

Decision No. 56864

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 NORTHERN COUNTIES UTILITY COMPANY,)
 a corporation, for the establish-)
 ment of rates for water service and)
 for authority to enter into a con-)
 tract with Fruit Growers Supply)
 Company.)

Application No. 39595

Clyde Henry, for applicant.
J. T. Pool and Leonard H. Randall, for
 Westwood Chamber of Commerce; Lester James
Bingham, in propria persona, protestants.
Farrand, Fisher & Farrand, by Ross C. Fisher,
 for Fruit Growers Supply Company; H. Miles
Raskoff, for Passview, Inc.; Lassen Hill,
 Inc.; Westwood-Lassen Development Co., Inc.;
 Fishvale, Inc.; Whitetop, Inc.; Scenic
 Hills, Inc.; Pondview, Inc.; Timberlake,
 Inc.; D/W Development Co., Inc.; W/W
 Development Co., Inc.; Greater Westwood,
 Inc.; Westwood Vale, Inc., and Nuievview,
 Inc.; W. J. Tunison, for Board of Super-
 visors, Lassen County; Richard J. Price, in
 propria persona, and Paul L. Jensen, for
 Veterans Administration, Reno, Nevada,
 interested parties.
Alfred V. Day, for the Commission staff.

O P I N I O N

This application seeks Commission authorization for the establishment of water rates and the approval of a contract terminating an agreement dated October 7, 1944 between applicant and Fruit Growers Supply Company.

A public hearing was held in this matter at Westwood, California, on February 27, 1958 before Examiner Donald B. Jarvis.

Westwood was built as a company town by the Red River Lumber Company. The water system was constructed in 1913. It was operated by Red River as part of its milling operations and designed for the purpose of supplying the town, mill, box factory and lumber

manufacturing facilities. Red River made no direct charges for utility services, including water, furnished the townspeople who were primarily employees or concessionaires and their families.

Fruit Growers Supply Company, a corporation, was formed for the purpose of supplying containers and other supplies to members of the California Fruit Growers Exchange. In 1944 Fruit Growers desired to purchase the stand of timber owned by Red River near Westwood. Red River was unwilling to sell the timber unless Fruit Growers purchased the town of Westwood including the mill, factory, other manufacturing facilities and substantially all of the utility systems operated by Red River. Fruit Growers purchased all of the aforementioned property in 1944. Fruit Growers decided to continue to operate Westwood as a company town but did not wish to assume public utility obligations. Fruit Growers organized applicant, Northern Counties Utility Company, for the purpose of taking over and operating the utility property and functions obtained from Red River. A contract between Fruit Growers and Northern Counties provided that Northern Counties would provide utility services, including water, to the company town. It was contemplated that for the foreseeable future no rates would be established for said utilities and that Fruit Growers would reimburse Northern Counties quarterly for any operating deficit until "such time as (Northern Counties) Utility Company shall have established adequate rates and (Fruit Growers) Supply Company shall have been relieved of its obligation to continue to make such payments, all by order of the Railroad Commission of the State of California."

The foregoing arrangements were presented for approval to the Commission in Applications Nos. 26385 and 26386 which sought a certificate of public convenience and necessity for the proposed utility operations of Northern Counties. The Commission in its order,

among other things, granted Northern Counties a certificate of public convenience and necessity to operate the water system. The order also provided that:

"(a) Northern Counties Utility Company shall file schedules covering water service, which schedules shall indicate that no charges will be made for such services pending application to and issuance by the Commission of a further order fixing rates or charges for such water services.

"(b) Northern Counties Utility Company shall on or before March 1, 1945, unless further time be given, file with the Commission a detailed inventory and cost appraisal of the facilities so acquired, such inventory and appraisal to show separately the water facilities and rights which are used and useful in rendering those public utility services." (Re Northern Counties Utility Co., 45 C.R.C. 530, 536-37.)

To date, Northern Counties has not endeavored to establish a rate base for the water system.

Supply Company operated in Westwood until it decided that it had exhausted the timber which could profitably be processed there. On September 17, 1956, Fruit Growers sold all of applicant's capital stock to Milton J. Wershow and David Weisz. This agreement, as amended, provided that Wershow and Weisz would reimburse Fruit Growers for any amount of Northern Counties operating deficit which Fruit Growers was obligated to pay. The amended agreement also provided, in part, that:

"Should Buyer default in the payment of any one or more of the quarterly payments from time to time required by the agreement between Seller and Utility dated October 7, 1944, as is set forth in Section 2 of the Agreement for Sale, the Seller, on written notice to Buyer, may require Buyer, within thirty (30) days from the receipt of such written notice, to either cure the default or to deposit with and pay to Seller the sum of \$50,000.00, which shall be used by Seller to cure any defaults of Buyer and to continue the performance of any of Buyer's obligations in connection with the Utility stock; if Seller is relieved of the obligation to underwrite deficiencies of Utility by the Public Utilities Commission before the \$50,000.00 is exhausted"

The stock was eventually transferred to a corporation controlled by Wershow and Weisz named Greater Westwood, Inc. On December 27, 1957, Greater Westwood entered into a contract to sell all of Northern Counties capital stock to Clyde Henry, the general manager of Northern Counties. This contract, in part, provided that:

".... said capital stock has been pledged to FRUIT GROWERS SUPPLY COMPANY upon the condition that said stock will be released from said pledge immediately upon the release of FRUIT GROWERS SUPPLY COMPANY from any and all obligations under an agreement of October 7, 1944, with NORTHERN COUNTIES UTILITY COMPANY whereby FRUIT GROWERS SUPPLY COMPANY agreed to pay to the utility, quarterly, such sums of money as might be necessary to pay any operating deficits of NORTHERN COUNTIES UTILITY COMPANY. A copy of said agreement of October 7, 1944, was attached to Application No. 26387 (sic) filed with the Public Utilities Commission of the State of California by NORTHERN COUNTIES UTILITY COMPANY, and said agreement is to remain in effect until the utility company establishes rates."

The contract further provided:

"Said sale is and shall be subject to the pledge of said stock to FRUIT GROWERS SUPPLY COMPANY with the only condition to the pledge being the release of FRUIT GROWERS SUPPLY COMPANY from any liability under its agreement with NORTHERN COUNTIES UTILITY COMPANY to pay any operating deficits of that company."

In addition, the contract provided that:

"HENRY hereby promises and agrees to pay to Greater Westwood as a purchase price for the property hereinabove referred to the sum of FIFTY THOUSAND (\$50,000.00) DOLLARS. Said sum of FIFTY THOUSAND (\$50,000.00) DOLLARS shall be payable to GREATER WESTWOOD without interest, in annual installments, commencing on March 15, 1961, with each annual payment being equal to 25% of the net profit, after taxes, earned by NORTHERN COUNTIES UTILITY COMPANY during the preceding calendar year. Said annual installments shall continue to be payable on the 15th day of March of each succeeding year until all payments made under the terms of this agreement, together with all payments that may be received pursuant to that certain agreement between MILTON WERSHOW AND DAVID WEISZ, as Sellers, and CLYDE HENRY, as Buyer, for the sale of the sewer system and the trash and garbage disposal facilities in the Town of Westwood

executed contemporaneously herewith, shall equal said sum of FIFTY THOUSAND (\$50,000.00) DOLLARS. It is expressly understood and agreed that no payment shall be due or payable under the terms of this agreement unless there is a net profit from the operation of said NORTHERN COUNTIES UTILITY COMPANY for the preceding calendar year."

In the circumstances, Northern Counties is entitled to the establishment of a rate. (Smyth v. Ames, 169 U.S. 466, 546.) The contract between Fruit Growers and Northern Counties was the financial enabling document for the utility. Without the presence of that contract this Commission would not have issued its previous order granting the operating rights here involved to Northern Counties without providing for the establishing of rates. If the contractual arrangement between Fruit Growers and Northern Counties be fully analyzed, it will be seen that Fruit Growers assumed a public utility status to a contingent but limited financial degree until such time as this Commission approved the establishing of rates by Northern Counties and the termination of Fruit Growers obligation under the contract. This construction is supported by the contemporaneous and subsequent conduct of the parties in dealing with said contract provision. The order herein will provide for the termination of said contract upon the effective date of the rates ordered.

Northern Counties has requested that any rates established herein be made retroactive to January 1, 1958. It is obvious from the facts heretofore recited that at all times mentioned the management of Northern Counties as well as the beneficial owners of its stock were aware that no rates could be charged the consumers using water system until a proper order of this Commission so provided. An order providing for retroactive rates would under these facts give a windfall to the utility and would be unjust and inequitable. The request for retroactive rates is hereby denied. (Re Citizens Utility Company of California, 52 Cal. P.U.C. 637, 639; see also Re Pacific

Telephone and Telegraph Company, 48 Cal. P.U.C. 823, 826; Re Wm. L. Govan, 28 C.R.C. 254, 256.)

A description of applicant's water system is contained in the application, as amended. As indicated, Northern Counties has not charged and presently does not charge its consumers for the water supplied them. Proposed rates are as follow:

<u>FLAT RATES</u>	<u>Per Month</u>
1. Residences, boarding houses, flats, lodging houses, apartments of 5 rooms or less, including one bathroom or toilet or shower	\$ 5.00
a. For each additional room .....	.20
b. Additional for each bath or shower .....	.35
c. Additional for each toilet .....	.35
2. Sprinkling or irrigation of lawns, gardens, shrubbery, etc., chargeable throughout the year, for all types of customers, per 100 sq. ft. ....	.05
3. Ice cream parlors, soda fountains, bars, restaurants and lunch counters, per unit of seating capacity .....	.15
Minimum Charge	5.00
4. Barber shops with one chair	5.50
a. For each additional chair	1.50
b. Additional for each bath or shower	1.50
5. Hotels or Motels	
General use including office and utility room	7.50
In addition to general use:	
a. Each room with running water	1.00
b. Each unit of seating capacity in dining room, coffee shop .....	.15
6. All commercial establishments, public buildings, schools and clubs not listed above ...	7.50
a. Additional for each bath, shower or toilet ..	.35

The minimum seasonal rates are to apply on all dwellings when being served on flat basis.

Yearly minimum charge 60.00

The following meter rates are to apply and meters may be installed at the option of the utility.

	<u>Per</u> <u>100 cu.ft.</u>
First 500 cu.ft. or less	\$0.80
Next 1,500 cu.ft. ....	.50
Next 3,000 cu.ft. ....	.30
All over 5,000 cu.ft. ....	.25

(NOTE: The record discloses that applicant has no present intention of installing meters.)

Northern Counties' general manager testified that presently there are 250 permanent, 136 seasonal and 14 commercial customers; that the estimated monthly operating expenses, excluding depreciation, total \$4,175; and that the estimated monthly revenue to be produced by the proposed rates would amount to \$2,400.

Other evidence of record indicates that Northern Counties is operating a water system that is overdeveloped for the community it now serves. This is understandable since the system was designed to serve the mill, box factory and lumber manufacturing facilities which are not now operating. The evidence further shows that it is possible to reduce the operating capacity of the system and thereby reduce costs and still adequately serve the system's consumers. On cross-examination the general manager testified that by replacing various pumps with those having less horsepower the utility's power bill would be at least halved. The power bill has been \$1,700 per month. The general manager testified that the utility was in the process of transitioning the system to one of lesser but adequate capacity. In addition, the record indicates that certain other operating costs relied upon by Northern Counties are based upon the overdeveloped system.

A number of consumers testified and, in the main, voiced the view that the proposed rates are too high.

In the light of the foregoing the Commission is of the opinion that the rates proposed by Northern Counties are greater than the service is reasonably worth and that the present customers should not be required to pay for all the operations of this over-developed system. (Re Kennett Water Company, 20 C.R.C. 464.)

Applicant's request to establish the proposed rates will be denied. However, applicant should not be required to continue furnishing service at no charge. The Commission finds that the rates set forth in Appendix A attached to the following order are reasonable and will be authorized.

The authorized rates are being established on an annual basis; however, a customer who has established permanency of service will be permitted to elect to pay the annual flat rate or minimum charge on a monthly basis.

This record does not contain evidence necessary to enable the Commission to establish a fair rate base and a fair rate of return for this applicant. If applicant is of the opinion that other changes in its rate structure are required it should, in an appropriate proceeding, make a detailed showing as to original cost, estimated, if unknown, and presently depreciated cost of all plant and facilities devoted to the public service and further make a detailed showing of operating revenues and expenses by accounts for a period of not less than 12 months.

O R D E R

The above-entitled application having been considered, a public hearing having been held, the matter having been submitted and now being ready for decision,

IT IS ORDERED that:

1. Applicant is authorized to file in quadruplicate with this Commission after the effective date of this order, in conformity with General Order No. 96, the schedule of rates and charges shown in Appendix A attached hereto and, on not less than five days' notice to the Commission and the public, to make said rates and charges effective for service rendered on and after June 16, 1958.

2. Within forty-five days after the effective date of this order applicant shall file in quadruplicate in accordance with the requirements of General Order No. 96 and acceptable to this Commission rules governing customer relations, a tariff service area map and samples of current forms normally used in connection with customer service. Such rules, tariff service area map and forms shall become effective on five days' notice to the Commission and to the public after filing as hereinabove provided.

3. Applicant within sixty days after the effective date of this order shall file four copies of a comprehensive map, drawn to an indicated scale not smaller than three hundred feet to the inch, delineating by appropriate markings the various tracts of land and territory served, the principal production, storage and distribution facilities, and the location of the various water system properties of applicant.

4. Upon the effective date of the rates hereinbefore provided, permission is granted to Northern Counties Utilities Company and Fruit Growers Supply Company to terminate the contract between said

companies which provides that Fruit Growers will reimburse Northern Counties for any operating deficit.

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

Dated at San Francisco, California, this 13th day of May, 1958.

Robert E. ...
 President

Ralph ...

...

Theodore ...
 Commissioners

Commissioner *E. Lyn Fox*, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
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Schedule No. 1

ANNUAL GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service furnished on an annual basis.

TERRITORY

The unincorporated community of Westwood, and vicinity, Lassen County.

RATES

	<u>Per Meter</u> <u>Per Year</u>
<u>Annual Quantity Rates:</u>	
First 6,000 cu.ft. or less	\$ 48.00
Next 4,000 cu.ft., per 100 cu.ft. ....	.40
Over 10,000 cu.ft., per 100 cu.ft. ....	.25
<u>Annual Minimum Charge:</u>	
For 5/8 x 3/4-inch meter	\$ 48.00
For 3/4-inch meter	52.00
For 1-inch meter	58.00
For 1 1/2-inch meter	70.00
For 2-inch meter	85.00
For 3-inch meter	125.00
For 4-inch meter	175.00

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

SPECIAL CONDITIONS

1. The annual minimum charge applies to service during the 12-month period commencing January 1, and is due in advance. A customer who has established his permanency by having taken service for the preceding 12 months may elect to pay the annual minimum charge on a monthly basis equal to one twelfth of the annual minimum charge.

2. Charges for water used in excess of the quantity which the annual minimum charge will purchase may be billed monthly, bimonthly or quarterly at the option of the utility.

Schedule No. 2

ANNUAL GENERAL FLAT RATE SERVICEAPPLICABILITY

Applicable to all flat rate water service furnished on an annual basis.

TERRITORY

The unincorporated community of Westwood, and vicinity, Lassen County.

RATES

	<u>Per Service Connection Per Year</u>
For each 3/4-inch service connection	\$51.00
For each 1-inch service connection	60.00
For each 1 1/2-inch service connection	72.00
For each 2-inch service connection	90.00

SPECIAL CONDITIONS

1. The annual flat rate charge applies to service during the 12-month period commencing January 1, and is due in advance. A customer who has established his permanency by having taken service for the preceding 12 months may elect to pay the annual flat rate charge on a monthly basis equal to one twelfth of the annual flat rate charge.

2. All service not covered by the above classifications will be furnished only on a metered basis.

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