

Decision No. 55499

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

W. H. AXEMAKER, et al.,  
 Complainants,  
 vs.  
 LIVE OAK SPRINGS WATER &  
 POWER CO., a corporation,  
 Defendant.

Case No. 5929

George R. Kirk, for complainants.  
John H. Thomsen, for defendant.  
C. O. Newman, for the Commission  
 staff.

O P I N I O N

Complainants are property owners and consumers of water furnished by the Live Oaks Springs Water & Power Company.<sup>1/</sup> They allege in their complaint that each of them has received a statement from the defendant company for charges covering irrigation water used for the month of March, 1957, and advising that if said statements are not paid water service will be disconnected, that they have not used irrigation water during the month of March and will not use any irrigation water until the summer months. Therefore, they request that the defendant be restrained from disconnecting any service as a result of non-payment of the bills for alleged use of irrigation water.

The defendant corporation in its answer contends that irrigation water has been used for which the complainants should pay, and defendant requests a hearing be held to determine the rights of the parties in regard to the furnishing and using of irrigation water.

<sup>1/</sup> Proper corporate name. See Decision No. 35603 dated July 21, 1942, in Application No. 25067, for transfer of properties to this corporation.

A public hearing was held before Examiner Grant E. Syphers at Live Oaks Springs on July 8, 1957, at which time evidence was adduced and the matter submitted.

The evidence shows that the present owners of the Live Oaks Springs Water & Power Company are Mr. and Mrs. Morris J. Rankin who purchased all of the stock of this company on October 18, 1956. The company conducts a water utility corporation in Live Oaks Springs, an unincorporated community, situated on U.S. Highway 80 approximately 65 miles east of the City of San Diego. There are 85 customers who subscribe to water service. According to the company's filed tariff there is an annual flat rate of \$36 per residential consumer and \$48 per commercial consumer. In addition the tariff provides for a charge of 5 cents per month for "sprinkling of lawns, gardens and shrubbery per 100 square feet of irrigated area."

The issue in the instant proceeding concerns the application of this monthly sprinkling charge.

Testimony was received by various residents of the area as to the billings that they have received for this monthly sprinkling charge, and the amount of land sprinkled or irrigated. Likewise, testimony was received from the company as to the method used in computing these charges.

This evidence shows that in the computation of the charges the company used a scale map to determine the square footage of the land of each user. From this total footage deductions were made for the space taken by buildings and structures and the remaining land area was used as a basis for billing the monthly sprinkling charge.

Each of the consumers who testified stated that he was not irrigating his entire property but merely a small portion of it. Therefore, it was the position of the consumers that the charge should only be made for the actual amount of property sprinkled or irrigated. Furthermore, the consumers contended that there were months when no irrigation was performed. They objected to being charged for irrigation water for these months.

Each consumer has one water connection from which is obtained both the so-called domestic water paid for on annual flat rates, as hereinbefore indicated, and the water used for sprinkling.

From an analysis of all of the evidence adduced in this hearing we find that the consumers should be required to pay a monthly sprinkling charge only for the areas irrigated and only for the months in which sprinkling is performed. The wording of the present tariff is indefinite as to this intent. In this connection it is realized that there are practical difficulties involved in the application of such a charge. As was pointed out at the hearing, it is not easily feasible for the company to determine the exact areas sprinkled or irrigated and the times of such irrigation. This situation illustrates a defect in the present tariff.

By Decision No. 47800, dated October 7, 1952, in Application No. 33411 the Live Oaks Springs Water & Power Company was ordered to "conduct a survey of the irrigated areas of each consumer." Whether or not this survey was conducted the fact remains, as illustrated in this record, that the present owners of the company do not have available to them information as to the amount

of land irrigated by each consumer. This may be no fault of the present owners since they purchased the stock of this company in October, 1956, and since there are various classes of consumers, Some consumers live on their property all year, others live there during the summer months and some are there on occasional weekends.

The testimony presented by the company disclosed that it was, at the time of the hearing, in the process of installing meters. About 40 had been installed and it expected to have the remaining 45 installed by the end of July. At that time it was the intention of the company to apply for authority to establish meter rates. If this is accomplished the problems of the company in assessing its tariff rates will probably be minimized.

However, it is necessary under the law and the existing tariff and according to the evidence in this record for the company to collect charges for sprinkling for the period while present tariffs are in effect. In order that the utility may have a basis for determining the amounts to be collected for sprinkling service, the order herein will provide for each customer to report to the utility in advance the extent of the area to be sprinkled or irrigated on his premises, and the number of months water is to be used for such purpose. The utility will be directed to revise its present rate schedule to specify that the sprinkling rate will be applicable only to the areas actually sprinkled and during the months of actual use.

There was some evidence on this record relative to whether or not certain services were domestic or commercial. The company is reminded that under its present rules commercial service is defined as "provision of water to a premises where the consumer is engaged in trade." Domestic service is defined as "the use of water for household residential purposes, including water used for

sprinkling lawns, gardens and shrubbery; watering livestock; washing vehicles; and other similar and customary purposes."

Upon this record the company will be directed to follow the procedures for billing herein outlined until such time as it may secure approval of this Commission for the establishment of meter rates.

O R D E R

Complaint and Answer as above entitled having been filed, public hearing having been held thereon and the Commission being fully advised in the premises,

IT IS ORDERED:

(1) That Live Oaks Springs Water & Power Company is directed to file, within fifteen days after the effective date of this order and in accordance with the procedure prescribed by General Order No. 96, the schedule of rates attached hereto as Appendix A. Such rates shall become effective upon not less than five days' notice to the Commission and the public after filing as hereinabove provided.

(2) That the charges for sprinkling or irrigating service furnished to each consumer during the year 1957, up to the effective date of the schedule herein directed to be filed, shall be adjusted to the basis of said schedule.

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

Dated at San Francisco, California, this 3rd day of SEPTEMBER, 1957.

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

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

APPENDIX A

Schedule No. 1

ANNUAL FLAT RATE SERVICE

APPLICABILITY

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

TERRITORY

The unincorporated community of Live Oaks Springs, and vicinity, San Diego County.

RATES

	<u>Per Year</u>
For each residential consumer .....	\$36.00
For each commercial consumer .....	48.00

Per Month

Additional for sprinkling or irrigation of lawns, gardens and shrubbery, during months of actual use, per 100 square feet of area sprinkled or irrigated .....	\$ 0.05
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SPECIAL CONDITIONS

1. Each consumer, before using water for sprinkling or irrigating as hereinabove provided, shall notify the utility in writing of the extent of the area to be sprinkled or irrigated and shall specify the months of that current year during which water will be used for such purpose.

2. The area for which the consumer proposes to use water for sprinkling or irrigation, and the number of months of such use, will be subject to verification by the utility.