

Decision No. 35371

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of Pacific Gardens Water Company, a corporation, for a certificate of public convenience and necessity, order approving rates and permission to sell stock.

Application No. 24404

ORIGINAL

Walter E. Drobisch, for Applicant.

McCutchen, Olney, Mannon & Greene,  
by Henry D. Costigan and Robert M. Brown,  
for California Water Service Company,  
Intervener and Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Pacific Gardens Water Company, a California corporation, asks the Railroad Commission to grant it a certificate of public convenience and necessity to install and operate a public utility water system in certain territory, partially subdivided and generally known as Calaveras Yacht & Country Club Estates and Pacific Gardens, located northwesterly of and adjacent to the City of Stockton in San Joaquin County, California. The Commission is requested to establish a schedule of rates for the service to be rendered and to authorize and permit the issuance of three hundred shares of Applicant's capital stock of \$30,000 par value.

Public hearings in this matter were held before Examiner Wm. Stava in Stockton and in San Francisco.

About the year 1936, The Anglo California National Bank of San Francisco<sup>(1)</sup> acquired through foreclosure proceedings a tract of land, comprising approximately 900 acres, lying within the boundaries of Reclamation District No. 1614. This tract is bounded on the north by the southerly bank of the Calaveras River, on the east by the westerly line of Pershing Avenue, being also the westerly city limits of Stockton, on the south by the southerly line of Michigan Avenue, and on the

Note: (1) Hereinafter sometimes referred to as the Anglo Bank.

west by the westerly line of Rainier Avenue. At that time, none of said land was served or supplied with water for domestic or irrigation purposes by a public, private or mutual utility and all of the water used and consumed in said territory for several years thereafter was developed either from shallow wells located on the properties of individual owners or taken from the Calaveras River. There being no central sewage disposal system, the water in the shallow wells was subject to pollution from cesspools and septic tanks. Under these conditions, local banks could not be interested in making loans to prospective purchasers of lots in the subdivisions and the Federal Housing Administration would not approve the property for the insurance of loans.

The southeasterly portion of this tract, adjoining the City of Stockton, and consisting of approximately 130 acres of land, is now being developed by the Anglo Bank into a suburban residential project. This particular area was originally subdivided into 70 parcels of land that varied in size from 1.5 to 2.3 acres. These parcels have now been further subdivided into 385 lots and it is these lots that will be served by the first unit of Applicant's water system. At present, gas, electric and telephone service are available within the 130-acre territory. Therefore, in order to promote the development of its land and make it more attractive and desirable for homes and homesites, the Anglo Bank asked the California Water Service Company, which operates the water system rendering service in and in the vicinity of the City of Stockton, to extend its mains to serve the subdivision. However, an agreement could not be reached as the Company required the Anglo Bank to advance the entire cost of the water system to serve the tract, said cost including land and facilities for producing water. The amount advanced was subject to refund for a ten-year period on the basis of 35% of the annual gross revenue derived from water sales on the tract. The Anglo Bank felt that the Company should make some contribution to the system, at least all of the water production facilities.

The Bank thereupon caused the incorporation of the Pacific Gardens Water Company on July 28, 1941, for the primary purpose of operating a public utility water system within the territory described above. Applicant obtained a franchise from San Joaquin County, Ordinance No. 449, permitting it to construct, maintain and

operate pipe lines in, upon, and under the public streets within the territory for which a certificate is requested. It was later found necessary to lay pipe on Pershing Avenue, which lies within the City limits of Stockton, and a franchise was obtained from the said City, Ordinance No. 1633, granting Applicant authority to make this installation. As the City of Stockton has been designated as a housing defense area, and anticipating that there might be a shortage of labor and material, Applicant commenced the construction of the water system a short time after filing the application for a certificate.

At the time of the hearing, construction of the well, pump and distribution system to serve the 130 acres had been practically finished, although the cost records were incomplete. The source of water supply is a 12-inch well, 496 feet deep. Water is produced by pumping and will be distributed with the aid of a pressure system through approximately 20,000 feet of steel pipe varying from 4 to 10 inches in diameter. Nineteen wharf-type fire hydrants have been connected to the mains for fire protection purposes.

The following tabulation shows the actual and estimated additional expenditure necessary to complete the first unit of the water system:

	<u>Actual</u>	<u>Estimated Additional</u>	<u>Total</u>
<u>FIXED CAPITAL:</u>			
C-1 Organization	\$ 97.18	\$ -	\$ 97.18
C-5 Landed Capital	-	1,500.00	1,500.00
C-6 Buildings	-	1,520.00	1,520.00
C-10 Wells	2,264.49	-	2,264.49
C-14 Pumping Equipment	-	1,620.00	1,620.00
C-18 Distribution Mains	18,830.64	-	18,830.64
C-19 Pressure Tanks	2,321.82	-	2,321.82
C-20 Fire Hydrants	418.38	-	418.38
C-21 Services	521.18	-	521.18
C-22 Meters	39.35	2,000.00	2,039.35
C-23 Misc. Distribution Equipment	-	200.00	200.00
C-24 Automobile Equipment	-	1,200.00	1,200.00
C-25 Undistributed Construction Equipment	287.36	780.00	1,067.36
	<u>\$24,780.40</u>	<u>\$8,820.00</u>	<u>\$33,600.40</u>
<u>MATERIALS AND SUPPLIES:</u>	2,760.00	-	2,760.00
<u>OTHER SUSPENSE:</u>	350.00	-	350.00
<b>TOTAL ASSETS</b>	<b>\$27,890.40</b>	<b>\$8,820.00</b>	<b>\$36,710.40</b>

The Commission is requested to establish the following schedule of rates for the water delivered to the consumers:

METERED GENERAL SERVICE

Service: This schedule is applicable to water service used for domestic, commercial, industrial, irrigation and metered purposes.

Minimum Charge: The monthly minimum charge applicable to this service is designated by the following meter sizes:

Meter size	1 inch or less	.....	\$1.00 per month
" "	1½ inch or less	.....	1.50 per month
" "	2 inch or less	.....	2.00 per month
" "	3 inch or less	.....	3.00 per month
" "	4 inch or less	.....	4.00 per month

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	1,000 cubic feet at	\$.10 per 100 cubic feet	.....	\$1.00 (Min.)
Next	2,000 cubic feet at	.10 per 100 cubic feet		
Next	3,000 cubic feet at	.09 per 100 cubic feet		
Next	4,000 cubic feet at	.08 per 100 cubic feet		
Next	15,000 cubic feet at	.07 per 100 cubic feet		
Next	35,000 cubic feet at	.05 per 100 cubic feet		
Over	60,000 cubic feet at	.04 per 100 cubic feet		

These rates are approximately 20% lower than those in effect on the California Water Service Company system in the City of Stockton. Mr. D. A. Leonard, in charge of lands for the Anglo Bank, testified that he considered the rates in Stockton higher than reasonably proper for his particular class of suburban service demand. Applicant submitted estimates of operating revenues together with maintenance and operating expenses which indicate that the service furnished can be made compensatory when the tract becomes fully developed.

California Water Service Company filed a protest and counter-application. The protest is made on the grounds that the Company has furnished water in the City of Stockton and vicinity for many years prior to the enactment of the Public Utilities Act and therefore it is entitled to provide any required water service in that area and vicinity without a certificate or any other authority from the Commission, and that it is now ready and willing to extend service into Pacific Gardens territory in accordance with its rules and regulations and furnish water at the rates in effect on its own system. Protestant contends that it is entitled

to protection from competition by other public utility water systems, except a bona fide company which can clearly demonstrate that it has the corporate power to continue its public utility water operations and is able to furnish a better service at lower rates and still earn a fair return on the investment. It alleges that applicant is not a bona fide public utility operator but that the present project is an unlawful investment by a National Bank as a mere incident of a real estate promotion.

The record shows that the Anglo Bank in good faith had complied with all of the requirements for obtaining an extension of facilities from the California Water Service Company, but was unable to obtain the extension upon a fair and satisfactory basis. The water system that it was thereupon compelled to install to serve its land was shown to have adequate capacity to furnish the demand for service on the tract. Applicant submitted lower rates for water service than effective in the general vicinity, and proved its financial ability to provide all necessary facilities throughout the proposed area. It furthermore appears that no duplication of service will result from Applicant's operations. Under the circumstances the best interest of the public demands that a certificate of public convenience and necessity be granted Applicant for the area requested as hereinafter modified. The following order will authorize the schedule of rates as requested in the application to be charged for the service furnished in the tract.

The existing facilities of the California Water Service Company in this vicinity include an 8-inch water main extending northerly along Pershing Avenue to Michigan Avenue and thence westerly about 500 feet along the north side of Michigan Avenue which main was installed some time prior to March 15, 1941. This company is now serving water to a few customers on both sides of Michigan Avenue and plans to extend its main westward on Michigan Avenue whenever development occurs in that direction. So far, there has been no duplication of facilities, Applicant's nearest water main being located on Monterey Avenue, one block north. In order to prevent overlapping of territory, Applicant has agreed that service to property fronting on the northerly side of Michigan Avenue, between Pershing Avenue and Mission Road, may

be supplied by California Water Service Company, protestant herein. This section, therefore, will be excluded from the territory certificated to Applicant.

It is the contention of the protestant that the proposed public utility water service of the applicant corporation should be viewed as an operation by the Anglo Bank and that a bank may not lawfully engage in such a business. But this Commission may not consider such contentions. The Applicant must be deemed to be a proper party to apply for and hold a certificate to engage in a utility business. It has a capital stock of \$200,000, which is divided into 2,000 shares of a par value of \$100 each. On August 27, 1941, the Department of Investments, Division of Corporations of the State of California, issued a permit authorizing applicant to sell and issue to the Anglo Bank an aggregate of not to exceed 300 shares of its capital stock at par, for cash.

At the hearing in this proceeding, Applicant filed an amendment to its original petition stating that the said stock was issued to the Anglo Bank, subject to the approval of the Railroad Commission, but that the Anglo Bank has now arranged with Arthur & Co., a California co-partnership, to take over said capital stock, at par, for cash. The Commission is asked that the issuance of said stock be permitted and authorized and that its transfer to said Arthur & Co. be ratified and confirmed.

An analysis of the foregoing figures, in the light of other evidence pertaining thereto, indicates that over thirty thousand dollars, the amount of the stock issue requested in the application, will be required for the construction and installation of the waterworks facilities to serve the first unit of the territory ultimately intended to be served. Applicant testified that whatever amount more than \$30,000 is required will be covered by short-term notes until such time as authority is granted to issue additional stock. In the Order which follows this Opinion, Applicant will be authorized to issue, at par for cash, three hundred shares of stock of a par value of one hundred dollars each, as requested. In the opinion of this Commission, it will be necessary for Applicant to cancel the certificates for shares of stock, now outstanding and issued prior to the effective date of the Order to follow, and to issue new certificates in lieu thereof. This Commission does not object to the issuance of such certificates to Arthur & Co.,

a California co-partnership, to satisfy the request made in the amendment to the application.

O R D E R

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require and will require the construction, operation and maintenance of a public utility water system by Pacific Gardens Water Company, a corporation, within that certain subdivided area of nine hundred acres, more or less, of land located northwesterly of and adjacent to the City of Stockton in the County of San Joaquin, California, which area is bounded on the north by the southerly bank of the Calaveras River, on the east by the westerly line of Pershing Avenue, on the south by the southerly line of Michigan Avenue and on the west by the westerly line of Rainier Avenue, as more particularly delineated upon the blueprint map entitled "Map showing location of Pacific Gardens Water District and Adjacent Territory in Reclamation District No. 1614, San Joaquin County, Calif." and attached to the application herein, and which is hereby made a part of this Order by reference; excluding therefrom, however, those lots fronting on the north side of Michigan Avenue between Pershing Avenue and Mission Road, which lots comprise the southerly halves of the two blocks bounded on the north by Monterey Avenue, on the east by Pershing Avenue, on the south by Michigan Avenue and on the west by Mission Road.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to Pacific Gardens Water Company, a corporation, for the construction, operation and maintenance of a public utility water system in the territory hereinabove described and to exercise the rights and privileges granted by the County of San Joaquin, by Ordinance No. 449, adopted August 11, 1941, and also the rights and privileges granted by the City of Stockton by Ordinance No. 1633, adopted October 6, 1941.

IT IS HEREBY FURTHER ORDERED that Pacific Gardens Water Company, a corporation, be and it is hereby authorized and directed to file in quadruplicate 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 its consumers subsequent to the 31<sup>st</sup> day of May, 1942, which schedule of rates is hereby found to be just and reasonable for the service to be rendered:

SCHEDULE OF RATES

Metered Service

Minimum Monthly Charges:

For 1-inch or smaller meter.....	\$1.00
For 1½-inch meter.....	1.50
For 2-inch meter.....	2.00
For 3-inch meter.....	3.00
For 4-inch meter.....	4.00

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

Monthly Quantity Rates:

First	1,000 cubic feet, or less.....	\$1.00
Next	2,000 cubic feet, per 100 cubic feet.....	.10
Next	3,000 cubic feet, per 100 cubic feet.....	.09
Next	4,000 cubic feet, per 100 cubic feet.....	.08
Next	15,000 cubic feet, per 100 cubic feet.....	.07
Next	35,000 cubic feet, per 100 cubic feet.....	.05
All over	60,000 cubic feet, per 100 cubic feet.....	.04

Pacific Gardens Water Company, a corporation, having requested the Railroad Commission for an order authorizing it to issue \$30,000 par value of its common stock to finance the construction and installation of the first unit of its water system, the Commission having considered Applicant's request and being of the opinion that the money, property, or labor to be procured or paid for through the issuance of \$30,000 par value of stock is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY FURTHER ORDERED that Pacific Gardens Water Company, a corporation, be and it is hereby authorized to issue, after the effective date hereof and on or before August 31, 1942, for cash, at not less than par value, not to exceed three hundred (300) shares of its capital stock of the par value of \$100



a share, and of the aggregate par value of \$30,000, to finance in part the construction and installation of the first unit of its water system heretofore described.

IT IS HEREBY FURTHER ORDERED that Pacific Gardens Water Company, a corporation, be and it is hereby directed, as follows:

1. Within thirty (30) days from the date of this Order, to submit to this Commission for its approval, quadruplicate sets of rules and regulations governing relations with its consumers, each set of which shall contain a suitable map or sketch, drawn to an indicated scale upon a sheet approximately 8 1/2 x 11 inches in size, delineating thereupon in distinctive markings the boundaries of the authorized service area; provided, however, that such map or sketch shall not thereby be considered by this Commission or any other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.
2. Within sixty (60) days from the date of this Order, to file with this Commission four copies of a comprehensive map drawn to an indicated scale of not less than 600 feet to the inch, upon which shall be delineated correctly by appropriate markings the various tracks of land in the territory for which the certificate is granted herein. This map should be reasonably accurate, show the source and date thereof, and include sufficient data to determine clearly and definitely the location of the various properties comprising the entire utility area of service.
3. Within forty-five (45) days from the date of this Order to file with this Commission an affidavit to the effect that it will never claim before this Commission or any other public body an amount for the certificate of public convenience and necessity granted herein or for obtaining the franchises, in excess of the actual cost of acquiring them.
4. To keep such record of the issue, sale and delivery of the stock, herein authorized, and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24-A, which order, in so far as applicable, is made a part of this Order by reference.

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

Dated at San Francisco, California, this 19<sup>th</sup> day of May, 1942.

Justice J. Calmes  
Ray L. Rice

[Signature]  
COMMISSIONERS.