

ORIGINAL

Decision No. 50221

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
ARROYO DITCH COMPANY for authority)	
to amend rules providing for a)	Application No. 34610
specific location for the wholesale)	(as amended)
delivery of water to agricultural)	
consumers.)	

Pierce Deasy, for Arroyo Ditch Company
Edson Abel, for California Farm Bureau
 Federation, Amador County Farm Bureau
 and Willow Springs Water Users
 Association

OPINION ON-REHEARING

The Commission granted rehearing (Decision No. 49906, April 13, 1954) limited to oral argument on the record theretofore made herein, which resulted in the issuance of Decision No. 49807, claimed by the company to be confiscatory and otherwise erroneous in certain particulars specified in the petition for rehearing.

Oral argument was had before Commissioner Craemer and Examiner Gregory on May 17, 1954 at San Francisco.

The decision complained of directed the company to install a suitable measuring device in its ditch in the vicinity of the Plymouth Fairgrounds and to report daily water flow measurements between May 1 and October 31, 1954 not later than 10 days after the end of each calendar month for measurements taken during the preceding month. The order also authorized the company to file a schedule of rates for summer irrigation service, which continued in effect a previously authorized rate of 30 cents per miner's inch-day, subject to a minimum demand of 150 miner's inches of water, to be manifested by applications filed by April 15 accompanied by a deposit of \$1.50 for each miner's inch of water applied for (Schedule 1-B, Appendix A; Decision No. 49807).

The company had asked to be relieved of the obligation to furnish water at retail to some 20 individual ranchers west of Plymouth, comprising the Willow Springs Water Users Association; and to be permitted to entertain proposals from the association providing for wholesale delivery of water at the Plymouth Fairgrounds at a seasonal rate of 50 cents per miner's inch-day, subject to a minimum demand of 150 miner's inches. The association, however, made no such proposal.

Since issuance of the Commission's order in March of this year, the ranchers west of Plymouth have organized a public water district comprising approximately 2800 acres of land. Their demand for water for the 1954 summer season, according to statements of counsel during the argument, was rejected by the company upon the ground that payment for water furnished during October, 1953 had not been made, and upon the further ground that nine inches of the 150-inch minimum demand was for water to be supplied to ranchers who, the company contends, were not entitled to ask for water under the summer schedule.

The company's schedules also provide for deliveries of water to agricultural users in the vicinity of Plymouth at their respective properties and in accordance with the company's rules, at a rate of 50 cents per miner's inch continuous flow (Schedule No. 1). That schedule applies to water delivered at any time when conditions provided for in the special seasonal schedule are not met. The company, however, contends that to require it to serve individual consumers west of Plymouth at retail, at either the 30-cent or the 50-cent rate, is financially impracticable. It asserts that it can survive in the utility business only if permitted to withdraw from retail irrigation service and concentrate its operations on its ditch and flume system east of Plymouth, principally for the benefit of domestic water users in and in the vicinity of Plymouth.

The company, in short, does not ask for a rate of return that would normally be considered reasonable, but only for irrigation water service rates and conditions of delivery that will enable it to survive. It contends, and the record shows, that its total income from 1947 to and including 1953 amounted to about \$34,000, while its total expenses, exclusive of deferred maintenance, depreciation and automobile expense for the period amounted to some \$57,000.

The association argues that the company should improve its service before asking for higher rates or a change in the point of irrigation water deliveries. The association asserts that the company is before the Commission with unclean hands, since it claims confiscation on its plant west of Plymouth without first having explored the possible beneficial effects of rendering adequate service to the agricultural users. Authorities relied upon by the association in support of its contentions are cited below.⁽¹⁾

Conclusions

Upon consideration of the record, which includes, by reference, two prior proceedings involving rates and service of the company,⁽²⁾ the Commission concludes that the only workable solution to the problem confronting the company and the district respecting sales and delivery of irrigation water is for the parties to come to an agreement upon those subjects at the earliest possible date. We strongly recommend to the company that it initiate such negotiations at once. The Commission, if advised that an agreement has been

(1) Happy Valley Land & Water Co., 9 CRC 459
City of Brawley v. Imperial Valley Gas Co., 16 CRC 925
Mokelumne River Power & Water Co., 18 CRC 43
Parkhill, 29 CRC 258
Market Street Railway Co., 45 CRC 53; 24 C.2d 378; 324 U.S. 548
Pond's Public Utilities (4th Ed.), p. 989
American Jurisprudence, Vol. 43, pp. 586, 676, 678

(2) Appls. Nos. 27113 and 30660. Also, consolidated for hearing and decision with Appl. No. 34610 (the instant proceeding) is a complaint by the association against the company (Case No. 5483) charging insufficient delivery of water during the 1953 irrigation season.

consummated, will then be in a position to determine whether Decision No. 49807 should be modified or amended. Meanwhile, the company is placed on notice that the Commission's order in that decision has been and still is in effect and that full compliance therewith by the company is expected.

O R D E R

Rehearing, limited to oral argument, having been held herein, the matter having been submitted, the Commission now being fully advised and basing its order upon the conclusions contained in the foregoing opinion,

IT IS ORDERED that:

(1) Arroyo Ditch Company, should it consummate an agreement with Willow Springs Water Users Association or its successor district respecting sales and delivery of water for agricultural use, shall notify the Commission in writing thereof within ten days thereafter and furnish the Commission with a true and correct copy of any such agreement at said time of notification.

(2) Decision No. 49807 is hereby reaffirmed.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 29th day of June, 1954.

John E. Mitchell
President
Justus F. Coe
Deane Higgins

Commissioners

-4- Commissioner Kenneth Potter, being necessarily absent, did not participate in the disposition of this proceeding.