

ORIGINAL

Decision No. 52316

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AL ANDERSON,
Complainant,

vs.

YUCCA WATER COMPANY, LTD.,
a corporation,
Defendant.

Case No. 5516

Investigation on the Commission's
own motion into the operations,
practices, contracts, rules, regula-
tions, charges, and service of Yucca
Water Company, Ltd., a public utility
water corporation, operating in
Yucca Valley, San Bernardino County,
California.

Case No. 5518

Application of Yucca Water Company,
Ltd.; a California corporation, for
a certificate of public convenience
and necessity, to extend its water
service and system to additional
areas.

Application No. 35274

In the matter of the application of
AL ANDERSON for a certificate of
public convenience and necessity for
the operation of a water system as a
public utility, San Bernardino
County, California.

Application No. 36203

OPINION AND ORDER ON PETITION FOR REHEARING

The petition of Yucca Water Company, Ltd., a corporation, for a rehearing of Decision No. 52021, was filed in time to stay the effective date of the order. Petitioner alleges that the decision is unlawful and erroneous upon numerous grounds, its principal objection running to the certification of Al Anderson, the complainant and

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minority stockholder in the petitioner corporation, as a water utility in sections in which he has title to the storage and distribution facilities. Petitioner and Anderson are parties to a contract pertaining to the installation of pipe and storage facilities. This contract is the subject of litigation in the Superior Court in Orange County, and one of the sources of conflict between two officers, who are majority stockholders in petitioner corporation, and Anderson. In that action petitioner is seeking and Anderson resisting the specific performance of the contract. It is to be noted that the terms of the contract are at variance with the provisions of petitioner's applicable tariff rules on file and in effect at the time. No order of the Commission was sought or obtained approving such deviations. However, as stated in Decision No. 52021, whether Anderson can be required to specifically perform, or whether or not he is liable in damages, are clearly problems which can only be carried to an ultimate conclusion by the courts. The Commission discharged its function and obligation to determine which of the two applicants would better serve the public convenience and necessity in the tracts involved. In doing this we can perceive no error or unlawful exercise of jurisdiction.

Petitioner for the first time in its petition for rehearing makes an offer to install certain facilities in one of the areas in which Anderson was granted a certificate. Under the circumstances of this case, and in view of the facts of record, the Commission's conclusions are not modified by such offer.

In its grant of a certificate to Anderson, the Commission imposed certain conditions to insure adequate service to the area to be served by him. Should he not comply with the conditions, within the allotted time, the Commission on its own motion or upon that of customers who may thereby be affected will take such steps as it may be advised.

The facts pertinent to the findings of the Commission were

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recited in Decision No. 52021 and will not be repeated herein except as such repetition may be necessary to an understanding of the issues. Petitioner raises two points of law which should be decided herein, the first of which concerns the effect of its extensions into territory outside of its certificated area. It has been and is the practice of the petitioner not to extend service into contiguous territory when requested by a prospective new customer therein until the customer has paid to one of petitioner's officers sums varying from \$100.00 to \$200.00 and sometimes more for the service plus a meter charge of \$15.00. It is to be noted that the charges bear no relation to length of extension or number of connections, and further, that neither petitioner's present nor previous filed Tariff Rule 19 contemplate such payments. Thereafter it was and is the practice of the officer to purchase pipe and meters and install them, and of petitioner to start to serve water at its tariff rates. The new customer signs the form used by petitioner, asking that water be turned on, agreeing to pay all charges and to abide by the company's present and future rates, rules and regulations. An accounting is made by such officer to petitioner's other two stockholders who are also officers in the corporation. Until all of the customers in a new tract have paid such sums to a company officer, petitioner insists that the extension is a private venture, constituting a sale of surplus water, and that payments to such officer are made to him as an individual. After all of the new customers in the tract have paid up, the area, according to petitioner's view, is then "accepted into the public utility," and by some metamorphosis the same service which was theretofore the "private venture" of petitioner becomes a public utility service.

Section 1001 of the Public Utilities Act gives an unusual

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privilege to certain public utilities lawfully operating in a territory in that it authorizes the utility to extend its service into contiguous areas without first obtaining a certificate of public convenience and necessity from this Commission for the extension. It perforce contemplates the lawful continuance of operations lawfully commenced, i.e., service as a public utility at filed tariff rates, rules and regulations. When a public utility has extended its service to the public into contiguous areas pursuant to the provisions of Section 1001, its extension will be regarded by this Commission as that of a public utility, subject to tariff rates, rules and regulations, and not the private venture of the utility or of its officers.

The cases cited by petitioner in its petition for rehearing may be differentiated from the situation herein on a factual basis.

Petitioner serves from its wells more than three times as many customers outside of its certificated area as those within it. It serves all at its tariff rates, using its own operating personnel for service and billing and in part, at least, its own facilities. Every person living outside of the certificated area who applied for water received it if he paid the officers of petitioner the sums heretofore adverted to. Petitioner did not limit its holding out to serve the public, and we perceive no error in our finding that the transactions were those of a public utility and subject to its rates, rules and regulations; i.e., that the company had dedicated service to customers outside of the certificated area.

Petitioner complains that by Decision No. 52021 it is improperly required to serve water as a public utility in the area known as the Scarvin Road area "when neither the water company nor any resident or landowner sought such an order".

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While it is true that neither petitioner nor residents of the Scarvin Road area formally sought the order of this Commission declaring that the service by petitioner is that of a public utility, the investigation of the Commission into petitioner's operations, practices, contracts, rules, regulations, charges and service (C. 5518) disclosed, and the Commission has found, that the utility is actually so serving those who have paid varying sums of money to one of petitioner's officers. Petitioner will not be heard to complain that until all of the residents in the area have paid such sums it will not "accept the area into the public utility".

Petitioner claims that Decision No. 52021 violates the rules, regulations and policies of this Commission and of the Public Utilities Code in that Al Anderson was granted a certificate of public convenience and necessity to serve a portion of the S.W. quarter of Section 36, T. 1 N., R. 5 E., S.B.B. & M., which is contiguous to lands presently being served by petitioner. Petitioner has been serving water in that area to its customers through facilities installed by Al Anderson, title to which remains in Anderson. The Commission has found herein that petitioner, by serving water to the public generally, had dedicated its service as a public utility to areas outside of but contiguous to its certificated area, which necessarily includes the portion of Section 36. However, petitioner is unwilling to serve such extended areas until it receives, as a donation, a completed, fully paid-for system. Petitioner occupies the inconsistent position of asserting its privilege as a public utility under Section 1001 of the Public Utilities Code, while at the same time refusing to perform its public utility obligations under its Tariff Rule 19. The facilities in the area in question were installed by Al Anderson, and title still remains in him. Practical

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considerations make it desirable to certificate the person owning the facilities. Equitable considerations dictate that if petitioner desires the benefits accruing to public utilities, it should bear its public utility obligation. Section 1001 does not foreclose the Commission from granting a certificate of public convenience and necessity to another applicant, nor does the fact that the land is owned by some of petitioner's stockholders preclude the Commission from making such order.

In serving customers outside of the certificated area, petitioner does not come within the provisions of Section 2704, Public Utilities Code. That section excludes from the jurisdiction of this Commission any owner of a water supply "not otherwise dedicated to public use and primarily used for domestic purposes by him or for the irrigation of his lands" who sells the surplus for domestic or irrigation purposes. The water from petitioner's wells is not now and never has been primarily used for petitioner's domestic purposes or for the irrigation of its land. (Bethel Island Improvement Club v. Hollander, 48 C.P.U.C. 364, 368.) Furthermore, as we have found, the supply is dedicated to a public use in that water is sold to all who met the requirements of petitioner's officers.

The construction petitioner would have the Commission put on Section 2704 would sanction service by it to comparatively few customers in a very small certificated area at tariff rates and under tariff rules, and allow it to serve a much greater number of the public outside of the area at rates which could be other than tariff rates and not subject to tariff rules and regulations or orders of this Commission. Such a construction would make a travesty of regulation, and would permit the preferences and discriminations which are forbidden by Section 532 of the Public Utilities Code.

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Petitioner complains that it has not received any of the moneys paid to its officers for extensions and meters. It may be well to point out that it has its remedy at law.

Petitioner asserts that "the decision and order make a piecemeal decision of the issues submitted" and that it "is unable to accept a part decision without first knowing what the balance of the decision will be". The decision is not interim as to the granting of certificates of public convenience and necessity to petitioner and to Anderson, nor as to its order that petitioner revise its tariff schedules and depreciation methods and file a map showing its service area. It is interim only to the extent that it requires petitioner to furnish the Commission with a list which may disclose even more deviations from petitioner's filed tariff rules and regulations than were disclosed at the hearings herein. The Commission has the undoubted power to make interim orders.

" * * * It is to be observed that in making said order, having the effect of limiting the scope of the investigation then pending before it, and of preventing a present consideration of the subject of taxation as germane to rate fixation, the commission was dealing strictly with the matter of its own procedure. It must be held equally clear that under the enlarged powers with which the railroad commission is invested under the provisions of sections 22 and 23 of article XII of the state constitution, the said commission has been entrusted with a very large, if not an almost unlimited, discretion, with relation to the inception, order and conduct of proceedings before it. Practically the only limitation imposed upon the commission in matters pending before it of the nature of those under review in the instant proceeding is that imposed by the terms of the federal and state constitutions, requiring that no person shall be deprived of life, liberty or property without due process of law. * * * " (Saunby v. Railroad Commission, 191 Cal. 226, 215 Pac. 904.

It is difficult to conceive how the interim portion of Decision No. 52021 could be construed as depriving petitioner of any constitutional right.

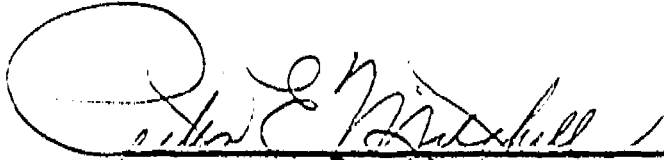
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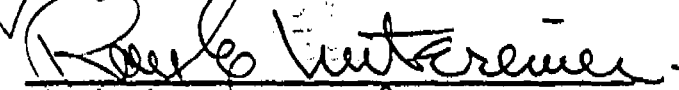
The action of the Commission, as reflected in Decision No. 52021, is in keeping with and required by the public interest; therefore,

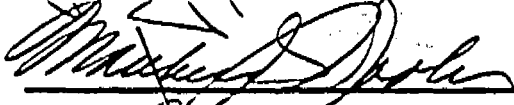
IT IS ORDERED that said petition for rehearing be and it is hereby denied.

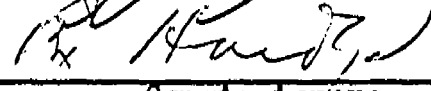
Dated at San Francisco, California, this 5th day of December, 1955.



President








Commissioners.