

ORIGINAL

Decision No. 36490

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of CALIFORNIA WATER & TELEPHONE
COMPANY, for an order abolishing
the preferential and discriminatory
rates for water and service fur-
nished to W. C. LAMB.

Application No. 25364

P. S. Thacher and Baciagalupi, Elkus and Salinger,
for applicant.

Charles C. Loosli, for W. C. Lamb.

CRAEMER, COMMISSIONER:

O P I N I O N

Applicant utility requests an order abolishing a preferential rate for water service furnished to W. C. Lamb and his predecessors under a contract made in 1888. A like application, filed in 1937, was dismissed without prejudice because of a then pending superior court action in which Lamb, claiming a private water right, sought enforcement of the contract. (Re Calif. Water & Tel. Co., Dec. No. 31392, App. No. 21453.) The circumstances and history of the contractual arrangement are set forth in that decision, and need not be repeated here.

In Lamb v. Calif. Water & Tel. Co. (Oct. 2, 1942), 21 Advance California Reports 34, the Supreme Court held that the Railroad Commission had jurisdiction over the rates to be charged for this utility service, but that until the Commission had acted to regulate such rates, the 1888 agreement would be recognized and en-

forced. However, the utility would be excused from performing the contract, said the Court, if the Commission ordered that Lamb be charged the rate applicable to other customers in the vicinity. Should the utility be directed to charge its tariff rates, the Court's opinion indicated that questions of restitution and set-off would arise, as between the parties to the agreement.

As the Commission is without power to decide restitution and set-off claims, the sole issue now before us is whether the charging of the contract rate, as a deviation from the utility's filed tariff, should be permitted or authorized for the future.

The record shows that for the period 1929-1942, both inclusive, Lamb's monthly average use of water on his fifteen acre tract has been 177,215 cubic feet, for which he has paid the utility an average of \$3.35 per month. Had the utility applied its tariff rate, the average monthly payment for that quantity of water would have been \$113.66. Stated in terms of yearly averages for the same period, this customer has been paying \$40.20 for 2,126,579 cubic feet of water for which other customers in the vicinity would have to pay \$1,363.95. During the first four months of the present year \$13.40 were paid for 380,900 cubic feet of water. Tariff charges would have been \$257.34.

It is quite clear that under present-day conditions the rate heretofore charged for water furnished to the fifteen acre tract in question is unreasonable, preferential and discriminatory. The record fails to justify continuance of such rate as a tariff deviation.

Q R D E R

The above application having been submitted following the

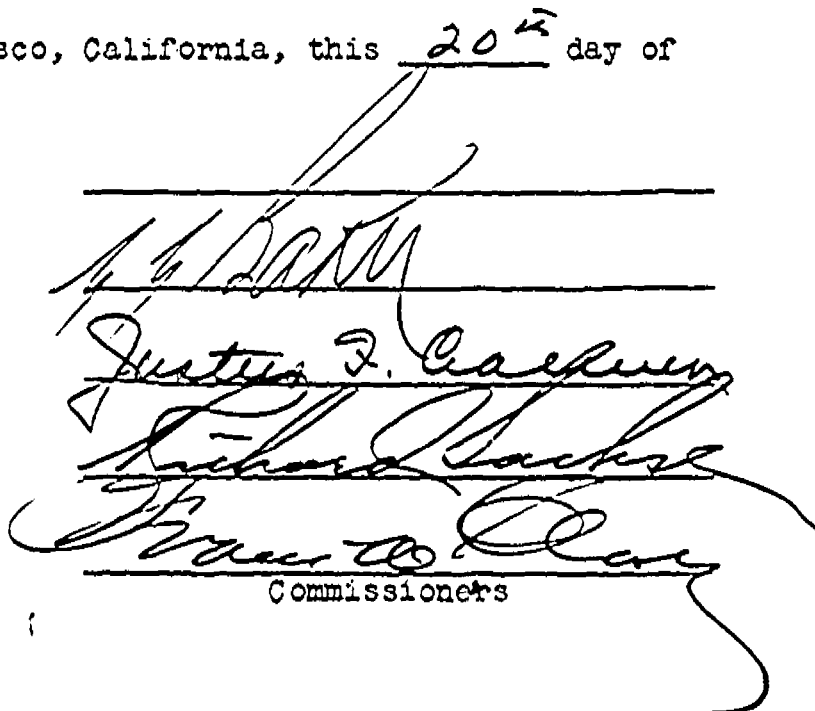
taking of evidence at a public hearing, and based upon the record and upon the factual findings contained in the above opinion, it is further found that the rate charged by California Water & Telephone Company for water furnished to the east 15 acres of the NW 1/4 of quarter section 111, Rancho de la Nacion, County of San Diego, which tract of land is now owned by W. C. Lamb, is unreasonable, preferential and discriminatory to the extent that it differs from the applicable tariff rates of said utility on file with this Commission, and

IT IS ORDERED that California Water & Telephone Company is hereby authorized and directed to charge its applicable tariff rates for all water furnished to said tract of land, commencing with the next billing period after the effective date of this order.

The effective date of this Order shall be the twentieth day 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, San Francisco, California, this 20th day of July, 1943.



Commissioners