

Decision No. 31327

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the rates and charges of San Gabriel Valley Water Service on its water system in the City of Indio, in Riverside County, California.

Case No. 4355

In the Matter of the Application of SAN GABRIEL VALLEY WATER SERVICE for permission to increase rates in Indio.

Application No. 22222

R. H. Nicholson, for San Gabriel Valley Water Service, respondent.

W. P. Rouse, City Attorney, for City of Indio, interested party.

Mrs. T. H. Becker, for the Women's Club of Indio, interested party.

E. H. Petzold, *in propria persona*.

A. Rolland, for Indio Drug Company.

BY THE COMMISSION:

OPINION AND ORDER

On August 22, 1938 the Commission instituted an investigation on its own motion into the lawfulness of the rates for water charged by San Gabriel Valley Water Service at Indio. (Case No. 4355.) This action was prompted by the receipt of informal complaints from customers of the utility indicating that certain charges exacted by the utility were in excess of the applicable rates set forth in tariffs lawfully on file with the Commission.

On September 8, 1938 the utility submitted a schedule of

proposed rates which it claimed were not increases, and requested authority to make such rates effective on less than statutory notice. Because of the fact that such rates would have resulted in an increase above the existing rates then on file, the application was formally docketed and assigned Application No. 22222.

Hearings in both matters were held at Indio before Examiner Gorman on September 15, 1938. For convenience we will first discuss the application proceeding.

Application No. 22222.

Subsequent to the hearing, and on October 4, 1938 the utility advised the Commission by letter that it desired to withdraw the proposed schedule attached to the application, and submitted a new proposed schedule of rates. Thereafter, and on October 11, 1938, the utility advised the Commission by letter that it desired to amend the schedule forwarded on October 4, 1938, and submitted a third proposed schedule of rates.

Certain of the rates in the third proposed schedule are in fact lower than those heretofore charged or lawfully on file, while other rates are identical with those on file. There appears to be no reason why the utility should not be permitted to make the desired rates effective on less than the usual statutory notice.

In order to avoid any possible future confusion or misunderstanding as to the lawfully applicable rates, the schedule of rates which the utility may file is attached as Exhibit "A" to this decision. Minor changes in form have been incorporated therein. Provisions have also been added clarifying the monthly minimum charges and specifically canceling all schedules now on file containing rates applicable in this territory.

The order will provide that the proposed rates may be

made effective on all meter readings taken more than five days after the utility has filed with the Commission an original and four copies of the schedule attached hereto as Exhibit "A," each of which shall be signed by the proper official of the company.

Case No. 4355.

Before adverting to the facts of record it should be noted that under section 63(a) of the Public Utilities Act no utility may raise any rate or so alter any rule or regulation as to result in an increase, "under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified."

Section 63(b) deals with rate changes which do not result in an increase. Under that section whenever there shall be filed with the Commission any schedule of rates "not increasing or resulting in an increase" the Commission on its own initiative or on complaint, may enter upon a hearing concerning the propriety of the proposed rate. Pending hearing and decision, the proposed rate shall stand suspended, but the period of suspension may not extend beyond a prescribed maximum time. In such a "suspension proceeding" the Commission shall establish the proposed rates, or others in lieu thereof, which it shall find to be just and reasonable.

The same section provides that all such rates which are not suspended "shall, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, go into effect and be the established and effective rates, * * *."

It is clear that rates may not be increased except upon a showing and a finding that the increase is justified. On the other hand, rates may be decreased by merely filing an appropriate rate schedule, and such reduced rates automatically become effective thirty days after the date of filing, unless a suspension order is issued by the Commission.

The record in the present proceeding shows that in 1931 the water system serving Indio was operated by the Indio Water Co., Ltd. On June 16, 1931 that company filed with the Commission an original and four copies of the following letter:(1)

"In re: NEW WATER RATES

"The meter rates now in force for the Indio Water Company Ltd., are as follows:

First 600 cu. ft.	1.50 minimum
Next 400 " "	.15 per 100 cu. ft.
Balance	.12 "

"The Company hereby petitions your Honorable Body for permission to put into effect the following meter rates:

First 600 cu. ft.	1.50 minimum
Next 400 " "	.15 per 100 cu. ft.
Balance	.08 "

"The Company further petitions for permission to place a minimum flat rate of One (\$1.00) Dollar for each additional family where there is more than one family served off one master meter."

By this filing the utility proposed two rate changes; first, a meter rate reduction from 12 cents to 8 cents per 100 cubic feet on all water used in excess of 1000 cubic feet, and second, a new and increased minimum rate of one dollar for each additional family

(1) The established practice is to file the original and four copies of water rate schedules, each copy being signed by the proper company official, and such schedules are ordinarily sent to the Commission by mail.

served through one meter.

This filing, produced from the Commission's files, was identified by witness H. S. Marshall, president and manager of Indio Water Co., Ltd. from 1931 to 1937. He testified that he received a letter from the Commission to the effect that he could not place the proposed one-dollar rate into effect. However, he did reduce the 12-cent rate mentioned to 8 cents and continued to charge the 8-cent rate as long as he had possession and was in active charge of the system, a period of some six years. On July 16, 1937 Indio Water Co., Ltd. was authorized to transfer its system to San Gabriel Valley Water Service. (Decision No. 29954, Application No. 21250.)

The president and general manager of San Gabriel Valley Water Service testified that the 8-cent rate was being charged at the time he took over the system. That rate was continued in effect until September of 1937, when the witness increased the rate from 8 cents to 12 cents. This increase was made without any instructions from the Commission, and in the absence of any order authorizing such an increase. In explaining the circumstances leading up to this rate change the witness testified that he went over the records of Indio Water Co., Ltd. and found that in 1931 a letter had been written to the Commission regarding the 8-cent rate. (This letter is quoted above.) He also found a letter from the Commission objecting to the flat rate one-dollar charge heretofore mentioned. He then went to the Los Angeles office of the Commission, requested a copy of the rates on file, was advised that it would be necessary to write to the San Francisco office, and a few days later the Los Angeles office furnished him with a copy of a rate schedule containing the 12-cent rate. Shortly thereafter the witness began charging the 12-cent rate for quantities of water over 1000 cubic feet.

The rate was increased, according to the witness, because "the only legal authorized rate by the Commission was 12 cents." The increase was "an attempt on my part to get everything in connection with the Indio Water Company running on the proper authorized legal basis. So far as the files of the Indio Water Company showing, they were never authorized to charge the 8-cent rate." He also testified that when he took over the system he knew what rates were being charged and that he was satisfied to take over the system with that understanding.

Witness William Stava, an engineer in the Commission's hydraulic division, explained the rate filing practices followed by the Commission, and also testified concerning the Commission's records relating to the 1931 rate filing of respondent's predecessor. Upon receipt of that filing "apparently an inspection is "(was)" made of the rate and it was found the 8-cent rate was a reduction, which was acceptable to the hydraulic division, because it is marked on the face of the letter, as I stated before, 'Initials O.K.'; however, the further request of the company requesting permission to place the minimum rate of \$1.00 for each additional family connected to one meter was considered an increase in the rate and was not acceptable, and was so marked on the face of the letter." Several letters addressed to Indio Water Co., Ltd. concerning this matter were read into the record.

Investigation of informal protests from customers at Indio concerning excessive charges disclosed that such complaints were largely based upon the change from the 8-cent rate to the 12-cent rate. "We found that there had been an 8-cent rate in effect, so we made a search of our files, and we finally found this file attached to other correspondence, and filed very carefully in the

system. It only came to light recently, and as I stated before, instead of being attached to the rate file, it had been attached to the correspondence file, that is, connected with other correspondence instead of the rate correspondence."

It should be added here that the usual practice of the Commission is to keep all rate filings of each utility in a separate rate file pertaining to that utility, in order that rate filings may be readily available for examination and public inspection. In this particular instance, however, the 1931 rate filing became attached to an unrelated correspondence file. This circumstance, however, does not alter the fact that the 1931 rate reduction was filed with the Commission on June 16, 1931. Under the provisions of section 63(b) of the Public Utilities Act the 8-cent rate, not having been suspended by the Commission, automatically went into effect and became the "established and effective" rate on the expiration of thirty days from the time of filing. Respondent's predecessor charged its customers at that rate for a period of six years. Respondent corporation knew at the time it purchased the water system that that rate was being charged, and continued to apply it for several months after it acquired the system. It found a copy of the 1931 rate filing in the records of its predecessor.

When, in 1937, respondent increased this rate to 12 cents, it failed to apply for the necessary authorization, failed to make the required showing of justification and did not obtain the required finding by the Commission that the increase was justified. It therefore acted at its own peril, and did so with full knowledge that the lower rate had long been charged by its predecessor. Section 63(a) of the Public Utilities Act is explicit in its mandate that no rate be increased, "under any circumstances whatsoever," except upon a showing and a finding that the increase is

justified.

There is no alternative under this record but to find that the 12-cent rate was and is being unlawfully applied, being a direct overcharge in excess of the rates lawfully on file with the Commission. Respondent should immediately recompute all customers' bills wherein the 12-cent rate was charged, and credit such customers with the amount paid by them in excess of the 8-cent rate. Unpaid bills should also be recomputed and rendered on the basis of the 8-cent rate.

O R D E R

Public hearings having been had, and based upon the record adduced and the findings of fact contained in the foregoing opinion,

IT IS ORDERED as follows:

1. San Gabriel Valley Water Service is hereby authorized to publish and make effective the schedule of rates contained in Exhibit "A" attached hereto and made a part hereof upon less than statutory notice, such rates to become effective and to be applied on all meter readings taken more than five days after such schedule of rates is filed with the Commission in the manner prescribed in the next succeeding paragraph.

2. In order to avail itself of the authority hereinabove granted San Gabriel Valley Water Service shall file with the Commission an original and four copies of the schedule of rates set forth in Exhibit "A," each of which shall be signed by the proper official of the company. Such schedule shall be on paper 8-1/2 by 11 inches in size.

3. San Gabriel Valley Water Service shall recompute all bills wherein a rate of 12 cents per 100 cubic feet was applied on quantities of water used in excess of 1000 cubic feet, and within

ninety (90) days from the date of this order, shall make cash refunds to those who are not then customers and shall credit bills of then existing customers computed at the rates set forth in Exhibit "A" with all amounts paid by them in excess of a rate of 8 cents per 100 cubic feet on quantities of water used in excess of 1000 cubic feet. Respondent shall also recompute all unpaid bills of like character and shall render such bills on the basis of the 8-cent rate.

4. The schedule of rates referred to above may be filed within fifteen days from the date of this order.

5. The Secretary of the Commission shall cause a certified copy of this opinion and order to be served upon San Gabriel Valley Water Service by registered mail.

6. This order shall become effective ten (10) days from the date hereof.

Dated, San Francisco, California, October 17, 1938.

Robert W. [unclear]
John [unclear]
Frank [unclear]
Ray & [unclear]
Commissioners

(Exhibit "A")

SAN GABRIEL VALLEY WATER SERVICE
242 East Garvey Avenue
El Monte, California

INDIO WATER SYSTEM

SCHEDULE OF RATES

(This schedule cancels all rate schedules heretofore filed covering the territory served by the Indio system.)

METER RATES

Monthly Minimum Charges

For 5/8 x 3/4-inch meter-----	\$1.50
For 3/4-inch meter-----	1.75
For 1-inch meter-----	2.00
For 1-1/4-inch meter-----	2.50
For 1-1/2-inch meter-----	3.00
For 2-inch meter-----	5.00

Each of the foregoing "monthly minimum charges" will entitle the customer to the quantity of water which that monthly minimum charge will purchase at the following "monthly quantity rates."

Monthly Quantity Rates

First 1,000 cubic feet, or less-----	\$1.50
Next 3,000 cubic feet, per 100 cubic feet-----	.10
Next 16,000 cubic feet, per 100 cubic feet-----	.08
Over 20,000 cubic feet, per 100 cubic feet-----	.06

FLAT RATES

Fire Hydrants

Monthly flat rate for each fire hydrant-----	\$.40
--	--------

Construction Work

Concrete walks, per 100 square feet-----	\$.20
Concrete curbs, per 100 lineal feet-----	.40
For street grading and oiling, per 100 lineal feet, for streets averaging 30 feet in width-----	1.60
Flooding sewers or pipe line trenches where dirt is used for back fill, per lineal foot of trench 2 feet by 4 feet or fraction thereof-----	.015
Concrete streets or gutters, per 100 square feet-----	.40
Street grading and asphalt paving, per 100 lineal feet for streets averaging 30 feet in width-----	1.60

Date Issued

Date Effective

R.A. Nicholson, President

(Publication on less than statutory notice authorized by Decision No. _____, in Application No. 22222 and Case No. 4355.)