

ORIGINAL

59281

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the practices, operations, contracts, rules, facilities and service of the HESPERIA WATER COMPANY, a corporation, and KAYEM INVESTMENT COMPANY, a corporation.

Case No. 6159

Kaplan, Livingston, Goodwin & Berkowitz, attorneys,
by Frank F. Mankiewicz, for respondents Hesperia
Water Company and Kayem Investment Corporation,
N. K. Mendelsohn, president, for respondent
Hesperia Water Company.
Everett A. Phillips, consulting engineer, for various
consumers; and Wilbur A. Coe for Hesperia County
Fire Protection District; interested parties.
Hugh N. Orr and James G. Shields for the Commission
staff.

INTERIM OPINION

The above entitled Investigation on the Commission's own motion into the practices, operations, contracts, rules, facilities and service of the Hesperia Water Company,^{1/} a corporation, and Kayem Investment Company,^{2/} a corporation, was instituted on the Commission's own motion on July 29, 1958. The order of investigation listed eleven purposes as set forth numerically in said order.

Public hearings were held before Examiner Stewart C. Warner on March 10 and 11, 1959, at Hesperia, and April 13 and 14, 1959, at Los Angeles. The matter was submitted subject to the filing and receipt of a written closing argument or brief by respondent's

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- ^{1/} Hereinafter referred to as Hesperia Water or the water company.
^{2/} Properly Kayem Investment Corporation - hereinafter referred to as Kayem.

counsel and a reply thereto by the staff counsel, which said latter brief was received on August 13, 1959, and the matter is now ready for decision. The record comprises 26 exhibits, including 12 reports submitted by Commission staff engineering and accounting witnesses, and 388 pages of transcript. Respondents took no issue with the factual data submitted by the staff.

Respondent Hesperia Water was organized on April 8, 1915, by Appleton Land, Water and Power Company^{3/} for the purpose of furnishing water service in Hesperia townsite, an unincorporated area of San Bernardino County, such water service to be furnished through water system facilities owned by Appleton and leased to Hesperia Water. Said lease, which provided that the consideration for the use of water system facilities by Hesperia Water to Appleton would be the net operating income of Hesperia Water, was approved by Decisions Nos. 2552 dated June 30, 1915, and 2625 dated July 23, 1915, in concurrent Applications Nos. 1693 and 1694. Said lease was for a term of five years terminable upon ninety days' notice by Appleton, and by said decisions Hesperia Water was granted a certificate of public convenience and necessity to operate as a public utility water corporation but no further application was ever made to the Commission for authority to renew the lease, and Commission records do not indicate that it was renewed upon its expiration date of April 30, 1920. Appleton controlled Hesperia Water through its ownership of five shares of the latter's stock. Appleton has never sought nor obtained a certificate of public convenience and necessity and has never been declared by the Commission to be a public utility water corporation.

^{3/} Hereinafter referred to as Appleton.

Some time in the year 1954, Hesperia Land Development Company,^{4/} a corporation, purportedly acquired Appleton's water system facilities and the five shares of Hesperia Water's stock owned by Appleton. Hesperia Land has never sought nor obtained a certificate of public convenience and necessity and has never been declared by the Commission to be a public utility water corporation.

Since 1954, Hesperia Water's service area had been expanded from the originally certificated Hesperia townsite to include the entire Hesperia Township comprising 36 square miles and 22,000 subdivided lots, together with some areas lying outside the boundaries of said Township.

Some time in 1956, a series of transactions occurred, as a result of which Kayem purportedly acquired the water system facilities of Hesperia Land and certain other parties, together with the stock of Hesperia Water. Since May 1, 1956, Kayem has leased said water supply and distribution facilities to Hesperia Water.

The following tabulations show the growth in the number of customers and the total footage of distribution mains for the years 1953 to 1957, inclusive, as set forth in Exhibit No. 4:

^{4/} Hereinafter referred to as Hesperia Land.

<u>End of Year</u>	<u>No. of Customers</u>	<u>Total Footage of Distribution Mains</u>
1953	169	50,815
1954	190	34,990
1955	481	134,990
1956	980	1,494,878
1957	1,233	1,718,109

The record shows that as of December 31, 1958 the total number of active customers was 1380.

As of October 28, 1958, Kayem's president was C. Dimston, its vice president was J. S. Hislop, and its secretary-treasurer was N. Gross. None of Kayem's officers or directors, as shown in Exhibit No. 4, testified at the hearings, but Hesperia Water's president, who acted as agent for the New York interests which formed Kayem, testified that Kayem had no interest other than to lease water system facilities to Hesperia Water.

Exhibit No. 11-A is Kayem's balance sheet as of March 31, 1959. Said exhibit shows waterwork system assets, depreciated, in the amount of \$364,215.98, whereas Hesperia Water's balance sheet as of the same date shows fixed assets, depreciated, of \$82,175.70. Hesperia Water's president testified that Kayem's officers and owners bought water system facilities from Hesperia Land and other parties which exceeded \$1,250,000. The arrangement for such purchases was that the water system facilities would be bought for 20 cents on the dollar, and would be held by Kayem for lease to Hesperia Water in the hope of selling such properties subsequently to some other party at a substantial profit. No prospective buyer of water system facilities under such conditions was disclosed for the record.

The contract, dated April 24, 1956, between N. K. Mendelsohn, acting for Kayem, and Hesperia Land, Hesperia Sales Corporation,

Hesperia Industrial Development Company, Milfer Farming Corp., and Hesperia Inn, copy of which was submitted as Item No. 1 of Exhibit No. 5-A, and the assignment, dated May 10, 1956, by N. K. Mendelsohn to Kayem which is set forth as Item No. 2 of said exhibit, contain the basic terms of the purchase of water system facilities leased to Hesperia Water by Kayem. Said exhibit also contains copies of assignments to Kayem of water system facilities by various subdividers and contractors, the result of which was to place all water system facilities in the name of Kayem.

Exhibit No. 5 contains copies of agreements, dated May 1, 1956 and May 1, 1957, as attachments Nos. 1 and 2, respectively, which set forth the lease terms by Kayem of water system facilities to Hesperia Water. Said agreements provide that the consideration for the lease is a sum equal to 10 percent of all revenues received by the water company for sales of water to customers in the ordinary course of business during a 12-month period; that the water company shall have the right to make improvements upon any of the facilities; that no additional installations not served by Hesperia as of the date of the agreement should be provided with water through any of Kayem's facilities without its consent in writing; and that Hesperia Water should pay to Kayem all property taxes on any or all of the facilities. Agreements between Kayem and subdividers provided that Kayem would cause Hesperia Water to furnish water service to subdivisions. Such terms had been incorporated in agreements between Hesperia Land and such subdividers prior to the acquisition of water system facilities by Kayem.

The record shows that both Hesperia Land and Kayem executed water main extension agreements with subdividers which were not in accord with Hesperia Water's filed tariffs and main extension rules.

One subdivider, the witness Al Guttman, testified that both Hesperia Land and Hesperia Water had demanded and received a total of \$17,000 including an initial cash payment of \$1,000 to M. Penn Phillips, president of Hesperia Land, together with two non interest bearing promissory demand notes of \$8,000, each payable by Certified Land & Development Company to Hesperia Water. Said notes, plus interest of an undisclosed amount, were eventually paid off through Security Title and Trust Company. Such cash payment was made by Guttman for water service to his subdivision, Tract No. 5375, which lay outside and to the west of Hesperia Water's service area. The record implies that other such cash payments may have been demanded and received, but the record does not disclose the extent to which water system installations by subdividers and contractors may have been donated to Hesperia Land, to Kayem, or to Hesperia Water. Neither does the record disclose whether the costs of such extensions and installations may have been advanced by such subdividers and contractors nor to what extent such advances, if any, were subject to refunds.

Further proceedings will be had herein for the purpose, among others, of determining to what extent respondents or their predecessors in interest have violated their tariff rules by making charges against customers contrary to said rules and to order respondents to make lawful restitution to customers whenever unlawful charges are found to have been made. These further proceedings have no application to the unlawful charge of \$17,000 exacted from Certified Land & Development Company which is established of record herein and which respondents will be ordered to refund.

Based on the record before us, the following findings and conclusions are made:

1. Kayem either owns, controls, operates, or manages a water system for compensation, within the meaning of Section 241 of the Public Utilities Code, and is a "water corporation", within the meaning of said Section of said Code. Said water system is used for distributing and delivering water to the public, and Kayem is therefore a "public utility", within the meaning of Sections 216 and 2701 of said Code.

2. Kayem should immediately take steps to prepare an inventory and ascertain, with respect to all tangible property now owned by it and devoted to public utility service, the original cost thereof to the person who first devoted such property to public utility purposes, and should record such costs in its plant accounts, in conformity with the Uniform System of Accounts for Water Utilities prescribed by the Commission.

3. Kayem should immediately take steps to bring its books of account in all other respects into accord with the Uniform System of Accounts for Water Utilities prescribed by the Commission, including proper entries to account, pursuant to said Uniform System of Accounts, for all advances for construction and all contributions in aid of construction.

4. Kayem should immediately undertake the preparation of a depreciation reserve requirement with respect to all of its depreciable water properties and facilities.

5. Kayem should, within 180 days after the effective date of the following order, file four copies of a comprehensive map or maps showing all principal water system properties and facilities including size, location, and year of installation of all pipe lines and equipment; such maps to be drawn to a scale no smaller than 600 feet to the inch.

6. Hesperia Water Company, a corporation, should, within 180 days after the effective date of the following order, submit in writing to the Commission, an over-all comprehensive plan for a water system adequate to serve the present service area; that plan to be prepared by a registered civil engineer and to include the location of proposed additional wells, water storage facilities and a master grid system which will afford reasonable assurance that potable water in sufficient quantity can be obtained at each well site and distributed to water service customers at adequate operating pressures.

7. Kayem and Hesperia Water should, within 180 days after the effective date of the following order, submit to the Commission, in writing, a proposed schedule for the reinforcement and rehabilitation of such of their water system facilities as the engineering studies required in the preceding paragraph may show to be insufficient, inadequate or obsolete, together with the estimated cost thereof and the means for financing them.

8. Hesperia Water should submit to the Commission in accordance with the procedures prescribed in General Order No. 96, copies of any contract or contracts for the furnishing of fire protection service or for fire hydrant rentals made with the Hesperia County Fire Protection District, or with any other party.

9. There is no necessity at this time for prohibiting the connection of new customers to existing distribution facilities but neither Kayem nor Hesperia should make any further main extensions of its distribution facilities without further order of the Commission.

10. Hesperia Water has unlawfully demanded and received from Certified Land and Development Company the sum of \$17,000 as a

condition to extending its water service to Tract No. 5375 and Hesperia Water should be ordered to refund said sum of \$17,000, with interest at the rate of six percent per annum, to Certified Land and Development Company and to refrain from demanding or receiving as a condition to such extensions of service any sum of money not authorized by its filed rules and regulations, unless authorized so to do by the Commission.

11. Hesperia Water and Kayem should be required to accomplish all the things described in the foregoing paragraphs numbered 1 through 10 on or before July 31, 1960.

INTERIM ORDER

Investigation on the Commission's own motion as above entitled having been instituted, such investigation having been made, public hearings on the results thereof having been held, written closing arguments and briefs having been filed, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED as follows:

1. That Kayem Investment Company be and it is declared to be a public utility water corporation within the meaning of Sections 240, 241, 216 and 2701 of the Public Utilities Code.

2. That Kayem either owns, controls, operates, or manages a water system for compensation, within the meaning of Section 241 of the Public Utilities Code, and is a "water corporation", within the meaning of said Section of said Code. Said water system is used for distributing and delivering water to the public, and Kayem is therefore a "public utility", within the meaning of Sections 216 and 2701 of said Code.

3. That Kayem shall immediately take steps to prepare an inventory and ascertain, with respect to all tangible property now owned by it and devoted to public utility service, the original cost thereof to the person who first devoted such property to public utility purposes, and shall record such costs in its plant accounts, in conformity with the Uniform System of Accounts for Water Utilities prescribed by the Commission.

4. That Kayem shall immediately take steps to bring its books of account in all other respects into accord with the Uniform System of Accounts for Water Utilities prescribed by the Commission, including proper entries to account, pursuant to said Uniform System of Accounts, for all advances for construction and all contributions in aid of construction.

5. That Kayem shall immediately undertake the preparation of a depreciation reserve requirement with respect to all of its depreciable water properties and facilities.

6. That Kayem shall, within one hundred and eighty days after the effective date of the following order, file four copies of a comprehensive map or maps showing all principal water system properties and facilities including size, location, and year of installation of all pipe lines and equipment; such maps to be drawn to a scale no smaller than 600 feet to the inch.

7. That Hesperia Water Company, a corporation, shall, within one hundred and eighty days after the effective date of the following order, submit in writing to the Commission, an over-all comprehensive plan for a water system adequate to serve the present service area; that plan to be prepared by a registered civil engineer and to include the location of proposed additional wells, water

storage facilities and a master grid system which will afford reasonable assurance that potable water in sufficient quantity can be obtained at each well site and distributed to water service customers at adequate operating pressures.

8. That Kayem and Hesperia Water shall, within one hundred and eighty days after the effective date of the following order, submit to the Commission, in writing, a proposed schedule for the reinforcement and rehabilitation of such of their water system facilities as the engineering studies required in the preceding paragraph may show to be insufficient, inadequate or obsolete, together with the estimated cost thereof and the means for financing them.

9. That Hesperia Water shall submit to the Commission in accordance with the procedures prescribed in General Order No. 96, copies of any contract or contracts for the furnishing of fire protection service or for fire hydrant rentals made with the Hesperia County Fire Protection District, or with any other party.

10. That there is no necessity at this time for prohibiting the connection of new customers to existing distribution facilities but that neither Kayem nor Hesperia shall make any further main extensions of its distribution facilities without further order of the Commission.

11. That Hesperia Water shall refund the sum of \$17,000, with interest at the rate of six percent per annum, to Certified Land and Development Company and refrain from demanding or receiving as a condition to any extensions of service any sum of money not

authorized by its filed rules and regulations, unless authorized so to do by the Commission.

12. That Hesperia Water and Kayem shall accomplish all the things described in the foregoing paragraphs numbered 1 through 11 on or before July 31, 1960.

Further hearing in this proceeding will be held at such time and place as may be hereafter designated.

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

Dated at San Francisco, California, this 17th day of September, 1959.

Ernest R. Leage
President
W. H. [unclear]
W. H. [unclear]
W. H. [unclear]
Commissioners

Commissioner Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.