

**ORIGINAL**

Decision No. 59222

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

YUCAIPA DOMESTIC WATER COMPANY, a corporation,)

Complainant,

vs.

Case No. 6247

YUCAIPA WATER COMPANY NO. 1, a corporation,

Defendant.

YUCAIPA WATER COMPANY NO. 1, a corporation,

Complainant,

vs.

Case No. 6248

YUCAIPA DOMESTIC WATER COMPANY, a corporation,)

Defendant.

Surr & Kellier; James R. Edwards, by John B. Surr,  
for defendant, Yucaipa Water Company No. 1, in  
Case No. 6247, and for complainant, Yucaipa  
Water Company No. 1, in Case No. 6248.

Taylor & Smith, by Edward F. Taylor, and Kyer &  
Graeber, by Charles G. Graeber, for Yucaipa  
Domestic Water Company, complainant in Case  
No. 6247 and defendant in Case No. 6248.

James G. Shields and C. O. Newman, for the Commis-  
sion staff.

INTERIM OPINION

Public hearings in these matters were held before Examiner Grant E. Syphers at Yucaipa on May 12 and June 15, 1959. On these two dates evidence was adduced and the matters submitted subject to the filing of briefs. These briefs now have been filed and the matters are ready for decision.

Yucaipa Domestic Water Company is a public utility operating under authority of this Commission. Yucaipa Water Company No. 1

is organized as a mutual water company which furnishes water to its shareholders. The largest shareholder of this mutual is Yucaipa Domestic Water Company, the aforementioned utility. In Case No. 6247 the utility filed a complaint against the mutual requesting that the mutual be declared to be a public utility and that it be ordered to cease and desist the "setting of rates, withholding of services, and assessment of costs" against the utility without authorization from this Commission. The mutual has threatened to enforce against the utility a rate increase which would critically affect the latter.

Case No. 6248 is a complaint which the mutual has filed against the utility requesting that the Commission restrain the utility from rendering water service outside of its service area, and that the utility be required to return certain stock and refund certain payments which have been made to it.

Case No. 6303 is an order instituting investigation on the Commission's own motion into the operations, practices and contracts of the Yucaipa Water Company No. 1 concerning the furnishing of water to the Yucaipa Domestic Water Company, a public utility, for the purposes of determining (1) whether respondent is in fact a public utility subject to the jurisdiction of this Commission, (2) whether or not it is justified in increasing the charges for water to the Yucaipa Domestic Water Company, (3) whether or not the enforcement of said contractual relationship threatened by Yucaipa Water Company No. 1 against said utility will tend to disable said utility in the performance of its public duty, and (4) whether any other action should be taken or orders entered that may be appropriate in the lawful exercise of the Commission's jurisdiction. In

said order instituting investigation, the Commission also ordered that pending Commission action on this investigation and further order of the Commission the Yucaipa Water Company No. 1 be, and it hereby is, directed to cease and desist from collecting or threatening to collect any increased rates or charges for water service furnished to the Yucaipa Domestic Water Company.

The evidence discloses, and we now find, that the only source of water supply of the utility is that furnished by the mutual. The utility presently has approximately 660 services, all of which are metered. As to the main pipelines for the primary sources of water, there are five connections between the pipes of the two companies and there are meters at each of these connections. Water is delivered from the mutual to the utility through these five connections.

The mutual water company has about 2,000 holders of shares. The shares are freely transferable and are not appurtenant to the land, and the shareholders may obtain water above their entitlement by paying special rates therefor.

Ordinarily a new water connection is allowed for each one-half share of stock although certain other mutual water companies and at least one individual receive water from the mutual under contract even though they hold no shares at all. Also, some of the shares are leased to others and the lessees obtain water from the mutual.

The area in which the mutual operates comprises Yucaipa township and consists of about 3,500 acres. It provides six types of service at a rate set for each type. These include domestic, public utility, poultry users, trailer parks, scheduled water users

and special services. The special services include hospitals, schools, churches, parks and other large uses.

While the mutual originally was principally devoted to irrigation service it has, over the years, added more domestic users, including about 90 in 1958 and between 80 and 100 in each of the years 1956 and 1957. It now estimates that about 74 percent of its water sales are to domestic users and 26 percent to irrigation users.

These matters were submitted on an interim basis for the purpose of determining whether or not the mutual is, in fact, a utility.

The following provisions of the Constitution of California should be noted:

"The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law..." Article XIV, Section 1.

"Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant or equipment within this State, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature..." Article XII, Section 23.

The Legislature has defined a public utility in Section 216(a) as follows:

"'Public utility' includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman,

and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof."

The following pertinent and definitive sections of the Public Utilities Code should be borne in mind in this connection:

Section 240. "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment, or measurement of water for power, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

Section 241. "Water corporation" includes every corporation or person owning, controlling, operating or managing any water system for compensation within this State.

Section 2701. Any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system within this State, who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the State, whether under contract or otherwise, is a public utility, and is subject to the provisions of Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission, except as otherwise provided in this chapter.

Section 2702. Any corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost which delivers water to others than its stockholders or members, or the State or any department or agency thereof or any school district, or any other mutual water company, for compensation, becomes a public utility and is subject to Part 1 of Division 1 and to the jurisdiction, control, and regulation of the commission.

It was the position of Yucaipa Water Company No. 1 that it was not a public utility and that, in fact, its operations came within the scope of Section 2705 of the Public Utilities Code. This section reads as follows:

"Any corporation or association which is organized for the purpose solely of delivering water to its stockholders or members at cost, and which delivers water to no one except

its stockholders or members, or to the State or any agency or department thereof, or to any school district, or to any other mutual water company, at cost, is not a public utility, and is not subject to the jurisdiction, control or regulation of the commission."

In relying upon the exemption contained in this section, this company took the position that Section 2705 was specific and, accordingly, controlled in this case rather than the provisions of Section 216(c) which read as follows:

"When any person or corporation performs any service or delivers any commodity to any person, private corporation, municipality or other political subdivision of the State, which in turn either directly or indirectly, mediately or immediately, performs such service or delivers such commodity to or for the public or some portion thereof, such person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

We hold that Sections 2705 and 216(c) present no contradiction in this matter. The word "deliver" in Section 216(c) is modified by the phrase "directly or indirectly". The word "deliver" in Section 2705 does not have such an express modification. However, to support the company's position it would be necessary to imply that the word "deliver" in Section 2705 means directly deliver. Such an implication should not be made. The two sections should be read together and applying a reasonable interpretation thereto we find that the word "deliver" in Section 2705 should have the same connotation as the word is used in Section 216(c). Therefore, an indirect delivery of water as well as a direct delivery to a nonstockholder, will destroy the exemption set out in Section 2705. Specifically, water from the mutual company is delivered either directly or indirectly to persons other than stockholders of the mutual. Clearly, Sections 2701, 2702, 240 and 241 of the Public Utilities Code also contradict the position of the mutual.

Furthermore, it must be kept in mind that any claim to exemption from the reach of a comprehensive regulatory statute must be strictly construed. This rule is elementary. (Piedmont and Northern Railway Company v. Interstate Commerce Commission, 286 U.S. 299, 311-312, 76 L. ed. 1115, 1123; Interstate Natural Gas Company v. Federal Power Commission, 331 U.S. 682, 691, 91 L. ed. 1742, 1748; U.S. v. Public Utilities Commission of California, 345 U.S. 295, 310, 97 L. Ed. 1020, 1034.)

Moreover, the evidence in this record does not show that the mutual delivered water even to its shareholders at cost. This is a requisite prescribed by both Section 2702 and Section 2705 of the Public Utilities Code. The failure of the mutual to prove that it delivers water to its shareholders at cost is fatal to its claim that it comes within the exemption provisions of said Section 2705.

A consideration of all of the evidence adduced in these cases and of the briefs and statements of position which have been filed by the parties, leads us to determine and we now find and conclude that the operations of Yucaipa Water Company No. 1 are such as to confer public utility status upon that company.

The law is clear in this State that one who dedicates water to a public use is a public utility. It is true that such dedication must be voluntary and cannot be impressed by this Commission (Allen v. Railroad Commission, 179 Cal. 68, 89). However, in this case there is no question but that the so-called mutual company has been the sole supplier of water to the utility for many years last past. Also, there is no question but that the mutual supplies water to parties other than its stockholders, permits the shares of stock to be transferred freely without being appurtenant to the land, permits the shares of stock to be leased and supplies water to the lessees, and furnishes additional water to shareholders upon the payment of

special rates. Furthermore, the mutual has been taking in new domestic customers each year for at least the past three years, and it maintains and charges for six separate classes of service. The foregoing facts we hereby find to be clearly established by the evidence.

The fact that this corporation is organized as a mutual water company and is allegedly consumer owned and controlled does not of itself exempt it from regulation (Plumas-Sierra Rural Electric Cooperative, Incorporated, 50 Cal. PUC 301; California Electric Power Co. v. Mesa Electric Cooperative, Inc., 47 Cal. PUC 118). The basic test must be whether or not this company has dedicated its property and service to the public. The Supreme Court of this State denied review of the decision of the Commission in the Plumas-Sierra case. In Western Canal Co. v. Railroad Commission, 216 Cal. 639, 646-647, the Court held that a corporation, even though organized as a mutual water company, may become a public utility by its subsequent activities.

We now find that these activities of Yucaipa Water Company No. 1 constitute a dedication to the public use and resultantly we find Yucaipa Water Company No. 1 to be a public utility subject to the jurisdiction of this Commission.

We further find and conclude that the enforcement of the threatened rate increase by Yucaipa Water Company No. 1 against Yucaipa Domestic Water Company would disable the latter in the performance of its duty to the public. Yucaipa Water Company No. 1 will be ordered to cease and desist from collecting any increased rates or charges for water service furnished the Yucaipa Domestic Water Company, pending further Commission action.

The ensuing order will be interim in nature, and further proceedings will be held to determine the other matters raised by these complaints and by the Commission's order instituting investigation in Case No. 6303.

INTERIM ORDER

The complaints as above entitled having been filed, public hearings having been held thereon, the Commission being fully advised in the premises and having made the foregoing findings,

IT IS ORDERED:

(1) That Yucaipa Water Company No. 1 be, and it hereby is, declared to be a public utility subject to the jurisdiction of this Commission and to the applicable provisions of law.

(2) That said corporation shall file, within one hundred twenty days after the effective date of this order, a report setting forth in detail a determination of the original cost, estimated if not known (historical cost appraisal), of its properties used and useful in the public service, and also the depreciation reserve requirement applicable to such properties. The report is also to include an estimate of the annual expenses of maintaining and operating the system as a public utility.

(3) That said corporation be and it is hereby ordered and directed to cease and desist from collecting any increased rates

or charges for water service furnished to the Yucaipa Domestic Water Company pending further Commission action.

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

Dated at Los Angeles, California, this 3<sup>rd</sup> day of November 1959.

Ernest R. Leary  
President  
W. H. H. H. H.  
W. H. H. H. H.  
S. L. H. H. H.  
Theodore H. H. H.  
Commissioners