

ORIGINAL

Decision No. 5999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation and suspension on the )  
 Commission's own motion of Schedule )  
 No. 5 of Morrow Water Company, filed )  
 by Advice Letter No. 3. )

Case No. 5999

John S. Burd, Jr., for Morrow Water Company,  
 respondent.  
Myron Moyle, for City of Ceres, intervenor.  
Martin Abramson, for the Commission staff.

O P I N I O NNature of Proceeding

On October 3, 1957, the public utility water system known as Morrow Water Company, rendering service in a portion of the City of Ceres and vicinity in Stanislaus County, filed with the Commission Advice Letter No. 3 with certain tariff sheets which included a rate schedule for public fire hydrant service designated as Schedule No. 5. No such schedule had been filed previously by this utility.

The City of Ceres was notified of this filing and by letter to the Commission dated October 18, 1957, the City protested the proposed rate as being excessive and requested the Commission to hold a hearing for the purpose of determining a proper rate for this service.

Case No. 5999 was filed on the Commission's own motion on October 28, 1957, ordering that an investigation be instituted to determine whether said Schedule No. 5 of Morrow Water Company is **improper, unreasonable, discriminatory, or preferential** in any particular, and to issue such order or orders that may be lawful and appropriate in the exercise of the Commission's jurisdiction in the premises. It was further ordered that the operation of said schedule be suspended until March 2, 1958, that being the 120th day after the

date when such schedule would become effective if not suspended, unless otherwise ordered. The order also required that a public hearing in said investigation be held and directed the Secretary to notify the water utility of such hearing.

#### Public Hearings

After due notice to known interested parties, a public hearing in this matter was held in Ceres before Examiner E. Ronald Foster on January 8, 1958. After the introduction of certain evidence, both oral and documentary, counsel for the City of Ceres<sup>1</sup> requested a continuance because of the unavoidable absence of the City's engineer, to which request objection was made by counsel for Morrow Water Company.<sup>2</sup> The request for continuance was denied by the examiner and the matter was submitted upon the filing of a brief by the City, as intervenor, and a reply brief by Morrow, as respondent.

Such briefs were filed. Attached as exhibits to the City's brief was a copy of the City's Ordinance No. 124 and a memorandum prepared by the City Engineer, both of which were offered in evidence in this proceeding. In the brief filed by Morrow, a further hearing was requested if the Commission found cause to admit into evidence the material offered by the City in its brief.

On February 4, 1958, the Commission ordered that the submission of Case No. 5999 be set aside and that the matter be set for further hearing. It was further ordered that the suspension of the operation of said Schedule No. 5 filed by Morrow be extended for a further period of six months beyond March 2, 1958, as provided by statute, unless otherwise thereafter ordered.

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1 Sometimes hereinafter referred to as City.

2 Sometimes hereinafter referred to as Morrow.

A further public hearing in this matter was held before Examiner Foster in San Francisco on February 20, 1958, at which time additional documentary and oral evidence was introduced. The matter was again submitted upon briefs to be filed by the City and by Morrow. The last of said briefs was filed on March 28, 1958, and the matter is now ready for decision.

#### Operations of the Utility

The initial part of the water system being operated under the name of Morrow Water Company was installed in about 1949 or 1950 to serve the Morrow Tract Subdivision located outside of and adjacent to the east side of the City of Ceres. Between 1953 and 1957, additional facilities were installed to serve units of a subdivision in contiguous territory, known as Morrow Village, lying entirely within the boundaries of the City, to the north of the original area. The water supply and distribution facilities in Morrow Tract and Morrow Village are interconnected and operated as a single system.

The Commission takes official notice of its Decision No. 54061 dated November 5, 1956, in Application No. 38120, which authorized the transfer to John Howard from Loyd A. Morrow and Zella E. Morrow of all real and personal property, including four parcels of land and water production and distribution facilities, franchises, permits, and operative rights of the public utility water system known as Morrow Water Company. The transfer of said property to John Howard pursuant to the terms of the agreement of sale, a copy of which was attached to the said application, was completed on November 27, 1956.

#### Description of the System

The combined system receives its water supply from four wells, each equipped with a turbine pump which discharges the water into a pressure tank and thence into the distribution system. Two of the wells are equipped with 40-hp pumps and under normal operating

pressures each is capable of supplying in excess of 600 gallons of water per minute. The other two wells have smaller pump installations and are generally maintained on a standby basis. The distribution mains in Morrow Village are 5½- or 6½-inch outside diameter, 8-, 10- or 12-gauge, welded steel pipe or tubing, all dipped and wrapped. The utility supplies approximately 390 customers, 65 in the original Morrow Tract and 325 in Morrow Village. There are 42 fire hydrants, all located in Morrow Village, of the wharf type with a 3-inch riser and a 2½-inch single outlet. Since practically all of the distribution mains are located in easements in the rear of the lots, the majority of the hydrants have 4-inch service connections approximately 110 feet in length. As of the end of September, 1957, total utility plant was in excess of \$91,000 and the total depreciation reserve was \$15,482.

#### Fire Hydrant Rate

The record shows that Morrow has made no charge nor collected any amount from the City for fire protection service afforded by the water system in Morrow Village since it was installed. Sometime during 1957 Morrow began negotiations with the City in an endeavor to arrive at a contractual rate, originally asking \$3 per month per hydrant. After protracted efforts had failed to reach an agreement, Morrow filed its advice letter together with a schedule for public fire hydrant service setting forth a rate of \$2 per hydrant per month applicable to such service rendered within the portion of the City served by the utility. Under the special conditions connected therewith, the cost of installation and maintenance of hydrants will be borne by the utility; 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; and relocation of any hydrant shall be at the expense of the party requesting location.

It may be noted that the total annual charge at the requested \$2 rate would be \$1,008 for the present number of 42 hydrants.

### Nature of the Evidence

At the first hearing, an engineer of the Commission staff introduced a memorandum, Exhibit No. 1, in which he presented the results of his investigation of the fire hydrant service rendered by Morrow. His rate analysis was based upon an assignment of appropriate portions of the utility plant associated with fire protection service at costs obtained from the utility's records. In general, such assignments or allocations were determined by the capacity of the various classifications of the facilities, other than fire hydrants, considered to be in excess of the requirements for water service to all domestic customers. Fire hydrants were included at their total cost. From the depreciation reserve related to such facilities, he estimated the average depreciation reserve during a future five-year period. The following tabulation summarizes his estimate of the depreciated investment in all utility plant properly devoted to fire protection service rendered through the public fire hydrants on the system:

Wells .....	\$ 418
Pumps .....	1,134
Pressure Tanks .....	528
Distribution Mains .....	1,880
Fire Hydrants .....	5,344
Subtotal .....	<u>9,304</u>
Average Depreciation Reserve	2,388
Total Depreciated Plant	<u>6,916</u>

Considering several factors only to the extent that they are related to furnishing public fire protection service, the staff engineer then developed from the utility's records the following tabulation to show the gross revenue requirement and the resulting

requirement per hydrant per month, using three assumed rates of return:

<u>Item</u>	<u>6½</u> <u>Per Cent</u>	<u>7</u> <u>Per Cent</u>	<u>7½</u> <u>Per Cent</u>
Operating & Maintenance Expense	\$ 70	\$ 70	\$ 70
Ad Valorem Taxes	44	44	44
Depreciation Expense	319	319	319
Taxes Based on Income	118	127	136
Return on Deprec. Utility Plant	450	484	519
Gross Revenue Requirement	<u>1,001</u>	<u>1,044</u>	<u>1,088</u>
Revenue Requirement per Hydrant (based on 42 hydrants)	\$23.83	\$24.86	\$25.90
Revenue Requirement per Hydrant per Month	\$ 1.99	\$ 2.07	\$ 2.16

On the basis of the foregoing analysis, it appears that the requested rate of \$2 per hydrant per month reasonably represents the total cost of rendering the fire protection service through the hydrants supplied with water by Morrow.

The staff engineer also presented Exhibit No. 2 which is a letter dated December 31, 1957, signed by the City's Fire Chief, advising that on a recent test made by the City's Fire Department, all fire hydrants on the Morrow system were found to be adequate in water supply to maintain a consistent flow through its pumper trucks.

Lloyd Morrow, the developer of both Morrow Tract and Morrow Village and one of the original co-owners of the Morrow water system, testified that he had installed the fire hydrants in connection with the water system in Morrow Village to meet the City's requirements as to number and location of such hydrants as a condition to the approval of the tract by the City.

Counsel for Morrow took the position that the evidence presented by the Commission staff engineer fully substantiated the rate set forth in Morrow's Schedule No. 5 and, therefore, submitted no additional evidence.

At the further hearing, the City introduced as Exhibit No. 4 a copy of Ordinance No. 124, an ordinance providing regulations for the subdivision of land in the City of Ceres. At the same time, the City Engineer presented a memorandum, Exhibit No. 5, on the subject of Morrow's fire hydrant rate.

In his memorandum, after quoting certain portions of Sections 6 and 8 of the City's Ordinance No. 124, the City's engineer described the manner in which the installation of improvements, including water mains and fire hydrants, had been accomplished in the several units of Morrow Village under his inspection and subject to his approval in accordance with the provisions of Section 8.1-3 of the Ordinance. His memorandum further states: "Upon certification by the City Engineer that the work covered by each improvement bond had been satisfactorily completed the City Council accepted all the improvements for maintenance, including water mains and fire hydrants, and released the surety bonds in accordance with the provisions of Section 6.5-4."

Referring to the staff engineer's memorandum, Exhibit No. 1, the City's engineer proceeded to make a comparable rate analysis. However, based upon his premise that the water mains and hydrants (but not the wells, pumps and pressure tanks) are the City's property, he eliminated those items from the utility plant associated with fire protection service. Although not admitting to agreement therewith, he then assumed that reasonable amounts for the remaining portions of utility plant devoted to fire protection service would not exceed those determined by the staff engineer, namely \$418 for wells, \$1,134 for pumps, and \$528 for pressure tanks, or a total of \$2,080. From this he deducted a proportionate amount of \$526 for the related average depreciation reserve, thus arriving at \$1,554 as the total depreciated plant upon which Morrow is entitled to consideration for

determining charges for fire protection service. Following the staff engineer's pattern, the City's engineer found amounts of \$0.48, \$0.50 and \$0.52, at the same three assumed rates of return, as representing the maximum rates per hydrant per month that could be expected to be charged. This witness further qualified his analysis by additional statements which are of too little moment to be repeated here.

Counsel for the City introduced as Exhibit No. 3 a letter dated January 3, 1958, from the City of Riverbank to the effect that under the terms of an informal agreement which has been maintained over the past 20 years, the public water utility serving that community makes no charge to the municipality for the use of fire hydrants. This is illustrative of the City's contention that the proposed \$2 fire hydrant rate is higher than rates charged in other communities by other public water utilities for such service and that even in the City of Ceres there are two other public water utilities which render fire protection service to other parts of the City at considerably lower rates. There was no evidence presented to show that such service is rendered under comparable conditions.

The City's mayor testified that if the City is required to pay for fire protection service through the application of fire hydrant rates, it will be necessary to raise the money by taxation. He suggested two ways, a franchise tax on the utility or a tax on property of the entire City, but stated that the City Council had not yet come to any conclusion in that regard.

#### Brief of the City of Ceres

In his brief filed March 7, 1958, the City's counsel urges the following principal points:

1. A utility cannot include for rate purposes the value of property which it does not own.



2. A purchaser takes utility property subject to all its obligations.
3. The burden of proof is on the utility to justify a suspended rate or to establish a new rate.
4. In fixing rates, the Commission should give consideration to comparison with rate structures of other utilities and equities between classes and groups of consumers.
5. Ability of the consumer to pay is a factor to be considered in determining a proper rate level.
6. The water company is only entitled to a fair rate of return on its entire system.

The last paragraph of City's brief reads:

"It is therefore respectfully submitted that the Morrow Water Company is not entitled to use for rate purposes the value of the improvements installed by Mr. Morrow under the laws of the State of California and the ordinances of the City of Ceres at the time he subdivided the property in question, and it is only entitled to a rate based upon the service it has rendered and a reasonable rate for such service would be the same rate paid by the City to other companies within the City rendering the same service."

Reply Brief of Morrow Water Company

Counsel for respondent Morrow, in his Brief filed March 28, 1958, replied under the following headings:

I

The City of Ceres is not entitled to a preferential rate for water service, and approval of Schedule No. 5 of respondent is necessary to avoid such preference.

II

Respondent Water Company does not contend that it can include for rate purposes the value of property which it does not own. Nor does it contend that it did not take title and possession to the water system at Ceres subject to all of the obligations of its certificated predecessor in interest.

III

Since the predecessor in interest of respondent Water Company held title to the property of said Water Company and to all of its facilities and was duly certificated to do business, respondent holds title to the same company and to the same facilities.

IV

Respondent has sustained the burden of proof to justify proposed rates for fire hydrant service.

V

Comparison with rate structures of other utilities is immaterial unless standards of comparability are offered.

VI

The City of Ceres is able to pay for services which it desires to be rendered.

In conclusion, Morrow submits:

- "1. That by impartial and objective staff investigation, the rates filed by the Company under Schedule No. 5 of Advice Letter No. 3 have been found to be fair and reasonable, and necessary to enable Respondent to earn a fair return upon its investment.
- "2. That if the City of Ceres is not required to pay the proposed rates, other customers of the Respondent will suffer discrimination in that they will be required to bear the cost of service rendered to said City.
- "3. That such rate as may be approved in this matter should be retroactive in effect to October 28, 1957."

Findings and Conclusions

We have carefully examined the City's Ordinance No. 124 and find nothing therein which provides for the transfer to the City of water facilities installed in connection with the subdivision herein concerned, either for ownership or maintenance. Although no mention of fire hydrants is made therein, the said Ordinance does provide for the installation of a water supply, among other improvements, as a part of the regulations applicable to the subdivision of land within the City's boundaries. In our opinion the said Ordinance is intended only to assure that the placement of water mains and services in connection therewith will meet the City's requirements and will be

in accordance with the engineering practices which the City's engineer may prescribe as to location, grades, character of facilities, and surfacing of sidewalks and streets pertaining thereto. The record shows that all such requirements were met by the subdivider, Loyd Morrow, who first installed the water system in Morrow Village. The Commission is not convinced that the dedication of streets within the subdivision, nor of the public utility easements in which the water mains were installed, in any way prejudiced the ownership of the water system installed by the said subdivider.

Based upon our review of the record in this proceeding and after due consideration of all the evidence therein and of all briefs submitted in connection therewith, the Commission finds and concludes as follows:

1. That nothing in this record disproves the assumption of ownership by John Howard of the water system, including all distribution mains, services and fire hydrants in connection therewith, known as the Morrow Water Company, furnishing water to Morrow Tract and Morrow Village in the vicinity of Ceres in Stanislaus County.

2. That the Commission staff engineer was warranted in using the records of said Morrow Water Company filed with the Commission and otherwise made available to him for the purpose of making his investigation and analysis which resulted in his memorandum filed as Exhibit No. 1 in this proceeding.

3. That the results set forth by the Commission staff engineer in said Exhibit No. 1 as to the revenue requirement for the service rendered by Morrow Water Company through fire hydrants in the portion of the City of Ceres served thereby, have been determined in a realistic and reasonable manner.

4. That the rate of \$2 per hydrant per month, as justified by the said Exhibit No. 1, for fire protection service rendered to said

area is proper and reasonable and is neither discriminatory nor unreasonable in any particular.

5. That so long as the City of Ceres is not required to pay charges at the rate thus determined for fire hydrant service rendered within the City, other customers of Morrow Water Company not within the boundaries of the City will suffer discrimination in that they will be required to bear the cost of such service rendered within the said City.

6. That the City of Ceres possesses all of the taxing authority of any city of its class and is therefore able to pay for services chargeable to it.

7. That the number of fire hydrants subject to the rate herein found to be reasonable is the number of hydrants heretofore required by the City of Ceres to be installed on the system of Morrow Water Company within the City's boundaries.

8. That the suspension of the rate filed by Morrow Water Company should be removed and the application of said rate should be made effective for service furnished on and after June 1, 1958.

9. That the increase in charges resulting from the application of said Schedule No. 5 as herein authorized is justified and the rate is reasonable.

O R D E R

The Commission on its own motion having instituted investigation into the propriety and reasonableness of Tariff Sheet No. 41-W filed with Advice Letter No. 3 on October 3, 1957, by John Howard, doing business as Morrow Water Company, which sheet entitled Schedule No. 5, Public Fire Hydrant Service, comprises a new rate for such service being furnished to a portion of the City of Ceres in Stanislaus County; the Commission having suspended the operation of said schedule

until March 2, 1958, and on February 4, 1958, having suspended the operation of said schedule for a further period of six months beyond March 2, 1958; public hearings having been held; the matter now having been submitted and being now ready for decision; and the Commission having found said schedule to be proper and reasonable and neither discriminatory nor preferential in any particular; therefore,

IT IS ORDERED that the suspension of Schedule No. 5 filed by Morrow Water Company on October 3, 1957, be and it is hereby removed, and John Howard, doing business as Morrow Water Company, is authorized to place said rate schedule into effect for service furnished on and after June 1, 1958.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of May, 1958.

Ray L. Johnson President  
William D. ...  
Theodore Jensen  
Commissioners

Peter E. Mitchell  
Commissioners C. Lynn Fox, being necessarily absent, did not participate in the disposition of this proceeding.