

Decision No. 55447

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA FARM BUREAU FEDERATION, )  
a corporation, )  
Complainant, )

vs. )

Case No. 5797

HAPPY VALLEY WATER COMPANY, )  
a corporation, )  
Defendant. )

Joseph Q. Joynt and Bert Buzzini, for  
complainant;  
Bacigalupi, Elkus & Salinger by Tadini  
Bacigalupi, for defendant;  
Martin J. Porter, for the Commission staff.

O P I N I O N

Complaint

By the above-entitled complaint, filed July 11, 1956, California Farm Bureau Federation, a non-profit corporation, on behalf of the Shasta County Farm Bureau, one of 54 component members of complainant, and on behalf of numerous members within the service area of defendant seeks (1) a finding of this Commission that the water service rendered and offered by defendant is inadequate, unjust, inefficient, unreasonable and contrary to public convenience and necessity, and (2) an order of this Commission requiring defendant to provide a standard of service sufficient to meet the needs of defendant's customers.

Complainant alleges that the water delivery schedules of defendant are irregular, erratic, undependable, infrequent, inadequate and so unreasonable as to cause water users to lose pasture, berry and garden crops due to infrequent irrigation; that delivery schedules

of water do not comply nor conform with defendant's rules and regulations; that the unreasonable length of time between water deliveries has caused and is causing irreparable damage and financial loss to customers; that defendant has refused to cooperate in providing service; and that defendant remains indifferent and apathetic to the needs and convenience of its customers and their unrecoverable losses.

Answer

Defendant is a public utility water corporation, having its principal place of business located in Olinda, Shasta County, engaged, among other things, in furnishing irrigation water service for the public generally in portions of Shasta County included in the Igo, Ono and Olinda districts. Defendant filed its answer on July 27, 1956, denying all of the allegations of complainant. Defendant alleges that it has made every effort commensurate with its financial and physical ability to tender adequate, just, sufficient and reasonable service and to deliver schedules of water which are regular, frequent, adequate and dependable to prevent loss of pasture, berry and/or garden crops. Defendant further alleges that its revenues are and have been inadequate, that the system has been kept in operation only by subsidizing its operations; that in 1950, it applied to this Commission for a rate increase which would provide a rate of return of one per cent of its capital investment but that such application was denied and that because of such denial the system has continued to deteriorate and insufficient funds have been obtained to make improvements necessary to establish an efficient system or to improve the system; that it is ready, willing and anxious to serve its customers to the best of its financial ability, predicated on a fair return; and, that for more than 25 years its distribution system has operated

at a financial loss, and since 1950, by reason of the order of this Commission it has been forced to operate at a loss.

Hearing

The matter was ready for hearing and in fact was set to be heard in October, 1956. At the request of complainant, it was removed from the hearing calendar because defendant had indicated its intention of filing a rate increase application. It was anticipated that by so doing the financial aspects of defendant's operations would be placed clearly before the Commission at a hearing on the consolidated matters. No such filing was forthcoming, however, and the complaint was returned to the calendar and hearing held before Examiner F. Everett Emerson on May 8, 9 and 10, 1957, at Olinda. The matter was submitted, after oral argument, on May 10, 1957.

Historical Note

The water system now owned and operated by defendant was originally established about 1870 by Dry Creek Tunnel and Fluming Company in order to provide water for its mining operations. In 1907, the lands and water rights were acquired by Happy Valley Land and Water Company, a public utility corporation which operated the system until 1917, when it was transferred to Happy Valley Irrigation District. The District became bankrupt and was dissolved in 1925. Upon dissolution of the District, defendant herein was formed to take over the water system and has since continuously operated the system.

The system has three basic operational divisions.<sup>1/</sup> The transmission and distribution system presently contains approximately 17 miles of main canal and 53 miles of lateral ditches. During 1956,

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<sup>1/</sup> A complete description of the system and its divisional grouping is set forth in this Commission's Decision No. 42594, in Application No. 29577, rendered March 8, 1949.

18 customers, all of whom took canalside deliveries, were located in Divisions 1 and 2. Also within Division 2 is a ditch delivery to the town of Igo. Division 3, also known as the Olinda Division, is served primarily by the laterals, and contains about 190 customers. The complaint herein concerns the Olinda Division and the water deliveries within such division.

Defendant's most recent proceeding before this Commission was its Application No. 31486 for authority to increase rates. Decision No. 45596 in such matter was issued on April 16, 1951.

Nature of Evidence

Complainant presented the testimony of 18 witnesses, all of whom are water users in defendant's Olinda Division and the majority of whom have been customers of defendant for many years. The testimony of these witnesses covered complaints respecting nearly every phase of defendant's operations. If such items may be termed "extremes", the complaints ranged from refusal to serve water to a failure to bill for water actually delivered. The universal complaint, however, concerned lack of water deliveries. Insufficient quantities, infrequently and irregularly delivered, particularly during the year 1956, although gradually worsening over the past 4 or 5-year period, have worked distinct and irreparable hardships on a large number of water users, according to their testimony. Extensive loss of pasture, due to lack of water, forced many to sell off their animals. As many as 6,000 newly-planted strawberry plants of one customer died for lack of water deliveries. Householders were without water, could not use their normal household sanitary facilities and had to haul water several miles in order to meet their minimum needs. Nearly all witnesses attributed such situations to the negligence of the utility, pointing out that ditches have had little or no cleaning or other

maintenance for several years; that offers of help to do such work by them have been refused by the utility; that the manager of the utility, the secretary of the corporation, disclaimed any further connection with the utility in July, 1956, and made no effort, either before or after that time, to alleviate the distress caused by lack of water deliveries; that water was running to waste through broken ditches when most needed and that no utility effort was made to correct such conditions; that promised deliveries were not made and that the periods between deliveries have lengthened to as much as 32 days. Every witness stated that he or she not only could have used more water but that he or she needed more water and would have purchased more water if it had been available. None of the testimony of complainant's witnesses was controverted.

Defendant offered the testimony of two witnesses. The first witness was defendant's vice-president and, for some months past, its only employee. His duties as an employee consist of general caretaking, operation and maintenance of the entire system. During 1956, he was assisted by two young men employed as ditch tenders, who tended the weirs and other turnouts in the Olinda Division. These young men were inexperienced but, according to the witness, were the only help available. The witness characterized the ditch system generally as "in very poor condition, from almost inoperable to fair condition and usually I have some small portion that is back to full capacity, but it is a very minimum amount."

He further stated "... the whole system is in a deteriorated condition, that is, repairs have been made over such a period of years as temporary repairs. Working at the -- -- always working at the worst damaged spot until the whole system -- -- there isn't any inch of it that compared to the way we operated 10 or 15 years ago. It is in bad repair, all of it."

The witness, who has been operating the physical system since 1931, testified that during the 1930's and 1940's, water deliveries were normally made weekly and at times as many as three times weekly. In 1950-51, deliveries were cut down to a 10-day rotation in order to curtail the expenses of operation and such period was continued until August, 1955, when, for the balance of that year, the period between deliveries was lengthened to 12 days. In 1956, a 12-day period prevailed for a very short time then lengthened to 14 days and finally to no regular period. Such conditions were attributed to inability to get water through the system to the points of delivery, a situation resulting directly from lack of ditch cleaning and maintenance over a period of years. In the words of the witness, "we have had inexperienced help since 1951, operating as we do now, and we still could not get enough water through to make up for our errors and poor judgment." The witness could not be in two places at the same time; when his presence was necessary at the source of supply, service or other portions of the system suffered and vice versa. In 1956, it became physically impossible for him alone to regulate the supply, attempt to make repairs and to make deliveries too. The system all but collapsed. This witness could foresee only a worsened condition during 1957.

Defendant's second witness had been the secretary-manager of the utility from about 1932 until October, 1956. Since the end of October, 1956, when he resigned, he has continued to keep the books and accounts of defendant. His testimony was primarily concerned with the financial aspects of defendant's operations and in connection therewith introduced three exhibits. The exhibits and his testimony indicate that the utility operations of defendant have long been operated at a serious loss and have been made possible only by "subsidies"

from non-utility operations of the company. He testified: "Increasing rates (for water service) sufficient to make this thing normally operative is fantastic to even think of". As a possible solution to the overall problem, it was suggested that the utility might confine its operations to the production, transmission and distribution facilities encompassed by defendant's Division No. 1 and Division No. 2 and provide wholesale deliveries to Harbinson Reservoir, the beginning of Division No. 3. Exhibit No. 3 in this proceeding, while purporting to indicate the costs of such a type of operation, in reality indicates the revenue per miners' inch needed to provide a full return to the utility.

An accountant for the Commission staff reviewed the records and accounts of defendant and presented the results of such study in evidence by oral testimony and by Exhibit No. 4 in this proceeding. Such exhibit covers a six-year period ended December 31, 1956, and in substance shows that utility operating income during such period was approximately \$62,500 less than total operating expenses. If depreciation expense is neglected, expenses still totaled \$6,066 more than revenues for the six-year period. This latter amount constitutes the sum contributed to utility operations by the non-utility revenues of defendant. During the same period, the non-utility operations of defendant produced a profit of \$13,925 and as of the end of 1956, defendant had on hand approximately \$22,000 in cash.

#### Conclusions

The record is clear and undisputed that the water service rendered and offered by defendant is inadequate and insufficient to meet the present-day needs of its patrons; that deliveries of water during the years 1955 and 1956 were erratic, undependable and infrequent and were not made in conformity with defendant's tariffs; and we find the facts so to be.

Defendant's position in this matter should generally be viewed in the light of its history and also in the light of this Commission's decisions regarding its financial situation, particularly as respects its last two rate proceedings. In this connection, we take official notice of Decision No. 42594, (48 C.P.U.C. 547) issued March 8, 1949, and of Decision No. 45596, issued April 16, 1951. Contrary to defendant's allegation that rate relief has been denied and that it has been forced to operate at a loss, rate relief was granted in each instance. In the first instance, rates were increased 100 per cent, albeit the relief accorded was only that necessary to halt operating losses. In the second instance, rates were increased an additional 75 per cent, in order to halt continuing operating losses and placed at such levels as the record indicated was the limit of the ability of customers to pay. In each instance, as the respective decisions disclose, the utility was in a precarious financial condition in so far as utility operations were concerned and utility operations had been continued only through "subsidy" from non-utility operations. In the first instance the utility sought only to halt its losses; in the second, it sought a return on its "investment."

In so far as a return on "investment" is concerned, two points are of primary importance. First, in our opinion the utility's fixed capital is overburdened with plant items inherited from the defunct water district. Especially is this true of the costly tunnel and dam construction done by the district, work which would have been improvident for a utility operation of this character to have undertaken. In addition, an historical cost rate base derived from this utility's books becomes meaningless as a measure of any "value" of the utility property used and useful in serving the public or as any measure of "investment." In reality, the utility has little or no



"investment" in facilities. Second, the economic status of the territory served by the utility for some years has been and now is such that charges for water deliveries designed to produce revenues sufficient to meet all the expenses of operation, including depreciation, and in addition provide a rate of return related to any reasonable rate base, would be theoretical only, completely unrealistic and an idle gesture. Plainly stated, the testimony has been convincing that the public is unable to pay more.

It must be kept in mind that this water operation was conceived, designed and built to supply the large mining and irrigation demands associated with large land holdings, extensive orchards and large scale farming operations. It so served for many years. The complexion of the area has changed, however. Only a very few of the large operations now remain. Partitioning and subdividing of once large parcels of land into many small parcels, some being but little larger than city lots, with the attendant changes in water use characteristics, has placed ever-increasing burdens both on operating personnel and on the expenses of operation. In an attempt to alleviate such situation in 1951, the utility was authorized to refuse to establish any new deliveries to parcels of less than 10 acres in size. Apparently a permanent injury to system operations had already been sustained, however, as the situation since that time has in no manner improved. Today, 190 water users in the aggregate have a lesser water demand than did one-fifth that number twenty years ago.

The condition of canals, flumes and ditches has deteriorated to such a state, that, even though the utility has a plentiful source of water, it can not convey the water to its customers in quantities sufficient to satisfy their needs, let alone their desires. With some justification, the utility claims it cannot properly maintain the ditches due to lack of funds. The customers plead for more water yet repeatedly testify that they can pay no more. A "vicious circle" is apparent. Utility and customer, face the same dilemma.

Defendant's management, directors and stockholders have been less than alert. It is difficult to discover any instance in which any degree of foresight has been exercised towards either recognizing the changing characteristics of the area and preparing to meet such changes or attempting to encourage greater usage and sale of water. If deliberate eventual collapse of the system had been planned, it is difficult to see how a more successful approach could have been devised than the selling off of the numerous small parcels of land engaged in by defendant in its non-utility land operations. Even in 1956, when the water system was experiencing its most agonizing difficulties, defendant sold parcels of 7.09, 5.88 and 1.7 acres of land. It seems readily apparent that much of defendant's difficulty stems from its own ineffectual management.

Relatively recently a committee of water users has been formed to study the water problems of the Olinda Division. They are seeking a solution whereby both the utility and the customers may be benefited. The record indicates that they have received no cooperation whatever from the utility management and have been unsuccessful in finding a solution. However, the record in this complaint proceeding does provide a possible solution and one which this Commission strongly advises be very seriously considered by all concerned. Physically, this overall system may be divided into two sections; one being the existing Divisions 1 and 2 and the second being the balance of the system beginning at Harbinson Reservoir and containing all of the ditches and laterals within Division 3. If the water users in the Olinda Division were to take over, operate and maintain this latter section, purchasing water at the intake to Harbinson Reservoir in

wholesale quantities, they could undoubtedly, by cooperative and concerted effort, soon place this portion of the system in adequate operation. Their combined labor force might accomplish in one season that which the utility has not done in ten years. The utility could then concentrate its efforts on the supply and delivery of the large heads of water for which Divisions 1 and 2 were designed and thereby be relieved of both the personnel and expense burdens of the many small deliveries demanded by the 190 customers in the Olinda Division. Judging from the exhibits in evidence in this proceeding, such a solution may be within the financial ability of the customers in so far as acquisition of the facilities is concerned, for the books of the utility indicate that as of December 31, 1956, the total original cost of all of the facilities in the Olinda Division, including Harbison Reservoir, all of the ditches and all meters or measuring devices, is approximately \$32,767. Subtracting accumulated depreciation of \$12,524 from such total leaves an indicated depreciated historical cost of about \$20,243. Assuming that the users could not obtain the facilities for less than such a sum and that the 190 users were equally to share, the facilities cost per user would be on the order of \$107.

The probable cost of wholesale purchases of water at Harbison Reservoir cannot be determined or even estimated from the evidence in this proceeding. Defendant's Exhibit No. 3, while purporting to indicate such cost, is deficient in this respect. The most that can be gained from the exhibit and the oral testimony thereon is that the wholesale cost of water must be a lesser one than that shown. The exhibit is valueless for the purpose intended.

Defendant is not now burdened with the salary of a secretary manager, since that person has resigned, and can and should immediately utilize the money thus released for improvement of the ditch system.

In summary, we conclude that the allegations of complainant have in each instance been proven by clear and convincing evidence. We commend to it the early and serious undertaking of the solution hereinabove discussed.

O R D E R

Public hearing having been held, the Commission having been fully informed, the matter having been submitted and now being ready for decision based upon the evidence and in view of the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that the defendant Happy Valley Water Company, a corporation, shall forthwith provide a proper and reasonable standard of service sufficient to meet the needs of its customers in strict compliance with its filed tariffs including its rule and regulation pertaining to periods of water deliveries and beginning not later than September 15, 1957, defendant shall submit to this Commission at thirty-day intervals, three reports in which shall be set forth the steps taken by defendant toward the improvement of water service as herein ordered. Further, defendant shall cooperate with and assist the complainant herein by providing copies of pertinent utility records concerning system costs and operations to complainant upon reasonable demand therefor, it being found as a fact that such

cooperation and assistance is required by the public interest, convenience and necessity and under the authority of Section 701 of the Public Utilities Code.

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

Dated at San Francisco, California, this 20th day of August, 1957.

[Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners

Commissioner Ray E. Untereiner being necessarily absent, did not participate in the disposition of this proceeding.