

Decision No. 22282

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of SUBURBAN WATER COMPANY for an order authorizing the execution of: (1) proposed contract to be entered into between applicant and The Permanente Corporation and The Roman Catholic Archbishop of San Francisco for the supplying of water; and (2) proposed contract to be entered into between applicant and San Jose Water Works and California Water Service Company providing for standby arrangements; and approving the terms and conditions of each of said contracts.

ORIGINAL

Application No. 22910

In the Matter of the Application of SAN JOSE WATER WORKS, a corporation, and CALIFORNIA WATER SERVICE COMPANY, a corporation, for an order authorizing the execution of (1) proposed endorsement to proposed contract between Suburban Water Company and The Permanente Corporation and the Roman Catholic Archbishop of San Francisco for standby water service and (2) proposed contract between the applicants and Suburban Water Company providing for standby arrangements; and approving the terms and conditions of said endorsement and contract.

Application No. 22927

Louis O'Neal and T. W. Dahlquist; Orrick, Dahlquist, Neff and Herrington for Suburban Water Company.

R. C. Leib, C. C. Leib, and R. M. Brown of McCutchen, Olney, Mannon & Greene, for San Jose Water Works.

Carl Mau for California Water Service Company.

L. D. Bohnett of Bohnett, Hill, Cottrell & Boccardo, for Harold L. and Evelyn W. Hamilton, Theodore Van Winson, Santa Clara Water Company, Nathan L. Lester, William Lester, Hazel Smith and C. D. McDonald, protestants.

BY THE COMMISSION:

O P I N I O N

By related and consolidated applications one utility seeks authority to execute a contract to supply water under special circumstances to two large customers at non-tariff rates, while two adjoining utilities desire authority to execute an endorsement agreement which in effect "underwrites" utility performance of the primary contract. All three utilities request permission to enter into a collateral "stand-by" agreement, whereby the two utilities undertake to supply the first utility with water in quantities sufficient to meet such customers' demands under the primary "service" contract, in the event that the first utility is unable to furnish such water.

Certain protests, entered at a public hearing before Examiner Cassidy at San Jose, will be considered following a resume of the proposed agreements.

The "Service" Contract.

Suburban Water Company renders service in Santa Clara County in the vicinity of Mountain View, Sunnyvale, Los Altos, Loyola and Permanente. The Permanente Corporation is constructing a cement manufacturing plant and other works at Permanente, which is about ten miles west of San Jose. Adjoining the property of Permanente Corporation are certain educational institutions maintained by The Roman Catholic Archbishop of San Francisco, a corporation sole. These two corporations (hereinafter called Customers), desiring water service supplementing such supply as they may develop on their respective properties, have applied to Suburban therefor,

and the latter seeks authority to enter into a five-year contract to furnish water at a rate not contained in its filed schedule.

Under the proposed contract Customers jointly agree to construct and convey to Suburban a 10-inch pipe line from a certain point on Suburban's present system to a specified point on the property of the Archbishop. Suburban will procure all necessary rights of way or permits, and will install and maintain its meter immediately in front of the "delivery point." Behind this meter, Customers will construct and retain storage facilities and a booster pump, as well as service lines to their respective properties. Suburban will enlarge its facilities to the point of connection with the 10-inch pipe line, and agrees, when necessary, to interconnect its system with San Jose Water Works or California Water Service Company.

For a period of five years Suburban will deliver all water requirements of Customers necessary to supplement such supply as the latter may develop on their own properties, at the rate of eight cents per 100 cubic feet, but Suburban shall not be obligated to deliver at any time, at such rate, a total amount of water in excess of 500 gallons per minute. Suburban is guaranteed an annual minimum of \$6,000. In consideration of Suburban's enlarging certain facilities and establishing the 8-cent rate, Customers will pay Suburban, contemporaneously with the execution of the agreement, \$50,000 as an aid to the construction and operation of such additional facilities. Suburban agrees to look exclusively to The Permanente Corporation for all payments to be made under the contract, and releases the Archbishop from all liability therefor.

The "Endorsement" Agreement.

San Jose Water Works and California Water Service Company operate utility systems adjacent to the area served by Suburban, and seek authority to execute an agreement in the nature of an endorsement of the service contract already mentioned. By such endorsement these two utilities jointly agree that if, for any reason, Suburban is unable to supply all of Customers' water requirements, they will furnish Suburban sufficient water for such requirements, or themselves will make delivery thereof to Customers through Suburban's facilities, subject to the terms of the "service" contract.

The "Standby" Contract.

All three utilities seek authority to enter into a third contract, which provides that if it becomes necessary for San Jose Water Works or California Water Service Company (hereinafter called "standby utilities") to furnish water under the service contract and endorsement, Suburban will connect its system with those of the standby utilities. As between such standby utilities, San Jose Water Works shall have the primary obligation to furnish water under the service contract and endorsement. Suburban shall take delivery at the point of connection with the standby utility's distribution system, and shall pay eight cents per 100 cubic feet for water delivered. Should Suburban be unable to deliver water so furnished to Customers, then either standby utility may deliver such water to Customers (at the "delivery point" specified in the service contract) through Suburban's system, and may collect from

Customers eight cents per 100 cubic feet of water so delivered. (1)

Suburban shall not deliver any water in the service area of the standby utilities from any lines interconnecting the systems, but the standby utilities may sell water from such lines to other consumers within their respective service areas, if such sales do not interfere with performance of obligations under the endorsement agreement.

Applicants' Position.

Suburban alleges that execution of the service contract will not impair its water supply or its ability to render adequate service to other patrons, but will improve its entire system and benefit all customers by reason of enlarged facilities, construction of which will largely be made possible by the \$50,000 contribution. Suburban points out that the proposed special service under the contract is not for continuous unlimited service, but is in the nature of standby service to the two Customers for five years only, and will supply the educational institutions and the new industry with needed water.

Applicants allege that the proposed arrangements, in addition to being in the public interest, are also deemed necessary in

(1) By stipulation of counsel for the three utilities, the "standby" agreement (Exhibit "B" to Application No. 22927 and Exhibit 4 to Application No. 22910) was amended at the hearing by inserting at the end of the last full sentence on page 3 thereof, a sentence reading as follows:

"It is understood and agreed that in the event that either San Jose or California furnishes service to Suburban hereunder the parties supplying such service shall be entitled to a minimum monthly guarantee of \$500.00 per month for each full calendar month of service rendered, and in the event service is made hereunder directly to the parties named in the said agreement and endorsement such service shall be at the rate including the minimum guarantee provided in the said agreement and endorsement."

order to protect Suburban's service area against invasion by any supplier of water who might not be subject to the Commission's regulatory jurisdiction and who might bring water to such territory from the outside, and that by cooperation all three utilities will be enabled to protect their respective service areas and businesses.

Suburban contemplates that it will be enabled to increase its source of supply and its storage capacity, improve its distribution lines, and make service available to a greater number of residents in its service area, as well as improve service to many existing customers.

The "delivery point" is located on the property of the Archbishop, and the two Customers will pump water from a sump located beyond the "delivery point" through their own distributing system to the points of use on their respective properties. Pipe lines beyond the "delivery point" will not be a part of Suburban's system.

According to Suburban's superintendent, in 1936 that utility had available a water supply from wells of about 550 million gallons, with an actual "pumpage" of some 75 million gallons. In 1937 there was no change in the supply available, although usage, increased to 78 million gallons, while in 1938 acquisition of a new well increased the available supply to a little over 600 million gallons, and the "pumpage" increased to 82 million gallons. The new well was acquired in 1938 to provide a source of supply nearer the center of demand, thus obviating installation of larger mains. Other "standby" wells are available. The level of percolating waters in the Santa Clara Valley has been increasing, due to recent wet years and the activities of the Santa Clara Valley Conservation District.

The Permanente Corporation owns about 1300 acres of property located in a canyon which drains into the territory served by Suburban. The Permanente Corporation has some water supply on its own property and has drilled one test well. The industry anticipates an average requirement of about 300 gallons per minute, part of which will be obtained from its own sources of supply. It can recover and reuse water in its manufacturing processes. Operating days may not exceed 300 per year. The pump being installed by The Permanente Corporation has a capacity of about 400 gallons per minute, which is less than the contractual maximum.

Barring unforeseen catastrophe, it will not be necessary for Suburban to call upon the two other utilities for water, and according to its president Suburban can and will acquire additional water, if necessary.

San Jose Water Works has an available supply of water in excess of 30 million gallons daily, and its peak daily consumption is about 15 million gallons. The rendering of standby service to Suburban would not make a serious inroad on its supply, nor create any "pressure" problem on its system. The maximum amount of water called for under the "service" contract could be furnished to Suburban without interfering with service to consumers of the San Jose Water Works. The wells which would be used to furnish water to Suburban have a total capacity of about 2500 gallons per minute.

California Water Service Company, whose obligation to furnish standby service is secondary, has wells with a daily capacity of 1.83 million gallons, or 666 million gallons per year, and in 1938 used some 75 million gallons of water, or about 11-1/4 per cent of its available supply.

Objections to Proposed Contracts.

Certain of the protestants claim water rights on a creek from which San Jose Water Works obtains a portion of its water supply, and protest against the taking of water from that source to the lands of the two contracting Customers. Other individual protestants own wells in the territory involved. They contend that wells from which the utilities obtain water tap the percolating waters of the Santa Clara Valley basin, that there is no surplus water in that basin, and that the utilities have no legal or moral right to convey waters thus obtained to the two Customers mentioned. Protestants also contend that the pumping of water from the percolating basin and conveyance thereof to different lands will result in inadequate service to utility consumers in that it will cause a lowering of the water level in the basin.

Arguing that the Commission, in this proceeding, should consider and determine questions relating to water rights and invasion thereof, counsel for protestants offered to prove that none of the applicant utilities have any water available for the furnishing of the proposed service to the Archbishop and to The Permanente Corporation, because the water which the utilities intend to use for that purpose does not belong to them. Objection to the offer of proof, as not being within the issues, was sustained by the examiner, whereupon protestants withdrew from participation in the hearing.

We believe that the rendering of the contemplated standby service will not jeopardize the ability of the several utilities to furnish adequate service to their present and future consumers, that the proposed deviation from filed rates is justified under the

special circumstances disclosed, and that execution of the proposed agreements should be authorized. However, in accordance with our established practice, the Commission reserves the right to alter or amend such agreements in the exercise of its regulatory jurisdiction.

O R D E R

The above applications having been consolidated and submitted for decision upon the evidence taken at a public hearing, and based upon the record and upon the factual findings contained in the above opinion,

IT IS HEREBY ORDERED AS FOLLOWS:

I. Suburban Water Company is hereby authorized to enter into, and render service under the rate and in accordance with the terms of, the proposed agreement with The Permanente Corporation and The Roman Catholic Archbishop of San Francisco which is set forth as Exhibit 2 to Application No. 22910 and Exhibit "A" to Application No. 22927.

II. San Jose Water Works and California Water Service Company are hereby authorized to execute the proposed "endorsement" agreement set forth as a part of Exhibit 2 to Application No. 22910 and Exhibit "A" to Application No. 22927.

III. Suburban Water Company, San Jose Water Works, and California Water Service Company are hereby authorized to enter into the proposed agreement set forth as Exhibit 4 to Application No. 22910 and Exhibit "B" to Application No. 22927, and as amended at the hearing.

The above authorizations are granted subject to the following conditions, and not otherwise:

1. Each of said contracts shall at all times be subject to such changes or modifications by the Railroad Commission as the Commission may, from time to time, direct in the exercise of its jurisdiction.

2. A true copy of each of the three contracts shall be filed with the Commission within thirty days from the time of execution.

3. The authorizations herein granted shall expire if not exercised within thirty days after date of this order.

This order shall become effective immediately.

Dated, San Francisco, California, this 30th day of

August, 1939.

Raymond
Frank

Justin J. Casner
Commissioners