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ORIGINAL

Decision No. 48942

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN GABRIEL VALLEY WATER COMPANY for authority to increase rates in its FONTANA DISTRICT.	))))	Application No. 33814

Faries & McDowell, attorneys, by McIntyre Faries, and John E. Skelton, for applicant.
James E. Cunningham, attorney, and R. L. Gazvoda, Mayor, for City of Fontana; Harold M. Manell, Assistant County Counsel, for Fontana Fire Protection District; J. J. Deuel, for California Farm Bureau Federation; Claude Swearingen and Stanley J. O'Neill, for United Steelworkers of America, Local Union No. 2869, and G. R. Kornhoff and Mrs. Alice Uhler, in propria personae, protestants.
H. W. Yorke, in propria persona, interested party.
John M. Gregory, staff counsel, and Carol T. Coffey, senior utilities engineer, for the Commission staff.

OPINION ON MOTIONS TO DISMISS THE APPLICATION

At the hearing on July 2, 1953, in the above-entitled application, a motion to dismiss the application was made by the Commission staff in which it was joined by the City of Fontana and the California Farm Bureau Federation, and a further motion to dismiss was made by the City of Fontana, based on the failure of applicant's president to testify as to the cost to him of stock in water companies conferring water rights included in the rate base which he personally sold to applicant. Some of these shares, according to the witness, were held by him personally and some as trustee for relatives. The hearings in the application were continued to a date to be set subject to the motions to dismiss.

Exhibit No. 5 is a copy of a letter dated May 19, 1953, addressed to applicant by the Commission's secretary, requesting

seven types of information. Page 2 of said exhibit is applicant's reply, dated June 26, 1953, which furnished six of the seven types of information, but stated that information as to invoice prices to Vesco or any predecessor supply company of all materials, supplies and equipment which have been purchased from Vesco by applicant and are now installed in applicant's Fontana District Water System or are used in its operations, such prices to be itemized by invoice date and type of material, supplies and equipment, were not available. At the hearing applicant's president and the president and owner of all the stock of Vesco, which the record shows to be one and the same person, was requested by the Commission staff to produce such information. The production of this information was refused and the Commission staff's motion to dismiss was then made.

General Information

Vesco and its predecessor, Valley Equipment and Supply Company, has purchased supplies and materials which it has sold to applicant. The president of these companies, who is also president of applicant, testified that he, as a veteran, purchased much material for the first two corporations which none of said companies could have purchased themselves. The officers and directors of Vesco are also officers of applicant. The materials purchased consist of pipe, gate valves, engines, fittings, and various kinds of equipment that Vesco has bought by various means and at various unstated prices and sold to applicant at what applicant's witness testified were for the market price of such articles, or less.

Basis of Staff's Request

The staff's request for information was based on the fact, as shown in the record, that materials and supplies purchased by applicant from Vesco were included in applicant's proposed rate base.

Basis of Applicant's Objection to Request

Applicant objected to furnishing the requested information on the grounds that the information requested was not in the possession of applicant as a corporation as distinguished from its officers and directors, that applicant could not get the information from the persons (its officers and directors) in whose possession the information is, that applicant could not be compelled to go out and get such information from its officers, directors and stockholders when it does not own controlling stock of the corporation possessing the information, and that applicant could not be compelled to subpoena its own officers, directors and shareholders to furnish information for use by the Commission staff to attempt to disprove its own case.

Facts as to Affiliation

It was stipulated that there is no stock affiliation between Vesco and applicant but the evidence shows that the president of applicant owns all outstanding shares of the stock of Vesco and the officers of Vesco are all officers or employees of applicant. The record justifies the finding that the president of applicant effectively controls it.

Magnitude of Applicant's Purchases from Vesco

Exhibit No. 5 indicates that the amounts recorded as fixed capital, as of December 31, 1952, on applicant's books for equipment, materials and supplies installed in the Fontana System and purchased from Vesco amounted to approximately $188,000. The number of shares of stock conferring water rights sold to San Gabriel Valley Water Company, applicant herein, by its president is 1,500 and applicant expects to increase this number during 1953 to approximately 2,200 shares.

Conclusion

The position taken by counsel for applicant that it was merely required to establish a prima facie case justifying an increase in rates is untenable. (Public Service etc. Co. vs. New Jersey (Supreme Court of New Jersey) 74A(2d) 580,591-592.) The Commission, whose powers have been invoked to fix a reasonable rate, is entitled to know and before it can act advisedly must be informed of all relevant facts. Applicant's president individually and also through a corporation he solely owns has caused many sales to be made to it of stock conferring water rights and of materials used in construction, all of which have been included in the proposed rate base. The Commission must be advised whether the president of applicant has taken or will take advantage of such situation to impose an unreasonable burden upon this utility and on its ratepayers. It is enough to say in view of the relation of applicant and its president and the power implicit in such relationship arbitrarily to fix and maintain costs as respects rights or materials sold by him to the company he largely owns and controls, that the regulatory authority is entitled to a full disclosure of all facts bearing upon the reasonableness of such costs although this may involve a presentation of evidence which, normally, would not be required in the case of parties dealing at arm's length and in the general and open market, subject to the usual safeguards of bargaining and competition.

Any other rule would make possible the gravest injustice and would tie the hands of the Commission as the State regulatory body in such fashion that it could not effectively determine whether the proposed rates are justified. The fact that applicant has declined or failed to make a proper and full showing as to the cost of materials and rights included in the rate base which have

been sold to it by its president, either personally or through a wholly owned corporation, justifies the Commission in dismissing the application. Applicant's president bearing a relation of intimate alliance with it cannot be said to deal with it at arm's length. The prices fixed in such sales made by him to applicant either personally or through a solely owned corporation, may not be said to preclude this Commission from further inquiry. The president in such transactions was not dealing with applicant as an ordinary independent purchaser, consequently the price paid is not binding upon the Commission. And unless the Commission is placed in possession of all factors involved it cannot decide whether the price paid was reasonable.

The foregoing rules are supported by the following decisions: Western Distributing Co. vs. Public Service Commission of Kansas, 285 U.S. 119, 124-127, 76 L. ed. 655, 658-659, Columbus Gas & Fuel Co. vs. Public Utilities Commission of Ohio, 292 U.S. 398, 400-401, 78 L. ed. 1327, 1329, Dayton Power & Light Co. vs. Public Utilities Commission of Ohio, 292 U.S. 290, 295, 298, 307-308, 78 L. ed. 1267, 1273, 1274, 1279, and Smith vs. Illinois Bell Telephone Co., 282 U.S. 133, 152-153, 75 L. ed. 255, 265.

The cardinal and elementary rule of full disclosure, heretofore adverted to, carries with it the corollary rule as to the right of cross-examination. The staff of the Commission had not only the right but the duty to test the integrity of these transactions concerning which information was demanded. The records must be produced if required. The right of cross-examination may not be frustrated by the suppression of relevant information.

O R D E R

A motion to dismiss this application having been made by the Commission staff and having been joined in by the City of Fontana and the California Farm Bureau Federation, and a further motion to dismiss the application having been made by the City of Fontana, such motions having been based on applicant's refusal to furnish certain information and on applicant's having proposed to include certain values for water stock owned by it in its rate base without full disclosure as to the profits made by its president, the Commission having considered the motions and finding that the same should be granted,

IT IS HEREBY ORDERED that Application No. 33814 be and it hereby is dismissed.

Dated at Los Angeles, California, this 10th day of August, 1953.

R. E. Mitchell
President
Justus F. Craemer
Harold P. Hulse
Kenneth Potter
Peter E. Mitchell
Commissioners