

Decision No. 38938

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
JESSE NICHOLSON, to fix water rates
for excess use by A. E. MONTGOMERY.

Application No. 26511

1st Supplemental

For Applicant, LUCAS & WYCKOFF, Attorneys, by
STEPHEN WYCKOFF.

For Protestant, J. FRANK MURPHY, Attorney.

ROWELL, COMMISSIONER:

OPINION ON SUPPLEMENTAL APPLICATION

The facts giving rise to this proceeding were sufficiently set forth in the Commission's Decision No. 38055 of July 10, 1945. Nicholson, who operates a small water system near Santa Cruz, had sought relief from the obligations of the contract requiring him to render water service without charge to certain premises owned by A. E. Montgomery. It was claimed that Montgomery used such an excessive amount of water as to impair the service rendered to other water users. The application, as first presented, prayed that the Commission annul such contract for free service. However, after hearing had, Nicholson offered to continue free service for domestic use only. In accordance with such offer, the Commission's decision did not find that such limited free water service would result in a burden upon Nicholson's water system.

In this Supplemental Application it is again alleged that Montgomery is using an excessive amount of water. Nicholson asks that he be permitted to apply his metered service rates for all water used by Montgomery in excess of 800 cu. ft. per month, a quantity of water he declares is sufficient for strictly domestic uses.

After hearing of the first application on April 13, 1945, Nicholson attached a meter to Montgomery's service line. Meter readings taken during the

succeeding six month period indicate that the average quantity of water used per month exceeded 4000 cu. ft., which, if billed at regular metered rates, would have resulted in a total charge of about \$53.00. During the subsequent winter months, the readings showed a consumption of less than 800 cu. ft. per month, the charge for which would have been the minimum of \$2.00 per month. During the same period, only four water users on Nicholson's system were billed at metered rates. Montgomery's use was considerably in excess of those other metered customers. However, it appears that a number of other non-metered customers attached to Nicholson's system, particularly those who use water for the spraying of orchards, probably use an equal quantity of water for which they pay a flat rate of only \$2.00 per month. Mr. Nicholson himself apparently uses a comparable amount on each of his two places, for which he credits his accounts \$2.00 per month for each service.

It is obvious, therefore, that Nicholson's schedule of rates, which permits either metered service or flat rate service, does not assure an equitable distribution of the limited supply of water available, nor the assessment of charges to all customers commensurate with the quantity of water actually used. However, the remedy for this condition lies in the correction of the rate schedule itself so as to require metered services to all customers. It does not justify continued water service to Montgomery without any charge at all. Nicholson's proposal to continue the delivery of 800 cu. ft. per month without charge cannot be accepted. It is evident that a service of water to Montgomery at variance with the filed rates results in an illegal preference. This can be removed only by directing the application of the filed rates in full for all water delivered to Montgomery. The order herein made will so provide. However, Nicholson will also be directed to apply his quantity rates to all his customers as soon as meters can be procured and installed. Steps should also be taken to install an automatic pump regulator in order to more effectively control his water deliveries. I recommend the following order.

ORDER

A hearing having been had upon the Supplemental Application of Jesse Nicholson, the matter considered, and the findings and conclusions made in the foregoing opinion justifying such action;

IT IS ORDERED that Jesse Nicholson, in the operation of his public utility water system, shall charge for water service rendered to the premises now owned by A. E. Montgomery, at the quantity rates provided for in his schedule of rates on file with this Commission.

IT IS FURTHER ORDERED that Jesse Nicholson shall, within ninety days from the date of this order unless such time be extended by the Commission, install meters on all water services and amend his tariffs to eliminate all service at flat rates.

The effective date of this order shall be the twentieth day 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 7th day of

May, 1946.

Harold Ruden

Justin F. Casner

Francis B. ...

Sam ...

James P. ...

Commissioners.