

**ORIGINAL**Decision No. 59452

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WESTERN STATES UTILITIES )  
 and KENNETH SOWERS dba Winterhaven )  
 Water Company for permission to sell a ) Application No. 40521  
 Water System at Winterhaven, California, )  
 and to execute a note and encumber )  
 Utility Property as a part of said sale. )

Application of WESTERN STATES UTILITIES )  
 for a certificate of public convenience )  
 and necessity for the operation of a )  
 water system at Winterhaven, California, ) Application No. 40522  
 for an order approving the rates pro- )  
 posed to be charged for the water to be )  
 furnished, and for approval of certain )  
 proposed opening book entries of the )  
 water system of Western States Utilities.)

Fennemore, Craig, Allen & McClennen by  
John J. O'Conner III, for applicant  
Western States Utilities.  
Kenneth Sowers in propria persona, applicant.  
Karl W. Stevens, for Winterhaven business  
 owners; Howard W. Kitchin, for Winterhaven  
 residence owners; and W. L. Land in propria  
 persona, protestants.  
Robert Salter, for Southern California Gas  
 Company and Earl E. Cavanah, for County of  
 Imperial, interested parties.  
Robert P. Randall, Harold Grondahl, Jr.,  
 and Arch Main, for the Commission staff.

O P I N I O N

On October 20, 1958, Western States Utilities, a California corporation, hereinafter referred to as the Company, and Kenneth Sowers filed an application requesting an order authorizing Sowers to sell and the Company to purchase an existing water system at Winterhaven in Imperial County. This application also requested authority for the Company to execute promissory notes and to encumber utility property. On the same date the Company filed three other applications wherein it requested certificates of public convenience

and necessity to operate a gas and a water system in the area of Winterhaven and an order authorizing it to issue stock.

The four applications were consolidated for public hearing on June 11, 1959 at Winterhaven before Examiner William L. Cole. At this hearing the Company amended Applications Nos. 40522 and 40524 by requesting a certificate of public convenience and necessity to exercise a franchise acquired from the County of Imperial. The four applications were submitted on June 11, 1959 subject to the filing of late-filed exhibits which have since been received. Subsequent to the submission of these matters a petition was filed by a substantial number of persons claiming to be residents of Winterhaven, requesting in effect that the application for authority to transfer the water system, be denied. By Decision No. 58853, the Commission granted Applications Nos. 40523 and 40524 dealing with the gas certificate and the issuance of stock of the Company. However, in the same decision the Commission set aside the submission of Applications Nos. 40521 and 40522 dealing with the transfer of the water system and the water certificate. These last two applications were set for further hearing on August 20, 1959 in Winterhaven, at which time further evidence was adduced and the matters were again submitted for decision.

#### Water System Sale and Certificate

At the present time Sowers owns and operates a water system in Winterhaven serving the residents of that area. The system consists of one drilled well, two well pumps, one 25,000-gallon elevated storage tank and a distribution system composed of approximately 9,600 feet of water mains of various sizes and kinds of materials. The system serves approximately 179 customers. As presently constituted, the system, particularly the mains, does not meet the requirements of the Commission's General Order No. 103. At the present

time service is rendered without the use of meters and therefore flat rates are charged.

Applicants are requesting authority for Sowers to sell the system to the Company for the sum of \$22,500. Of this purchase price \$7,500 is to be paid in cash at the time of the sale, the balance of the purchase price to be evidenced by promissory notes to be executed by the Company in the principal amount of \$15,000 payable over a period of two years in equal annual installments with interest at the rate of 4 per cent per annum based upon the unpaid balance of the notes. These notes are to be secured by mortgages executed by the Company covering the real and personal property of the water system. The Company is requesting authority to execute such notes and mortgages and it is requesting a certificate of public convenience and necessity to operate the system inasmuch as Sowers has never obtained such a certificate from this Commission.

The Company is a newly formed corporation which had not issued any stock prior to the issuance of Decision No. 58853. The president and vice president of the company are also vice presidents of the Arizona Water Company. This latter Company serves water to Yuma, Arizona, as well as other cities in Arizona. Yuma is located within five miles of Winterhaven. It is anticipated that the operation and maintenance of the system will be handled by employees of the Arizona Water Company. Western States Utilities proposes to enter into a contract with Arizona Water Company whereby it would reimburse the Arizona company for all expenses incurred by the latter in operating the system. The Company proposes to engage no employees other than its corporate officers.

If the authority requested by the applicants is granted, the Company plans to spend at least an additional \$18,000 during the

next three years to rehabilitate the system, including rehabilitating the well and replacing many of the water mains so as to bring the system into better compliance with General Order No. 103.

Sowers has not kept adequate records of the operation of the water company from which can be ascertained the original cost of the various assets in the system. Both the Company and the Commission staff attempted to estimate the original cost of the system's utility plant. The Company estimated a so-called trended original cost of \$30,855 and determined that as of December 22, 1958, the required depreciation reserve amounted to \$11,704. This would result in an original cost depreciated for the plant in the amount of \$19,151. The Commission staff estimated the historical cost of the depreciated plant to be \$25,215 with a required depreciation reserve on December 31, 1958 of \$12,252. Under this estimate, therefore, the utility plant depreciated on that date would be \$12,963. An examination of the two studies introduced by these parties indicates that the principal differences in these estimates resulted because of differing estimates as to the original cost of the system's transmission and distribution mains and services. The experts for both parties indicated that in arriving at their respective estimates they were hampered by the lack of adequate records. In view of all of the factors involved in this matter, it is the Commission's conclusion that the Company's utility plant estimate is not unreasonable and it will be adopted.

The following flat rates are presently being charged for service:

	<u>Each</u>
Residence	\$ 3.75
Small Apartment	3.00
Motels:	
One at	10.50
One at	11.50
Restaurants	10.00
Service Stations	5.50
County Jail and	
J. P. Court Building	15.00

The Company proposes to apply these flat rates to existing customers until such time as individual meters can be installed throughout the system. Immediately upon completion of the installation of meters, the Company proposes to apply the meter rates set forth in Application No. 40522 as amended, which rates are as follows:

Quantity Rate:		<u>Per Meter</u> <u>Per Month</u>
First 1,200 cu.ft. or less .....		Minimum*
Over 1,200 cu.ft., per 100 cu.ft. ....		\$0.22
Minimum Charge:		
For 5/8 x 3/4-inch meter .....		4.00
For 1-inch meter .....		4.55
For 1½-inch meter .....		5.60
For 2-inch meter .....		6.80
For 3-inch meter .....		9.70

\* The Minimum Charge will entitle the customer to 1,200 cubic feet or less, regardless of meter size.

Under the proposed meter rates, the Company estimates that the average monthly charge per customer will approximate \$7. The staff estimates an average monthly consumption of water per customer of 2,500 cubic feet, the charge for which, under the proposed meter rates, would be \$6.86 per month.

Both the Commission staff and the Company estimated the results of the third year of proposed operations of the water system under the Company's direction. Again it appears that the arriving at these results was hampered by the lack of adequate records concerning the results of the system's existing operations. As an example, the existing consumption of water by the present consumers had to be estimated. The Company made this estimate by means of an analogy with the water consumption of the residents of Coolidge, Arizona. The staff made its estimate based upon the cost of electric power in running the present system's well pump. Likewise, inasmuch

as the present system is primarily a one man owner-operator arrangement, the amount of time required for operation and maintenance of the system had to be estimated. It is apparent from these observations that the actual results of operations may differ substantially from the estimates. In view of this and after considering all of the circumstances in this matter, it is the Commission's conclusion that the proposed meter rates, with certain modifications, are not unreasonable and that the Company should be authorized to adopt such rates as modified. The flat rates authorized will be temporary pending full metering of the system and will be modified slightly from those presently in use, for simplification. The Company is put on notice, however, that these rates may be reviewed at any subsequent time in order to determine whether they are resulting in reasonable charges and a reasonable return.

One modification referred to involves the provision in the Company's proposed rates which provides that the minimum charge will entitle the customer to 1,200 cubic feet of water or less regardless of meter size. The Commission staff recommended that this provision be modified so as to entitle the consumer to the quantity of water which the monthly minimum charge would purchase at the Company's proposed quantity rates. It is anticipated that this modification will not have an appreciable effect on the Company's revenues.

Other modifications include a reduction of the monthly minimum charge for a 5/8 by 3/4-inch meter from \$4.00, as requested by the Company, to \$3.75, which is the same as the monthly flat rate charge for residential service. Likewise, a rate for a 3/4-inch meter will be included and the minimum monthly charges for various sizes of meters will be modified to reflect more closely the cost of service for these various sizes.

In its original rate proposal, the Company did not include a rate for fire hydrant service. At the time of the hearing, the staff recommended rates for this service in Exhibit 17. The Company has indicated that it plans to negotiate with the local fire protection authorities for the purpose of determining the proper fire hydrant rate. The Company also indicated its agreement with the rates proposed by the staff. The Commission will not authorize any fire hydrant rates at this time pending negotiation between the Company and the local fire protection authorities and the subsequent filing of rates with this Commission.

The evidence indicates that under the existing system certain of the water mains cross private property and that easements have not been obtained. The evidence indicates that Sowers has stated that he will obtain them. These easements must be obtained by either Sowers or the Company.

There were no protestants at the time of the first hearing in these matters; however, at the second hearing several people who were residents of Winterhaven appeared as protestants to the applications. Basically it appears from the record that the reason for the protesting of the sale of the water company are the proposed increase in rates, the fact that the protestants felt that Sowers did not want to sell the water system, and the feeling that there would be no engineer or caretaker of the system located at Winterhaven. It was testified by these protestants that a large number of the residents of Winterhaven are retired pensioners on fixed income and an 80 to 90 per cent increase in the rates for water would be a heavy burden for them. Most of the protestants agreed that whoever owned the system should get a reasonable increase in rates if the water system was improved. One witness indicated that the doubling of existing rates was reasonable. In answer to these points it was shown that

the Company planned to invest a considerable sum of money towards improvements in the system over the next three years, that Sowers on the record indicated his position that the processing of the application for authority to transfer the water system continue, and that the Company intends to arrange with a local store to act as the Company's agent where bills could be paid, applications for service made, and complaints received. It was also pointed out that it is anticipated that workmen from Yuma will be in Winterhaven to check the water system.

Based upon all of the evidence in the record, it is the Commission's conclusion that the proposed sale of the water system from Sowers to the Company is not adverse to the public interest. The Company will also be authorized to execute the notes and mortgages hereinabove mentioned. Likewise, based upon all of the evidence in the record, the Commission finds and concludes that public convenience and necessity require the operation of a public utility water system by Western States Utilities in Imperial County in the area set forth in the map marked Exhibit 4 in these proceedings.

Certificate to Exercise Franchise

On January 19, 1959, the Company received a franchise from the County of Imperial authorizing the Company to construct and operate a system of mains and pipelines along and across public streets and places together with the right to transport gas and/or water through such mains and pipes. This franchise limits the authority granted to a geographical area set forth in Exhibit 4 of this proceeding. The franchise is also limited to a term of 25 years. A fee is payable annually to the County in the amount of 2 per cent of the gross annual receipts of the Company arising from the use, operation, or possession of the franchise. However, this fee is not required during the first five years of the term of the franchise.



As previously indicated, the Commission in Decision No. 58853 granted a certificate of public convenience to exercise the portion of this franchise dealing with gas mains and pipes. Based on the evidence in the record, the Commission finds and concludes that public convenience requires the exercise by the Company of the rights, privileges and franchise granted to the Company by resolution of the Board of Supervisors of the County of Imperial, dated January 19, 1959, authorizing the construction and operation of a system of mains and pipelines to transport water.

#### Finances

The Company's financial structure was discussed in detail in Decision No. 58853. Based upon the record in this matter, it is the Commission's finding and conclusion that the Company's financial condition is adequate to purchase and operate the water system in question.

#### Situs of Records

The Company is also requesting authority to maintain a record of its water operations in Phoenix, Arizona. The reason for this request is that the records will be kept by personnel of the Arizona Water Company which has its main office in Phoenix. In Decision No. 58853 the Company was authorized by the Commission to maintain records of its gas operations in Phoenix.

It is recognized that operating convenience may be served by maintaining the records in Phoenix; however, this Commission may, from time to time, require the members of its staff to examine these records. Such an examination is made more difficult when the records are placed out of state. It is the Commission's conclusion that the Company's request is not adverse to the public interest and that the authority requested should be granted; however, this authority will

be granted subject to the condition that the Company will make any and all of its records available on reasonable notice at any time in Winterhaven, or in any other place mutually convenient in California.

Staff Recommendations

At the time of the hearing of June 11, 1959, the Commission staff made certain recommendations relative to future improvements of the water system. The Commission basically adopts these recommendations, as set forth in the order which follows.

O R D E R

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

IT IS ORDERED that:

1. Kenneth Sowers is authorized to sell and transfer his public utility water system to Western States Utilities pursuant to the terms and conditions set forth in Application No. 40521. This authority shall expire within ninety days from the effective date hereof if not exercised within that time.

2. Western States Utilities is authorized to issue promissory notes payable to Kenneth Sowers in the principal amount of \$15,000 payable over a period of two years in equal annual installments, with interest at the rate of 4 per cent per annum based upon the unpaid balance of the notes. It is the opinion of the Commission that the money, property or labor to be procured or paid for by the issue of notes is reasonably required for the purpose stated herein which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income. Western States Utilities is likewise authorized to execute mortgages covering the real and personal property of the water system as security for such notes.

3. A certificate of public convenience and necessity is granted to Western States Utilities to acquire, construct and operate a public utility system for the distribution and sale of water within the area shown in Exhibit 4 of this proceeding. This certificate is granted subject to the exercise of the authority granted in paragraph 1 of this order.

4. A certificate of public convenience and necessity is granted to Western States Utilities to exercise that portion of the rights, privileges and franchise granted to it by resolutions of the Board of Supervisors of the County of Imperial dated January 19, 1959 authorizing the Company to construct and operate mains and pipelines for the transmission of water. This certificate is granted subject to the exercise of the authority granted in paragraph 1 of this order.

5. The certificates herein granted in paragraphs 3 and 5 are subject to the following provisions of law:

- a. That the Commission shall have no power to authorize the capitalization of the franchise involved herein or these certificates of public convenience and necessity or the right to own, operate or enjoy such franchise or certificates of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, certificate of public convenience and necessity or right.
- b. That the franchise involved herein shall never be given any value before any court or before public authority in any proceeding of any character in excess of the cost to the grantee of the necessary publication and any other sum paid by it to the County of Imperial therefor at the time of the acquisition thereof.

6. If the authority herein granted in paragraph 1 of this order is exercised, Western States Utilities within thirty days

thereafter shall notify this Commission in writing of the date of completion of the property transfer herein authorized. Western States Utilities shall also notify the Commission in writing of the date water service is first tendered to the public under the rates and rules authorized herein, within ten days thereafter.

7. Western States Utilities is authorized to file after the effective date of this order the water rates set forth in Appendix A attached to this order to be effective on or before the date water service is first rendered to the public under the authority herein granted. The schedule of meter rates set forth in Schedule No. 1, page 1 of Appendix A, shall be applied only after completion of the installation of meters on services of all customers as hereinafter required. Western States Utilities shall file in quadruplicate with the Commission in conformity with the provisions of General Order No. 96 a complete set of tariff schedules for its water operations including service area maps, rates, rules and sample copies of printed forms that are normally used by the utility in its operations in connection with customer services.

If the authority herein granted in paragraph 1 of this order is exercised, Western States Utilities shall, within sixty days thereafter, file with this Commission four copies of a comprehensive map drawn to an indicated scale of 100 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 the Company.

9. Western States Utilities shall determine accruals for depreciation for its water operation by dividing the original cost of the utility plant, less estimated future net salvage, less

depreciation reserve, by the estimated remaining life of the plant. The Company shall review the accruals as of January 1 of the year following the date service is first rendered to the public under the rates and rules utilized and thereafter when major changes in utility plant composition occur and at intervals of not more than five years. The results of these reviews shall be submitted to this Commission.

10. Western States Utilities is authorized to maintain the records of its water operations in the office of the Arizona Water Company in Phoenix, Arizona with the provision that the Company shall make any and all of its records available on reasonable notice at any time in Winterhaven, or any other place mutually convenient in California.

11. If the authority herein granted in paragraph 1 of this order is exercised, Western States Utilities shall insure that all necessary easements covering water installations are obtained not later than December 31, 1960 and shall report the completion thereof to this Commission in writing within ten days thereafter.

12. If the authority herein granted in paragraph 1 of this order is exercised, Western States Utilities shall meter all services by December 31, 1960, and upon completion shall notify this Commission thereof in writing, within ten days thereafter.

13. If the authority herein granted in paragraph 1 of this order is exercised, Western States Utilities shall carry out the proposed three-year construction program essentially as set forth on page 10 of Exhibit No. 3 in this proceeding and shall submit semi-annual reports to this Commission on the progress of this program. The program shall be completed not later than December 31, 1962.

14. If the authority herein granted in paragraph 1 of this order is exercised, Western States Utilities shall submit to this

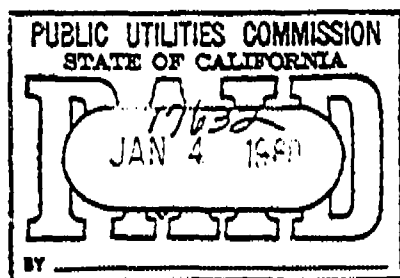
Commission, not later than July 1, 1960, a program for elimination of service deficiencies not covered by the construction program ordered in paragraph 13 above, with specific reference to those deficiencies outlined in paragraph 3, chapter 10 and paragraph 11, chapter 12 of Exhibit 17 in this proceeding.

15. If the authority herein granted in paragraph 1 of this order is exercised, Western States Utilities shall, not later than July 1, 1960, develop a total water supply of at least 300 gallons per minute and upon completion and placing into service shall notify this Commission thereof in writing, within ten days thereafter.

16. Western States Utilities shall file with the Commission a report or reports as required by General Order No. 24A, which order in so far as applicable is made a part of this order.

The authority herein granted to issue promissory notes will become effective when Western States Utilities has paid a fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25. In all other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 29th day of December, 1959.



[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Theodore Jenner  
Commissioners

APPENDIX A  
Page 1 of 2

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The unincorporated community of Winterhaven, and vicinity, Imperial County.

RATES

Per Meter  
Per Month

Quantity Rates:

First 1,200 cu.ft. or less .....	\$ 3.75
Over 1,200 cu.ft., per 100 cu.ft. ....	.22

Minimum Charge:

For 5/8 x 3/4-inch meter .....	\$ 3.75
For 3/4-inch meter .....	5.00
For 1-inch meter .....	8.00
For 1 1/2-inch meter .....	15.00
For 2-inch meter .....	25.00
For 3-inch meter .....	45.00

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

APPENDIX A  
Page 2 of 2

Schedule No. 2LX

LIMITED TEMPORARY FLAT RATE SERVICE

APPLICABILITY

Applicable to water service furnished on a limited temporary flat rate basis.

TERRITORY

The unincorporated community of Winterhaven, and vicinity, Imperial County.

RATES

Per Service Connection  
Per Month

Residence .....	\$ 3.75
Small Apartment .....	3.00
Motels .....	10.50
Restaurants .....	10.00
Service Stations .....	5.50
County Jail and Justice of Peace Building ...	15.00

SPECIAL CONDITIONS

1. Service under this schedule will be furnished to all customers until such time as all services are metered. Service thereafter will be furnished only on the basis of Schedule No. 1, General Metered Service.

2. This schedule will be effective only to and including December 31, 1960, and will thereafter be withdrawn.