

ORIGINAL

Decision No. 50095

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DOROTHY WAGGLE, ETHEL CHANEY
and JACK VEST, et al.,

Complainants,

-vs-

WESTSIDE WATER COMPANY, a
corporation,

Defendant.

Case No. 5514

In the Matter of the Application of
PACIFIC WATER CO. and EARL H. DePUE
and EDWARD A. DUITSMAN, a
co-partnership d/b/a WEST SIDE WATER
COMPANY, under Section 851 of the
Public Utilities Code for authority
to transfer the assets of West Side
Water Company to Pacific Water Co.,
and for authority to Pacific Water
Co. to issue Class B shares under
Section 818 of the Public Utilities
Code as consideration for such
transfer.

Application No. 35290

Dorothy L. Waggle, for complainants.
Conrad E. Mahlum, attorney, and Edward A. Duitsman, for defendants and for applicants, Earl H. DePue and Edward A. Duitsman, dba West Side Water Company.

Moss, Lyon, and Dunn, attorneys, by George C. Lyon, interested party in the complaint and for applicant, Pacific Water Company.

James E. Cunningham, attorney, interested party in both matters.

James F. Wilson and Reginald H. Knaggs, for the Commission staff.

O P I N I O N

The above-entitled complaint was filed December 7, 1953 by a group of consumers of Earl H. DePue and Edward A. Duitsman, copartners, doing business as West Side Water Company,^{1/} furnishing

^{1/} A fictitious name.

public utility water service in unincorporated territory, San Bernardino County, about 4 miles west of Barstow, on the north and south sides of U. S. Highway No. 66.

By the above-entitled application filed March 26, 1954 Pacific Water Company^{2/} and Earl H. DePue and Edward A. Duitsman,^{3/} a copartnership, doing business as West Side Water Company, seek authority to transfer the DePue and Duitsman water system assets to Pacific, and Pacific seeks authority to issue stock in partial consideration of such transfer.

A public hearing in these matters on a consolidated record was held before Examiner Warner on April 14, 1954 in Barstow. There was no protest to the granting of the application.

Allegations of Complaint

Complainants alleged that defendants' rate schedule was unreasonable, exorbitant, impractical, and violative of the intent and purposes of the Public Utilities Code. They alleged that defendants misinformed and wrongly advised complainants that they would not install meters, and encouraged them to increase their agronomy. They alleged that defendants, pursuant to defendants' application for a rate increase in 1952, advised their consumers that they intended only to ask for a \$1 increase in flat rates, and further advised complainants not to attend the hearing in said application.

Complainants alleged that greater amounts of air and other deleterious matter were allowed to enter the water system, thereby

^{2/} Hereinafter referred to as Pacific.

^{3/} Hereinafter referred to as DePue and Duitsman.

endangering the health and well-being of complainants and other consumers of defendants.

Complainants finally alleged that defendants were ordered by this Commission to drain all dead ends of their water system at least once a week and that this order had been disobeyed, and that defendants had failed and refused to carry out the order of the Commission to take necessary steps to correct the sand, air, and oil content in the water system.

Relief Requested

Complainants requested the Commission to lower the rate schedule heretofore adopted, and direct defendants to correct the mechanical defects, and generally improve service.

Evidence Adduced

Complainants' witness testified at length and in substance that when complainants bought their properties from Earl H. DePue and Edward A. Duitsman, a copartnership realty firm, beginning in 1947, they were advised that water service would be available to them at a flat rate of \$2 per month. Copies of the newspaper, the Barstow Printer Review, dated November 10, 1949, January 12, 1950 and January 19, 1950, were introduced as Exhibit No. 1. Said copies contained an advertisement for lots 100 feet by 500 feet for \$495, 100 feet by 700 feet for \$665, and water at \$2 per month. Nearly all consumers planted lawns, and shade and fruit trees, and trees for windbreaks, and use large quantities of water under complainants' then filed and authorized flat rate schedule of \$2 per month plus \$1 per month for additional house on a lot. When notice was received of the public hearing of June 10, 1952, at Barstow, on complainants' Application No. 33257, for authority to increase the flat rate from \$2 per month to \$3 per month and the flat rate for additional house from \$1 per month to \$2 per month, no

protest was entered by any consumers. However, in July, 1953, defendants commenced to install meters on certain services which defendants considered to be using excessive amounts of water, and water bills increased. In one instance the monthly charge increased from a combined flat rate of \$5 per month for two houses on one lot to \$48.90^{4/} in July, 1953. Other general metered service bills rose substantially, although not in as great degree as the one cited. Several consumers who had been placed on meters abandoned the watering of trees and lawns due to the high bills received.

In essence, thus, the major complaint involved the change-over from flat rate service to metered service in particular instances, and charges of discrimination between consumers being served at flat rates and metered rates. Some complaint was made of the condition of the water system itself and fear was expressed of unsanitary conditions. However, Exhibit No. 2 is a negative report of the San Bernardino County and State Health Departments dated November 13, 1953.

Commission Staff's Investigation

Exhibit No. 5 filed at the hearing is a Commission staff investigative report on the results of defendants' operations. Said report shows that DePue and Duitsman were granted a certificate of public convenience and necessity by Decision No. 41619, dated May 25, 1948, in Application No. 28642. Said decision established monthly flat rates of \$2 per month for a 3/4-inch service connection

^{4/} Adjusted by defendants to \$14.48. Bills received by this consumer for other months' water service were as follows: August, \$24.60; September, \$15.40; October, \$10.20; November, \$8.00; December, \$7.60; January 1954, \$1.75; February 1954, \$7.30.

per single family unit or single lot not in excess of 10,000 square feet, and \$0.04 per month for sprinkling or irrigation of each additional 100 square feet, and \$1 per month for each additional dwelling. A flat rate of \$3.75 per month was established for a 1-inch service connection. Said decision also established meter rates of \$1.75 per meter per month for the first 900 cubic feet or less of water usage, with the next 4,100 cubic feet at \$0.15 per 100 cubic feet, and all over 5,000 cubic feet at \$0.10 per 100 cubic feet. By Decision No. 47374, dated June 30, 1952, in Application No. 33257, the flat rate was increased to \$3 per month and \$2 per month for additional house. No change was requested or authorized in the meter rate.

The staff report shows that for the adjusted year 1953 applicants' net operating revenue amounted to \$218. Such net revenue when related to an average depreciated rate base of \$56,490 produced a rate of return of 0.38 per cent. No charges were made by either of the partners for their time in the operation of the water company.

Exhibit No. 2 shows that as of December 31, 1953 there were 96 flat rate consumers and 127 metered consumers, or a total of 223 consumers. During the last half of 1953 the average monthly bill per metered consumer was \$3.04. For the entire year 1953, the average monthly bill per flat rate consumer was \$3.50.^{5/}

The staff report, which was dated March 15, 1954, shows that, during 1953 additions by defendants to their water system

^{5/} The record shows that defendants did not apply their authorized rate of \$0.04 per 100 square feet, in excess of 10,000 square feet, per lot, for irrigation.

fixed capital amounted to \$30,805. This included \$17,298 for distribution mains, \$8,331 for a 100,000-gallon storage tank, and \$4,998 for meters. Service conditions regarding pressures, based on recording pressure gauge tests in March, 1954 and potability of water based on County Health Department bacteriological analyses, were found to be satisfactory.

Motion for Further Staff Investigation

Counsel for complainants submitted as Exhibit No. 7 a Subdivision Inspection Report of the State Division of Real Estate, dated January 20, 1949, which contained the following paragraph:

"WATER: The West Side Water Company will extend water service to Lots 1 to 50 inclusive. The cost of extension to these lot will be included in the purchase price of said lots. This company is a public utility water company operating under the supervision of the Public Utility Commission."

Counsel contended that the above-quoted paragraph implied that when complainants purchased their lots from DePue and Duitsman, realtors, the cost of the water system installed in the subdivision in which their lots were located was included in and was a part of the purchase price for said lots. He contended, therefore, that the water system had been paid for by the lot purchasers and consumers, and represented property donated to defendants. Since no donated property was shown on defendants' books or included in the staff report, he moved that the Commission order the staff to investigate this issue. He also moved that further hearing be held in this complaint and application for the purpose of receiving for the record in these proceedings the results of such investigation.

Ruling on the Motion for Further Staff Investigation

The Commission has carefully considered the statement set out in the Real Estate Division Report, Exhibit No. 7. Such reports are required by the State Real Estate Commission to be issued upon

the opening of any subdivision and the Commission has from time to time had many brought to its attention, although not for the purpose for which Exhibit No. 7 was introduced in these proceedings. However, a report of the Division of Real Estate, the information contained in which was obtained from defendants and other sources and promulgated by the Real Estate Commissioner, cannot be considered to be binding on this Commission. Further, this Commission interprets the quoted paragraph to mean not that the lot purchasers paid for the water system installed in this subdivision, Lots 1 to 50 of Tract No. 3396, San Bernardino County, but rather that water service would be available to such properties under the utility's regularly filed rules and regulations without extension costs. Rule and Regulation No. 19 provides for extensions of water systems and costs attendant thereto.

It may be true that the value and market price of raw land may be enhanced by water system installations, but it is also true that such market price is enhanced by sewers, streets, sidewalks, and other improvement. To investigate and determine the composition of the selling price of lots of the subdivision in Tract No. 3396 would lead the Commission far afield of its province and jurisdiction. Since there is no evidence that water system properties were or may have been donated to the utility, the motion for further staff investigation is hereby denied.

Application No. 35290

By this application, Pacific Water Company, a public utility water corporation, proposed to acquire the water system properties of DePue and Duitsman, copartners, doing business as West Side Water Company, according to the terms of the agreement, Exhibit A attached to the application. Pacific proposed to issue and

transfer to DePue and Duitsman 3,200 shares of its 5 per cent Class B preferred stock in the amount of \$32,000 and to pay \$1,000 cash in consideration of the property transferred. Pacific also requested that in addition to the right to issue Class B shares of preferred stock, it be given the right to issue 25,600 shares of common stock if DePue and Duitsman, prior to December 31, 1956, request the right to convert its Class B preferred stock to common shares.

The application shows that there are no consumers' advances for construction due by DePue and Duitsman for main extensions under the Main Extension Rule and that the water system is subject to no conditional sales, contracts, liens, or encumbrances. A balance sheet attached to the application as Exhibit B shows total depreciated fixed assets in the amount of \$70,871.97 and total assets amounting to \$71,866.01.

Pacific operates public utility water systems in Los Angeles, Orange, Kern and San Bernardino Counties. It furnishes water service to approximately 6,000 consumers and had total depreciated assets in excess of \$1,857,000 as of December 31, 1953. Pacific operates water systems in Twentynine Palms, Morongo Valley, Victorville, Arrowhead View and Rimforest, and a system known as Berdooco System, all in San Bernardino County. It maintains standby equipment and crews at Victorville and Santa Ana. Pacific's witness testified that it planned to complete the installation of meters throughout the DePue and Duitsman system at once. No change in rates was proposed in the application.

Conclusion

From a review of the record it appears that defendants' authorized rates are not producing a fair rate of return. The adjusted earnings for the year 1953, of \$218, are nominal. It

further appears that the installation of meters during 1953 was an appropriate act by the utility and that service conditions have been markedly improved.

It further appears to the Commission that it would be in the public interest to grant Pacific's application to acquire the water system properties, inasmuch as Pacific is an experienced and large public utility water company with fairly widespread operations and substantial facilities to provide adequate service to the West Side consumers. The order which follows will provide that the application of Pacific Water Company and DePue and Duitsman for authority to transfer their properties be granted.

The record herein does not justify the granting of the relief sought by complainants and the complaint will be dismissed.

The action taken herein shall not be construed to be a finding of the value of the property herein described.

O R D E R

Complaint and application as above-entitled having been filed, a public hearing having been held, the matters having been taken under submission and now being ready for decision,

IT IS HEREBY ORDERED as follows:

1. That Case No. 5514 is hereby dismissed.
2. That Pacific Water Company, a corporation, and DePue and Duitsman, copartners, doing business as West Side Water Company, may on or after the effective date hereof and on or before December 31, 1954 transfer the herein described public utility property pursuant to the agreement for water service attached to the application as Exhibit A.
3. That the rates, rules and regulations of Earl H. DePue and Edward A. Duitsman, copartners, doing business as West Side Water Company, now on file with the Commission shall be refiled within thirty days from the date of transfer under the name of

the Pacific Water Company, in accordance with the procedure prescribed by General Order No. 96, or in lieu of such refiling, Pacific Water Company may file a notice of adoption of said rates, rules and regulations. No increases in the present lawfully filed rates and rules shall be made unless authorized by the Commission.

4. That on or before the date of actual transfer, Earl H. DePue and Edward A. Duitsman, copartners, doing business as West Side Water Company, shall refund all deposits which customers are entitled to have refunded; and that any unrefunded deposits shall be transferred to and become the obligation for refund of Pacific Water Company.
5. That if the authority herein granted is exercised, Earl H. DePue and Edward A. Duitsman, copartners, doing business as West Side Water Company, shall, within thirty days thereafter, notify this Commission, in writing, of the date of such completion of the property transfer herein authorized, and of its compliance with the conditions hereof.
6. That on or before the date of actual transfer of the physical properties herein authorized, Earl H. DePue and Edward A. Duitsman, copartners, doing business as West Side Water Company, shall transfer and deliver to Pacific Water Company and the latter shall receive and preserve all records, memoranda and papers pertaining to the construction and operation of the properties of Earl H. DePue and Edward A. Duitsman, copartners, doing business as West Side Water Company.
7. That upon due compliance with all of the provisions of this order, said Earl H. DePue and Edward A. Duitsman, copartners, doing business as West Side Water Company, shall stand relieved of all further public utility obligations and liabilities in connection with the operation of the public utility water system herein authorized to be transferred.

IT IS HEREBY FURTHER ORDERED as follows:

1. That Pacific Water Company be, and it is, authorized to issue 3,200 shares of its 5 per cent Class B preferred stock of the aggregate par value of \$32,000, to DePue and Duitsman, copartners, and to issue 25,600 shares of common stock in exchange therefor if DePue and Duitsman elect to convert said Class B preferred shares into common shares prior to December 31, 1956, all for the purposes indicated in the opinion preceding this order, the Commission being of the opinion that the money, property or labor to be procured or paid for by the issuance of said stock is reasonably required by applicant for the purposes herein stated and that such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

2. That Pacific Water Company shall file with the Commission a report, or reports, as required by the Commission's General Order No. 24-A, which order in so far as applicable is made a part of this order.
3. That the authority herein granted shall expire if not exercised on or before December 31, 1954.

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

Dated at San Francisco, California, this 10th day of June, 1954.

John E. Mitchell
President
Justus S. Calver
Berneth Patten
Verne Higgins

Commissioners