

Decision No. 42920

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
PINE FLAT WATER COMPANY FOR CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY TO  
OPERATE A WATER SYSTEM FOR THE DISTRI-  
BUTION OF WATER FOR DOMESTIC USE FOR  
COMPENSATION, IN THE COUNTY OF TULARE,  
STATE OF CALIFORNIA, AND FOR ORDER  
AUTHORIZING ISSUE OF STOCK.

Application No. 29957

W. R. Bailey and R. M. Boeke for applicant;  
Edwin P. Jacobsen for 26 members of Pine  
Flat Water Users' Association.

O P I N I O N

Pine Flat Water Company, a California corporation, by the above-entitled application requests a certificate of public convenience and necessity authorizing it to operate a public utility water system to serve Myers Land Company's Pine Flat subdivision and a few water users having property just outside the subdivision and who are now served by the water system. The subdivision is part of a summer resort area in Sequoia National Forest and is located two miles southeast of California Hot Springs, in Tulare County. There are approximately 350 lots within the tract, of which some 235 have been sold, but there are only about 100 services now connected to the water system. As most of the business is seasonal, applicant is requesting that both flat and meter rates be established on an annual basis. Applicant is also requesting permission to issue 1,000 shares of capital stock of the par value of \$10 per share.

A public hearing in this proceeding was held before Commissioner Potter and Examiner Edwards at Pine Flat on April 29, 1949. At the hearing witnesses for the applicant told the history of development of the tract and the reason for the desire of the present owner to

discontinue free water service. Twenty-six customers had collectively employed counsel to present their alleged rights to perpetual free water service.

Mrs. Helen M. Curtis, daughter of Mr. William Myers, acquired the present water system in 1936 when the Myers Land Company was dissolved. Her father originally planned to form a mutual water company, but after his death in 1924 no one developed the plan. Water has been served for approximately 25 years at no charge, to all water users in the tract. During the past three years, Mrs. Curtis sold most of the subdivision property she inherited and now does not desire to continue to live in Pine Flat. She has agreed to transfer the water system for the nominal sum of \$10 to Pine Flat Water Company, and has no desire to control the new company nor to serve it as an officer or director.

The water system comprises collecting works at five springs; transmission mains consisting of about 13,020 feet of 1½-, 1½-, and two-inch pipe; a concrete, covered reservoir of approximately 25,000 gallons capacity; a distribution system totaling about 16,935 feet of two-, 1½-, and ¾-inch pipe; and approximately 97 service connections ranging in size from ¾ inch to two inches. Practically all of the facilities were installed in the years 1923, 1924, and 1925 and are estimated by applicant to be presently worth \$40,000. The springs are located on Sequoia National Forest land at approximate elevations of 4,200 and 4,400 feet above sea level. The subdivision, at approximate elevation of 3,750 feet, is located in portions of Sections 4 and 5, Township 24 South, and portions of Sections 32 and 33, Township 23 South, Range 31 East, M.D.B.&M.

Mr. Jacobsen, as counsel for 26 water users, contested the transfer of the water system to the new company by means of a quitclaim deed. He urged that a grant deed should be given, together with a policy of title insurance to guarantee that the new company would have no extra expense in acquiring full title to the water system.

There is no evidence showing that Mrs. Curtis does not have a clear title to the water system.

Mr. Jacobsen also opposed the formation of the new water company, on the ground that it was not the result of unanimous action of all of the property owners and water users in the tract to form such a company. The various owners had not been able to agree on the type of a water utility to be formed, notwithstanding the fact that Mr. Myers had told the lot purchasers that free water would be served only for the first five years after the tract was opened, and that thereafter the water system would be run on a mutual basis. The record indicates the company can obtain legal possession of the water system, and will render adequate utility service in the future.

Another fact stressed by Mr. Jacobsen was that the present users have been receiving free water for 25 years and he argued that free water for such a long period of time establishes a right in perpetuity. He stated that the people purchased the lots with the understanding that they would receive free water. The applicant, through its witnesses, countered this claim and presented evidence to show that the lots were not sold on the basis that free water would always be available. The Myers Land Company issued water licenses for use of free water for domestic purposes until such time as a mutual water organization might be formed and the water system put in the hands of such ownership for operation and maintenance.

Mr. H. H. Morse, witness for the applicant, testified that the company does not propose to sell water, but rather, water service. The water is obtained free from the Forest Service, the only condition being that watering troughs be maintained at the springs for stock and wild life. In his opinion, the water rights obtained from the Forest Service could be transferred to the new company.

Mr. E. R. Foster, an engineer in the Hydraulic Division of the Commission's staff, made a study of the operations of this water system and presented a report in evidence at the hearing. He estimated original cost of the total fixed capital as of April 1, 1949, at \$16,372.39 and the depreciation reserve requirement at \$4,537.25. Annual operation and maintenance expenses including taxes and depreciation expense on the 5% sinking fund basis were estimated at \$1,477 and annual revenue based on rates proposed by the applicant were estimated at \$1,942. On the basis of these figures a rate of return of 2.8% is indicated. However, the applicant believes that certain additional improvements, such as a well, pumping equipment, distribution tanks, and more distribution mains are necessary to serve the present and prospective new customers adequately. If allowance is made for all such new capital estimated to cost \$5,550, the rate of return is lowered to 2.1%.

Applicant is requesting flat rates that vary from \$18 to \$36 per year, depending upon the size of service, and meter rates with the same annual minimum charges. The annual quantity rates under the metered schedule vary from 50 cents down to 20 cents per 100 cubic feet. The new water company has not requested a differential in water charges between those using water during only the summer or vacation season and those who use water for the entire year. Mr. Foster pointed out the desirability of having different seasonal and all-year rates, and the Commission in granting this certificate will establish monthly rates for permanent residents and annual rates (payable semiannually) for seasonal residents and that the minimum charge for metered service should be less than the charge for flat rate service. The witness likewise stated that no service should be rendered through pipes less than three-quarter inch in diameter, and the lowest flat rate charge should be based on service through a three-quarter inch pipe.

Mr. Lester E. Manor, a property owner since 1924, was the only customer who took the stand to protest the proposed new setup. He stated that in the past, water had been generally ample, and he questioned the need of a new well to supplement the springs. He thought the proposed new reservoirs would provide ample storage for peak-hour purposes and would refill during the off-peak hours. Mr. Manor was willing to pay fair rates for good service, but did not want to pay a return on an inflated capital structure.

The applicant's officers were questioned as to their desire to earn a return upon any value of the property being donated by Mrs. Curtis. They were anxious to earn a return on only the money hereafter invested in the property. The utility had asked permission to sell 1,000 shares of stock at \$10 per share, but in the application showed a need for only \$6,800 of new capital. Eight hundred dollars of the new capital will be used to pay the cost of organizing the corporation and obtaining a certificate. At the hearing the secretary of the company asked for some \$200 more to cover additional costs connected with obtaining permits, transferring property, and filing data requested by the Commission. He also requested a reserve fund of \$500 be permitted which would extend the total new capital requirements to \$7,500. This cost includes a well and equipment not presently required.

The order herein will authorize applicant to issue 555 shares of its capital stock to be sold at \$10 per share, to be used for the following purposes:

New Construction:

Install Distribution Main - 600 ft. two-inch pipe . . .	\$ 435
Install Distribution Tanks - two 500 bbl. covered . . .	2,700
Install Hydrants - 25 @ \$22 . . . . .	550
Install Services of 3/4" pipe - 18 @ \$11 . . . . .	198
Subtotal	<u>3,883</u>

Intangible Capital:

Organization expense, certificates, permits, attorney's fees . . . . .	913
To maintain and improve service . . . . .	754
Total	<u>5,550</u>

Applicant stipulated at the hearing that it, its successors or assigns, will never claim before the Commission, or before any court or public body, any value for this certificate in excess of the actual cost thereof which is reported to be \$50.

No one specifically appeared to protest the granting of a certificate of public convenience and necessity to the applicant, other than a general protest lodged by counsel for the 26 water users. Mr. Jacobsen's only witness who testified was not adverse to a public utility system so long as the rates were reasonable and spring water was available. At the close of the hearing Mr. Jacobsen thought that his clients would be satisfied if there was no return allowed on the present fixed capital, if they could continue to get spring water and no standby well was installed.

Applicant stated that the water system does not cross county roads and, therefore, no county franchise is necessary. Applicant obtained a test of the water from the springs and it was found to be safe for human consumption as of that date. Mr. Morse testified that no other utility in this vicinity is rendering public utility water service. There are no loans or other indebtedness outstanding against the present water system owned by Mrs. Curtis.

The evidence indicates that the applicant will be able to operate and maintain the water system in such condition as to furnish satisfactory water service during the remaining developmental stage of this tract and thereafter. The Commission finds that public convenience and necessity require the issuance of this certificate. The certificate of public convenience and necessity hereinafter granted is subject to the following provisions of law:

That the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

Public hearing having been held on the above-entitled application, the matter having been submitted, the Commission being fully advised, and it being of the opinion that the money, property, or labor to be procured or paid for by the issuance of 555 shares of stock herein authorized, is reasonably required by the Pine Flat Water Company for the purposes herein stated, which purposes are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should be granted, as herein provided; therefore,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is granted Pine Flat Water Company, a corporation, to construct, operate, and maintain a public utility system for the production, distribution, and sale of water within the territory hereinbefore described.

IT IS HEREBY FURTHER ORDERED that applicant shall:

1. File in quadruplicate with this Commission within twenty (20) days after the effective date of this order, in conformity with General Order No. 96, the schedules of rates shown in Exhibit A attached hereto, to be charged for all water service rendered to customers after said effective date.
2. Within twenty (20) days after the effective date of this order, file with the Commission four sets of rules and regulations governing relations with its customers, each set of which shall contain a suitable map or sketch drawn to an indicated scale upon a sheet 8½ x 11 inches in size, delineating thereupon by distinctive markings the boundaries of the present service area and the location thereof with respect to the immediate surrounding territory; provided, however, that such filing shall not be construed as a final or conclusive determination or establishment of the dedicated area of service or any portion thereof.
3. Within thirty (30) 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 by appropriate markings the various tracts of land, territory served and to be served, and the location of the various facilities and properties of the applicant.

Schedule No. 1

METER RATES

APPLICABILITY

Applicable to all measured water service on a monthly or yearly basis.

TERRITORY

Pine Flat subdivision and adjoining territory, Tulare County.

RATES

Minimum Charge:	<u>Per Meter</u>	
	<u>Per Month</u>	<u>Per Year</u>
For 5/8 x 3/4-inch meter . . . . .	\$1.50	\$16.50
For 3/4-inch meter . . . . .	1.85	20.00
For 1-inch meter . . . . .	2.75	30.00
For 1 1/2-inch meter . . . . .	3.65	40.00
For 2-inch meter . . . . .	5.50	60.00

Quantity Rate:	<u>Per Month</u>
First 500 cu. ft. or less . . . . .	\$1.50
Next 1,500 cu. ft., per 100 cu. ft. . . . .	.25
Next 3,000 cu. ft., per 100 cu. ft. . . . .	.20
Over 5,000 cu. ft., per 100 cu. ft. . . . .	.15

The Minimum Charge will entitle the customer to the quantity of water which that monthly minimum charge will purchase at the monthly Quantity Rate.

SPECIAL CONDITIONS

1. The monthly minimum charges apply to permanent residents.
2. The annual minimum charges apply to seasonal residents and are due and payable semiannually in advance in 50% payments January 1 and July 1 of each year.
3. Meters may be installed at the option of the utility.



Schedule No. 2

FLAT RATES

APPLICABILITY

Applicable to all flat rate water service on a monthly or yearly basis.

TERRITORY

Pine Flat subdivision and adjoining territory, Tulare County.

RATES

	<u>Per Month</u>	<u>Per Year</u>
For each residence or commercial enterprise receiving service:		
Through 3/4-inch service connection . . . . .	\$1.90	\$21.00
Through 1-inch service connection . . . . .	2.80	31.00
Through 1 1/2-inch service connection . . . . .	3.80	42.00
Through 2-inch service connection . . . . .	5.75	63.00

SPECIAL CONDITIONS

1. The monthly rates apply to permanent residents.
2. The yearly rates apply to seasonal residents and are due and payable semi-annually in advance in 50% payments January 1 and July 1 of each year.
3. Meters may be installed at the option of the utility, in which event service will thereafter be rendered only on the basis of Schedule No. 1, Meter Rates.

IT IS HEREBY FURTHER ORDERED that Pine Flat Water Company, after the effective date hereof and on or before November 30, 1949 may issue and sell at not less than \$10 per share, 555 shares of its capital stock and use the proceeds for the purposes set forth in the foregoing opinion.

IT IS HEREBY FURTHER ORDERED that Pine Flat Water Company shall file with the Commission on or before December 31, 1949, a statement showing the number of shares of stock sold under the authority herein granted, the names of the persons to whom said shares were sold, and the number sold to each, and the use to which the proceeds of the sale of such stock has been put.

IT IS HEREBY FURTHER ORDERED that this application in so far as it involves the issue of 445 shares of stock is hereby dismissed without prejudice.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 24<sup>th</sup> day of

May, 1949.

R. F. [Signature]  
Justus F. [Signature]  
[Signature]  
Harold [Signature]  
[Signature]  
Commissioners.