

**ORIGINAL**

Decision No. 62863

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 PALM CITY WATER COMPANY, a corporation, )  
 for a Certificate of Public Convenience )  
 and Necessity authorizing applicant to )  
 construct and operate a public utility )  
 water system in Riverside County, )  
 California, and for authority to issue )  
 stock. )

Application No. 43436  
 (Filed May 23, 1961)

Gibson, Dunn & Crutcher, by Raymond L. Curran, for  
 applicant.  
 Redwine & Sherrill, by Maurice C. Sherrill, for  
 Coachella Valley County Water District, protestant.  
C. O. Newman and A. L. Gielegem, for the Commission  
 staff.

O P I N I O N

By this application Palm City Water Company, a California corporation, seeks a certificate of public convenience and necessity to operate a public utility water system, near the community of Palm Desert in Riverside County, and authority to issue capital stock as a means of financing the water system.

Public hearing in the matter was held before Commissioner George G. Grover and Examiner F. Everett Emerson on July 20, 1961, at Indio. The matter was submitted subject to receipt of the two late-filed exhibits, received August 30, 1961, and is now ready for decision.

Applicant proposes to acquire, construct and operate a public utility water system in an area encompassing approximately 560 acres located near the community of Palm Desert. Of the 560 acres of land within applicant's proposed service area, about 223 acres are owned by Marnel Development Company, a Nevada corporation, and the remaining 337 acres are owned by Private Trust No. 506 and are under option to Marnel. Marnel is developing the over-all area

into a complete community in which, when fully developed, there will be some 1426 single-family dwellings, 407 multi-family units, 205 acres of golf course and a 20-acre commercial center. Development work is to be in two phases, the first being that of the 223 acres owned by Marnel. As of the date of hearing, the first phase had reached the point where an apartment house and about 300 dwellings were under construction and the commercial center was being readied for occupancy. The single-family dwellings are to be sold to individuals. Marnel, however, will retain ownership of the land for the multi-family units and have a continuing responsibility for the operation and maintenance of the commercial center and the golf course.

At the time of hearing, a water system for the phase one development (the 223 acres owned by Marnel) had reached 95 percent of completion. The source of supply now consists of two deep wells, of adequate capacities for phase one, which tests show produce potable water. The initial system is designed to comply in every way with this Commission's General Order No. 103. The State Board of Health had issued an appropriate permit respecting the water supply.

The water system costs are estimated to total \$388,608 (including an allowance for working cash and "back-up" facilities for phase two) upon completion of the installations. Applicant proposes to acquire the physical system from Marnel by exchanging capital stock therefor on an actual cost basis. In addition, it proposes to issue stock to Marnel in order to obtain some working cash. Marnel has committed itself to take the stock offering and will hold it for purposes of investment. Marnel has also committed itself to meet any short-term money needs of applicant.

The protestant relies on two principal points of protest. The first ground of protest amounts substantially to the contention

that there should be no further certification of privately owned water utilities within protestant's boundaries. In certain prior certification proceedings where the availability of publicly owned water service has been demonstrated, the Commission has been reluctant to authorize competing service. (See San Gabriel Valley Water Co., 50 Cal. PUC 406; La Mirada Water Co., 55 Cal. PUC 87.) In this case, however, as a condition of service by protestant, it would be necessary that applicant and its affiliate transfer their water system to protestant; no payment would be made for the distribution facilities, and payment for production facilities would be spread over a period of years, without interest. Applicant claims that under such circumstances protestant is not truly "ready, willing and able" to provide reasonable service and that to deny a certificate would force the developers of the area to make unreasonable contributions to protestant.

Applicant's position is well taken. Comparison with the standard in eminent domain proceedings shows the extent of the burden which protestant's present proposal would place upon applicant. Had applicant been certificated earlier this year, before protestant entered the retail domestic water field, protestant could now acquire applicant's system only by purchase or by payment of just compensation. In contrast, under the present proposal applicant would receive nothing for the distribution properties and would be forced to wait for a matter of years, without interest, to be paid for the production properties. Comparison with the Commission's present water main extension rule is also pertinent. A privately owned public utility water company must ordinarily provide necessary production facilities; only certain distribution facilities are required by the main extension rule to be financed by the developer, and such financing is subject to a refund plan. Although protestant's

witness testified that other publicly owned water utilities require donation of distribution lines, there was no evidence that they customarily require developers to finance installation of production facilities in the manner here proposed. Protestant's evidence was to the effect that its own financial limitations necessitate the advances which it demands from developers.

The Commission finds that protestant is neither ready nor able to provide utility water service on a basis comparable to applicant's proposal.

The second ground of protest is based on protestant's contention that the underground basin from which applicant proposes to obtain its water is overdrawn and that therefore applicant has no water right. Although protestant's expert testified to such an overdraft, we cannot say on this record whether or not the overdraft exists. Basin adjudications customarily take weeks or even years to try. Neither side in this proceeding undertook to make the kind of showing which would be necessary to determine the legal status of this large underground reservoir, nor did protestant offer to show how its own rights would be affected by a basin adjudication.

Although we would not deliberately certificate a water utility which had no water right, it would be unreasonably burdensome to require applicant to prove in this proceeding that the basin is not overdrawn. Protestant will not be prejudiced by our action, for it has other legal remedies by which it may prevent any possible invasion of its own water rights.

In view of the evidence and in consonance with the foregoing discussion of certain of its elements, the Commission finds that public convenience and necessity require and will require that applicant be certificated as requested. The certificate granted herein is subject to the provision of law:

That the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

In view of the evidence, the Commission finds that applicant's request to issue stock should be granted. Further, it is found as a fact that the money, property or labor to be procured or paid for by such issuance of stock is reasonably required for the purposes hereinabove set forth and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

In connection with applicant's rate proposal, applicant presented summaries of estimated earnings for each of the years 1961 through 1965. If either the year 1964 or the year 1965 is taken as being representative of full-year operations under a completed service area development, the evidence indicates that applicant would earn a rate of return of more than 8 percent on a depreciated rate base of approximately \$360,000. Applicant's expert witness testified that a rate of return "in the vicinity of 6 percent would be more reasonable". In view of the evidence on this subject, the Commission finds that it is fair and reasonable to authorize water rates which, on the basis of the assumed test year of 1964, should yield such a lower rate of return. Accordingly, the basic rates hereinafter authorized will be as follows for the normal 5/8 x 3/4-inch residential-meter service:

Authorized Rate, 5/8 x 3/4-inch Meter

<u>Quantity per Month</u>	<u>Charge per Month</u>
First 1,000 cu.ft. or less .....	\$ 3.10
Next 1,000 cu.ft., per 100 cu.ft. ....	0.15
Next 3,000 cu.ft., per 100 cu.ft. ....	0.10
All over 5,000 cu.ft., per 100 cu.ft. ....	0.08

Applicant's showing respecting the costs of landed fixed capital included costs of well sites and utility easements which in the opinion of the Commission are excessive. The well sites and the easements to them lie within the golf course and are not for the exclusive use of the water utility. The well sites should be conveyed to applicant at no more than the raw land cost; the easements to them, at no cost. Applicant is placed on notice that in any future proceeding in which a rate base may be established, applicant will have the specific burden of proving the reasonableness of charges for land as well as for other fixed capital items.

O R D E R

Public hearing having been held and based upon the evidence therein adduced and the findings set forth in the foregoing opinion,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Palm City Water Company authorizing it to acquire, construct and operate a public utility water system for the production, distribution and sale of water within the north half of the northeast quarter of Section 13 and the west half of Section 13, Township 5 South, Range 6 East, and the southeast quarter of Section 14, Township 5 South, Range 6 East, San Bernardino Base and Meridian, Riverside County.

2. Applicant is authorized to file in quadruplicate with this Commission, on or after the effective date of this order and in conformity with the provisions of General Order No. 96, the schedules of rates and charges set forth in Appendix A attached to this order, together with rules governing service to customers, a tariff service area map and sample copies of printed forms normally used in connection with customers' services, and to make said rates, rules, map

and forms effective upon not less than ten days' notice to the public and to this Commission, on or before the date service is first rendered to the public under the authority herein granted. ✓

3. Applicant shall notify this Commission, in writing, of the date service is first rendered to the public under the rates and rules authorized herein, within ten days thereafter.

4. Applicant shall file with this Commission, within thirty days after the effective date of this order, four copies of a comprehensive map, drawn to an indicated scale not smaller than 400 feet to the inch, delineating by appropriate markings the tracts of land and territory served; the principal water production, storage and distribution facilities; and the location of the various water system properties of applicant.

5. Applicant shall determine accruals for depreciation by dividing the original cost of depreciable utility plant, less estimated future net salvage less depreciation reserve, by the estimated remaining life of the plant; further, applicant shall review the accruals when major changes in plant composition occur and for each plant account at intervals of not more than three years. Results of such reviews shall be submitted to this Commission.

6. Applicant, on or after the effective date of this order and on or before January 1, 1964, may issue, for the purposes hereinabove set forth, not to exceed \$363,658 aggregate par value of its capital stock at par and applicant shall file with this Commission a report or reports as required by General Order No. 24-A, which order insofar as applicable is hereby made a part of this order.

7. The certificate herein granted and the authority to render service under the rates and rules authorized herein will expire if not exercised on or before January 1, 1964. Further, if the authorizations herein granted are exercised, applicant shall expressly dedicate to public utility purposes the land, parcels

or areas, on which wells, pumps, tanks and related water facilities are located, and any easements or permits where water mains are located otherwise than in streets dedicated to public use, and within fifteen days thereafter applicant shall file a written statement with this Commission that such dedication in fact has been made.

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

Dated at San Francisco, California, this 29th day of NOVEMBER, 1961.

*Arnell H. Reed*  
 President

*C. Lynn Fox*

*George H. Trover*

*Friedrich B. Hubhoff*

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 Commissioners

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Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.



APPENDIX A

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The area known as Palm City, and vicinity, located approximately two miles northwest of Indio, Riverside County.

RATES

		<u>Per Meter</u> <u>Per Month</u>
Quantity Rates:		
First	1,000 cu. ft. or less .....	\$ 3.10
Next	1,000 cu. ft., per 100 cu. ft. ....	.15
Next	3,000 cu. ft., per 100 cu. ft. ....	.10
Over	5,000 cu. ft., per 100 cu. ft. ....	.08
Minimum Charge:		
For	5/8 x 3/4-inch meter .....	\$ 3.10
For	3/4-inch meter .....	3.50
For	1-inch meter .....	5.00
For	1½-inch meter .....	7.00
For	2-inch meter .....	12.00
For	3-inch meter .....	25.00
For	4-inch meter .....	40.00

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