

Decision No. 48831**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HERCULES WATER COMPANY,)
 a corporation, for an order authoriz-) Application No. 35158
 ing applicant to discontinue free water)
 service to certain consumers.)

Pillsbury, Madison & Sutro, by Eugene M. Prince
 and Dudley A. Zinke, for applicant.
Francis W. Collins, for the Faria Family and the
 Ellerhorst Family, protestants.
Verner R. Muth, of the Commission staff.

O P I N I O NPreliminary Statement

Hercules Water Company, a corporation, owns and operates a public utility water system in and about the Towns of Hercules and Pinole, in Contra Costa County. The Commission has authorized the company to transfer, on or before March 31, 1954, certain of its water properties and facilities to East Bay Municipal Utility District in accordance with the terms and conditions of an agree-
 (1)
 ment dated September 26, 1952. One of the conditions of that agreement provides that the company shall terminate all existing free water arrangements with its consumers. Another condition provides for annexation to the district, in accordance with law, of the Towns of Hercules and Pinole and certain nearby unincorporated areas. Annexation has been accomplished. Termination of some but not all of the free water arrangements has taken place. The present application, filed February 15, 1954, seeks authority to discontinue the remaining free services and to charge those consumers in

(1) Decision No. 48145, January 13, 1953, as modified by Decision No. 48707, June 16, 1953 and Decision No. 49490, December 30, 1953, in Application No. 33895.

accordance with the company's filed tariffs. It is alleged that such free water service is unjust, unreasonable, preferential and discriminatory.

Written objections to the application were filed by ten members of the Ellerhorst and Faria families who together constitute two of the remaining four free service connections to applicant's system. (2) One of the other consumers, Joseph E. Silva, was present at the hearing but did not testify. Rolla and Gertrude Silva, the last of the group enjoying free water service, made no appearance on the record. None of the protestants, however, offered evidence in support of their objections or their respective claims to be entitled to free water service.

Protestants assert rights to free water service from either the company or the district, as its successor, by virtue of a contract between Kate T. Cousins (a predecessor in interest of some of the present consumers) and the company, dated December 2, 1902. That agreement provided, in substance, that as long as the company, its successors or assigns should use and enjoy rights in and to the waters of Pinole Creek theretofore granted by Cousins to California Powder Works and later assigned to applicant, the company would furnish, free of charge to Cousins and her successors, from the water taken from Pinole Creek, whatever amount of water might be reasonably required for domestic purposes at certain of Cousin's houses situated or to be erected in various portions of Pinole.

The record suggests that other claims to free water service by some of the present consumers may be founded upon grants to the company by their predecessors of various rights of way for pipelines.

(2) Of the ten original free water arrangements, six were terminated by negotiated settlements concluded before the filing of the application or prior to the hearing.

As stated above, however, neither the protesting claimants nor any other consumer receiving free water service undertook to support their respective claims at the hearing.

Public Hearing

A public hearing in this proceeding was held, after due notice, at Pinole on March 16, 1954 before Examiner Gregory, at which time the application was submitted for decision. ✓

Summary of Evidence

The evidence of record shows that the company purchases from East Bay Municipal Utility District all of the water supplied to its consumers, including those who have been receiving free service. Neither the company nor the district obtains its supply of water from Pinole Creek, which runs through the Joseph Silva property. Three of the four free services use water for domestic and yard irrigation purposes. The Rolla Silvas use the water only for yard irrigation. Company pipelines crossing the Ellerhorst and Rolla Silva premises will be discontinued upon assumption of service by the district following consummation of the transfer to it of certain of the company's properties and facilities. A company pipeline across the Faria premises was abandoned long ago.

The company has offered to settle the asserted claims of the remaining four consumers, but the offers have so far been refused.

From 1948 through 1953 the Ellerhorsts, Joseph Silva and the Farias consumed a total of 735,930 cubic feet of water for which they paid nothing. The total charge for that water for the six-year period, at the company's applicable tariff rate, amounts to \$1,703.62.

The record further shows that all of the terms and conditions of the contract, dated September 26, 1952, between the company and the district have been executed with the exception of the

provision relating to termination by the company of its free water arrangements. The district, moreover, has spent approximately \$60,000 for improvements in the areas it will serve following acquisition of the company's properties.

Findings and Conclusions

The only issue with which we are concerned in this proceeding is whether it is fair and reasonable, from the standpoint of proper regulation, to permit the continuance of free water service to a small group of patrons of this utility whose other consumers are required to pay tariff rates for their water. We expressly refrain, however, from passing upon any questions relating to rights or obligations asserted by the consumers, the company, or the district under the various contracts which have been placed in the record. Nor do we pass upon the existence or scope of any easement for right of way or consideration therefor which may be involved in the assertion by a consumer of any right to free water service from the company or the district. Such questions, including any right to compensation which these consumers may have as a result of termination of existing free water service, are for the courts.

This Commission has frequently held arrangements for preferential treatment of some of a water utility's patrons to be unfair, discriminatory, economically unsound and contrary to proper regulatory standards. (3) An extended discussion of the Commission's longstanding policy in cases of this kind and the reasons underlying such policy would serve no useful purpose here. It is sufficient to point out, and we find as a fact, that the existing

(3) Spring Valley Water Co. (1919) 16 CRC 785
Henry Chauvet (1921) 19 CRC 669, 670
Emma H. Rose, et al. (1921) 20 CRC 266, 268
Excelsior Water and Power Co. (1923) 23 CRC 623, 624
California Water & Telephone Co. (1943) 44 CRC 758.

arrangements considered herein for free water service maintained by Hercules Water Company with some of its consumers are unjust, unreasonable, preferential and discriminatory and are contrary to the public interest. It follows that the company should be directed to discontinue such service and to charge such consumers for water service hereafter in accordance with the company's filed tariffs.

O R D E R

Public hearing having been held herein, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that Hercules Water Company, a corporation, shall discontinue rendition of free water service to any of its consumers now being supplied with water from its system and shall hereafter charge for water supplied to such consumers in accordance with its applicable schedules of rates on file with this Commission, commencing with the first billing period after the effective date of this order.

Finding it to be in the public interest that this order become effective without unnecessary delay, IT IS HEREBY FURTHER ORDERED that the effective date of this order shall be five days after the date hereof.

Dated at San Francisco, California, this 23rd day of March, 1954.

R. E. [Signature] President
Justice J. [Signature]
[Signature]
[Signature]
[Signature] Commissioners