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ORIGINAL

Decision No. 56270

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of AVILA WATER COMPANY, a corporation, (1) for increase rates for water service rendered in and in the vicinity of the unincorporated town of Avila, San Luis Obispo County, (2) for a certificate of public convenience and necessity to operate a public utility water system and sell water within a certain territory, and (3) for authority to restate its fixed capital accounts.	Application No. 38462
FRED A. SHAEFFER, ET AL., Complainants, vs. AVILA WATER COMPANY, a corporation, Defendant.	Case No. 5708

Wyman C. Knapp of Gordon, Knapp & Gill, for Avila Water Company, applicant and defendant; Jack P. Kaetzel, and Frank L. Sprague of Orrick, Dahlquist, Herrington & Sutcliffe, for Joseph E. Gregory; Bert Smith, Mayor, and Richard F. Harris, City Attorney, for City of Pismo Beach; Warren T. Smith, in propria persona; protestants.

William C. Prince, for residents of Sunset Palisades; Martha J. Rivers and John H. Klinger, in propria personae, interested parties; John D. Reader and A. L. Gieleghem for the Commission staff.

O P I N I O N

Nature of Proceedings

By the above-entitled application, filed October 1, 1956, Avila Water Company, a California corporation, seeks an order of this

Commission authorizing it (1) to increase rates for water service rendered by it in San Luis Obispo County, and (2) to restate its capital accounts. Applicant also seeks a certificate of public convenience and necessity for the area served by it and its predecessor and for an expanded area including one generally known as Sunset Palisades.

The above-entitled complaint, filed December 21, 1955, sought as relief the improvement of service in the Avila portion of defendant's system and the elimination of any rate differentials between different areas of service. Decision No. 53992, issued October 30, 1956, in such matter, provided for the service relief sought and ordered defendant to apply its regularly filed tariffs to all customers throughout its entire service area. The effect of such order, as respects rates, was to increase rates in the Sunset Palisades area to the level of rates on the balance of the system. Following issuance of the order, residents of Sunset Palisades petitioned for a reopening of the complaint proceeding on the primary ground that they had not had notice respecting the proceeding which resulted in increased rates. The Commission granted petitioners' prayer and, by order dated April 16, 1957, reopened the matter for the limited purpose of determining "whether Decision No. 53992 should be altered or amended insofar as said decision relates to rates to be charged for water service in the Sunset Palisades Area".

Public Hearing and Submission for Decision

The application and the reopened complaint case were consolidated and public hearings thereon held before Examiner F. Everett Emerson on April 30, May 1 and May 2, and before Examiner Donald B.

Jarvis on October 9 and 10, 1957, at San Luis Obispo. The matters were submitted subject to the filing of late-filed Exhibit No. 14, which exhibit was received by the Commission on October 18, 1957.

Analysis of the record, insofar as it pertained to the proposed restatement of applicant's books, revealed certain minor discrepancies which it appeared to the Commission should be reconciled. Accordingly, the Commission issued an order, on December 3, 1957, setting aside submission and reopened Application No. 38462 for the limited purpose of receiving additional evidence on such subject. All appearances in the proceedings were supplied copies of an exhibit entitled "Company Appraisal and Proposed Adjustments as of March 1, 1955" and were advised that unless objection to its receipt in evidence was raised prior to December 17, 1957, the exhibit would be received as Exhibit No. 15 and the matter resubmitted for decision. No objection having been entered, the matter was resubmitted for decision on December 17, 1957.

Nature of Evidence and Conclusions Thereon

Reynold T. Doty, president of applicant, and two brothers, P. E. Doty and J. T. Doty, acquired control of the system through stock purchase on March 11, 1955. The system was deficient in several respects and required not only immediate but continuing rehabilitation and improvement. Practically no records or books of account were in existence. After adopting the only known fixed capital base and adding thereto the cost of additions and betterments made subsequent to March 1, 1955, applicant's accountant analyzed the

financial aspects of the operations and found that the operations were producing a wholly inadequate return. Applicant thereupon filed the application herein seeking an improved earning position.

An inspection of the system showed that the recorded costs, as set out in the capital accounts, did not reflect all of the actual original costs to install the facilities. Accordingly, applicant had the property inventoried and appraised on an historical cost basis. Applicant seeks to restate its capital accounts to reflect the appraisal.

The presently effective basic rates and charges for water service have remained substantially unchanged for a period of over thirty years. A comparison of present charges with those proposed by applicant, for general domestic and business customers, is shown in the following tabulation:

Monthly Usage (Cubic Feet)	Present Charge	Proposed Charge	Percent Increase
300	$1.50 Minimum	$3.00 Minimum	100%
500	2.40	3.00 Minimum	25
700	3.30	3.90	18
1,000	4.65	5.25	13
1,500	6.65	7.25	9
1,500	10.65	11.25	6
5,000	20.65	21.25	3

Applicant also has a schedule of flat rates which produces charges of various amounts depending upon combinations of types of plumbing fixtures used. The schedule is unwieldy and out-moded, according to applicant, and it is proposed to replace it with one which would charge $4.00 per month for a 3/4-inch connection, $6.00 per month for a 1-inch connection and $10.00 per month for a 1½-inch connection.

Applicant and the Commission staff presented extensive testimony, supported by exhibits, on practically all phases of applicant's operations.

Of considerable importance in this proceeding is the proposed restatement of applicant's books and the appraisal of properties upon which such restatement would be based. Exhibit No. 15 sets forth the results of the appraisal and the adjustments thereto and can properly be said to dispose of all disputed plant items except one water main identified in Account No. 343-I and known as the Front Street main acquired from the Union Oil Company. In our opinion the evidence is abundantly clear that applicant is the owner of this 3,065 feet of main, by purchase, and that the line has been and now is but a portion of applicant's system used and useful in the public service. The estimated original cost of the main is $9,225.00. The purchase price was $10.00. Applicant places a value of $5,500.00. on the line, deriving such sum by equating a $100.00 per month reduction in the water rate charged the Union Oil Company over a period of 55 months. In our opinion, such derivation is erroneous. Commission records clearly indicate that the reduction in rate was occasioned by the mutual recognition of applicant's predecessor and the oil company in 1950 that water usage was reduced to 13.7 per cent of prior usage as the result of permanent removal of water-using facilities by the oil company. This is disclosed by letters dated May 16, 1950 and June 28, 1950, in File No. 602 (Avila Water Company) on such subject. While the total transaction may be said to have been somewhat loosely handled, we believe it to be eminently fair

to all parties and to the public at this time to finally determine the matter and we find the fact to be that the reduced rate was the result of reduced usage and was not a matter of compensation for change of title to the line.

In view of the evidence and the foregoing finding we conclude that applicant should be permitted to restate its books in accordance with Exhibit No. 15 in this proceeding, except that the entries of $5,500 shown in Account No. 343-I thereon should be deleted and the sum of $9,225 should be placed in columns marked "Appraisal Amount" and "Final Amount After Adjustments" thereon. By so doing, the adjusted total will become $96,511. The order herein will so provide.

In developing a rate base upon which applicant should be entitled to earn a fair and reasonable return, the amount of $96,511 will be used as the total of utility plant in service as of March 1, 1955. Net additions and betterments from such date to December 31, 1956, total $10,228 according to witnesses for applicant and the Commission staff. Thus, total utility plant as of December 31, 1956, amounts to $106,739. To such total will be added allowances of $1,260 for materials and supplies, $510 for working cash and $3,111 as average net additions during the year 1957, as derived by the staff witness. For the average year 1957, therefore, average utility plant plus working capital totals $111,620. From such total will be deducted the dollar amounts of contributed plant, advances for construction and an adjustment for services, as testified to by the

staff, in the amount of $17,784, thus deriving an average undepreciated rate base of $93,836 for the year 1957.

The evidence shows that the gross investment in depreciable plant, as determined by the staff, at the beginning of the year 1957 was $84,675 and that the depreciation reserve requirement applicable thereto was $31,794, or a ratio of 37.5 per cent. Applying the same percentage factor to the depreciable utility plant of $104,115, as of December 31, 1956, would indicate a reserve requirement of $39,043. We find this latter amount to be a fair and reasonable estimate of the reserve requirement and such amount for the purposes of this decision will be deducted from the undepreciated rate base of $93,836, as above derived, to produce a depreciated rate base of $54,793 for the average year 1957. In the order herein, applicant will be authorized to record on its books of account as its accumulated reserve, as of January 1, 1957, the above-derived amount of $39,043. The depreciated rate base of $54,793 we hereby find to be a fair and reasonable rate base and may be compared with the amount of $61,710 claimed by applicant and the $42,580 as developed by the Commission staff.

In the opinion of the Commission, this utility should normally earn a rate of return of 6.5 per cent on a fair and reasonable depreciated rate base. In view of the evidence relating to the acquisition of the 3,065 feet of main on Front Street, however, and the fact that this $9,225 worth of main was acquired for a price of $10, we find that a rate of return of approximately 6.0 per cent is fair to the utility and will place no undue or unreasonable burden upon its customers.

The Commission finds that, in view of the evidence, applicant is in need of and entitled to increased revenues. The rates for water service hereinafter authorized will produce a rate of return of approximately 6 per cent on a depreciated rate base of $54,793. Net revenues of approximately $3,290 are thus required and to such sum will be added reasonable operating expenses in order to arrive at the gross revenues to which applicant is entitled.

Applicant's and the staff's witnesses testified respecting operating expenses and lengthy and detailed cross-examination thereon ensued. The expense estimates in this record are the sum of $13,672 as claimed by applicant, and the sum of $10,830 as derived by the staff. Both figures include allowances for taxes and depreciation, although in different amounts, and are based upon presently effective rates for water service. Comparable totals under the rates which applicant seeks to make effective are $14,371 and $11,760 respectively. In view of the evidence, we find that applicant's reasonable operating expenses should total approximately $8,500 before provision for tax and depreciation expense. The staff's methods of computing taxes and depreciation are reasonable and will be followed herein. Accordingly, the total operating expenses which we hereby find to be reasonable under the rates to be authorized herein, for the estimated average year 1957, are as follows:

Operating and Maintenance Expenses	$ 8,500
Taxes	1,700
Depreciation	3,240
Total Reasonable Expenses	$13,440

From the above, it follows that applicant would be entitled to gross revenues not exceeding $16,730 based upon usage during the estimated average year 1957. Applicant's estimate of the gross revenues to be generated by the water rates which it proposes is $16,246, while the staff's estimate of such revenues is $16,150. We conclude, therefore, that applicant's proposed water rates will produce revenues in a total amount no greater than is reasonable and that the proposed rates should be authorized except that the proposed business and residential meter and flat rates will be made applicable to industrial customers because no justification was demonstrated for the considerably higher than average increases proposed for this class of service.

The testimony relating to applicant's proposed certificated area clearly indicates that a great proportion of the area is already served by applicant. The area lying between State Highway 101 and the ocean from the southeasterly limits of Sunset Palisades to Shell Beach, however, is presently unserved. In this area, owners of relatively large parcels of land desire to develop their lands into residential tracts and commercial areas. The desired development has not been undertaken, apparently, because of lack of a water supply. Applicant's system is capable of supplying the area and lawfully may extend into such area as it is contiguous to an area already lawfully served. Certification of the area would require the utility to provide service to any and all applicants therein who meet the requirements of the utility's lawful rules. The City of

Pismo Beach, which operates a municipal water system both within and without the city limits has been contemplating serving the area. Its lines, however, are some distance away and it does not appear, from the record in this proceeding, that the city is presently, or in the foreseeable future will be, in a position to provide adequate service to the area. Suffice it to say that the evidence indicates that public convenience and necessity require that the area be served and that applicant herein is able and willing to provide service therein. Accordingly, we find the fact to be that public convenience and necessity require and will require that applicant provide service therein. A certificate will be issued, as requested by applicant. Such certificate is, of course, subject to the provision of law:

> "That the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right."

Testimony concerning the subject of water rates for service in the area known as Sunset Palisades leads to the inescapable conclusion that this area is an integral part of the utility system dedicated to the serving of the general area of Avila. It cannot be separated therefrom. In our opinion there is no merit to the contention that this portion of the system has characteristics so different from those of the balance of the system that special rate treatment and lower rates therein should be accorded it. The

evidence does not support a finding to that effect, no matter how liberally the evidence is construed. The apparent misunderstanding of this situation by residents of Sunset Palisades is unfortunate and, in our opinion, is directly traceable to the loose manner in which the former owner of applicant's stock managed the system and handled an agreement between the utility and the subdivider of the Sunset Palisades area.

No utility, subject to the jurisdiction of this Commission may deviate from its filed rules or rates unless after a finding by this Commission that such deviation is justified, the authorization to so deviate is specifically granted. The agreement, in evidence as Exhibit No. 7 in Case No. 5708 and therefore in evidence in the consolidated proceeding herein, by its terms would create deviations from both the filed rate schedules and main extension rule of the utility. The agreement was not even brought to the attention of this Commission until several years after it had been signed by the parties thereto, despite the fact that the agreement itself carried a clause reading, "It is understood that the provisions hereof are subject to the lawful rules and regulations of the Public Utilities Commission of the State of California and appropriate governing bodies."

The parties to the agreement are Joseph E. Gregory and wife and R. L. Gilliam and wife, the latter persons being predecessors of the applicant corporation herein. Any adjudication of their respective rights under the agreement may lie in the courts, but insofar as the regulation of utility operations may be concerned

this Commission has exclusive jurisdiction. The terms of the agreement as respects the establishment of a water rate different from that in effect on the utility system were, and are, unlawful and we so find. These terms created an unlawful and discriminatory rate situation, as we have heretofore indicated in Decision No. 53992, which was ordered terminated by this Commission in said decision. Rates applicable to the area will be those rates authorized by this Commission and none other.

We find as a fact that the terms of the contractual agreement pertaining to reversion of the properties to Gregory, as contained in that portion of the agreement starting on line 21 of page 5 and running through page 6, line 20 thereof, are unlawful in their application to utility operations. Property which has been dedicated to the public use cannot be impressed with a reversionary interest which could have the effect of depriving the public of that use. No such clauses will be approved by this Commission.

In view of the evidence, we conclude that applicant should be authorized to carry out that portion of the agreement starting at page 4, line 17 and running through line 5 of page 5 thereof. The Commission hereby finds as a fact that refunding of construction costs substantially in accordance with the provisions contained therein is warranted under the specific conditions disclosed by the record in this proceeding. Further, the Commission finds that the clauses "when twenty per cent of the lots ... are connected", therein contained, are to be interpreted as applying when said lots

are first provided water service by being connected to the utility mains by service connections and/or through meters installed for bona fide water customers of applicant and not before. Further, the Commission finds that no refund payments should be made after a period of ten years from the date on which the main construction was completed and in no event shall the total sum of any refunds be more than the actual cost of construction.

In view of the evidence, the Commission finds that Decision No. 53992, heretofore issued in Case No. 5708, should not be modified. Further the Commission finds that the increased rates and charges authorized herein are justified and that existing rates and charges, insofar as they differ from those authorized herein, are for the future unjust and unreasonable.

O R D E R

Public hearing having been held, the matters having been submitted and now being ready for decision based upon the evidence and the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that:

(1) A certificate of public convenience and necessity is hereby granted Avila Water Company to construct, maintain and operate a public utility water system for the production, storage, distribution and sale of water within that portion of San Luis Obispo County enclosed by the red boundary line shown on Exhibit No. 1 in this proceeding.

(2) Applicant is authorized to file, after the effective date of this order, in quadruplicate with this Commission and in conformity with the provisions of General Order No. 96, the schedules of rates set forth in Appendix A attached to this order and, on not less than five days' notice to the public and to this Commission, to make said rates effective for all service rendered on and after April 1, 1958.

(3) Within thirty days after the effective date of this order, applicant shall file in quadruplicate with this Commission and in conformity with the provisions of General Order No. 96, rules governing customers' relations revised to reflect present-day operating practices, together with a tariff service area map and with current forms normally used in connection with customer service.

(4) Within sixty days after the effective date of this order, applicant shall file with this Commission four copies of a comprehensive map, drawn to a scale not smaller than 500 feet to the inch, delineating by appropriate markings the various tracts of land and territory served, the production, storage and distribution facilities and the various water utility properties of applicant.

(5) Beginning with the year 1957, applicant shall determine depreciation expense by multiplying the dollar amount of its depreciable utility plant, exclusive of plant provided through contributions in aid of construction, by a rate of 3.4 per cent, using such rate thereafter until review indicates that it should be revised. Further, applicant shall review said rate, using the

straight-line remaining life method of depreciation accounting whenever major changes in plant composition occur and at intervals of not more than five years, and shall revise the above rate in conformance with such reviews. Results of these reviews shall be submitted to this Commission.

(6) Applicant is authorized to adjust its books so as to reflect the March 1, 1955 adjusted appraisal in the total amount of $96,511 as set forth in the foregoing opinion. Further, applicant may record as accrued depreciation on its December 31, 1956 adjusted utility plant the amount of $39,043.

(7) Except as said contract may be modified in accordance with the findings and conclusions contained in the foregoing opinion, the contract between Joseph E. Gregory and Elsie B. Gregory and R. L. Gilliam and Myrtle M. Gilliam, dated September 11, 1950, is not approved by this Commission and is void and of no effect insofar as it pertains to public utility operations.

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

Dated at San Francisco, California, this 25th day of February, 1958.

President

Commissioners

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service, except service to Union Oil Company under Schedule No. 9LIM.

TERRITORY

The unincorporated town of Avila, and vicinity, San Luis Obispo County.

RATES

	Per Meter per Month
Quantity Rates:	
First 500 cu.ft. or less	$ 3.00
Next 500 cu.ft., per 100 cu.ft.	.45
Over 1,000 cu.ft., per 100 cu.ft.	.40
Minimum Charge:	
For 5/8 x 3/4-inch meter	$ 3.00
For 3/4-inch meter	4.25
For 1-inch meter	6.60
For 1-1/2-inch meter	14.25
For 2-inch meter	18.75
For 3-inch meter	35.00
For 4-inch meter	57.00

The Minimum Charge will entitle the customer to the quantity of water which that minimum charge will purchase at the Quantity Rates.

Schedule No. 2

GENERAL FLAT RATE SERVICE

APPLICABILITY

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

TERRITORY

The unincorporated town of Avila, and vicinity, San Luis Obispo County.

RATES

	Per Service Connection per Month
For each 3/4-inch service connection	$ 4.00
For each 1-inch service connection	6.00
For each 1½-inch service connection	10.00

SPECIAL CONNECTIONS

1. All service not covered by the above service connection sizes will be furnished only on a metered basis.

2. A meter may be installed at option of utility or customer for above service connection sizes in which event service thereafter will be furnished only on the basis of Schedule No. 1, General Metered Service.

Schedule No. 5

PUBLIC FIRE HYDRANT SERVICE

APPLICABILITY

Applicable to all fire hydrant service furnished to duly organized or incorporated fire districts or other political subdivisions of the State.

TERRITORY

The unincorporated town of Avila, and vicinity, San Luis Obispo County.

RATE

	Per Month
For each fire hydrant owned by a fire protection agency	$ 1.00

SPECIAL CONDITIONS

1. For water delivered for other than fire protection purposes, charges will be made at the quantity rates under Schedule No. 1, General Metered Service.

2. Relocation of any hydrant shall be at the expense of the party requesting relocation.

3. The utility will supply only such water at such pressure as may be available from time to time as the result of its normal operation of the system.

4. The cost of installation and maintenance of hydrants will be borne by the fire protection agency.

Schedule No. 9LIM

LIMITED INDUSTRIAL AND FIRE PROTECTION METERED SERVICE

APPLICABILITY

Applicable to industrial and fire protection metered water service furnished to Union Oil Company.

TERRITORY

The unincorporated town of Avila, and vicinity, San Luis Obispo County.

RATE

	Per Meter per Month
Quantity Rate:	
Per 100 cu. ft.	$ 0.40
Minimum Charge:	
Fire protection and pier washing	$ 65.00
Pumping plant and fire protection	250.00

The Minimum Charge will entitle the customer to the quantity of water which that minimum charge will purchase at the Quantity Rate.

Schedule No. 9LIF

LIMITED INDUSTRIAL AND FIRE PROTECTION FLAT RATE SERVICE

APPLICABILITY

Applicable to water service furnished on the Port San Luis Transportation Pier on a flat rate basis.

TERRITORY

The unincorporated town of Avila, and vicinity, San Luis Obispo County.

RATES

	Per Service Connection per Month
For the fire protection service connection	$40.00
For the boat lift service connection	10.00