

ORIGINAL

Decision No. 52650

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EPHRUM AVE. COMMUNITY ASSOCIATION,
 a voluntary association,
 Complainant,
 vs.
 PETER WILLIAMS dba WILLIAMS WATER
 SERVICE,
 Defendant.

Case No. 5656

EPHRUM AVENUE COMMUNITY ASSOCIATION,
 a voluntary association,
 Complainant,
 vs.
 CALIFORNIA WATER SERVICE COMPANY,
 Defendant.

Case No. 5675

J. M. Nairn of Maas and Nairn, for complainant.
Vincent P. DiGiorgio, for Defendant Peter Williams.
George L. Williams, for Defendant California Water
 Service Company.
John D. Reader, for the Commission staff.

O P I N I O N

Complainant's Request

Ephrum Avenue Community Association, a voluntary association formed by the residents of the Ephrum Avenue Tract, consisting of approximately 80 families residing on or near Ephrum Avenue, located approximately 4 miles south of the City of Bakersfield, Kern County, filed the two above-entitled complaints in an endeavor to obtain improved water service. Case No. 5656, filed on May 28, 1955, alleged that Peter Williams, dba Williams Water Service, is acting as a public utility and requested that the Commission issue an order directing the defendant to file rates,

to submit to regulation, and to improve his facilities. Case No. 5675 was filed on August 27, 1955 after the California Water Service Company refused to distribute water within the area now served by Peter Williams. Complainant requested that the Commission order the California Water Service Company to supply water to the Ephrum Avenue area; to set rates; and to determine what provision of the extension rule, Rule and Regulation No. 50, should be used; and requested that the two cases be heard at the same time.

Public Hearing

After due notice, public hearing on the two cases was held on December 8, 1955 at Bakersfield before Commissioner Rex Hardy and Examiner M. W. Edwards. Testimony in support of the allegations contained in the complaints was presented through 13 persons residing in the area. In addition, complainant called two adverse witnesses to complete its presentation. Testimony on behalf of the alleged utility operation known as Williams Water Service was presented by its owner, Peter Williams. A vice president presented testimony on behalf of the California Water Service Company. An engineer of the Commission's staff had made an investigation of the operations of the water system of Peter Williams and presented testimony and three exhibits. The matter was submitted after the day's hearing subject to the possible filing of a closing statement within 15 days after study of the staff's showing.

Water System of Peter Williams

Williams' water system was originally established in 1934 by the father of Peter Williams when he served water free from his well as an accommodation to residents of certain land that he had sold to them. On the father's death in 1939, Peter Williams inherited half of the water system and on his mother's death in 1950,

he inherited the other half of the system. Water was furnished free until 1941 when a charge of \$2 per dwelling place per month was established, and in July 1955 the rate was raised to \$5 per dwelling place per month.

The water supply for the Williams Water Service system is produced by two wells. One is 10 inches in diameter, 100 feet deep, equipped with a 2-hp electric motor directly connected to a jet pump. The other one is 12 inches in diameter, 100 feet deep, equipped with a 5-hp electrically driven deep-well pump. It is estimated that the two wells will produce approximately 75 gallons of water per minute. There are two pressure tanks, one at each well, with a combined capacity of 865 gallons. The maximum normal operating pressure is 22 pounds per square inch. As of December 8, 1955, there were approximately 70 service connections serving some 87 customers. Distribution is effected through approximately 5,800 feet of mains, the sizes varying from 3/4 inch to 3 inches in diameter.

Defendant's Position (Peter Williams)

Peter Williams takes the position that he is rendering an accommodation service and is not a public utility under the exception provided in Section 2704 (c) of the Public Utilities Code.^{1/} Williams admitted that the system is inadequate for the number of customers served and that the pressure is inadequate, particularly during the summer months, but states that his financial condition is such that he cannot raise any more money to improve the system. Exhibit No. 4 shows that Williams owed

^{1/} Section 2704 (c) provides: "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 or delivers a portion of such water supply as a matter of accommodation to neighbors to whom no other supply of water for domestic or irrigation purposes is equally available, is not subject to the jurisdiction, control, and regulation of the Commission."

\$6,747.33 as of November 30, 1955, the largest item of which is an \$8,000 mortgage on his real and personal property and the water system, upon which \$5,613.79 was still unpaid and he also owed \$241.71 on another mortgage covering all or a portion of his properties, and \$539.95 in delinquent taxes and penalties, and an unstated amount on sewer bonds. His testimony indicated approximate assets as follows:

Six Vacant Lots at \$500 each	\$ 3,000
Two Lots with Improvements	10,000
Well and Lot	4,500
Home and Lot	5,500
Power Tools	250
Total	\$23,250

In addition he has a 1952 Dodge pickup truck which he is buying on contract, a 1953 Studebaker automobile which he says is worth \$600 but on which he still owes \$650, and property in Tulare and Fraser of low value.

For the period January 1, 1951 to November 30, 1955, Peter Williams testified, his profit from the water system before depreciation was \$943.94 and after depreciation was a loss of \$533.77. He stated that the above profit and loss figures did not include any charge for the time and labor that he and his wife have put in to operate and maintain the system. His suggestion as to a solution to the problem was for them all to get together and form a community system; he would contribute his part if others would contribute to provide the needed improvements.

Defendant's Position (California Water Service Company)

The position of the California Water Service Company is that it has not been issued a certificate to serve nor has it any public utility obligation to the Ephrum Avenue area, that Peter Williams is in fact a public utility and is obligated to serve the area, that the system is located contiguous to an area served by

California Water Service Company as a public utility, that it could supply the Ephrum Avenue area if a water main extension agreement were executed providing for the installation of adequate water facilities and upon the deposit of requisite funds in accordance with Rule 50 B2, and that the existing Peter Williams' system is of little value. Defendant requests that the complaint under Case No. 5675 be dismissed.

The defendant's witness stated that the California Water Service Company would cooperate in any further surveys of the area which the Commission thought were necessary. It is willing to sell water to Williams' system at the regular meter rates provided Williams will extend his main over to the end of its existing 6-inch main on Union Street. If required to extend its mains into the area, the defendant desired a deposit of approximately \$29,000 which would be subject to refund at the rate of 22 per cent of revenue for a period of 20 years as provided in its filed main extension rule. If required to extend under the section of the extension rule applicable to individuals, which allows 65 feet free per customer, the advance deposit would be about \$7,300 which would be subject to refund only at such times as the vacant lots in the area require water service. Williams is serving a few customers outside of the subdivided area which will probably increase the above figures if included.

Staff Investigation

The staff's engineer estimated the original undepreciated cost of the Williams' water system at \$8,192 as of August 1, 1955 and the depreciated rate base of \$4,724 for the year 1955. Under a \$2 rate for the full year of 1955 he estimated a loss of \$671. Under a \$5 rate, he estimated the net revenue at \$1,690, or a rate of return of 35.77 per cent on the depreciated rate base.

To improve the service the engineer recommended development of a new well to yield at least 100 gpm and the installation of 1,600 feet of 4-inch pipe in order to cross-connect with the existing small mains. Such improvements are estimated to cost \$7,800 and, if added to the existing rate base, will raise it up to the point where the \$5 rate would show a rate of return of 8.83 per cent.

The staff placed into the record by Exhibit 7 some additional figures assuming that 850 feet of 4-inch main is installed to connect with the existing 6-inch main of the California Water Service Company on Union Avenue and the purchase of all water requirements at California Water Service Company's present general meter rate. Under this assumption the rate of return at the \$5 rate was estimated to be 1.84 per cent after excluding all of Williams' source of water supply plant from the rate base. A similar computation using the existing source of water supply and augmenting this supply as necessary by purchase of additional water from California Water Service Company, was estimated to be a rate of return of 8.85 per cent at the \$5 rate.

Position of Complainant

The basic position of the complainant is that its members are wage earners or pensioners and that they do not have the means of raising the capital necessary to improve the system or advance a deposit to the California Water Service Company for an extension of mains. Complainant's chairman agreed that Williams was losing money on a \$2 rate and testified as to an offer by the customers to pay an added \$2 per month toward system improvements, which was not accepted by defendant because in return therefor the customers desired shares of stock in the water company. He also testified that the possibility of formation of a mutual water company or of a utility district had been considered but that the cost was so great in each case that the members had rejected each plan.

Findings and Conclusions

After considering the record herein the Commission finds and concludes that Peter Williams, doing business as Williams Water System, is a "water corporation" as defined in the Public Utilities Code and as such is a "public utility".^{2/} The Commission finds that Peter Williams is not rendering an accommodation service and is not exempt from the jurisdiction, control and regulation of the Commission. Up to the time that the \$2 monthly charge was imposed in 1941 this operation possibly was exempt from regulation. The record shows that since 1941 Peter Williams mortgaged his own personal residence to try to keep the water system going. During the period 1939 to 1946 three wells were drilled. Such wells were not drilled for irrigation purposes and one well is sufficient for the domestic needs of Peter Williams. This operation is too extensive to be classed as one primarily used for the owner's domestic purposes who sells or delivers a portion of such water supply as an accommodation to neighbors to whom no other supply of water is equally available.

The Commission also finds and concludes that system improvements are needed and that defendant Peter Williams must be allowed rates for service from his water system which will afford him a reasonable return on the existing investment and be at such level as will attract capital to make the necessary improvements. Such improvements shall include either the 4-inch pipe line to the existing main of the California Water Service Company on Union

^{2/} Section 241 defines a "water corporation" as every corporation, or person owning, controlling, operating, or managing any water system for compensation within this State. Section 216(a) states that a "public utility" includes every ... water corporation ..., where service is performed for or the commodity delivered to the public or any portion thereof.

Avenue for the purpose of augmenting the existing well water supply or the development of a new well capable of delivering water at a minimum rate of 100 gallons per minute and, in addition to either alternative, a 4-inch main to cross-connect the existing mains. However, the Commission further finds and concludes that a basic flat rate of \$4.50 per customer per month is adequate to provide a return of approximately 7 per cent on the investment including the necessary additional investment as estimated by the staff in Exhibits Nos. 6 and 7, under either one of the two plans set forth above.

Defendant Peter Williams will be allowed a reasonable period of time in which to install the improvements which he may elect from the two plans outlined herein, and additional time within which he must notify the Commission of the satisfactory completion of the improvements outlined in one of these plans.

In case Peter Williams is unwilling or unable to make the improvements ordered, or fails to report on the satisfactory completion of the ordered improvements within the time specified, the Commission will, by supplemental order, declare this territory open to service from any other water company as well as to Peter Williams and will further consider reducing the rates of defendant Williams. The record in this proceeding indicates that a basic rate of \$3 per customer per month should be adequate to provide for the expenses of operating the existing water system including a nominal return on the investment.

In view of the fact that we find that this water system has been a public utility since 1941 and the fact that Case No. 5656 was filed on May 28, 1955, we find that the increase in charges for water service rendered by Peter Williams, effective as of July 1, 1955, from \$2 to \$5 per month was without this Commission's

approval and was therefore illegal. An adjustment of \$2 per month will be ordered for those months during which each customer paid \$5, which adjustment will be ordered credited to each existing customer's future bills at the rate of \$1 per month until all charges collected in excess of \$3 per month for the period commencing July 1, 1955 and ending on the effective date of the rates authorized by this order have been refunded.

Complainant requested the Commission to determine which section of the extension rule should be applied by California Water Service Company. It is the Commission's conclusion that extension, if made, should be under Section B-2 of Rule No. 15 of California Water Service Company, which has replaced Rule and Regulation No. 50 since these complaints were filed. This section provides for extensions to serve five or more individuals for which the entire cost must be advanced subject to refund at the rate of 22 per cent of the company-wide estimated average annual revenue. We find that Section B-1 of the rule is not applicable to this situation.

California Water Service Company has expressed a willingness to cooperate and to serve the area under the basis of its filed extension rule; accordingly, we find no reason to order the company to serve the area. There is no need for the Commission to set a special rate for the service as the company has indicated the filed rate will apply. Currently this rate is Schedule BK-1, a meter rate, or Schedule BK-2R, a residential flat rate. Defendant estimated the company-wide average annual residential water bill at \$50 for refunding purposes. If Williams does not improve the service and if the association cannot raise the money to cover the full extension deposit required by California Water Service Company, the rules do not prevent Peter Williams, the association

and California Water Service Company from coming to an understanding and trying to work out an agreement subject to formal approval of the Commission and satisfactory to all parties.

The Commission finds that Peter Williams, supplying water for domestic purposes in the Ephrum Avenue area, is a public utility and as such is under the control and jurisdiction of the Public Utilities Commission of the State of California; that an order should be issued requiring Peter Williams to file rates and rules and regulations and make necessary improvements within 90 days.

O R D E R

Complaints as above-entitled having been filed with this Commission, public hearing having been held thereon, the matters having been submitted and now being ready for decision; therefore,

IT IS HEREBY ORDERED as follows:

1. That Peter Williams is authorized and directed to file after the effective date of this order, to become effective on and after March 16, 1956, and upon not less than five days' notice to the Commission and the public, the rates set forth in Appendix A attached to this order, together with rules and tariff service area map acceptable to this Commission and in accordance with the requirements of General Order No. 96.

2. That within sixty days after the effective date of this order, Peter Williams shall file with this Commission four copies of a comprehensive map, drawn to an indicated scale not smaller than 200 feet to the inch, delineating by appropriate markings the various tracts of land and territory served; the principal water production, storage and distribution facilities; and the location of the various water system properties.

3. That beginning with the year 1956, Peter Williams shall determine depreciation expense by multiplying the depreciable fixed capital by a rate of 4.4 per cent. This rate shall be used until review indicates it should be revised. Peter Williams shall review the depreciation rate using the straight-line remaining life method whenever substantial changes in depreciable fixed capital occur or at intervals of not more than five years, and shall revise the above rate in conformance with such reviews. Results of these reviews shall be submitted to the Commission.

4. That Peter Williams, within ninety days after the effective date of this order, shall improve his service by providing an additional supply of water from a new well or wells or by purchase from California Water Service Company, and shall install 1,600 feet of main at least four inches in diameter on Phoenix and Elliot Streets to cross-connect and serve water to the existing smaller mains in the Ephrum Avenue tract.

5. That Peter Williams, within one hundred twenty days after the effective date of this order shall notify this Commission in writing of his compliance with item 4 of this order. In the event that Peter Williams does not make the ordered improvements within the specified time or fails to notify this Commission of compliance or noncompliance with the provisions of item 4 as required herein, it is the Commission's intent that a supplemental decision be issued in this matter declaring this territory open to service from any other public utility water company.

6. That in the event Williams Water Service does not improve this water system as ordered herein, it is the Commission's intent to issue an appropriate order for the purpose of adjusting the authorized rates downward to reflect the investment and conditions pertaining at that time.

7. That Peter Williams shall credit each existing customer's future bills at the rate of \$1 per month for overpayment of \$2 per month, during the period commencing July 1, 1955 and ending on the effective date of the rates authorized by this order, until all charges collected in excess of \$3 per month have been refunded.

8. That Peter Williams shall set up on his books the plant accounts and depreciation reserve as of August 1, 1955, substantially as shown in Table 3-A of Exhibit No. 6.

9. That in view of the fact that California Water Service Company has expressed a willingness to serve the Ephrum Avenue area under its main extension rule, Case No. 5675 is dismissed.

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

Dated at Los Angeles, California, this 14th day of FEBRUARY, 1956.

[Signature]
President
[Signature]
[Signature]
[Signature]
[Signature]
Commissioners

APPENDIX A

Schedule No. 2R

RESIDENTIAL FLAT RATE SERVICE

APPLICABILITY

Applicable to all residential water service furnished on a flat rate basis.

TERRITORY

The unincorporated community known as the Ephrum Avenue area located approximately 4 miles south of the City of Bakersfield, Kern County.

RATES

	<u>Per 3/4-inch Service Connection per Month</u>
For a single family residence on a single lot	\$4.50
For each additional residence on the same premises served from the same service connection	3.00