

Decision No. 31122

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
MOUNTAIN PROPERTIES, INC., a Calif-  
ornia Corporation, for

1. A Certificate of Public  
Convenience and Necessity to Operate  
a Water System for Domestic and Com-  
mercial Purposes in the INDEPENDENCE  
SQUARE TRACT, Los Angeles County,  
and to Establish Rates therefor and  
Define the Service Area, and

2. To increase the water rate in  
the NEW WESTMINSTER TRACT.

Application No. 21825

George C. Lyon, for Applicant.  
Inez Juarez, Protestant,  
Loe Gallagher, for Consumers of  
Independence Square Tract.  
R. V. Phillips, for Protestant.

BY THE COMMISSION:

### OPINION

Mountain Properties, Inc., a corporation, asks for a Certificate of Public Convenience and Necessity to supply domestic and irrigation water to the inhabitants of Independence Square Tract, Los Angeles County, and authority to charge for such service. Further request is made that it be authorized to increase the rates it is now charging for water supplied through its separate and independent water plant in the New Westminster Tract in Orange County.

Public hearings in this matter were held before Examiner McCaffrey at Los Angeles. These separate matters set forth in the application herein were combined for hearing and decision.

#### INDEPENDENCE SQUARE TRACT WATER SYSTEM

According to the evidence, Tract No. 6234, generally known as Independence Square Tract, in Los Angeles County, was owned and subdivided into 384 lots by Gore Brothers, Inc. during years 1923 and 1924. The tract embraces approximately 40 acres of land and is served through a water system installed by the original subdividers. There are at present about 100 consumers. The water supply is obtained from a deep well and is of good quality. The distribution system consists of pipe lines 4 inches in diameter, laid and installed on easements reserved for water utility purposes on the back of each plot in the tract. No other public utility operates in or near this subdivided area which is now entirely dependent upon the present water system for all service requirements.

A large number of water consumers objected to the granting of a Certificate of Public Convenience and Necessity upon the grounds that in the purchase of lots from Gore Brothers, Inc. and/or their agents, representations were made by various real-estate salesmen to the buyers that water would be given free. For this reason a large number of consumers have demanded continuance of free water service to their respective properties and in perpetuity. In this connection the evidence is as follows: Gore Brothers, Inc. sold the water system to applicant herein, Mountain Properties, Inc., on November 5, 1937. Up to that time no charges had been made by Gore Brothers, Inc. for water furnished to any of its consumers. Upon acquisition of the water system by applicant herein, it was consolidated with certain other water plants operated by the corporation in various parts of Southern California, and this application was filed with the Commission

for the establishment of rates and for authority to operate as a public utility. A review of the record indicates that a large number of the lot purchasers were told by real-estate salesmen that no charges would be made for water service to their properties. This is based upon the direct testimony of several witnesses.

Testimony of Mr. C. Weingarten, a real-estate broker, who sold most of the property in the tract, is to the effect that while he told all purchasers dealing with his organization that water service to the lots was then being furnished free at the time of purchase, he gave no assurance, either verbal or otherwise, that water would continue to be supplied as a free service for any definite or specified period of time then, or for the future. In this connection, Exhibit 5 was presented as the typical form of "Agreement For Sale of Real Estate," covering practically all lots sold by or in behalf of Gore Brothers, Inc. Testimony indicates that this form of sales contract is practically the same in all instances. Each such sales contract sets forth under paragraph (I) in part as follows:

"Price includes oiled streets and water at rear of each lot."

No other reference is made in the sales agreements, nor is any similar provision pertaining to water service or water charges set forth in any actual deeds of conveyance. No evidence has been presented in this proceeding which would warrant the Commission in refusing to grant applicant a certificate to operate this water system in the Independence Square Tract. As a practical matter the consumers must have water from some source. It is clear that Gore Brothers, Inc. in providing water service free did not dedicate its service to the public and did not come under

the jurisdiction and control of this Commission. Whatever rights the consumers and lot purchasers and lot owners may have to free water service from Gore Brothers, Inc. or any of its duly appointed agents will still inhere to them. Lacking jurisdiction we are in no position to require Gore Brothers to maintain free water service to residents of Independence Square Tract. We may, however, authorize applicant herein to establish and maintain water service upon a fair, reasonable and proper basis. If such action be not taken there will be no water service whatsoever available in the tract. In the meantime, however, any lot owners or water users who desire may bring action in the civil courts to enforce their legal rights, if any, to free water service.

Applicant herein, operates other public utility water systems in Southern California under the jurisdiction and control of this Commission and appears to be amply qualified to take over and assume all responsibility of water service in this subdivision. Franchise requirements are satisfactory for the purposes of this proceeding.

In general, the proposed rates are reasonable in comparison to the rates charged by similar utilities in the general vicinity operating under substantially the same conditions. However, the testimony indicates that some of the lots are small, having a frontage of but 25 feet, and that proper provision should be made for this fact by a modification of the schedule to avoid unfair discrimination against occupants of 25 foot lots. In addition to this, the meter rates as proposed will be modified to conform more equitably with the flat rates herein established.

#### NEW WESTMINSTER TRACT WATER SYSTEM

The New Westminster Tract Water System, operated by appli-

cant in the vicinity of Westminster, Orange County, was acquired by applicant through Order of the Commission in Decision No. 29036 dated August 10, 1936. The water works supplying the New Westminster Tract was installed in 1926 or 1927 by the subdividers of the property to provide water service for lot purchasers. Thereafter it was acquired by Martin and Goold who obtained a certificate of public convenience and necessity from the Commission to operate the plant on June 8, 1934 by Decision No. 27147. Thereafter Martin and Goold transferred the property to applicants herein in 1936 as set forth above.

The present rates in effect are as follows:

DOMESTIC USE

Monthly Flat Rates

For each residence, including one lot of one-half acre or less where service connection does not exceed 1 inch, .....	\$1.50
For each additional one-fourth acre or less, .....	.50
For each additional residence on 1 lot, .....	1.00
For each vacant lot of one-half acre or less, where service connection does not exceed 1 inch, .....	1.50
For each additional one-fourth acre or less, .....	.50
For extra service not exceeding 1 inch on any lot, .....	.50
For small business frontage lots where service does not exceed 3/4 of an inch, at option of applicant, .....	1.00

Meter Rates

Monthly Minimum Charges:

For 5/8 x 3/4 Inch Meter, .....	\$1.00
3/4 " " .....	1.50
1 " " .....	2.00
1 1/2 " " .....	3.00
2 " " .....	5.00
3 " " .....	8.00

Each of the foregoing "Monthly Minimum Charges" will entitle the consumer to the quantity of water which that monthly minimum charge will purchase at the following "Monthly Quantity Rates":

Monthly Quantity Rates:

From	0 to 1,000	cubic feet, per 100 cubic feet, ...	\$0.10
From	1,000 to 2,000	" " " " " " " " ...	.07 $\frac{1}{2}$
All over	2,000	" " " " " " " " ...	.05

IRRIGATION USE

Monthly Flat Rate

For one miner's inch ( 9 gallons per minute) per hour, ... \$0.01

Meter Rates

Monthly Minimum Charges:

For 1	inch meter	.....	\$2.00
" 1 $\frac{1}{2}$	" "	.....	3.00
" 2	" "	.....	5.00
" 3	" "	.....	8.00
" 4	" "	.....	15.00

Each of the foregoing "Monthly Minimum Charges" will entitle the consumer to the quantity of water which that monthly minimum charge will purchase at the following "Monthly Quantity Rates."

Monthly Quantity Rates:

From	0 to 10,000	cubic feet, per 100 cubic feet, .....	\$0.05
All over	10,000	" " " " " " " " .....	.03

Testimony presented in behalf of applicant in this case indicates that the soil in the area served is characteristically very sandy and porous, resulting in an excessive use of water for the irrigation of lawns and gardens and for all general agricultural irrigation purposes. As a result of this condition, applicants claim that the cost of operation has increased to such an extent that the existing rates no longer yield revenue sufficient to equal actual out of pocket operating expenses, with no allowance for depreciation.

Testimony and reports were submitted by Mr. W. T. Williams,

Superintendent of the water properties in behalf of applicant, and by Mr. F. E. Van Hoesen, one of the Commission's hydraulic engineers. Set out below is a brief summary of the results of the testimony presented by these two witnesses:

	<u>Williams</u>	<u>Van Hoesen</u>
Estimated original cost May 1, 1938	\$ -	\$14,496
Cost to duplicate system	12,229	-
Cost of Operation, exclusive of Dep.	1,148	1,115
Depreciation, Straight Line	500	-
Replacement Annuity, 5% sinking fund	-	325
Operating Revenue, 1937,	975	975
Operating Revenue, Proposed Rates	1,416	-

From the above data it is clear that the present operating costs, including depreciation calculated upon the 5% sinking fund method amounting to \$1440, is not only in excess of the entire gross annual revenue receivable for the year 1937, but is also slightly in excess of the estimated yield of the proposed rates. However, in view of the fact that the utility is willing to accept this yield and to forego at this time any net return upon its investment, the proposed schedule of rates will be approved. It is believed that economies can be adopted which will result in future operation at some slight net profit. The new rates will be the same as are now charged and in effect on the Orangewood Tract System now operated by this applicant.

#### O R D E R

Application having been filed with the Railroad Commission as entitled above, public hearings having been held thereon, the matters having been duly submitted, and the Commission now being fully advised in the premises,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the operation of a water system by Mountain Properties, Inc., in that certain

Tract No. 6234, commonly known as Independence Square Tract, Los Angeles County, and

IT IS HEREBY ORDERED that a Certificate of Public Convenience and Necessity be, and it is, hereby granted to Mountain Properties, Inc., to operate a public utility for the sale and distribution of water within the territory hereinabove described.

IT IS HEREBY FURTHER ORDERED that said Mountain Properties, Inc., be, and it is, hereby authorized and directed to file with this Commission, within thirty (30) days from the date of this Order, the following schedule of rates to be charged for all water service rendered to consumers on Tract No. 6234, or Independence Square Tract, subsequent to the 31<sup>st</sup> day of July, 1938:

Monthly Flat Rate

House, 5 rooms or less, on 25-foot lot, .....	\$1.25
House, " " " " " 50-foot lot, .....	1.50
Extra house, 5 rooms or less, occupied by separate family on one lot, .....	1.00
Each additional room, .....	.10
Small store or shop, .....	1.50
Large store or shop or meat market, .....	1.75
Soft drink shop or bakery, .....	2.00
Public hall or billiard parlor, .....	1.50
Drug store with soda fountain, .....	2.50
Barber shops, .....	1.50
Water for irrigation, per square yard irrigated, .....	.005

Meter Rates

Monthly Minimum Charges:

5/8 x 3/4 Inch Meter, .....	\$1.25
3/4 " " .....	1.75
1 " " .....	2.25
1 1/2 " " .....	4.00
2 " " .....	6.00

Each of the foregoing "Monthly Minimum Charges" will entitle the consumer to the quantity of water which that monthly minimum charge will purchase at the following "Monthly Quantity Rates":

Monthly Quantity Rates:

From 0 to 1,000 cubic feet, per 100 cubic feet, .....	\$0.25
From 1,000 to 3,000 " " " " " " " " .....	.15
From 3,000 to 6,000 " " " " " " " " .....	.12
All over 6,000 " " " " " " " " .....	.06

IT IS HEREBY FURTHER ORDERED that Mountain Properties, Inc., be, and it is, hereby directed to submit within thirty (30) days from the date of this Order, to this Commission for its approval, rules and regulations governing relations with its consumers.

## PART II

IT IS HEREBY FOUND AS A FACT, that the rates now charged by Mountain Properties, Inc., for water supplied to its consumers in its New Westminster service area 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, basing its Order upon the foregoing finding of fact, and upon the statements of fact contained in the Opinion preceding this Order,

IT IS HEREBY ORDERED that Mountain Properties, Inc., be, and it is, hereby authorized and directed to file with the Railroad Commission, within thirty (30) days from the date of this Order, the following schedule of rates to be charged for all water delivered to the consumers of its New Westminster service area, on and after the 31<sup>st</sup> day of July, 1938:

### DOMESTIC USE

#### Monthly Flat Rates

For each residence, including one lot, size not to exceed 90' x 135' where service connection is 1 inch in diameter, or less .....	\$2.00
For each additional one-fourth acre, or fraction thereof .....	1.00
For each additional residence on one lot .....	1.00
For extra service not exceeding one (1) inch in diameter on any lot .....	.50
For small business lots where service is not larger than one (1) inch in diameter .....	2.00

Meter Rates

Monthly Minimum Charges

For 5/8 x 3/4 Inch Meter .....	\$1.50
3/4 " " .....	2.00
1 " " .....	2.25
1 1/2 " " .....	4.00
2 " " .....	6.00
3 " " .....	15.00

Each of the foregoing "Monthly Minimum Charges" will entitle the consumer to the quantity of water which that monthly minimum charge will purchase at the following "Monthly Quantity Rates":

Monthly Quantity Rates:

From 0 to 1,000 cubic feet, per 100 cubic feet, ...	\$ .25
From 1,000 to 3,000 " " " " " " " " ...	.20
All over 3,000 " " " " " " " " ...	.12

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

Dated at San Francisco, California, this 25<sup>th</sup> day of

July, 1938.

William H. Miller

Ray C. Riley  
James P. Sullivan  
Earl D. Harker  
Commissioners