

Decision No. 71803

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of MALIBU WATER COMPANY, a
corporation, for Authority to
Abandon and Discontinue Irrigation
Service.

Application No. 48586
(Filed June 27, 1966)

F. B. Yoakum, Jr., for applicant.
Mrs. Ellen C. Archer; David L.
Diefenderfer; Charles A. MacGregor;
Mrs. Kathryn Newcomer; Victor D.
Newcomer, M.D.; Ray Gagnon; Alice M.
Kling; and Susumu Ioki in propria
persona and for Ioki Floral Products;
protestants.
Jerry J. Levander, for the Commission
staff.

O P I N I O N

Malibu Water Company seeks an ex parte order of the Commission authorizing it to abandon and discontinue its irrigation service which had, prior to late 1963, been furnished in lower Malibu Canyon pursuant to its tariff Schedule No. 2, Irrigation Service. The abandonment of said service was due to a flood in the Fall of 1963 which broke its two-mile pipeline from Malibu dam in many places, silted it up, and covered it with landslides, in several places. Further damage was done by subsequent rainstorms in 1964 and 1965 which also further silted the dam's reservoir rendering it useless for water delivery purposes.

Upon receipt of protests from irrigators, principally from commercial flower growers, and as the result of a staff investigation which disclosed that the application was not "non-controversial" as averred in the application, public hearings were held before

Examiner Warner on October 17, 18, and 19, 1966, at Malibu. Written protests were entered by Malibu Canyon Property Owners Association, and others. The Association requested an investigation of irrigation service. We find such investigation to be unnecessary in view of the scope of the facts developed on this record. Several "erstwhile" ^{1/} irrigators who had formerly been furnished irrigation service on Schedule No. 2 but, after 1963, had been served through applicant's domestic water system and billed according to its tariff Schedule No. 1, General Metered Service, appeared and protested.

By Decision No. 66234, dated October 29, 1963, in Application No. 43579, applicant was authorized to increase its rates for general metered service to offset the cost of water purchased by it from Los Angeles County Water Works District No. 29, however the request to increase irrigation service rates was denied. Applicant was ordered, within ninety days after the effective date of said decision, to submit a written program for the installation of facilities for the removal of debris from water entering the irrigation system in order to minimize the clogging of meters and to report to the Commission in writing every ninety days thereafter as to the progress of installation of such facilities until completed. The furnishing of irrigation service was restricted by said decision to providing water for commercial agricultural, floricultural, and horticultural uses, and Schedule No. 2, Irrigation Service, was applicable to all irrigation service in lower Malibu Canyon with water supplied either from the Malibu dam reservoir or from applicant's wells in the Canyon's lower basin. Said wells have not recently been utilized for irrigation service.

1/ As characterized by applicant.

Rehearing or modification of Decision No. 66234 was not sought by applicant.

The record shows that, beginning in January, 1964, applicant removed all irrigation service meters, ostensibly to repair them, but never reinstalled them and irrigation customers have since been served domestic water at domestic rates even though used for irrigation as defined in applicant's rules. Irrigation service rates (Schedule No. 2) are 12 cents per ccf per meter per month, whereas the lowest block of the domestic rates (Schedule No. 1) for usage over 5,000 ccf per month is 38 cents per ccf. Protestants claimed that notice of the change in service and rates effected had not been given them by applicant and the record shows that no notice of interruption or discontinuance of service was filed with the Commission pursuant to paragraphs 2a. through 2d. of Section II of General Order No. 103, or pursuant to applicant's rules. Applicant claimed that the interruptions were "Acts of God"; there was no alternative to its changing irrigation customers to the domestic schedule; and no notice was required. The record shows that lower Malibu Canyon is frost free and has for many years been a desirable location for floriculture including the growing of geraniums, orchids, nursery stock, and commercial flowers. Many commercial growers purchased their properties with the knowledge and understanding that irrigation service was available. Protestants claimed, in effect, that they had been disenfranchised, and would continue to be if the instant application were granted.

Exhibits Nos. 3 and 4 show the names of 35 locations and consumptions of irrigation system services in 1962, and 10 such services in 1963, together with their domestic consumption for the years 1962 through 1965. Said exhibits show no irrigation consumption

for 1964 and 1965, but they show substantially increased domestic consumption for those years. These exhibits reflect the changes from irrigation service rates to domestic service rates.

Exhibit No. 2 shows that the use of applicant's upper and lower Malibu wells was discontinued, commencing in part in 1949 and continuing through 1962, due to high flouride content, drying up, and excessive chloride caused by salt water intrusion. The latter condition has become extant throughout applicant's domestic water system which extends from Topanga Canyon to Ventura County, along the Pacific Coast.^{2/} These events caused applicant to participate in the formation of District 29 which now purchases water from West Basin Municipal Water District, a member agency of Metropolitan Water District. A pipeline was constructed by District 29 from Culver City to applicant's system and the present rate charged to applicant by District 29 is \$85 per acre foot for treated domestic water. The record shows that a credit of \$14 per acre foot could be arranged by District 29 for irrigation water. Such credit would calculate to 3.2 cents per ccf.

Applicant's principal source of supply is water purchased from District. Applicant's rates for irrigation service, based primarily on water from Malibu dam reservoir, are unreasonably low for the present supply.

Exhibit No. 8 is a report prepared for applicant by its consulting engineers on the revenue requirements for a rehabilitated irrigation system. Estimates of the cost of desilting the dam and rehabilitating the reservoir range from \$105,000 to \$255,000, plus \$70,000 for repairing the spillway. Although there is a possibility that some of the excavated material could be sold for highway construction purposes, the amount of such use and sale was not estimated. Construction of a new transmission line along

^{2/} Applicant's annual report to the Commission shows 2,536 active service connections as of December 31, 1965, including 2,269 commercial (including domestic), 6 private fire connections, and 261 public fire hydrants.

either of two alternate routes was estimated to be between \$133,000 and \$224,000. Applicant's consulting engineer forecasted in Exhibit No. 8 that the probable life of any need for irrigation water in lower Malibu Canyon, due to urbanization of the area, would be 15 years. His costs of rehabilitating the dam, constructing a new transmission line and operating the irrigation system included the amortization of rehabilitation costs over that period. The resultant estimated rates for irrigation service, based on a 7 percent rate of return, ranged from \$1.04 per ccf per meter per month to \$2.33 per ccf per meter per month.

Exhibit No. 9 is a report on the results of an investigation of the application by a Commission staff engineer. He recommended that the application be denied. He further recommended that applicant should be ordered to comply with Decision No. 66234, and to expeditiously make the necessary repairs to provide irrigation service in accordance with its filed tariffs.

The Commission finds as follows:

1. Applicant discontinued providing irrigation service according to its filed tariff Schedule No. 2 without notification to its irrigation service customers commencing about January 1, 1964.
2. The then, or "erstwhile", irrigation customers were furnished domestic water service for irrigation purposes and were charged applicant's domestic rates pursuant to its Schedule No. 1, General Metered Service, commencing about January 1, 1964.
3. The discontinuance of irrigation service and change of irrigation customers to domestic customers for irrigation purposes resulted in substantial rate increases which were not only unauthorized but which had been denied by Decision No. 66234, dated October 29, 1963.

4. No notification to the Commission of the discontinuance of irrigation service and change of irrigators to domestic service was given by applicant pursuant to the provisions of General Order No. 103, and no authorization by the Commission for such changes was sought by applicant at that time. Such lack of notice to the irrigation customers and to the Commission and change of service at increased rates were unlawful.

5. To rehabilitate Malibu dam and reservoir and, either repair the present two-mile long transmission main in exceedingly rugged terrain, or construct a new transmission main would be prohibitively costly.

6. Applicant's upper and lower Malibu wells are not usable either for domestic, except in an emergency, or agricultural purposes due to high flouride content, drought conditions, and salt water intrusion.

7. A credit on the purchase of the Metropolitan Water District water used for irrigation by Los Angeles County Water Works District 29 through West Basin Municipal Water District of \$14 per acre foot, or approximately 3.2 cents per ccf, can be passed on to applicant by District 29. Irrigation water thus would cost \$71 per acre foot instead of \$85 for domestic water.

It is concluded as follows:

1a. The application should be granted in part and denied in part, and applicant should be authorized and directed to file a revised tariff Schedule No. 2, Irrigation Service.

1b. Applicant should be directed to abandon its irrigation system and dam, and ordered to record them on its books of account as nonoperative nonutility plant.

1c. Decision No. 66234 should be modified, and ordering paragraph 9 thereof should be rescinded.

2. Applicant should be directed to refile its tariff Schedule No. 2, Irrigation Service, to provide modified rates including in such refiled tariff usage over 5,000 ccf per meter per month at the rate of 34.8 cents per ccf per meter per month for the years 1964, 1965 and 1966 which rates are just and reasonable.

3. Applicant should be ordered to refund to its then irrigation customers shown on Exhibits Nos. 3 and 4, the difference of 26 cents per ccf per meter per month for irrigation service for the years 1964, 1965 and 1966 to date of the most recent billing and collections.

4. The increases in rates over the rates for irrigation service found by Decision No. 66234 to be just and reasonable, authorized herein, are just and reasonable, and insofar as the rates authorized herein differ from said prior rates, the latter are unjust and unreasonable.

O R D E R

IT IS ORDERED that:

1. This application is granted in part and denied in part, and Malibu Water Company is authorized and directed to file the revised schedule of rates attached to this order as Appendix A. Such filing of revised rates shall comply with General Order No. 96-A. The revised rate schedules shall become effective for service rendered on and after January 15, 1967, or on and after the fourth day following the date of filing, whichever is later.

2. Applicant shall abandon its irrigation system and dam and shall record them on its books of account as nonoperative non-utility plant.

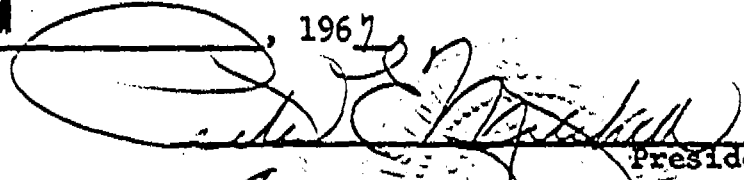
3. Ordering paragraph 9 of Decision No. 66234 is rescinded.

4. Applicant shall refund to its then irrigation customers shown on Exhibits Nos. 3 and 4 the difference of 26 cents per ccf per meter per month for irrigation service for the years 1964, 1965 and 1966 to date of the most recent billing and collections.

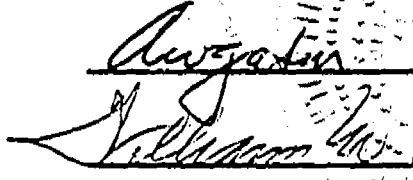
5. Applicant shall, within 15 days after the effective date hereof, report to the Commission in writing its compliance herewith.

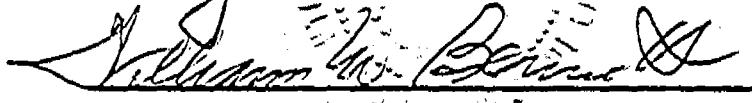
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 4th day of JANUARY, 1967



President





Commissioners

APPENDIX A
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Schedule No. 2

IRRIGATION SERVICE

APPLICABILITY

Applicable to all irrigation water service.

TERRITORY

The Malibu Canyon area and those lands that could be served water from the irrigation distribution system in place on September 1, 1955. (T)
(T)

RATES

Monthly Quantity Rates:		<u>Per Meter</u> <u>Per Month</u>	
First	500 cu.ft. or less	\$ 3.40	(I)
Next	1,500 cu.ft., per 100 cu.ft.53	
Next	3,000 cu.ft., per 100 cu.ft.46	
Over	5,000 cu.ft., per 100 cu.ft.348	(I)

Annual Minimum Charge:		<u>Per Meter</u> <u>Per Year</u>	
For	5/8 x 3/4-inch meter	\$ 40.80	(I)
For	3/4-inch meter	60.00	
For	1-inch meter	90.00	
For	1 1/2-inch meter	180.00	
For	2-inch meter	264.00	
For	3-inch meter	480.00	
For	4-inch meter	720.00	(I)

The Annual Minimum Charge will entitle the customer to the quantity of water each month which one-twelfth of the annual minimum charge will purchase at the Monthly Quantity Rates. (T)
(T)

Schedule No. 2

IRRIGATION SERVICE
(Continued)

SPECIAL CONDITIONS

1. The annual minimum charge applies to service during the 12-month period commencing January 1 and is due in advance. It may be paid in two equal installments, the first installment being due and payable on January first and the second installment on July first of each year. When meters are read bimonthly or quarterly, the charge for water used in excess of the monthly allowance under the annual minimum charge will be computed by doubling or tripling, respectively, the number of cubic feet to which each block rate is applicable on a monthly basis.

(T)

(T)

2. The opening bill for service shall be one-half the established annual minimum charge for the service. Where initial service is established after the first day of January or July, the portion of such minimum charge applicable to the current period shall be determined by multiplying one-half the annual charge by one hundred-eighty-second ($1/182$) of the number of days remaining in the period. The balance of the initial payment shall be credited against the charges for the succeeding period. If service is not continued for at least six months after the date of initial service, no refund of the initial charges shall be due the customer.

(N)

(N)