public utility in character and deny that the Railroad Commission has jurisdiction in this phase of the complaint.

Because of certain ambiguities existing in the complaint of Lucerne on the Lake, Inc., the Railroad Commission instituted an investigation on its own motion as above entitled.

A public hearing was held at Lakeport before Examiner MacKall at which time these matters were consolidated for hearing and decision.

According to the evidence, Clear Lake Beach Company about 1925 developed a real estate subdivision on the northerly shores of Clear Lake called Lucerne and installed electric and water systems to supply the tract. These two utilities were leased to Verne L. Olson who received a certificate of public convenience and necessity for their operation on August 11, 1926. (Decision No. 17201.) The certificate was transferred in August 1933 to Clear Lake Beach Company, adjudged a bankrupt in 1934 and now administered by H. Vincent Keeling as trustee by appointment of the Federal Court. On April 1, 1935, the trustee caused the water works to be sold to J. Lowell Annette and

Lillian C. Annette, his wife, (Decision No. 27859) and thereafter transferred the golf course to Lucerne on the Lake, Inc., principal complainant herein, a corporation controlled by Daniel V. Reeves.

Although Verne L. Olson held only a lease to operate the physical properties of the water works, the domestic or townsite system being owned by Clear Lake Beach Company and the golf course mains and pipe lines in the ownership of Lucerne Country Club, its subsidiary corporation, yet said Olson operated both systems as a single unit, as was also the case during the period the water works was operated by the trustee in bankruptcy. If there is any doubt that both of these systems have not dedicated their services to the public use, it is dispelled by the fact that, in compliance with the demand of defendants, complainant Lucerne on the Lake, Inc., by letter agreed to pay "the Railroad Commission established minimum (of $9.00) per month" and "The rate established by the Railroad Commission, viz: Ten Cents (10¢) per hundred cubic feet," service at the above charges having thereafter been rendered to date. Upon failure to pay its water bill, Lucerne on the Lake, Inc., was advised by defendants in a letter under date of October 1, 1935, that the water would be shut off if not paid for unless the disputed amount be deposited with the Railroad Commission for decision. A copy of this letter was mailed directly to this Commission by defendant.

Defendant utility now supplies water to forty domestic users and to the golf course and provides water for standby fire protection to the unfinished Lucerne Hotel, now controlled by "Cruikshank & Co. of the Pacific," a corporation. In a report presented by C.F. Mau, one of the Commission's hydraulic engineers, the physi-

cal properties of this utility were appraised at $28,778 upon the basis of estimated original cost with a corresponding depreciation annuity of $422. Certain fixed capital was declared to be non-operative and not necessary at this time to serve existing demand, which would result in reducing the above figures to $19,042 and $354, respectively. The report also gives the following operating statistics:

Estimated Revenues - 1934 use	$2,842
Estimated Reasonable Maintenance and Operating Expenses for 1934, including depreciation	2,042
Net Revenue	$ 800

Return on $19,042-----4.2%

Cost of Pumped Water to Golf Course, power and labor only, per 100 cubic feet----------$.031

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The net return of 4.2 per cent upon combined system operations cannot be held excessive; however, the testimony of the Commission's engineer shows that a segregation of facilities and plant and operating costs between the golf course service and domestic service indicates that the former could be supplied as a single unit at a profit at less than 10 cents per one hundred cubic feet because of the large volume of use, while the domestic service is causing a considerable loss principally due to the excessive use of water under the present flat rate delivery.

The evidence shows that as a result of intercorporate relationship the Country Club paid for water for the golf course upon the basis of power costs only rather than at established utility rates. While it may be true that the golf club was purchased by said Daniel V. Reeves and his associates in Lucerne on

the Lake, Inc., under representations that the water costs were billed upon the above basis, nevertheless this Commission cannot for that reason permit the defendant to charge any such preferential rate; neither can it grant the owner of the golf club the requested rate of one and one-quarter cents per hundred cubic feet of water, less than the bare production costs of three and one-tenth cents per hundred cubic feet for power and labor only. To authorize even this lower rate would be an unfair discrimination against the domestic and other users who might then be placed in the position of being liable to stand an increased rate to make up the losses incurred by the utility.

Under the facts as set out above, there can be no reparation granted. The evidence does not warrant the Commission in ordering a reduction in the lowest established rate of ten cents per hundred cubic feet against the protest of the utility. It appears to be clear that the golf club under present conditions cannot afford to continue operations under such water charges. The water bill from August 13, 1935, to September 15, 1935, amounted to $354.62 and the subsequent bill for approximately thirty days immediately following was $147.25.

There is no special rate for a golf course in the filed tariffs and, should defendant utility desire to file a reduced special rate for this service, it may do so provided it will agree that in so doing it will not at any time attempt to saddle a compensating increase upon the shoulders of the other consumers; otherwise it appears that the water works will lose the service to and revenue produced by the golf course and complainant corporation will be put to the expense of installing its own water works and pump from Clear Lake or else abandon the course. This seems to be a

case where mutual agreement over a fair rate would be to the best interests of both parties. The amounts of the disputed water bills deposited with the Railroad Commission by Lucerne on the Lake, Inc., necessarily will have to be directed to be paid to the water company.

As to the remaining complainants, the evidence quite conclusively shows that their signatures to the complaint were secured on behalf of Lucerne on the Lake, Inc., for the sole purpose of having twenty-five or more consumers request a reduction in water rates as required by Section 60 of the Public Utilities Act of the State of California. These remaining complainants were all domestic water users and had no complaint to make against the rate for this class of service, which is one dollar and fifty cents ($1.50) per month flat rate, an unusually favorable charge for water in a summer resort community such as Lucerne.

O R D E R

Complaint having been made by Lucerne on the Lake, Inc., et al., as entitled above and the Railroad Commission having instituted an investigation on its own motion, a public hearing having been held thereon, the matters having been submitted and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that all money deposited with this Commission by Lucerne on the Lake, Inc., a corporation, for the adjustment of disputed water bills for water service supplied by J. Lowell Annette and Lillian C. Annette, doing business under the fictitious firm name and style of Lucerne Water, Light &

Power Company, to the golf course owned and operated by said corporation in or near the unincorporated Town of Lucerne, in Lake County, be and it is hereby ordered and directed to be paid to said J. Lowell Annette and Lillian C. Annette within thirty (30) days from the date of this Order.

IT IS HEREBY FURTHER ORDERED that, as to all other matters concerning the above entitled Cases Nos. 4069 and 4077, they are hereby dismissed.

The Secretary of this Commission is directed to cause a certified copy of this decision to be served by registered mail upon J. Lowell Annette and Lillian C. Annette, doing business under the fictitious firm name and style of Lucerne Water, Light & Power Company, and upon Lucerne on the Lake, Inc., a corporation. This Order shall become effective twenty (20) days after the date of such service.

Dated at San Francisco, California, this 6th day of April, 1936.

Commissioners.