

Decision No. 37803

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM W. BABCOCK, FLOYD H. COOPER,
W. O. MENDENHALL, ANTHONY KOEHL and
R. A. VON HAKE,

Complainants,

vs.

DON LUGO CORPORATION, a Nevada Cor-
poration; J. M. FISHER, ARTHUR W.
LONGRIDGE, ROBERT BUCHAN, MRS. J. M.
FISHER, CLAUDE FOOSHE, JOHN DOE ONE
to FIVE, inclusive, JANE DOE ONE to
THREE, inclusive, and JOHN DOE COM-
PANY, a corporation,

Defendants.

ORIGINAL

Case No. 4683

In the Matter of the Application of
J. M. FISHER doing business as the
LOS SERRANOS WATER COMPANY for permission
and certificate authorizing him to sell
and distribute water.

Amended Supplemental
Application No. 25834

Leslie L. Heap and Lee J. Myers, by Leslie L. Heap,
for complainants; Charles D. Warner for all defendants
except Claude Fooshe; Harry J. McClean for defendant
Claude Fooshe.

CLARK, COMMISSIONER:

O P I N I O N

Complainants in Case No. 4683 are members of a committee of
home owners and water customers in and around a subdivided area
known as Los Serranos Village, near Chino, San Bernardino County.
They allege that defendants are operating a water system long dedi-
cated to public use, and seek an order directing the filing of rates

and the furnishing of uninterrupted water service. While the answer denied utility status, one of the defendants later filed an application for a certificate, and the two matters were consolidated for hearing and decision.

The principal defendants are Don Lugo Corporation and J. M. Fisher, the President and owner of about 75 per cent of the stock of such corporation. Defendant Fooshe is the beneficiary of a trust deed, recorded in 1941, which describes certain of the property involved, ⁽¹⁾ while the remaining defendants are stockholders or officers of the corporate defendant.

The so-called Los Serranos Country Club subdivisions consist of five tracts of land. ⁽²⁾ About 1922 these properties, once held by Chino Land and Water Company, were acquired by H. C. Davidson. Three California corporations were then formed, Davidson Investment Company in 1922, Davidson Corporation in 1923, and Los Serranos Country Club in 1924:

The Davidson interests proceeded to subdivide and develop the properties, beginning with Tract 1932, a 200-acre tract divided into some 1650 lots. A golf course, a club house, and a dam creating a 60-acre lake were installed to aid in the sale of lots. Additional water facilities were provided between 1922 and 1924. ⁽³⁾ These consisted of a new well, known as Pellissier well; a 100,000-gallon tank, a booster pump, and connecting pipe lines throughout

(1) The Trustor is Don Lugo Corporation, which executed the deed of trust on June 12, 1941, to secure a 6% note for \$75,000, payable in installments of \$750 monthly from August 1, 1941 until August 1, 1948, on which date the unpaid balance and accrued interest shall be due and payable.

(2) Tracts 1932, 2557, 2562, 2650 and 2576.

(3) The record suggests that prior to 1900 the territory involved had been subdivided into tracts by the Chino Land and Water Company, the deeds providing for rights of way for pipe lines which had been installed, and that additional pipe lines to provide water for irrigation were installed during the period from 1910 to 1912 in portions of the territory. The Junior Republic well, the present chief source of supply, was put down about 1910.

the subdivided area and the golf and country club grounds. Lots were sold, and four houses were built about 1925 and one house about 1927. These houses have received water continuously from the water system. Additional pipe lines were installed as new houses were erected. The California State Bird Farm, owned by the State of California, has been furnished water continuously from about 1927. Water was also supplied to one or two irrigation customers. All of the above service was for compensation.

In 1935 the properties, including the water system, were taken over by Dudley Smith, A. W. Longridge and associates. Two Nevada corporations were formed, Los Serranos Bonded Mutual Water Company in 1935, and Don Lugo Corporation in 1936. In 1937 both corporations filed their articles of incorporation with the Secretary of State of California. ⁽⁴⁾ The first named corporation is not a party to these proceedings.

J. M. Fisher became interested in the properties about 1940, and purchased a quarter interest in Don Lugo Corporation, later acquiring 75 per cent of the stock of that corporation. About 60 homes were built in the area between 1935 and 1942, to all of which water service was furnished for compensation. Water was also furnished to the golf course and to the club house and grill.

At the first hearing on the complaint defendants' counsel stated a willingness to stipulate that the water system be declared a public utility, and indicated that Mr. Fisher, doing business as Los Serranos Water Company, planned to apply for a certificate. Such an application was filed on October 13, 1943. But complainants.

(4) In 1940 and 1941 the charters of both corporations were revoked in Nevada, but were reinstated about March 15, 1943, at which time defendant Fisher appeared as President of both corporations. As of May 25, 1944 Don Lugo Corporation was in good standing in California as to payment of State corporation taxes, and was also in good standing in Nevada.

objected to the issuance of a certificate to Mr. Fisher as an individual, fearing that only limited portions of the water system might be turned over to him, ownership of substantial assets being retained by the corporation. Complainants contend that the corporation, having been a public utility in fact for many years, should be held responsible for utility service. Thereafter, an amended application was filed, substituting Don Lugo Corporation as the applicant for a certificate.

The record shows, and we so find, that dedication of properties to public use was made by the predecessors of Don Lugo Corporation long prior to the formation of that corporation, and that the latter has continued and expanded such public service. There would be little objection to the issuance of a certificate to the corporation, were it not for the provisions of section 26 of the Public Utilities Act. ⁽⁵⁾ However, Don Lugo Corporation, as the operator of properties impressed with certain public utility obligations, is subject to regulation and should be directed to file rates, despite the fact that it is a foreign corporation.

Complainants and defendants join in asking that the Commission fix rates for this utility service. A Commission engineer presented a report which included an appraisal of physical properties of the water system, based on historical cost adjusted to exclude facilities not considered presently essential in furnishing water service, as well as estimated revenues and expenses. Original cost was estimated to be \$97,886. ⁽⁶⁾ Such figure was reduced to \$66,191 by deducting the cost of certain properties believed not to be re-

(5) The parties should consider what appropriate steps should be taken, in view of section 26, such as the formation of a California corporation and transfer thereto, upon application and authorization of the properties of Don Lugo Corporation.

(6) This figure included \$4,246 as the cost of a new booster engine and pump to replace the present inefficient unit.

(7)
quired for present operations.

Actual operating revenues for 1943 were \$1,907.75. The Commission witness submitted a flat rate schedule for residential use, also providing for irrigation rates for the golf course and for crop irrigation, as well as a suggested meter rate. The latter provides for a \$2.00 minimum charge, covering a use of 800 cubic feet of water therefor, and lower rates for larger quantity uses. Under such proposal it does not appear that any increases in charges would result. Future revenues resulting from application of the suggested rates were estimated as approximately \$8,400. (8) Estimated average annual operating expenses were as follows:

Exclusive of depreciation annuity & taxes	--\$5,610	(9)
Taxes	----- 720	
Depreciation annuity (5% sinking fund)	----- <u>870</u>	
Total operating expenses	----- \$7,200	

(7) Such deductions are as follows:

Artesian wells and land	----- \$ 4,535.00
Pellissier well and pipe line	----- 5,285.50
Home well land, and pipe line	----- 5,267.34
Pipe lines used entirely for golf course	----- 13,658.65
Booster station engine and pump	----- <u>2,948.00</u>
Total deductions	----- \$31,694.49

Strictly nonoperative capital, such as lands, buildings, etc., were not appraised, but may well total approximately \$300,000.

(8) Such estimated revenues may be summarized as follows:

Residential service	----- \$2,400
State Bird Farm	----- 300
Golf course irrigation	----- 4,320
Country club domestic service	----- 480
Farm land irrigation	----- <u>900</u>
Total	----- \$8,400

(9) Pumping, power and repairs-----\$2,600
Operating transmission and distribution system----- 120
Repairs to above----- 1,500
Commercial expenses----- 780
General and miscellaneous expense----- 610
Total----- \$5,610

The above estimates indicate a net operating revenue of \$1,200, or a return of less than 2% on \$66,200. The water system is considerably overbuilt for present demands, and the area served is still in a development stage. No objection was made to the suggested rates, which are a composite of those charged by other utilities in the general vicinity. Such rates were suggested as trial rates, for temporary application pending the compilation of more accurate information on operating costs and revenues.

ORDER

Public hearings having been had in the above matters, and based upon the record and upon the findings contained in the above opinion, IT IS ORDERED as follows:

1. That Don Lugo Corporation, within thirty days after the effective date of this order, file four copies of the schedule of rates attached to this order. Such rates are found to be just and reasonable under the circumstances set forth in the opinion, and shall become effective and be applied on all service rendered on and after June 1, 1945.
2. That Don Lugo Corporation, within sixty days after the effective date of this order, make the necessary alterations and installations so as to result in the satisfactory discharge of water from the 90,000-gallon storage tank into 12-inch pipe lines supplying Tract 1932, in addition to the Club House and vicinity presently supplied.
3. That Don Lugo Corporation, within thirty days after the effective date of this order, file four sets of rules and regulations governing relations with customers, which shall contain a map or sketch, drawn to an indicated scale and about 8-1/2" x 11" in size, indicating its service area and location thereof with reference to surrounding territory. Such filing shall not be construed as a determination or establishment, in whole or in part, of the dedicated area of service.

4. That Don Lugo Corporation, within sixty days after the effective date of this order, file four copies of a comprehensive map, drawn to an indicated scale of not less than 400 feet to the inch, delineating correctly by appropriate markings the various tracts of land in the territory served. Such map should be reasonably accurate, show the source and date thereof, and include sufficient data to determine definitely the location of the various properties comprising the entire service area. Such filing shall not be construed as a determination or establishment, in whole or in part, of the dedicated area of service.

Case No. 4683 is dismissed as to all defendants other than Don Lugo Corporation. Amended Application No. 25834 is dismissed without prejudice.

The Secretary is directed to cause a certified copy of this order to be served upon Don Lugo Corporation, and this order shall become effective on the twentieth day after the date of such service.

The foregoing opinion and order are approved and ordered filed as the opinion and order of the Commission.

Dated, San Francisco, California, this 17th day of

April, 1945.

Howard Anderson

Justin J. Casper

Richard Kachise

Frank Olson

Ernest Sanchez

Commissioners

RATE SCHEDULES

Schedule No. 1

GENERAL METERED SERVICE

Applicability

Applicable to metered water service for general domestic and commercial purposes.

Territory

Los Serranos Village and vicinity, San Bernardino County.

Rates

Monthly Minimum Charges

5/8 x 3/4 inch meter	.....	\$2.00
3/4 " "	.....	2.25
1 " "	.....	2.75
1-1/2 " "	.....	4.00
2 " "	.....	6.00

The minimum charge will entitle the customer to the quantity of water which that monthly minimum charge will purchase at the quantity rates.

Quantity Rates

First	800 cubic feet, per 100 cubic feet	\$0.25
Next	1,200 " " " " " "	.20
Next	3,000 " " " " " "	.15
Next	20,000 " " " " " "	.10
Over	25,000 " " " " " "	.05

Where service is available at both flat and metered rates, a meter shall be installed at the option of either the company or the customer. After exercising such option, service at flat rates shall not be resumed except by mutual consent of both company and customer.

Schedule No. 2

FLAT RATE DOMESTIC SERVICE

Applicability

Applicable to flat rate, domestic and commercial water service.

Territory

Los Serranos Village and vicinity, San Bernardino County.

FLAT RATE DOMESTIC SERVICE (Cont'd)

<u>Rates</u>	<u>Per Month</u>
For one residence of 5 rooms or less on one lot of 7,500 square feet in area, or less, including irrigation of lawn, garden and shrubs	\$ 2.50
For each additional room .....	.20
For each additional lot having an area of 7,500 square feet, or less	1.50
For each additional 100 square feet of area irrigated in excess of 7,500 square feet on same lot or adjoining lot .....	.02
For each additional residence on the same lot, when occupied	1.00
For irrigation of otherwise unimproved lots, \$0.02 per 100 sq. ft. per month, where separate service connections are installed, minimum	1.50
For horses or cattle, per head .....	.25
For separate service connection to stables or enclosures for horses, cattle or other livestock, minimum	2.50

FLAT RATE IRRIGATION SERVICE

Golf course, throughout the year, per 100 sq. ft.	\$0.01
Irrigation of crops, gravity flow, per acre foot	15.00
