

66086

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SOUTHWEST WATER COMPANY, a corporation,)
 for authority to increase rates in its)
 La Mirada, Etiwanda and La Sierra)
 Districts.)

Application No. 43589

C. H. Deitz; and Overton, Lyman and Prince,
 by Arthur D. Guy, Jr., for applicant.
David M. Korwitz, for himself and neighbors
 (in La Mirada); Chapman L. Bone, City
 Administrator, for City of La Mirada; and
Thelen, Marrin, Johnson and Bridges, by
Frederick R. Schumacher, for E. C. Losch
 Co., Inc., interested parties.
K. F. Ambs or Erby N. Davidson, for La Sierra
 Community Services District; Ralph Winchester,
 for Loma Linda Food Company (in La Sierra);
 and Vernon L. Von Pohle, for himself and
 neighbors (in La Sierra), protestants.
Burt Shelby, for Etiwanda Service Club, pro-
 testant and interested party.
Hugh N. Orr, A. L. Gielegem and John R.
Gillanders, for the Commission staff.

O P I N I O N

By Interim Decision No. 64486, dated November 2, 1962,
 applicant was authorized a system-wide temporary increase in rates
 for water service. By the terms of said order, the temporary
 increase in rates was to expire June 30, 1963, but was subsequently
 extended to August 31, 1963, by Interim Decision No. 65572, dated
 June 18, 1963, and then to October 31, 1963, by Interim Decision
 No. 65926, dated August 27, 1963.

In establishing the temporary rates made effective by
 Interim Decision No. 64486, we observed that no deduction from

rate base had been made because of any construction performed by the E. C. Losch organization, but we stated that:

"Nonetheless, the applicant is reminded that an affirmative showing of reasonableness as to all its expenses remains its responsibility. Such responsibility cannot be delegated nor shifted to other parties. Applicant will be required to justify the reasonableness of expenditures with the Losch organization before permanent rate relief is granted. The increase in rates authorized by this decision will expire as of June 30, 1963. Applicant is entitled to present whatever additional evidence it deems appropriate upon due notice to the Commission."

In response to applicant's request for an opportunity to make its presentation concerning the Losch charges, further hearing was held in Los Angeles before Examiner Patterson on April 16 and May 27, 1963, and the matter was submitted on the latter date.

Testimony for applicant, as presented by two of its officers, was directed at establishing the reasonableness of the Losch charges by evidence that such work had been performed in conformity with the specific bidding requirements imposed by prior Commission orders. According to this testimony, the first work performed for applicant by the Losch organization was in the latter half of 1956, on a unit-price basis, as a result of Losch submitting the lowest bid. The 1956 work and contract was effected prior to the time that applicant was required by Commission order to follow a prescribed bidding procedure for work which was not performed by the utility's own construction forces. The first such order was set forth as ordering paragraph 10 of Decision No. 54327 dated

December 27, 1956, in Application No. 37413 and Application No. 37695, as follows:

"10. That installation of utility plant exceeding \$1,000 for each project or contract, when not performed by the utility's own construction force, shall be based upon sealed competitive bids. Southwest may reject the bids of bidders who are deemed unqualified, but there shall be a minimum of three bonded bidders, each guaranteeing to do the majority of work with its own forces. Contracts may be by specified projects or by unit prices for a period not exceeding one year. Southwest shall maintain a record of bids and bidders and certify thereon that the minimum three bidders are nonaffiliated with and nonfinanced by applicant or its officers, directors and/or employees in any manner, that bidders were notified at least five days in advance of the time and place of opening bids, and that bids were opened in the presence of bidders who appeared. In the event that three bids are not obtained and the utility does not elect to reject all bids, the Commission shall be advised by letter at least ten days in advance of awarding a contract. This letter should set forth the circumstances and indicate the nature of the proposed contract, to what extent calls for bids have been advertised, what bids have been received, and what bidders were deemed unqualified."

The same type of order, with some modifications or variations was continued and repeated in subsequent Commission orders.^{1/}

Certification of the bidding procedure followed, as required by the Commission's orders, was presented by applicant in Exhibit 30 for the period from 1957 through 1961 along with certain correspondence which was related thereto.

A summary of unit cost bid analyses was presented by applicant in Exhibit 31 for each of the bidding periods, starting

^{1/} Decision No. 54649 dated March 12, 1957, in Application No. 38576, Amended; Supplemental Decision No. 54697 dated March 19, 1957, in Application No. 37413; Decision No. 58138 dated March 17, 1959, in Application No. 40273, Amended.

with August, 1956, indicating the relative costs of the various bidders based upon three representative construction jobs, the first being a medium-sized tract, the second a larger tract, and the third a main extension.

Exhibit 32, which was offered by the staff but testified to by one of applicant's witnesses, presented the certification of bidding procedure, the minutes of the bid opening meeting, and certain related correspondence for the period July 1, 1962, to June 30, 1963.

The bidding procedure and awarding of unit price contracts may be summarized as follows:

For the year 1957, sealed bids were received from five bidders who were certified to be nonaffiliated with and non-financed by applicant or its officers, directors or employees in any manner. A sealed bid was also received from Garnier Construction Company. Upon analysis, Garnier Construction Company was found to be the lowest bidder, but the contract was awarded to the next lowest bidder, E. C. Losch Company, as applicant's management believed the utility might be penalized in treatment of rate base if Garnier Construction were awarded the contract. Subsequently, the 1957 contract was extended to May 12, 1958, by mutual consent of applicant and the Losch organization.

For the six-month period ending June 30, 1958, Garnier Construction Company was again the lowest of five bidders, but the contract was awarded to the next lowest bidder, E. C. Losch Company, for the same reason as stated for the year 1957. This

contract was subsequently extended by mutual consent to December 31, 1958, and then to February 11, 1959.

For the six-month period ending June 30, 1959, the Losch organization received the contract as it had submitted the lowest of five bids. By mutual consent this contract was extended to December 31, 1959, then to May 1, 1960, and finally to December 31, 1960.

For the year 1961, the Losch organization received the contract as it had submitted the lowest of three bids.

For the year 1962, Desert Pipeline Construction Company submitted the lowest of five bids, but, according to the testimony, that contractor requested permission to withdraw his bid due to a misunderstanding as to the terms of the contract which would allow applicant to perform some of the work by its own crews. It was alleged that this could prove detrimental to the contractor as his bid was unbalanced, in that labor prices for installing pipe were very low, whereas prices for installing services and meters were very high. Applicant's Board of Directors authorized negotiations to proceed so as to release Desert Pipeline Construction Company from its bid by payment of a penalty of \$1,000 of the \$5,000 bid bond. Subsequently, Desert Pipeline Construction Company was released from its bid and no penalty was collected, as by that time, a decision had been made to reject all the bids and request new bids on a fiscal year basis, from July 1, 1962, to June 30, 1963.

Bid forms for the 1962-63 year were sent to nine contractors, and as a result four sealed bids were received. The Desert Pipeline Construction Company bid, which was one of the four, was not opened and was rejected due to the concern that this bidder was allegedly affiliated with another utility. Subsequently, evaluation of the three remaining bids indicated Losch to be the lowest with the Macco Corporation the next lowest. The contract was awarded to the Macco Corporation and the Losch bid was rejected, as indicated by the letter of July 30, 1962, from Southwest Water Company to the Losch organization included in Exhibit 32.

The staff presented testimony and cross-examined witnesses to point out certain irregularities in the bidding procedure. The principal deficiencies which may be noted are that the Macco Corporation, in 1960 and 1961, installed certain jobs which were not competitively bid; that certain joint venture licenses had been held jointly by Garnier Construction Company and E. C. Losch, and that at least two subdivisions, in 1956, were installed under these joint venture licenses; that the benefit of discount on materials which were purchased through Southwest Water Company by Losch was apparently not made known to bidders; that invitations to bid were made by oral discussions with contractors rather than by public advertising; and that on three occasions the unit price contract was not awarded to the lowest bidder. The staff also made a motion that the application be dismissed on the grounds that applicant's showing was wholly inadequate.

The record contains evidence and extensive argument concerning the association or affiliation which may or may not exist between applicant and Losch. The evidence will not support a finding that an affiliate relationship existed between applicant and Losch as that term is generally understood in the law, and we therefore find that such relationship did not exist at any of the times herein mentioned. However, the evidence does show and we find that there did exist a relationship between applicant and Losch which required a thorough investigation with a view to determining whether said relationship had resulted in unreasonable charges being made to applicant by Losch. We find that said relationship was suspect but that neither applicant nor its ratepayers sustained injury as a result thereof. The issue which is now before us is whether or not

the Losch charges to Southwest Water Company were and are reasonable. The evidence shows that these charges have resulted from contracts which have been entered into as a result of applicant endeavoring to follow the basic bidding procedures prescribed by Commission orders.

The record reveals that the jobs performed under the joint venture license in 1956 and which amounted to approximately \$44,000 were prior to the date that competitive bidding was required, and that in the years Losch was awarded the unit price contracts, his bids were generally lower than the nearest competitor by more than the differential which would result from reflection of discount prices available on materials.

We find that certain irregularities or deficiencies have occurred in applicant's bidding practices. One aspect which subjects applicant to censure is the failure, on occasion, to award the unit price contract to the lowest responsible bidder. Such action apparently was engendered by the belief that any transactions between applicant and an affiliate, or even with an affiliate of another utility, would be viewed by the staff and the Commission as improper, per se, and would subject applicant to some type of penalty.

Another aspect, is a need for improvement in the manner of advertising for bids on construction. The usual practice of Southwest Water Company is to orally contact certain selected contractors and invite submission of bids. The testimony also shows that all invitees were not fully informed as to all circumstances in the purchasing of materials and supplies which could be obtained through Southwest Water Company at a discount.

Whereas the deficiencies, as noted, may not constitute violations of the bidding procedures heretofore ordered, they do point to the need for our prescribing more definitive bidding procedures.

We have a grave public trust to perform in insuring that the relationships between a utility and its affiliates will not adversely affect the consuming public. Although we shall continue to sedulously scrutinize such relationships, it does not follow that such close scrutiny will necessarily result in adjustments favorable to the ratepayer. Transactions between a utility and an affiliate, although suspect, are not improper per se; it is the end result which is important. Such result must be tested by all the various standards which are applicable. In this regard, the activities of the staff in bringing the methods of operations of applicant and Losch to the Commission's attention were and are proper and constituted a lawful discharge of the staff's duty.

Despite the irregularities in applicant's bidding practices, we find that such irregularities have not resulted in unreasonable charges to applicant by the Losch organization.

The staff's motion to dismiss the application is denied.

From the foregoing findings, we conclude that:

1. The bidding procedures heretofore prescribed for applicant should be amplified and continued by the order herein.
2. The rate increases heretofore ordered on a temporary basis by Decisions Nos. 64486, 65572 and 65926 have been shown to be justified on a permanent basis. The termination date of October 31, 1963, and the designation, "temporary", as contained in applicant's rates for general metered service in each of its three tariff areas, should be stricken.

O R D E R

IT IS ORDERED that:

1. Installation of utility plant exceeding \$1,000 for each project or contract, unless performed by Southwest Water Company's own construction force, shall be performed under contract awarded as a result of sealed competitive bids, to be obtained in response to publicly advertised and published invitations to bid. The bid specifications will set forth full and complete details of all arrangements which will exist between the utility and the successful bidder, including discounts on materials available to the bidder for materials purchased through the utility. Contracts may be by specified projects or by unit prices for periods not exceeding one year and shall not be extended except upon approval by the Commission. Contracts shall be awarded to the lowest responsible bidder, but Southwest may reject bids of bidders who are deemed unqualified. Southwest shall maintain a record of bids and bidders and certify thereon that a minimum of three bona fide bidders are nonaffiliated with and nonfinanced by applicant or its officers, directors and/or employees in any manner, that bidders were notified at least five days in advance of the time and place of opening bids, and that bids were opened in the presence of bidders who appeared. In the event that three such nonaffiliated bids are not obtained and the utility does not elect to reject all bids, the Commission shall be advised by letter at least ten days in advance of awarding a contract. This letter shall set forth the circumstances and indicate the nature of the proposed contract, to what extent calls for bids have been advertised, what bids have been received, and what bidders were deemed unqualified.

2. Southwest Water Company shall file with this Commission, on or before October 31, 1963, in conformity with General Order No. 96-A, the schedules of rates attached to this order as Appendix A and shall make such rates effective for service rendered on and after November 1, 1963.

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

Dated at San Francisco, California, this 24th day of September, 1963.

President
John E. Mitchell
Charles W. O'Keefe

Commissioners

I concur in the finding that the bidding procedures heretofore prescribed should be amplified and continued, in the finding that the ordered rate increases have been justified on a permanent basis, and in the order.
George L. Hoover
Commissioner

I concur only in the finding numbered 1, on sheet 8 of the opinion and in ordering paragraph 1.
Frederick B. Holzhauff,
Commissioner.

BENNETT, William M., Commissioner, dissenting:

The language of the majority pointing to the irregularities in the bidding procedure discloses a situation which warrants further investigation. There has never been a look at the books and records of the contractor here involved and thus it seems to me the majority is unable to state that the alleged irregularities did not, in fact, penalize the ratepayers. All that the majority opinion does is to point out a relationship which is suspect but not resolved; an irregular bidding procedure whose impact upon the ratepayer is unresolved; this suggests to me that further inquiry should be made to determine, as a matter of fact and not speculation, that no improper charges resulted from the matters disclosed in the majority opinion.

Page 6 of the majority opinion states "we find that there did exist a relationship between applicant and Losch which required a thorough investigation with a view to determining whether said relationship had resulted in unreasonable charges being made to applicant by Losch." It is a fact that at no time were the books and records of Losch ever examined or made any part of this record from which it follows that the "thorough investigation" contemplated was not, in fact, made. Thus all of the doubts which are suggested by the opinion of the majority remain unresolved. In view of the suspect relationship which is alluded to time and again in the majority opinion, this Commission should have insisted that the applicant take up the burden of proving that the relationship between itself and the Losch Construction Company was absolutely proper and that the charges for such services were, in fact, reasonable and not overstated.


WILLIAM M. BENNETT

APPENDIX A
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Schedule No. EG-1 (T)

Etiwanda-Guasti Tariff Area

GENERAL METERED SERVICE (T)

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The territory adjacent to the east boundary of Ontario, San Bernardino County.

RATES

| | <u>Per Meter</u> <u>Per Month</u> |
|---|--------------------------------------|
| Quantity Rates: | |
| First 800 cu.ft. or less | \$ 3.75 |
| Next 3,200 cu.ft., per 100 cu.ft. | .30 |
| Next 296,000 cu.ft., per 100 cu.ft. | .20 |
| Over 300,000 cu.ft., per 100 cu.ft. | .10 |
| Minimum Charge: | |
| For 5/8 x 3/4-inch meter | \$ 3.75 |
| For 3/4-inch meter | 4.00 |
| For 1-inch meter | 5.75 |
| For 1 1/2-inch meter | 7.50 |
| For 2-inch meter | 11.25 |
| For 3-inch meter | 37.50 |
| For 4-inch meter | 75.00 |
| For 6-inch meter | 150.00 |

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

(D)

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Schedule No. LM-1

(T)

La Mirada Tariff Area

GENERAL METERED SERVICE

(T)

APPLICABILITY

Applicable to all metered water service.

TERRITORY

La Mirada and vicinity, Los Angeles County.

RATES

| | <u>Per Meter</u> <u>Per Month</u> |
|--|--------------------------------------|
| Quantity Rates: | |
| First 800 cu.ft. or less | \$ 2.70 |
| Next 1,200 cu.ft., per 100 cu.ft. | .22 |
| Next 2,000 cu.ft., per 100 cu.ft. | .19 |
| Over 4,000 cu.ft., per 100 cu.ft. | .16 |
| Minimum Charge: | |
| For 5/8 x 3/4-inch meter | \$ 2.70 |
| For 3/4-inch meter | 3.20 |
| For 1-inch meter | 4.75 |
| For 1 1/2-inch meter | 6.50 |
| For 2-inch meter | 10.00 |
| For 3-inch meter | 25.00 |
| For 4-inch meter | 50.00 |
| For 6-inch meter | 100.00 |

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

(D)

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Schedule No. LS-1 (T)
La Sierra Tariff Area
GENERAL METERED SERVICE (T)

APPLICABILITY

Applicable to all metered water service.

TERRITORY

La Sierra and vicinity, Riverside County.

RATES

| | <u>Per Meter</u> <u>Per Month</u> |
|---|--------------------------------------|
| Quantity Rates: | |
| First 800 cu.ft. or less | \$ 2.75 |
| Next 2,200 cu.ft., per 100 cu.ft. | .25 |
| Next 7,000 cu.ft., per 100 cu.ft. | .20 |
| Next 10,000 cu.ft., per 100 cu.ft. | .18 |
| Over 20,000 cu.ft., per 100 cu.ft. | .15 |
| Minimum Charge: | |
| For 5/8 x 3/4-inch meter | \$ 2.75 |
| For 3/4-inch meter | 3.65 |
| For 1-inch meter | 5.50 |
| For 1 1/2-inch meter | 8.50 |
| For 2-inch meter | 12.00 |
| For 3-inch meter | 25.00 |
| For 4-inch meter | 50.00 |
| For 6-inch meter | 100.00 |

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

(D)