

**ORIGINAL**Decision No. 54757

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 LAKEWOOD WATER & POWER COMPANY, a  
 corporation, for an order authorizing  
 applicant to increase its water rates.

Application No. 37844

OPINION AND ORDER REQUIRING UTILITY TO MAKE  
 AVAILABLE CERTAIN BOOKS AND RECORDS

Lakewood Water & Power Company, a California corporation (hereinafter referred to as "the utility"), by Application No. 37844, seeks an order of this Commission authorizing an increase in its water rates.

Public hearings were held in Lakewood on September 26, November 28, 29 and 30, 1956 before Commissioner Rex Hardy and Examiner Stewart Warner.

In support of its application for a rate increase, the utility introduced evidence which revealed that from some time in 1950 until June, 1956, the utility paid to Mutual Pipeline and Construction Company (hereinafter referred to as "Mutual") for labor and equipment furnished by Mutual for the installation of water mains, services and fire hydrants the sum of \$818,578. This is the total sum paid for installations by the utility during this period.

The record disclosed that Mutual is an unincorporated enterprise engaged in the business of pipeline construction and that the majority portion of the business is owned by the wife, adult son, minor daughter and brother-in-law of Lee T. Hollopeter, the general manager, secretary-treasurer, and one of the directors of the utility.

It was also shown that the California State Contractor's License under which Mutual does business is issued in the name of

Mr. Hollopeter's wife. Mutual's business office occupies space controlled by Mr. Hollopeter at the same address where Mr. Hollopeter maintains his own personal office. The utility's business office is in the immediate vicinity. The record is clear from the testimony of Mr. Hollopeter himself that he dominates and controls the business activities of Mutual through the medium of the members of his family.

During the period in question, 1950 to June, 1956, the utility's chief engineer negotiated with the general manager of Mutual relative to construction contracts. After these parties arrived at an adjusted figure, the contract was submitted to Mr. Hollopeter. In this period, while unit costs of work performed by Mutual for the utility were increasing, no bids were received by the utility for pipeline construction work.

The chief engineer is subordinate and responsible to Mr. Hollopeter, the general manager. As general manager, Mr. Hollopeter has full authority to hire and fire personnel, including the chief engineer, and has authority to extend contracts and limited authority to modify contracts.

The record also revealed that the president and the two vice-presidents of the utility have many other business interests and do not devote full time to the utility's operations.

Upon these facts, having been disclosed by the record, the Commission staff representative made a motion that the utility be directed to make available to the staff the books and records of Mutual for the purpose of determining the reasonableness of the charges of Mutual to the utility, which charges appear on the books of the utility.

It is upon that motion that this Commission is now asked to

rule.

It is a fundamental principle in rate making proceedings that all charges made by a utility against its ratepayers be reasonable. (Smyth v. Ames, 169 U.S. 466, 544-545, 42 L. ed. 819, 848-849.) It is the duty of this Commission to prevent a utility from passing on to the ratepayers unreasonable costs of materials or services.

(Western Distributing Co. v. Public Serv. Comm., 285 U.S. 119, 126-127, 76 L. ed. 655; Dayton Power & Light Co. v. Public Utilities Comm., 292 U.S. 290, 295, 78 L. ed. 1267; Pacific Tel. & Tel. Co. v. Public Utilities Comm., 34 Cal. (2d) 822, 826.)

Moreover, the burden of proof is upon the utility, if it is to prevail, to establish the reasonableness of such charges. It does not meet this burden by proving its books of account or the fact that the charges were incurred. In addition, there must be independent proof in the record of reasonableness of the charges.

(Public Service Coordinated etc. Co. v. State of New Jersey (Supreme Court of New Jersey), 74 Atl. (2d) 580, 591-592.)

While it is perhaps true that, in most instances, the contract price can be regarded as a reasonable measure of the cost to the ratepayer, this is not the situation where there are absent the usual safeguards of bargaining and competition. When there is a lack of arm's length dealing, brought about by the relationship of the parties, this Commission is entitled to a fair showing of the reasonableness of such costs, although this may involve the production of evidence which would not otherwise be required.

Based upon the evidence thus far adduced, we find that there exists a relationship of trust and confidence between Mr. Holloper and the utility and that there exists a like relationship between him and the construction company. We, also, find that the relationship

between Mr. Hollopeter and the utility, on the one hand, and between him and the construction company, on the other hand, is such that he has a full opportunity to unlawfully and prejudicially affect the relationship between the utility and the construction company to the detriment of the ratepayers of the utility. We do not say that Mr. Hollopeter has so acted. What we do say is that the Commission is entitled to a full disclosure of all elements of the transactions between the utility and the construction company for the purpose of ascertaining if any of those transactions constitute unreasonable charges against the utility to the detriment of the ratepayers of the utility.

We further find that, in order that this Commission be fully advised whether undue advantage has been taken of the existing situation to impose an unreasonable burden upon this utility and on its ratepayers, the public interest requires that the books and records of the construction company be made available to agents and representatives of the Commission.

O R D E R

For the reasons stated in the foregoing opinion,

IT IS ORDERED that the motion of the Commission staff representative be granted.

IT IS FURTHER ORDERED that Mr. Hollopeter and the utility cause the books of account of the construction company and supporting data relating to the transactions between the utility and the construction company to be made available within twenty days from date hereof to the authorized agents and representatives of the Commission for their examination. Should said books of account and supporting data be not made available, the Commission will give

consideration to dismissing the rate increase application herein or removing it from the calendar until this order has been complied with.

Dated at San Diego, California, this 26th day of March, 1957.

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

Commissioner Rex Hardy abstains from signing this decision.