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ORIGINAL

Decision 54495

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SUTTER BUTTE CANAL CO. for authority to transfer all of its public utility property to RICHVALE IRRIGATION DISTRICT, BIGGS-WEST GRIDLEY WATER DISTRICT, SUTTER EXTENSION WATER DISTRICT and to BUTTE WATER DISTRICT.	)	Application No. 38259 Amended

Brobeck, Phleger & Harrison by George R. Rives and Gordon E. Davis, for Sutter Butte Canal Co.
Minasian & Minasian by P. J. Minasian, for Richvale Irrigation District, Biggs-West Gridley Water District, Sutter Extension Water District and Butte Water District.
Albert E. Sheets, for Ernest E. Hatch, protestant.
Eldon N. Dye for California Farm Bureau Federation, interested party.
George F. Tinkler, for the Commission staff.

FIRST SUPPLEMENTAL OPINION AND ORDER

By this Commission's Decision No. 54048, issued November 5, 1956, in the above-entitled matter, Sutter Butte Canal Co. was authorized to transfer its public utility properties to four districts. Under the terms of the transfer agreements, all of the utility's service area would be included within the boundaries of a district except two fringe areas. The lands within the fringe areas would be served upon the same terms as lands within district boundaries, except that the districts would charge either the utility's present rates or the rates within the district plus a fifty per cent surcharge, whichever is greater. The utility has a tariff rule that if a customer fails to take water within a five year period, the utility may discontinue serving him. Under the transfer agreement the districts would adopt the five-year rule and

apply it to fringe area owners.

The decision authorizing the transfer held there was no logical basis for charging the utility's higher rate, it being agreed that the fifty per cent surcharge on the district rate fairly equalized the expenses and assessments paid by district members. The opinion states that the utility never invoked the five-year rule and that the districts have no such rule for their members and it was held that the rule serves little or no purpose but if invoked certain lands could forever be precluded from the right to claim water. Transfer was authorized provided the alternate rates of the utility and the five-year rules were to be deleted from the transfer agreements.

Petitions for modification of the Commission's order were filed by the utility on November 23, 1956, and by a group of 30 water users on December 8, 1956. A statement in support of the petition was filed by the California Farm Bureau Federation on December 4, 1956. The petition of the utility alleged that substantial evidence, which was accorded little or no notice in the decision, shows clearly that the single protestant's objections are without merit but that, nevertheless, the utility in good faith endeavored to obtain the consent of the districts to the two conditions.

The two districts involved in the fringe area problem have amended the agreements by deleting the alternative rate provision. The only rate they may charge fringe area landowners is the rate effective at the time within their boundaries (including assessments, if any, and water tolls) plus fifty per cent of such amount. The districts determined, however, that they are unable to agree to any amendment deleting the five-year rule. They advise that they cannot obligate themselves to serve water in perpetuity to lands whose owners have no obligation to take water or to contribute to the support and maintenance of the district at any time.

No sale of any portion of the utility can be consummated, therefore, as the failure of the sale to the two districts involved in the fringe area problem blocks any sale to the other districts also.

The utility's petition asks that the Commission's order be modified (1) by deleting the five-year rule requirement set forth in paragraph 2 of the order, (2) by amending paragraph 5 so as to make it clear that the utility need not refund prepaid service charges to its customers upon condition that the purchasing districts serving such customers assume all of the utility's obligations owed such customers for such prepayments, and (3) by amending the order so as to state specifically that nothing therein shall impose any obligation upon any of the four purchasing districts to serve any lands outside their boundaries other than the obligation specifically assumed by Biggs-West Gridley Water District and by Richvale Irrigation District.

Further hearing in the matter was held before Commissioner C. Lyn Fox and Examiner F. Everett Emerson on January 16, 1957, at Sacramento. The hearing was limited to the presentation of new evidence. The matter was taken under submission after oral argument. The evidence adduced concerned, almost exclusively, the subject of the five-year rule.

The further evidence presented on January 16, 1957, consisted of the oral testimony of seven witnesses and the introduction of three new exhibits. Such evidence may be summarized as follows.

The utility witness testified that no applicant for service has ever been refused by reason of the five-year rule. In this sense the rule has not been invoked. The further fact, however, is that no application for service has ever been made for service to lands, which for five years have not been served. Hence, there has

been no occasion to invoke the rule. The utility's experience has been that when a parcel of land has not taken service for five years, no subsequent request for utility service is made and that the land, if irrigated at all, is thereafter irrigated under permanent arrangements for the use of new and nonutility sources such as pumping from wells or drainage ditches or some combination of such sources. The utility attributes such situation, in part at least, to the general knowledge that its tariff rules permit it to refuse service to lands unserved for a five-year period. With respect to the fringe area land problem, exhibits 5 and 6 in this proceeding clearly show the decreasing acreage served by the utility. During the periods shown on these exhibits two large fringe area land holders (Schorr and Hatch, the latter being the single protestant in this matter) made provisions to irrigate by means of pumping nonutility water.

According to the utility witness, the utility as presently constituted, has served at one time or another approximately 28,000 acres of land. On the average, however, it serves only about 18,000 acres in any one year. While diversity accounts for some of the difference, the bulk of the difference results from lands discontinuing service by reasons of change of use or development of substitute sources of supply. If all of the 28,000 acres were to demand service, such acreage could not be served without severe curtailment and proration of deliveries and available water to all users. The stability of the entire area as well as that of the utility would thus be seriously affected. The utility's five-year rule, therefore, becomes a very essential control directly contributing to stability of both water and farming operations. In addition it affects the cost of service since in many instances it would be quite costly again to undertake service to lands which had not been served for five years or more. The position of the utility,

as expressed by the witness, is that it is only fair and reasonable that land not served for a period of five years should be put in the same service availability category as lands susceptible of service but never served.

The utility witness also testified that the five-year rule was applied when delineating the boundaries of that portion of Butte Water District in Sutter County and that by so doing, about 2,100 acres, served at one time or another in the past, had been eliminated. Most of these lands pump water, taking advantage of water in drains or from wells which enjoy a high water level because of irrigation from the utility's canal system in adjoining areas. The rule was also used in defining the fringe area lands to be served by the Biggs-West Gridley Water District and the Richvale Irrigation District.

With respect to the situation of the single protestant in this proceeding, the utility witness clarified and corrected the earlier record from which this Commission stated in the opinion portion of Decision No. 54048 that protestant had not purchased water since 1952 with the exception of the year 1956 when he required water for 150 acres of rice. The record is now clear that service taken by protestant during 1956 consisted solely of service to 25 acres of general crops.

The utility witness also testified that complete publicity by means of publishing legal notices, advertising and news articles in the public press had been given respecting the establishment of the five-year rule and that no person had protested its adoption. In this respect we take notice of the fact that after due notice and public hearing, this Commission found the five-year rule, among other things, to be just and reasonable and authorized the utility to file the same by the Commission's Decision No. 46612 in Application No. 32199 issued January 3, 1952. The single protestant

in this proceeding is presently subject to this five-year rule and the utility may invoke it as respects his or any other customer's operations at any appropriate time.

Each of the districts had one of their directors testify as to the actions of the districts respecting the acceptability of the five-year rule to the districts. In addition, testimony was offered respecting certain farming methods and operations. Basically, the districts are unwilling to take on an undefined responsibility for serving land that has shown no desire for service over a five-year period. Landowners outside the districts who have not availed themselves of the opportunity to take water over a five-year period have forfeited their right to any claim for future water service in the eyes of the districts. The districts maintain that their first responsibility is to the landowners within the district and that any responsibility undertaken with respect to the serving of lands outside the district must be clearly defined. The elimination of the five-year rule would place the districts in the position of holding themselves in readiness to serve lands outside their boundaries which at any future date might demand service, without such outside lands having contributed anything towards meeting the costs of supplying the facilities by which service would be rendered. During the periods when the outside lands did not receive service, the outside landholder would completely avoid any financial payment to the district. During all periods, however, the landholder within the district would be paying his share of the bond and interest payments as well as the other obligations of the districts. Such situation, the districts feel, would be eminently unfair.

In our Decision No. 54048 we stated that it would appear that by invocation of the five-year rule, the land affected would be forever precluded from the right to claim water. Apparently in response to such observation, the Biggs-West Gridley Water District

adopted a resolution on January 10, 1957, by which this district offers to include any or all of five fringe area parcels within the district with the right of service on payment of the same water tolls and subject to the same assessments as other lands in the district provided an application for inclusion in the district is (1) filed during 1957, (2) contains an accurate legal description of the parcel, (3) is accompanied by an inclusion fee of $22.50 per acre plus the cost of the inclusion proceedings and (4) contains an agreement that the cost of construction of laterals and drains, if any are required, shall be borne by the lands to be included. A copy of such resolution is Exhibit No. 7 in this proceeding. In effect, therefore, certain presently designated fringe area lands of this district could, by proper application, become part of the distrct. Such fringe area parcels include those of the single protestant in this proceeding. The witness for the Richvale Irrigation District testified that the board of directors of that district was ready to adopt a similar resolution respecting the fringe area lands of such district.

A witness for the 30 signers of a petition for modification of Decision No. 54048 testified as to certain farming operations and in addition stated that in his opinion the application of the five-year rule would impose no hardship whatsoever on lands suitable to the growing of rice.

Protestant's testimony was a reiteration of earlier testimony and a clarification of some of the details of his own pumping and supply operations. It is of record that this party has expended approximately $25,000 in installing pumps and facilities for using water that drains off or infiltrates from the lands of others and that his service from the utility is minor and has been decreasing over the past several years.

Upon a review of the entire record and after consideration of the new evidence adduced at the further hearing in this matter

and after careful study of the arguments of counsel for the various parties, we find the conclusion inescapable that transfer of the utility properties to the districts under the provisions of the amended agreements now before us is not adverse to the public interest. The order heretofore issued in this matter should be modified as prayed for by petitioners and the order herein will so provide. By so doing, protestant will remain in the same position, in regard to the five-year rule, with the district that he now is with respect to the utility, a situation which we find to be fair and reasonable to all concerned. In addition, protestant, and others who may be similarly concerned, now have an avenue open to them through which they may join the district if they should so desire at any time during the year 1957, a course not available heretofore.

Based upon the evidence and our findings and conclusions thereon,

IT IS HEREBY ORDERED as follows:

1. Ordering paragraph 2 of Decision No. 54048 is modified so as to read as follows:

> "2. That the authority granted in paragraph 1 hereof is made subject to the condition that Sutter Butte Canal Co. shall amend its agreement with the districts heretofore mentioned by deleting therefrom any provision requiring said landowners to pay the present rates of Sutter Butte Canal Co. in the alternative."

A copy of said amended agreement shall be filed with this Commission within sixty days after the date hereof.

2. Ordering paragraph 5 of Decision No. 54048, as it pertains to the subject of the refunding of deposits, was intended primarily to apply to customers' deposits for the establishment of credit or for extension of facilities. As a matter of clarification of said paragraph 5, we now state that the Sutter Butte Canal Co. need not refund prepaid service charges to its customers upon the

condition that the purchasing districts serving such customers assume all of the utility's obligations owed such customers for such prepayments.

3. Nothing herein nor in Decision No. 54048 shall impose any obligation on any of the four purchasing districts to serve any lands outside their boundaries other than the obligation specifically assumed by Biggs-West Gridley Water District and by Richvale Irrigation District by the respective agreements of said districts with Sutter Butte Canal Co.

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

Dated at San Francisco, California, this 5th day of FEBRUARY, 1957.

President

Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.