

ORIGINALDecision No. 55525

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 authoriz-) Application No. 37844
 ing applicant to increase its water)
 rates.)

(Appearances attached as
 Appendix A)

INTERIM OPINION

The application of Lakewood Water & Power Company, a corporation, hereinafter called Lakewood, seeking an increase in its water rates, was filed on March 16, 1956. Hearings were held on September 26 and November 28, 29 and 30, 1956, in Lakewood, California, before Commissioner Rex Hardy and Examiner Stewart C. Warner. During the hearing on November 30, 1956, evidence was offered and received showing that over the period from 1950 until 1956 Lakewood had paid to Mutual Pipeline and Construction Company, hereinafter called Mutual, the sum of \$820,578.84 for construction work on Lakewood's water system, without having asked for or received bids from other construction companies. Evidence was also offered and received showing that Lee T. Hollopeter was a member of the board of directors of Lakewood, was its secretary-treasurer and its general manager. Evidence was also offered and received showing that the California State Contractors' license under which Mutual did business had been issued in the maiden name of the wife of Lee T. Hollopeter, and that the wife and children of said Hollopeter controlled the operations of Mutual. Some evidence was received indicating that

said Hollopetter, as the head of his family, controlled and guided his family's decisions in the operation of Mutual's business. On November 30, 1956, a Commission representative moved that the presiding Commissioner direct Lakewood to make available to staff inspection the books of Mutual for the purpose of determining the reasonableness of the charges of Mutual appearing on the books of Lakewood for the purpose of making any necessary adjustments in the event such charges appeared to be unreasonable (Tr.Vol.IV,p.337). The presiding Commissioner submitted this motion for the decision of the Commission upon the filing of concurrent briefs (Tr.Vol.IV,p.344, et seq.).

Briefs were filed on said motion by the staff of the Commission and by Lakewood. On March 26, 1957, the Commission issued Decision No. 54757, the effect of which was to grant the motion of the Commission staff and to order that said Hollopetter and Lakewood

"cause the books of account of the construction company (sic Mutual) 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."

On April 15, 1957, Lakewood filed its written motion with the Commission, the effect of which was to request the setting of an early date for the completion of hearings upon its application, in which it was stated, inter alia:

"Mutual Pipeline and Construction Company has now informed the applicant and the Commission that the Commission's authorized agents may examine its records in compliance with the Commission's Decision No. 54757, which examination can be completed within a matter of one or two days."

Representatives of the Commission went to the office of Lakewood on April 24, 1957, for the purpose of examining the books and records and supporting data of Mutual in order to obtain a full disclosure of all elements of the transactions between Lakewood and Mutual for the purpose of ascertaining if any of these transactions constituted unreasonable charges against Lakewood to the detriment of its ratepayers. Certain of the records of Mutual were then presented to the representatives of the Commission, which included records of Mutual subsequent to April 1, 1954 only, as follows: the general ledger, vouchers, register, check record, cash receipts journal, general journal, journal vouchers, payroll invoices, canceled checks, and a few recent timecards, but not individual time reports, purchase invoices and canceled checks, payroll recap sheets and payroll reports to the State of California. Such records of Mutual so presented pertained only to the business done by Mutual with Lakewood subsequent to April 1, 1954. No records of any type were made available to the representatives of the Commission prior to April 1, 1954. Demand was made upon said Hollopeter, his attorney and one Jack Croul, the assistant manager of Lakewood, for the production of other and additional records of Mutual for the purpose of testing the reasonableness of the total charges made by Mutual to Lakewood, including indirect charges and charges to overhead. Such additional records were not made available to the representatives of the Commission. Subsequently and on May 1, 2 and 3, 1957, representatives of Commission again visited the office of Lakewood and again saw Messrs. Hollopeter and Croul, and again made demands upon them to see additional and other records of Mutual, which demands were refused.

Mr. Hollopeter on May 1, 1957, and again on May 2, 1957, stated to the representatives of the Commission that he did not have

the records of Mutual prior to April 1, 1954, nor did he have any access to such records, and that he could not furnish such records to the representatives of the Commission.

As a result of the foregoing, and because the information furnished to the Commission's representatives did not enable them to make such examination as they deemed necessary in order to determine the reasonableness of the gross charges by Mutual against Lakewood in the sum of approximately \$821,000 the Commission on May 28, 1957, issued its order directing said Lee T. Hollopeter and Lakewood to appear before Commissioner Hardy and Examiner Warner on June 17, 1957, in the chambers of the City Council of Lakewood, in the City of Lakewood, to show cause "if any they have, why said Decision No. 54757 has not been complied with".

Lakewood on June 10, 1957, filed with the Commission its answer and return to said order to show cause, in which it was contended, inter alia, that said order to show cause did not state wherein said Decision No. 54757 had not been complied with by Lakewood, that Lakewood had complied with said Decision No. 54757 in substance and effect and so far as was within its power, that Mutual is not a subsidiary, associate or affiliate of Lakewood and that Lakewood did not have the power, directly or indirectly, to compel Mutual to do any more than it had done, that upon receipt of said Decision No. 54757 Lakewood had made written demand upon Mutual that it submit its books and records to the examination of the representatives of the Commission in so far as they related in any way to transactions between Mutual and Lakewood and had on several occasions since April 1, 1957, orally repeated its said demand, that Lakewood was informed that said Mutual had complied with said demands as far as it could do so, that Lakewood was informed and believes that said

Mutual did not have in its possession or subject to its access or control any books or records prior to April 1, 1954, and that Lakewood had been and was then ready, able and willing to show and offered to show, by competent and sufficient evidence other than the records of Mutual, that the costs paid by Lakewood to Mutual were reasonable, never greater but often less than the services rendered would have cost Lakewood if rendered by anyone else.

Pursuant to said order to show cause hearings were held at Lakewood, California, on June 17 and 18, 1957, before Commissioner Hardy and Examiner Warner, at which Lakewood and said Hollopeter were represented by counsel.

Evidence was offered and received through testimony by representatives of the Commission, and on behalf of Lakewood and said Hollopeter.

Evidence offered by the Commission's representatives showed, in substance, the visits by the Commission's representative to the office of Lakewood on April 24, 1957, and on May 1, 2 and 3, 1957, and their unsuccessful efforts to examine the books and records of Mutual, all as hereinbefore related. Such evidence showed that Lakewood made payments totaling \$196,948.25 to Mutual after April 1, 1954, until March 31, 1957, of which Mutual recorded the sum of \$89,819.94 as "P & L". The amount of \$107,128 was recorded as cost. The Commission takes notice of the common fact that in bookkeeping practice and parlance "P & L" means "Profit and Loss". This sum of \$89,820 is 45.6 per cent of the total of \$196,948 and 83.8 per cent of the sum of \$107,128. A Commission representative testified that Mr. Hollopeter told him that the "P & L" shown on Mutual's books consisted of "general expense, tool expense, depreciation and Mutual's actual net profit or loss", and that "general expense consisted primarily of insurance, gas and oil, postage, office supplies, licenses, telephone,

entertainment, office salaries, superintendents' salaries and bonuses, travel and auto expense, advertising and taxes". He stated that Mr. Hollopeter did not furnish any records showing the detail of the items mentioned. He stated further that the Commission's representatives were not shown any records of Mutual prior to April 1, 1954 but were permitted to examine records which had to do with the business done by Mutual with Lakewood after that date which was approximately 13 per cent of the gross business done by Mutual with Lakewood since 1950. He stated, further, that the Commission's representatives were not permitted access to nor examination of all of the books and records of Mutual, which the Commission's representatives deemed necessary in order to determine the detail of Mutual's indirect costs and overhead charges, such as executives' salaries and expense, accounting billings, and expenses of a general nature which could not be allocated either as a direct or indirect cost of Mutual.

At this hearing both Lakewood and Hollopeter contended that Decision No. 54757, supra, did no more than to require the production of the books of account and supporting data relating to transactions between Mutual and Lakewood; that said Decision required only the production of said books and supporting data as were related

"to the transactions between the utility and
the construction company",

and did not require the production of Mutual's books and records showing the transactions between Mutual and others with which it had done business. They offered evidence showing that the books and records of Mutual showing its business transactions prior to April 1, 1954, were not "available", and that neither Lakewood nor Hollopeter nor Mutual had control of, access to, or possession of such books and records, or any power to produce them. The record also shows, and we find that Lakewood made reasonable efforts to comply with Decision No. 54757, supra.

Based upon this record, we find, that neither Lakewood nor Hollopeter nor Mutual, in its present ownership, has control of, access to, possession of, or power to produce the books and records of Mutual, as such books and records existed, prior to April 1, 1954.

Conclusions

While we find that Lakewood has taken reasonable action to require full disclosure of the transactions between it and Mutual, we are constrained to point out that the testimony and conduct of Hollopeter were less than forthright so far as the relationship and transactions between Mutual and Lakewood were concerned. The record shows that Lakewood made an unqualified written demand upon Hollopeter to render available to the Commission all of the books and records of Mutual. This demand he refused to comply with claiming that he was unable to produce such books and records prior to April 1, 1954. As pointed out herein, the examination of the books and records after April 1, 1954 was only partial and covered only business amounting to \$196,948 out of a total business done of approximately \$821,000. This latter resulted from Hollopeter making available to the representatives of the Commission only those parts of the books and records of Mutual which, in his judgment, related to transactions with Lakewood.

In light of the evidence and surrounding circumstances, we find that further pursuit of the books and records of Mutual would prove unavailing at this time. However, the parties here concerned are placed upon notice that the action which we are herein taking is without prejudice to further inspection and examination of the books and records of Mutual should subsequent events warrant such action.

The record demonstrates a situation which is not healthy in the operation of a public utility, i. e. where an officer and director of a public utility has even slight control of the operations and business of one of its suppliers. The Commission considers that where, as here, the record showed dealings between Lakewood and Mutual over a six to seven-year period, as a result of which Lakewood paid Mutual more than \$800,000, which Lakewood alleges should be a part of its rate base, the Commission was not only justified but it was its duty to attempt to secure a full disclosure of those dealings in order to protect Lakewood's ratepayers. We are satisfied, however, that it is not within the power of Lakewood or Hollopeter to produce the books and records of Mutual which might throw the full light of truth upon the situation. We are of the opinion that Lakewood was derelict in the performance of its obligations to this Commission and to its ratepayers in its business dealings with Mutual, at least after April 1, 1954, since which time the wife and other members of the family of Hollopeter, its secretary and general manager, and one of its directors, were in control of Mutual's business and operations. Such a practice tends to, at least, create a suspicion that Lakewood did not use its best efforts to procure labor and/or material going into its utility plant at the best or market price therefor. This Commission has the duty of seeing to it that no "padding" goes into the costs of utility plant. We do not say that any such "padding" existed in the matter before us, but we do say that there was an abundant opportunity for such unlawful conduct. We will give Lakewood all reasonable opportunity to demonstrate that such was not the case. The order to show cause will be dismissed.

INTERIM ORDER

1. The order to show cause heretofore issued by the Commission in this proceeding on May 28, 1957, hereinbefore referred to, is hereby dismissed.

2. The application of Lakewood Water & Power Company, heretofore partially heard, shall be set down for additional hearing before Commissioner Rex Hardy and Examiner Stewart C. Warner at as early a date as is feasible for the purposes (a) of hearing such evidence as Lakewood Water & Power Company shall present tending to prove the reasonableness of all charges made by Mutual Pipeline and Construction Company to and paid by Lakewood Water & Power Company; and (b) of hearing such evidence as the staff of the Commission shall present having to do with the application of Lakewood Water & Power Company to increase its rates for water service; (c) and of hearing such other evidence pertinent to this proceeding as may be offered by other interested parties.

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

APPENDIX A

LIST OF APPEARANCES

John Amos Fleming and Sydney by Sydney Sanner, for applicant.

Carl J. Ellis, Robert T. Andersen; John S. Todd, for City of Lakewood; and Levy, Russell & De Roy by John R. Russell, for Local 148 UAW-AFL-CIO (Douglas), protestants.

Walhfred Jacobson by Leslie E. Still, Deputy City Attorney; Henry E. Jordan; Frederick Schafer, for City of Long Beach; Ray L. McCoy, for Southern California Water Co.; E. T. Ibbetson, for Ideal Petroleum Co., and Jack H. Croul, in propria persona, interested parties.

Edward F. Walsh, Carol T. Coffey and Theodore Stein, for the Commission staff.