

Decision No. 22522

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Jesse Nicholson, For Recognition and
Assuming of Jurisdiction by the Rail-
road Commission of California over
the Water System of said Applicant
and for the Regulation of Rates Thereof.

ORIGINAL
Application No. 22522

Jesse Nicholson, For Applicant.

RILEY, COMMISSIONER:

O P I N I O N

In this proceeding Jesse Nicholson asks the Railroad Commission for a determination of his status as a public utility owner and operator of that certain water system used to distribute water to residents in the Valencia District northeast of Aptos in Santa Cruz County and asks for authority, if such be required, to continue to conduct his business as a public utility. The Commission also is requested to establish a schedule of rates covering charges for all service.

A public hearing in this matter was held in Santa Cruz.

The evidence shows that this water system was first constructed about the year 1886 by Frederick A. Hihn, in connection with his sawmill and logging activities in the hills back of Aptos in Santa Cruz County. Water was supplied to employees of the mill and later to consumers who had established residences in the vicinity. After the death of Frederick A. Hihn in 1913, ownership of the system passed to Harriet Hihn, widow of Mr. Hihn's son, and Teresa A. Hihn, a granddaughter. Sales of water to residents con-

tinued as before. By deed dated May 25, 1920, applicant Jesse Nicholson acquired the water plant from the Hihn heirs, together with the right to divert and use waters of Valencia Creek. Mr. Nicholson was granted certain easements and rights of way, together with the right of ingress and egress, for purposes of operating, maintaining and repairing the various portions of the water system. The storage reservoir was excepted from the transfer but it continues to be used by applicant as a vital part of the water distributing system.

By means of diversion works constructed on the east bank of Valencia Creek some distance above the confluence with its East Branch, water is now conducted through a combination flume and pipe line to a Rife hydraulic ram located about 1,400 feet below the point of intake. The ram elevates the water into a 25,000-gallon, partially covered, concrete-lined reservoir, situated 133 feet in elevation above it. An electrically-driven pump, installed about 1927 near the ram, is used to pump water from the Creek directly into the distribution main when required. From the reservoir the water flows by gravity through a system of distribution pipes ranging in size from four inches to one inch in diameter and totalling 12,430 feet in length. There are now twenty service connections on the system, including those to the applicant's own premises. None of the services are metered and the consumers are furnished with water at flat rates varying from one dollar (\$1.00) to two dollars (\$2.00) monthly. The record shows that applicant offers service of water for domestic purposes only, the supply being insufficient to provide for agricultural crop irrigation.

On February 17, 1927, a contract was entered into by and between Jesse Nicholson and A. B. Harrison, the then owner of a certain tract of land near Nicholson's property, wherein Nicholson obligated himself to supply domestic water service to future purchasers

of subdivided areas of the tract, not to exceed three in number, at a rate of two dollars (\$2.00) per month. Rights to this service of water were subsequently assigned by A. B. Harrison to Ralley M. Hood, to F. U. Little and Ethel Little, his wife, and to E.C. Stopp and Anna Stopp, his wife. The premises of the above parties are now served by applicant's water system and all are located on the west side of the Santa Cruz-Watsonville Highway approximately two miles distant from the source of supply and at the most remote section of the service area of the water system. To reach these three properties water must pass through a long distribution main consisting mostly of $1\frac{1}{2}$ -inch and 1-inch diameter pipe laid over an elevation which is but slightly lower than the storage reservoir. These conditions make it difficult for these consumers to obtain an adequate supply of water simultaneously. While this situation was called to the attention of the Commission several years ago by Mr. Hood, no formal proceeding was instituted but instead the matter was taken into the Superior Court of Santa Cruz County, resulting in a decree which attempted to provide for equality in water deliveries through installation of service pipes of certain definite sizes and lengths for each of the above three contract consumers. In the present proceeding these three water users still complain that service is unsatisfactory but now desire to place the matter at the disposal of this Commission.

Some question arose over the status of this water works, mainly upon the grounds that the contract under which three of the consumers claim rights to water indicated a private transaction in water sales and further that none of the owners of this particular system ever had secured a certificate of public convenience and necessity to operate the plant. While the contract consumers have agreed to waive their claims to private contractual rights to water service and to permit the Railroad Commission to assume jurisdiction uncon-

tested at this time, nevertheless it should be pointed out that the evidence herein clearly and conclusively shows a complete dedication of this water supply and water works to the public use by the Eihn interests at least as early as 1886, a great many years prior to the enactment of the Public Utilities Act⁽¹⁾, and therefore long before the transfer of this plant to applicant Nicholson. It logically follows therefore that the agreement entered into by and between Jesse Nicholson and A. B. Harrison, dated February 17, 1927, having been made subsequent to the dedication of the plant and the water supply to the public use and never having been approved by this Commission, is subject to whatever orders affecting it that may be issued from time to time by the Commission in the exercise of its jurisdiction. In order to avoid unfair discrimination against the other consumers in the establishment of rates, rules and regulations, for the purposes of this proceeding, such terms and provisions of the above agreement as may be contrary thereto accordingly must be disregarded. All charges and operations will be placed and maintained upon a uniform and non-preferential basis. For the reasons set forth above, it is likewise clear that this water system at this time does not require a certificate of public convenience and necessity from the Railroad Commission.

Mr. Nicholson offered no testimony relating to his investment in the system. A report submitted by R. E. Savage, one of the Commission's engineers, shows the estimated original cost of the physical properties, exclusive of water rights, to be \$5,704 as of February 10, 1939. The depreciation annuity, computed on the five per cent sinking fund basis, is \$65. The reasonable operating ex-

(1) The Public Utilities Act became effective March 23, 1912.

penses for the immediate future are estimated at \$200 per year and the annual revenues at \$275, based on present rates.

Applicant requested that the rates to be fixed be similar to those now in effect. He also asked for the establishment of rules and regulations to prevent all unequal distribution of water. On any system where flat rates are in effect, experience shows that it is extremely difficult to design any structure of charges with accompanying rules which will prove entirely equitable to all consumers and to the utility itself. The most logical remedy for this difficulty is to deliver water on a measured basis. Therefore, a schedule of both flat and meter rates will be established. Meters may be installed at the option of either the consumer or the utility. The use of meters will minimize unnecessary waste of water and should conserve the supply thereof during years and seasons of low flow. The rates set out in the following Order are based upon similar charges in effect on other systems operating under fairly comparable circumstances and should prove to be fair and reasonable to both consumer and applicant.

The testimony indicates that during normal years and during the major portion of every year the supply of water flowing in Valencia Creek is adequate. Whatever difficulty is now experienced by any consumer in obtaining an adequate quantity of water is due primarily to the small size of the long distribution pipe lines. Applicant will be expected to remedy this condition by the most practicable means available as soon as his finances reasonably warrant.

The service area of the utility will be defined in the Order set out below.

The following form of Order is recommended.

O R D E R

Application as entitled above having been filed with the Railroad Commission, a public hearing having been held thereon, the

matter having been duly submitted and the Commission now being fully advised in the premises,

Based upon the findings set out in the foregoing Opinion, it is hereby found as a fact that Jesse Nicholson is operating a public utility water system under the control and jurisdiction of the Railroad Commission of the State of California in that portion of Santa Cruz County known as the Valencia District within Sections 4, 9 and 16, T. 11 S., R. 1 E., M.D.B. & M., more particularly described as the properties fronting upon Cox Road, upon Valencia Road and upon the Watsonville-Santa Cruz Highway, commencing from points on Cox Road and on Valencia Road approximately 1,500 feet northerly from their intersection, extending from said points southerly along the two roads to the aforesaid intersection, thence in a southerly direction along Valencia Road to its intersection with the Watsonville-Santa Cruz Highway, and continuing approximately 1,500 feet along said highway in a southerly direction to the Southwesterly boundary of property now owned by E. C. and Anna Stopp, his wife. Now, therefore,

IT IS HEREBY ORDERED that said Jesse Nicholson be and he 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 subsequent to the 31st day of May, 1939:

RATE SCHEDULES
FLAT RATES

<u>Classification</u>	<u>Per Month</u>
1. Each residence, four rooms or more	\$2.00
2. Each residence, less than four rooms	\$1.00 to \$1.50
3. Churches, public halls, clubs, lodges, etc., minimum charge	\$0.50 to \$2.00
4. Additional for lawns, flowers and shrubbery, etc., and sprinkling payable for the months of April, May, June, July, August and September of each year, per 100 square feet of surface watered	\$.05

METER RATES

Monthly Minimum Charges

For 5/8-inch x 3/4-inch meter	\$2.00
For 1-inch meter	\$3.50

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

First 800 cubic feet or less	\$2.00
Next 1200 cubic feet, per 100 cubic feet	\$.30
All over 2000 cubic feet, per 100 cubic feet	\$.25

A meter may be installed on any service at the option of either the consumer or the utility. If meter is installed at request of a consumer the estimated cost of the meter and installation thereof must be deposited by such consumer with the utility, subject to refund of 25% of the monthly water bill until entire deposit is returned.

IT IS HEREBY FURTHER ORDERED that within thirty (30) days from and after the date of this Order, said Jesse Nicholson be and he is hereby directed to submit to the Railroad Commission for its approval rules and regulations governing relations with his consumers in the territory indicated above.

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

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23rd day of May, 1939.

Charles J. ...
James J. ...
James J. ...
James J. ...
COMMISSIONERS.