

Decision No. 68250**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 ROSA WATER COMPANY, a California  
 corporation, for an order authori-  
 zing the sale of a portion of its  
 operating water system in Tapo  
 Canyon and abandon service in said  
 area.

Application No. 46664  
 (Filed May 25, 1964)

Gibson, Dunn & Crutcher, by Raymond L. Curran,  
 for Rosa Water Company, applicant.  
Charles Stuart, for Southern California Water  
 Company, interested party.  
Kenji Tomita and Robert C. Durkin, for the  
 Commission staff.

O P I N I O N

Rosa Water Company (Rosa), a corporation, seeks authority to transfer part of its water system to Tapo Mutual Water Company (Tapo), a nonprofit corporation, to discontinue service to the portions of its certificated areas served by the facilities to be transferred, and to amortize certain litigation costs and losses incurred on the proposed sale as charges to future operating expenses.

A public hearing on this application was held before Examiner Catey at Los Angeles on September 16, 1964. Copies of the application and notice of hearing had been served in accordance with this Commission's instructions and rules of procedure. At the hearing, testimony on behalf of Rosa was presented by its president and general manager; testimony on behalf of Tapo was presented by its secretary; and one customer testified on behalf of herself and several of her neighbors who are served by the facilities to be transferred. The matter was submitted at the conclusion of the hearing.

Growth of Service Area

Decision No. 58772, dated July 21, 1959, in Application No. 40685, denied Rosa's request for a certificate of public convenience and necessity to construct a water system in Simi Valley, Ventura County. In that decision, the Commission found that water from Rosa's proposed sources of supply was unfit for drinking and culinary purposes. Rosa then developed additional sources of supply with a better quality of water. After further hearing on the original application, Decision No. 59030, dated September 22, 1959, granted Rosa a certificate covering only the 34-acre, 161-lot Tract No. 1040.

Decision No. 60439, dated July 26, 1960, in Applications Nos. 41870, 41917 and 42221, granted Rosa a certificate covering additional territory, conditioned upon Rosa's developing an additional supply of potable water. Rosa had acquired an undivided interest in the water rights relating to certain lands located in Tapo Canyon and, in compliance with the Commission's order in Decision No. 60439, acquired a well site and well in Tapo Canyon and constructed some five miles of transmission main from the well to Rosa's certificated area in the valley.

Additional areas have been certificated to Rosa from time to time. Among them are a 2½-acre parcel designated "G" (Decision No. 62888, dated December 5, 1961, in Application No. 43458) and a 5-acre parcel designated "P" (Decision No. 65121, dated March 19, 1963, in Application No. 44721). The latter two small parcels are in Tapo Canyon and are served from Rosa's transmission line or extensions therefrom.

Rosa now serves more than 2,400 customers throughout all of its service areas.

Water Rights Litigation

On November 13, 1961, Tapo filed, in the Superior Court of Ventura County, an action (No. 69X) entitled, "Complaint for Determination of Water Rights and for Injunctive Relief." Rosa is one of the defendants in that suit.

In its complaint, Tapo alleged that it had taken from the basin an average of 1,500 to 2,000 acre-feet of water each year for 40 years, that it was the owner of the prior and paramount right to take 2,000 acre-feet of water each year from the basin, and that an overdraft existed. On December 12, 1962, one of the other defendants and plaintiff Tapo filed a stipulation that Tapo has established a prior and paramount right to take and divert 2,000 acre-feet of water each year and that the amount of 2,000 acre-feet exceeds the average annual supply of water to the basin by approximately 800 acre-feet per year.

Rosa has already incurred costs of almost \$13,000 in connection with the preliminary stages of the water rights litigation and estimates it will incur \$5,000 more under the proposed settlement. It has concluded that the very substantial additional costs of detailed engineering and geological studies, and the costs of a prolonged trial and subsequent appeals, may well make the total cost of defending the suit a more substantial burden on its customers than would the amortization of costs resulting from a negotiated settlement.

Rosa and Tapo tentatively have entered into an agreement, a copy of which is attached to the application as Exhibit B, in settlement of the pending litigation. Under the terms proposed therein, Tapo agrees to:

(1) Purchase Rosa's Tapo Canyon production, treatment, storage and transmission facilities for the sum of \$145,500, payable \$100,000 in cash and \$45,500 by means of an interest-free note.

(2) Sell Rosa 900 acre-feet of water in the year 1964 and lesser quantities for the next four years, diminishing to 500 acre-feet by the year 1968, for \$33.00 per acre-foot, at the delivery point of the intersection of Alamo and Tapo Streets.

(3) Assume Rosa's obligation to serve parcels "G" and "P" and vicinity by selling  $\frac{1}{24}$  share of its stock to each present water user<sup>1/</sup> in that area for \$35.00 and to future applicants for service in that area for the then market value of such fractional share.

(4) Take whatever action is necessary to protect its water rights in "Tapo Basin".

Under additional terms proposed in the agreement, Rosa agrees to:

(1) A stipulation with Tapo, providing that Rosa has no water rights in "Tapo Basin" or "Happy Camp Basin".

(2) Entry of judgment in the water rights action in favor of Tapo.

#### Effect on Rosa's Revenue Requirements

Rosa now has an alternative source of potable water: the supply imported by Calleguas Municipal Water District, a member of Metropolitan Water District of Southern California (MWD). The cost of this water is estimated by Rosa to be \$54.00 per acre-foot, including purchase price, operating costs, taxes and depreciation on Rosa's necessary plant, and return on investment in that plant. Rosa's corresponding estimate of present cost of water from Rosa's Tapo Canyon source is \$41.30 per acre-foot. Water to be purchased from Tapo under the proposed agreement will cost about \$39.00 per acre-foot if some \$6.00 per acre-foot is added

---

<sup>1/</sup> In the application, Rosa states that it will pay for the shares of stock to be provided to present water users.

for amortization of water rights litigation costs and of losses incurred on the proposed sale of utility plant.

At Rosa's 1964 withdrawals of 900 acre-feet of water from its Tapo Canyon source, its revenue requirements would be some \$11,400 per year, or about 40 cents per customer-month, higher due to substitution of imported MWD water. The full impact of this increase would be deferred until 1969 due to proposed purchases of water from Tapo under the agreement.

Effect on Abandoned Customers

An unfortunate but necessary adjunct to the sale by Rosa of its Tapo Canyon facilities is the abandonment of nine utility customers. The record shows that, although those customers would prefer service from a regulated public utility, there is no economically feasible way for Rosa to continue service to them. Under the circumstances, the availability of service to those customers by Tapo appears to be a suitable substitute for the utility service.

Tapo's secretary testified that the 1/24 share of Tapo stock to be provided to each customer in the area to be abandoned by Rosa will entitle those customers to any reasonable amount that is necessary for any household use and, in addition, will permit the watering of farm animals. Exhibit D attached to the application shows that charges under Tapo's rates are, in general, slightly lower than under Rosa's rates, being slightly higher only for monthly consumptions in excess of 13,000 cubic feet.

The testimony is somewhat conflicting in regard to a possible \$300 connection charge to be required by Tapo from each customer now served by Rosa. It is apparent that no connection charge should be levied if the mains and service lines are already

connected. The order herein will require Tapo to so stipulate, as a condition to authorization of the transfer.

Rosa received an advance of \$4,300 in 1962 from one of its customers in parcel "P" for construction of an extension of 2,800 feet of 4-inch main and a small booster pump, described in Exhibit No. 5. Instead of installing a permanent main, Rosa extended service through a temporary line on the surface of the ground. As a condition to authorization of the transfer, Rosa will be required to install the permanent distribution main and service piping and to enter into a formal main extension agreement with the individual who advanced the \$4,300. The agreement must be in accordance with Section B, Extensions to Serve Individuals, of Rosa's main extension rule in effect at the time the advance was received. In view of Rosa's delay in making the permanent installation, the amount of advance must not be increased if the actual cost of the main extension exceeds the estimated cost. Tapo will be required to provide Rosa with the necessary information as to any customers added to the extension after the transfer, for the purpose of determining future refunds.

Rosa's president and general manager testified that Rosa had been negligent in that it had not completed the installation of water meters on all services, resulting in the use of water by some customers without charge. Some of those customers, however, indicated that they thought they were receiving free water as rental for right-of-way across their property but we are unable to determine, from this record, whether such is the case. In any event, Rosa is hereby placed on notice that providing free service to favor a few customers constitutes unjust discrimination and that this Commission looks with disfavor on arrangements whereby free service

is provided in payment for rental or acquisition of rights-of-way. The staff of the Commission will be directed to investigate this situation and report to the Commission at an early date.

Some of the customers to be transferred to Tapo indicated some concern that 1/24 share per customer would not give them sufficient voting power in the mutual company to prevent discrimination against them in regard to rates or conditions of service. As a condition to authorization of the transfer, Tapo will be required to stipulate it will not so discriminate.

#### Amortization of Litigation Costs

Rosa's development of its Tapo Canyon source apparently was done in good faith and was the only practicable way to provide a potable water supply to its customers prior to availability of MWD water. There is no assurance, however, that Rosa could establish a right to its continued use, even if it continued the present costly water rights litigation. If it continues the litigation and loses all rights to Tapo Canyon water, it might have to abandon the facilities it now proposes to sell to Tapo. The proposed agreement would at least permit Rosa to recoup most of its investment in the Tapo Canyon supply, would avoid further costly litigation, and would allow the gradual substitution of MWD water.

It is apparent that Rosa's expenditures of some \$18,000 in the water rights litigation and the resulting proposed settlement thereof will have permitted use of Tapo Canyon water by Rosa for the years 1962 through 1968 in various quantities. It is appropriate, then, that the total litigation costs be amortized as charges to surplus or operating expense, as appropriate, for those same years approximately in proportion to the Tapo Canyon water used, rather than to amortize them only over the years 1964 through

1968 as requested by Rosa. Amortization chargeable for the calendar years 1962 and 1963 shall be charged to earned surplus account, and that applicable to later years may be expensed. The approximate use and corresponding amortization percentages are:

<u>Year</u>	<u>Acre-feet</u>	<u>Percentage</u>
1962	1,000	18
1963	1,200	21
1964	900	16
1965	800	14
1966	700	12
1967	600	10
1968	<u>500</u>	<u>9</u>
Total	5,700	100

Rosa requests that the approximately \$3,000 loss to be sustained (because of the difference between book cost and sales price of the transferred facilities) also be amortized as charges to future operating expenses. In view of the particular circumstances of this case, this request will not be granted for accounting purposes, but Rosa may propose such treatment for rate-making purposes in future rate proceedings, if it so desires.

Findings and Conclusions

The Commission finds that:

1. The proposed transfer will not be adverse to the public interest, based upon the conditions contained in the order following.
2. Upon transfer of its Tapo Canyon facilities to Tapo, Rosa cannot reasonably continue to serve parcels "G" and "P" and vicinity, referred to herein. However, the offer of service to those parcels by Tapo is a reasonable substitute for the utility service.
3. Amortization of water rights litigation costs as charges to surplus or operating expense, as appropriate, as authorized herein for accounting purposes, is reasonable. The Commission reserves the right, however, to review this subject in any future rate proceeding involving Rosa.



The Commission concludes that the application should be granted to the extent set forth in the order which follows.

O R D E R

IT IS ORDERED that:

1. Within one year after the effective date of this order, Rosa Water Company (Rosa) may transfer to Tapo Mutual Water Company (Tapo) the portion of Rosa's water system located north of Alamo Street in Simi Valley, Ventura County, essentially in accordance with the terms and conditions of the agreement, Exhibit B, attached to the application herein, and subject to the conditions hereinafter imposed.

2. The foregoing authority is conditioned upon the filing in this proceeding of a stipulation by Tapo that:

- (a) Tapo will levy no connection charges against customers already served by Rosa prior to the date of transfer.
- (b) As to the rates, rules and conditions of service which Tapo will apply in the service area of the facilities herein authorized to be transferred, it will not unreasonably discriminate between service rendered in that area and service rendered in the rest of its service area.
- (c) Tapo will supply Rosa with the necessary information as to any customers added to the main extension covered by an advance for construction, for the purpose of determining refunds.

3. On or before the date of actual transfer, Rosa shall:

- (a) Refund all deposits for the establishment of credit made by customers in the area served by the system to be transferred.
- (b) Deposit in escrow with a suitable bank, the sum of \$4,300 to be disbursed only to settle refund obligations related to outstanding advances for construction in the area served by the system to be transferred, except that any excess amount remaining in the account upon expiration or termination of all said refund obligations shall become payable to Rosa.

- (c) Install the permanent pipeline covered by the aforementioned \$4,300 advance for construction, and enter into a formal main extension agreement as discussed in the foregoing opinion.
- (d) Install meters on all services in the portion of the system to be transferred.
- (e) Provide 1/24 share of Tapo stock to each bona fide customer transferred to Tapo.

4. Within ten days after the date of actual transfer, Rosa shall file in this proceeding written notification of the dates of compliance with each requirement of ordering paragraph 3, the date of transfer, and the date upon which Tapo shall have assumed operation of the water system authorized herein to be transferred. A true copy of (1) the escrow agreement for refunding advances, (2) the main extension agreement, and (3) the instrument or instruments of transfer, shall be attached to the written notification.

5. Within thirty days after the date of actual transfer, Rosa shall file revised tariff sheets, including tariff service area maps to discontinue the application of its present tariff schedules to the areas served by the transferred properties. Such filing shall comply with General Order No. 96-A. The effective date of the revised tariff sheets shall be four days after the date of filing.

6. Rosa shall account for the transfer herein authorized in accordance with Utility Plant Accounts Instruction 12.F., Utility Plant Sold, of the Uniform System of Accounts for Water Utilities (Class A, Class B and Class C) prescribed by this Commission and, within sixty days after the date of actual transfer, shall file in this proceeding a copy of the journal entry or entries used to record the transfer.

7. Rosa may amortize the water rights litigation costs discussed herein as charges to surplus or operating expense for the years, in the percentages, and in the manner, set forth in the foregoing opinion.

8. Upon compliance with all of the conditions of this order, Rosa shall stand relieved of all of its public utility obligations, except refund of advances for construction, in the area served by the transferred system, and may discontinue service therein concurrently with the commencement of service by Tapo.

9. The staff of the Commission shall investigate the matter of ✓ discrimination involving the excessive use of water and the use of water not in accordance with Rosa's tariffs and report to the Commission the results of such investigation at an early date.

The effective date of this order shall be established by supplemental order, after Tapo shall have complied fully with the requirements of ordering paragraph 2.

Dated at San Francisco, California, this 24<sup>th</sup> day of NOVEMBER, 1964.

Fredrick B. Holbluff  
President  
W. S. Hutchings  
Robert C. Craig  
George G. Grover  
William A. Burnett  
Commissioners