

ORIGINALDecision No. 52239

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PARK WATER COMPANY, a corpora-)
tion, for authority to adjust and)
increase rates for water service.)

Application No: 34699
(Amended)

See Appendix A for list of appearances.

O P I N I O N

This application of Park Water Company,¹ a public utility water corporation, was filed September 4, 1953 and amended September 11, 1953 by a correction to the proposed flat rates for excess square footage. Based on 1953 estimated operations Park sought increases in its flat and general metered service rates which would produce additional gross annual revenues of approximately \$529,000 from its several operating districts in the cities of Compton, Montebello, and South Gate, and in unincorporated territory in Los Angeles and San Bernardino Counties.

An original public hearing was held before Examiner Stewart C. Warner on November 19, 1953, at which time the matter of Case No. 5491,² James Valerie, et al., Complainant, versus Park Water Company, Defendant, regarding service conditions in Compton and vicinity was also heard. An additional hearing was held on November 20, 1953, during which applicant completed its affirmative showing and the matter was continued to a date to be set to provide

1 Hereinafter referred to as applicant or Park.

2 Decision No. 49394, dated December 1, 1953, issued in this matter.

time for the Commission staff to conduct an investigation.

Adjourned hearings were held on February 2, 3, 4, 14, 15 and 16; March 22, 23, and 24; and April 12, 13, and 14, 1955, during which a staff accountant submitted evidence with respect to Park's financial practices and relationships and accounting practices, and Park's officers and several other witnesses were called by staff counsel under the adverse party rule and were cross-examined. The matter was submitted, after 14 days of hearing, on a motion by staff counsel to dismiss the application for lack of showing by applicant that it was entitled to relief.³ A ruling on said motion for dismissal is now in order, and the matter of the application is ready for decision.

Evidence of Record

The evidence of record comprises 1,533 pages of testimony and 53 exhibits. Briefs have been filed by opposing counsel and they, together with the entire record, have been carefully considered.

General Information

Park Water Company was formed in 1937⁴ by H. H. Wheeler, an officer and principal stockholder of L. A. Decomposed Granite Company,⁵ a rock and gravel contracting company engaged in the development of subdivisions through the installation of streets, curbs, sewers, and water systems. The record shows that Wheeler organized

³ Preceded by a motion by staff counsel for a continuance to provide applicant an opportunity to submit additional evidence and testimony of applicant's need for rate relief. Said motion for continuance was opposed by applicant's counsel, and was denied.

⁴ By Decision No. 30620, dated February 14, 1938, in Application No. 21668, applicant was granted a certificate of public convenience and necessity to construct and operate a public utility water system. Rates for water service were established and authority was granted to issue stock.

⁵ Hereinafter referred to as L.A.D.G.

Park because he was dissatisfied with existing water service available to subdivisions in which he and L.A.D.G. were interested. It is the contention of applicant that, at some time during 1938, Wheeler and the officers and directors of applicant and L.A.D.G. and L.A.D.G. and applicant entered into an Agreement⁶ and Order and Assignment⁷ under the terms of which Wheeler and his associates O. D. Collins, vice-president, and V. E. Motz, secretary, common officers and directors of Park and L.A.D.G., advanced large sums of money to L.A.D.G. which were in turn advanced to applicant for the installation of water systems. The evidence shows that Wheeler did advance large sums of money for the purpose of enabling applicant to construct water systems but the evidence is conclusive that the Agreement and Order and Assignment were not executed until, at least, as late as May 1, 1943. Also, the evidence shows that large sums of money were furnished by subdividers which were used to enable applicant to construct water systems for subdivisions in which such subdividers were interested. Said water systems were contracted for by L.A.D.G. with property owners and developers under the terms of contracts⁸ which provided that the property owner or developer should advance the cost of subdivision improvements including installation of a water system by Park, subject to no refund. The water systems in some 365 subdivisions in Los Angeles and San Bernardino Counties, and in the Cities of Compton, Montebello, and South Gate, were so installed by Park for L.A.D.G. and subdividers and H. H. Wheeler.

As of March 31, 1955, Park was furnishing water service to more than 16,000 metered and nearly 20,000 flat rate customers for a total of about 36,000 customers. During the five-year period, 1948 through 1952, customers were added at the rate of approximately 4,000 per year.

Applicant's total fixed capital in service as of December 31, 1954, amounted to \$5,593,488 with a related depreciation reserve of \$616,774. Its gross revenues for the year 1954 were \$844,654. Total operating expenses and deductions from income amounted to \$742,253 and net profit retained in earned surplus after federal income taxes

⁶ Exhibit No. 34

⁷ Exhibit No. 35

⁸ A typical contract was submitted as Exhibit No. 12.

amounted to \$102,401, all as shown in Exhibit No. 48, an audit report as of December 31, 1954 submitted by applicant.

Bases of Application

Applicant based its request for authority to increase rates on the following allegations:

1. That no dividends have been declared by applicant since 1946.
2. That all earnings, if any, have been used to maintain the operations of its system.
3. That by reason of restricted earnings, applicant has been forced, during past years, to employ economy measures which in many instances were not in the interest of satisfactory operations.
4. That in order to meet expansion required in rapidly growing areas, depending upon applicant for water, applicant's available funds have been called upon to the limit.
5. That capital expenditures have increased from 20 to 50 per cent each year for the past five years.
6. That applicant believes that a continuance of the stringent operating practices referred to above cannot be had in the future and is not in the best interests of the consumer, and that, therefore, additional funds from increased rates must be had in order to insure adequate operation and return, and to maintain applicant's credit.

Earnings

Included in the application was a summary of earnings for the year 1953 partly estimated at present and proposed rates, and for the year 1954 estimated at proposed rates, as follows:

<u>Item</u>	<u>1953 Partly Estimated</u>		<u>1954 Estimated</u>
	<u>Present Rates</u>	<u>Proposed Rates</u>	<u>Proposed Rates</u>
Operating Revenues	\$ 737,653	\$1,266,225	\$1,423,995
Operating Expenses			
Maintenance and Operation	379,764	379,764	432,556
Taxes	134,664	419,607	481,268
Uncollectible Accounts	1,976	1,976	2,000
Depreciation	99,829	99,829	127,422
Total Operating Expenses	616,233	901,176	1,043,246
Net Operating Revenues	121,420	365,049	380,749
Nonoperating Revenues	4,155	4,155	4,155
Net Income	125,575	369,204	384,904
Depreciated Rate Base	4,454,082	4,454,082	5,417,678
Rate of Return	2.81%	8.29%	7.10%

Rates

As noted hereinbefore applicant's present rates were established in 1938 by Decision No. 30620. Until 1953, most consumers were served at a flat rate of \$1.50 per month for a single lot of not in excess of 7,500 square feet and \$0.02 per month for each 100 square feet additional. The flat rate of \$1.50 is proposed to be increased to \$3 per month and the rate for additional square footage to \$0.04 per month for each 100 square feet, an increase of 100 per cent. During 1953, applicant started an extensive meter installation program and, as noted herein, approximately 16,000 customers are now metered. The following tabulation is a comparison of applicant's present and proposed meter rates:

Comparison of Present and Proposed Metered Service

Quantity Rates:	<u>Per Meter per Month</u>	
	<u>Present</u>	<u>Proposed</u>
First 4,000 cu.ft., per 100 cu.ft.	\$0.15	
Next 16,000 cu.ft., per 100 cu.ft.125	
Next 180,000 cu.ft., per 100 cu.ft.10	
Next 400,000 cu.ft., per 100 cu.ft.08	
Over 600,000 cu.ft., per 100 cu.ft.072	
First 4,000 cu.ft., per 100 cu.ft.		\$0.20
Next 6,000 cu.ft., per 100 cu.ft.175
Next 40,000 cu.ft., per 100 cu.ft.15
Next 150,000 cu.ft., per 100 cu.ft.125
Over 200,000 cu.ft., per 100 cu.ft.10

Under the present meter service rates a consumer using 4,000 cubic feet every two months, under applicant's bimonthly billing practices, would be charged \$6. Under the proposed rates this charge would be \$8., or a 33-1/3 per cent increase.

Applicant's Showing

Applicant's consulting engineering witness submitted Exhibit No. 3, "A Valuation and Appraisal of Its Properties as of December 31, 1952," and Exhibit No. 2, a statistical report of Park's operations; the rate base included in Exhibit No. 2 was determined

from the aforesaid appraisal, Exhibit No. 3. This witness testified that he had made a physical inventory of Park's facilities, had applied certain historical unit costs thereto, and had added 10 per cent for overhead. He testified that the estimates of operating revenues and expenses for the years 1953 and 1954, were based on estimated operations for those years. It is significant that applicant's operating revenues have progressively increased and will continue to increase as the metering program is carried out. No estimate of operating revenue for the year 1955, under such program, was submitted. In determining a rate base for the years 1953 and 1954 estimated, applicant's witness deducted only those donations in aid of construction and consumers' advances for construction as shown on applicant's books.

Staff Showing

At the conclusion of the hearings in November, 1953, the staff requested, and it was granted, a continuance in order to analyze applicant's exhibits, and to make an independent investigation, and to prepare a report or reports. The hearings of February, March, and April, 1955, were devoted primarily to the direct presentation by a staff accounting witness of the results of his investigation into the receipt of advances by L.A.D.G. and the advances by it to Park of certain monies to the extent to which their amounts were determinable. The staff showing further comprised the calling, under subpoena duces tecum and under the adverse party rule of applicant's president, H. H. Wheeler, and secretary, Miss V. E. Motz, together with the calling under subpoena of several subdividers and other witnesses.

The staff submitted no summary report of the results of its investigation, or of an estimate of applicant's operations and earnings either under present or proposed rates, stating that it had been unable to prepare such a report from the information made available to it by Park.

Burden of Proof Rests upon Applicant

It is well established that the burden of proof in proceedings of this nature rests directly upon applicant to show the reasonableness of its request. Where doubt exists the same must be resolved against the applicant. It is not incumbent on the Commission staff to make applicant's showing.

Conclusions

We have considered the record in this proceeding. Our conclusion is that the record is fatally deficient.

Applicant's complicated financial methods and its explanations with respect thereto, together with its improper, inadequate, and incomplete bookkeeping practices since the utility's inception, render no rate determination possible either by formula or pragmatic adjustment or other lawful means.

Further, the attitude of applicant's president and secretary of reluctance to provide simple facts for the record, and their evasive and incomplete answers to lawful questions propounded in order to clarify and establish facts upon which the Commission could arrive at a decision in this matter have frustrated the regulatory process.

The evidence shows that applicant's accounting practices, particularly with respect to the sources and application of funds for capital improvements, have not only been inadequate but have been improper. It appears that such practices were followed to circumvent applicant's filed rules and regulations with respect to water main

extensions and to provide its officers and directors with impermissible reimbursement for funds never directly advanced to applicant by them.

In order to determine the reasonableness of applicant's proposed rate increases it would be necessary for the Commission to rely on applicant's books of account. It is hereby found as a fact that such books of account are unreliable and misleading, and these deficiencies were not cured by any credible testimony or other evidence offered by applicant or contained in the record.

L.A.D.G. was, purportedly, transferred to other persons by Wheeler during the pendency of this proceeding. No reasonable justification for the transfer of L.A.D.G. in the midst of a rate proceeding, when information contained in the books of L.A.D.G. was vital to the proceeding, is disclosed by the record. Such purported transfer constituted a denial to the Commission of facts necessary to it in determining the reasonableness of applicant's request for a rate increase, and necessary to applicant in proving such reasonableness. Said transfer, we find was merely colorable and for the purpose of hindering the Commission in obtaining full information as to the operations of said corporation.

The record contains evidence of duplications of capital recorded on applicant's books in the merger of Bellflower Land and Water Company and Los Nietos Water Company with applicant. It contains evidence of unrecorded monies collected in substantial sums by applicant's president from water customers. The record contains evidence of unauthorized recordations in balance sheet accounts of large sums of money advanced to applicant by L.A.D.G. and its officers and those of applicant. The record shows that no formal approval by the Commission was ever sought by applicant of its plans to finance its subdivision extensions. The verbal opinion of a

member of the Commission staff, if actually sought and secured, did not and does not constitute authority for deviation from rules and regulations ordered by the Commission to be filed, and filed pursuant to such order. The record contains no evidence of Park's indebtedness for such advances. Entries on applicant's books of account without supporting data did not, and do not, per se, constitute evidence of indebtedness. The record discloses that no contracts, bonds, loans, notes, liens, indentures or other documentary evidence of indebtedness payable were ever executed between L.A.D.G. and applicant, or between Collins, Motz or Wheeler and applicant, for such advances. Exhibits Nos. 34 and 35, purporting to be an Agreement and an Order and Assignment, respectively, each dated April 15, 1938, did not constitute such documentary evidence. Their authenticity has been totally discredited. The record contains evidence that they could not have existed prior to May 1, 1943, although sworn by applicant's witnesses to have existed prior to that date.

In view of the deficiencies in the accounting practices of the applicant, as disclosed in the record, the order which follows will provide that applicant shall adjust its books of account to conform them to the Uniform System of Accounts for Water Corporations prescribed by this Commission. Advances from L.A.D.G., H. H. Wheeler, or any other source, for subdivision water system extensions or installations, not subject to refund supported by signed contracts providing for such refund according to applicant's regularly filed rules and regulations, should be classified as donations in aid of construction. Unrecorded advances from customers should be recorded, also as donations.

Until applicant's books are adjusted, as ordered herein-
after, the Commission finds no basis upon which to adjudge the
reasonableness of applicant's request for a rate increasc. We find
that applicant has not established its need for rate relief, and has
offered no reliable basis for the determination thereof. Neither has
applicant proven the unreasonableness of its present rates, nor the
reasonableness of its proposed rates. We conclude, therefore, that
the application should be dismissed. The motion made by staff
counsel to dismiss will be granted.

It is also found that at all times hereinabove mentioned,
Mr. Wheeler completely dominated and controlled the applicant Park
Water Company and Los Angeles Decomposed Granite Company.

It is further found that applicant's books of account have
not been kept in accordance with the Uniform Classification of
Accounts for Water Corporations prescribed by the Commission.

O R D E R

Application, as amended, having been filed by Park Water
Company, a corporation, public hearings having been held, the matter
having been submitted and now being ready for decision, and basing
its order upon the foregoing conclusions,

IT IS HEREBY ORDERED as follows:

1. That the motion to dismiss be and it is hereby
granted and the application is hereby dismissed.

- 2. That applicant shall adjust its books to conform to the Uniform Classification of Accounts for Water Corporations prescribed by the Commission and in accordance with the instructions regarding the classification of certain advances as donations in aid of construction in the opinion herein, and shall report to the Commission within thirty days after the completion thereof and within two years after the effective date of this order of its completion of such adjustment.

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

Dated at Los Angeles, California, this 14th day of November, 1955.

[Signature]
President

Justin F. Calmes

Paul H. [unclear]

[Signature]

R. Hardy
Commissioners

APPENDIX A

LIST OF APPEARANCES

For Applicant: Gibson, Dunn and Crutcher, attorneys, by Max Eddy Utt and Richard L. Wells.

Protestants for Municipalities, Groups and Associations: Alfred C. Davenport, city attorney, City of Montebello, Francis L. Sanders, for Rivera Citizens Committee.

Protestants in propria personae: James Valerie; Katherine E. Raynor; Mrs. Vincent Contestable; Mrs. Ralph E. Davidson; Dale De Vorss; Mrs. Clark Fowler; Mrs. Melvin Bowen; Irene Johnson; Mrs. Joy Martin; Mrs. Vilean Faulkner; Mrs. Esther L. Evans.

Interested Parties: James Butler, city attorney, City of Compton; Loeb & Loeb, attorneys, by Harry L. Gershon and Frank E. Feder, for Citizens Utilities Company; J. E. Skelton, for San Gabriel Valley Water Company; Wallace B. Scales, attorney, for Thomas N. Neale.

For the Commission staff: J. T. Phelps and Cyril Saroyan, attorneys, C. T. Coffey, engineer, and Theodore Stein, accountant.