

Decision No. 53368

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BEN ALI WATER COMPANY, for authority
to exercise the franchise granted by
the County of Sacramento to Sierra
Water Company, by Ordinance No. 483
of the Board of Supervisors of the
County of Sacramento, California, in
accordance with the terms of an
Agreement between Ben Ali Water Company
and Sierra Water Company, dated
November 2, 1954, in conformance to
Section X-A of General Order No. 96.

Application No. 37282
As Amended

Gail Bash for Ben Ali Water Company, applicant.

James Phelan and John N. Sapunor for Sierra
Water Company, interested party.

George F. Tinkler for the Commission staff.

O P I N I O N

On September 8, 1955, applicant Ben Ali Water Company filed its application herein. This application was subsequently amended by the filing of amendments on January 6, 1956, and on April 19, 1956. By the application, as amended, (1) applicant seeks a certificate of public convenience and necessity to exercise the franchise granted to Sierra Water Company by Ordinance No. 483 of the Board of Supervisors of Sacramento County, which said franchise is to be transferred to applicant by Sierra Water Company, and (2) applicant requests the Commission to approve the terms of a certain refund agreement between Sierra Water Company and Ben Ali Water Company, which said agreement provides for the transfer to Ben Ali Water Company of a water system, including water production and distribution facilities, on making payments equal to 29 per cent

of the gross revenues from the System for a period not to exceed 15-1/6 years from the date of initiation of service to the consumers, provided that in no event shall the payments exceed an amount to be stipulated as the installed cost of the said facilities, without interest. The proposed agreement, a copy of which is attached to the application as Exhibit "B" deviates from Ben Ali Water Company's currently filed main extension rule which provides for a refund of 22 per cent of gross revenues for a maximum period of 20 years.

Public hearing was held before Examiner Cline at Sacramento on May 3, 1956, at which time the matter was taken under submission.

A copy of the franchise granted to Sierra Water Company by Ordinance No. 483 of the County of Sacramento permitting the installation, maintenance, and use of a water distribution and transmission system upon the public streets of said county in the area described in the franchise, is attached to the application, as amended. This franchise was granted by the said county in accordance with the Broughton Act for a term of fifty years. Commencing five years after the date of said franchise, a fee is payable annually to the County of Sacramento equivalent to 2 per cent of the gross receipts arising from the use, operation, or possession of said franchise.

The area covered by the franchise is the area known as Swanston Estates. At the hearing evidence was introduced to show that applicant has furnished water to each residence within Swanston estates as individual applications have been made for service and that as of December 31, 1955, applicant rendered water service to 495 consumers within this area without competition. The residents of the area are dependent upon applicant for water service to meet their respective needs and requirements, present and prospective. The distribution mains within Swanston Estates are so connected with the distribution mains in applicant's certificated territory that

they are an integral part of applicant's entire distribution system.

No objection to the granting of the requested certificate has been entered.

With respect to the proposed deviation from applicant's main extension rule the evidence shows that the refund basis of 29 per cent for a term of 15-1/6 years was mutually agreed upon by Ben Ali Water Company and Sierra Water Company as a compromise between the 35 per cent refund for 10 years provision in effect when negotiations were initiated and the 22 per cent refund for 20 years provision in effect when the agreement was consummated. The percentage times the years set forth in the proposed agreement equals 4.4 as required by Decision No. 50580. Sierra Water Company was fully aware of the fact that the proposed agreement constitutes a deviation from applicant's filed main extension rule.

Exhibit No. 4 shows that the total cost of the water system installed by Sierra Water Company in Swanston Estates during the period September, 1954, to August, 1955, amounted to \$102,012.78 and that an estimated \$28,665.19 will subsequently be expended in completing the system. Of the \$102,012.78 already expended, \$12,111.86 represents costs for well and pump facilities and of the \$28,665.19 to be expended, \$3,500 represents the cost of meters. The main extension rule was designed to reimburse the subdivider for the cost of main extension facilities. Under applicant's filed rule and under the modification provided in the agreement proposed herein which is based on the 4.4 formula, it is anticipated that no more than the cost of the main extensions will be refunded to the subdivider and that the refund agreement will ultimately result in the contribution by the subdivider of the meters and the back-up facilities such as wells and pumps.

After consideration it is found as a fact that present and future public convenience and necessity require and will require the exercise by applicant of the franchise granted to Sierra Water Company by Ordinance No. 483 of the Board of Supervisors of Sacramento County which said franchise is to be transferred to applicant by Sierra Water Company pursuant to the provisions of a proposed agreement attached to the application herein and designated Exhibit "B".

The certificate of public convenience and necessity herein granted is subject to the following provisions of law:

That the Commission shall have no power to authorize the capitalization of the franchise involved herein or this certificate of public convenience and necessity or the right to own, operate or enjoy such franchise or certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, certificate of public convenience and necessity or right.

The Commission further finds that the agreement between applicant and Sierra Water Company as proposed herein is not adverse to the public interest.

O R D E R

The above-entitled application having been filed, a public hearing having been held, the matter having been submitted and now being ready for decision,

It is Hereby Ordered as follows:

1. That a certificate of public convenience and necessity be and it is granted to Ben Ali Water Company, the applicant herein, to exercise the rights and privileges granted to Sierra Water Company by the County of Sacramento, by Ordinance No. 483, adopted October 6, 1954, which said franchise is to be transferred to applicant by said Sierra Water Company.

2. That applicant is authorized to execute and carry out the terms and conditions of the proposed agreement between Sierra Water Company and Ben Ali Water Company, the applicant, attached to the application herein as Exhibit "B".

3. That applicant shall file with this Commission within thirty days after the effective date of this order, two certified copies of the said agreement as executed, together with a statement of the date on which the agreement is deemed to have become effective.

4. Within thirty days after the consummation of each transfer pursuant to said agreement a copy of each instrument by which said transfers are effected shall be filed with this Commission.

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

Dated at San Francisco, California, this 10th day of July, 1956.

[Signature]
President

[Signature]

[Signature]

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Commissioners