

Decision No. 75769

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE COUNTY OF KERN, a political
subdivision of the State of
California,

Petitioner,

vs.

SOUTHERN PACIFIC COMPANY, a
corporation,

Respondent.

Case No. 8673
(Filed August 16, 1967)

Investigation on the Commis-
sion's own motion into the
status, rates, rules, operations,
service, facilities, equipment,
contracts and practices of
the SOUTHERN PACIFIC COMPANY, a
corporation.

Case No. 8674
(Filed August 17, 1967)

Edwin D. Grant, for complainant in Case No. 8673
and interested party in Case No. 8674.

Larry W. Telford and George Brown, for defendant
in Case No. 8673 and respondent in Case
No. 8674.

John Wesley Wood and Arden E. Henning, for
43 residents of Keene, intervenors in Cases
Nos. 8673 and 8674.

David R. Larrouy, for the Commission staff.

ORDER OF DISMISSAL

The complaint in Case No. 8673, filed August 16, 1967
by the County of Kern alleges that the Southern Pacific Company
(SP) has for a number of years been selling and delivering water
to a county hospital, fire station, several schools and various
individuals in the Keene-Caliente area of Kern County (approx-
imately 40 miles east of Bakersfield); that SP has never been
regulated as a public utility water corporation by the Commission;

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and that SP informed all of said water users by letter in October 1966 that it would terminate water service on September 1, 1967, and advised them to arrange for substitute water service. The complaint prays that SP be declared a public utility water corporation and be required to continue water service in said area.

Case No. 8674 is an order instituting investigation and temporary restraining order issued by the Commission on August 17, 1967. Said order directed SP to refrain from discontinuing water service as now provided until further order of the Commission. SP advised that it would not challenge the temporary restraining order.

In its answer to the complaint in Case No. 8673, filed August 28, 1967, SP denied that it is a public utility water company. It alleged that for many years it has maintained a private water system in the area in question for serving its own private water needs; that said water system at one time produced water in excess of SP's needs, and as a matter of accommodation, it agreed to sell such surplus water to individuals living near its pipeline; that it is now having difficulty in obtaining water; and that there is no longer surplus water available.

Both cases were consolidated for public hearing which was held before Examiner Mooney in Bakersfield on August 30 and 31, 1967, and on October 3 and 4, 1967. The matter was submitted on the latter date subject to the filing of concurrent briefs due April 26, 1968.

By statement filed April 26, 1968, the Commission staff advised that since it had not presented evidence in these proceedings, it would not file a brief. Prior to said date, both

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complainant and defendant in Case No. 8673 requested an extension of time to file briefs. They pointed out that SP was entering negotiations with the Keene Water District, a newly formed water district, which, if successful, would assure continued water service to the residents of the Keene-Caliente area and would satisfy the complaint. Said request was granted. Subsequent requests for additional extensions of time to allow sufficient time to complete the negotiations were likewise granted. The parties stated that in the event an agreement satisfactory to all concerned were negotiated, there would be no purpose in filing briefs. The agreement was negotiated by SP and the Keene Water District on February 13, 1969. A copy of the agreement, which has been received in evidence as late-filed Exhibit 33 in Case No. 8673, is attached hereto as Appendix A. By the terms of the agreement, SP will continue to provide water service in the Keene-Caliente area until said service is taken over by the Keene Water District in the near future.

By letter dated March 13, 1969, complainant has informed the Commission that it does not oppose the dismissal of Case No. 8673. A motion to dismiss both Cases Nos. 8673 and 8674 was filed by SP on March 27, 1969. A motion for discontinuance of the investigation and revocation of the temporary restraining order in Case No. 8674 was filed by the Commission staff on April 28, 1969. In the circumstances,

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IT IS ORDERED that:

1. The complaint in Case No. 8673 is dismissed.
2. The investigation in Case No. 8674 is discontinued.
3. The temporary restraining order in Case No. 8674 is revoked.

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

Dated at San Francisco, California, this 10th day of JUNE, 1969.

William J. Sproul
President

Harold R. Morrison
[Signature]

[Signature]
Commissioners

APPENDIX A

A G R E E M E N T

SOUTHERN PACIFIC COMPANY, hereinafter referred to as "SP", owns and operates a pipeline and related water production and storage facilities situated in the County of Kern, State of California, between the City of Tehachapi and the community of Caliente. SP has in the past sold surplus water to various persons owning property adjacent to said pipeline pursuant to agreements for the sale of such surplus water.

SP also has certain water rights which are presently being exercised and water produced thereunder and thereby is the water being so sold.

KEENE WATER DISTRICT, a California water district, hereinafter referred to as "DISTRICT", has been formed primarily to finance and construct a water transmission line connecting the area within its boundaries to the transmission line to be constructed by the Tehachapi-Cummings County Water District for the importation of water from the California State Water Project water to said District.

DISTRICT, acting by and through its Board of Directors, hereby agrees to take over and operate the said pipeline, water producing and storage facilities of SP, and assume responsibility for supplying water to persons currently purchasing surplus water from SP, at the time and under the conditions set forth below.

1. SP will continue to operate and maintain the said pipeline and water producing facilities until six (6) months after DISTRICT commences construction of its said water transmission line. At that time DISTRICT will assume responsibility

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for the operation of the pipeline and the continued supply of water to those persons currently purchasing surplus water from SP. To the extent there is water available DISTRICT may serve other users in the vicinity of Keene.

2. At the time DISTRICT is ready to assume responsibility for the operation of said pipeline, SP will lease the said pipeline, water producing and storage facilities and water rights to DISTRICT at no cost for a term of ten (10) years, except that if the DISTRICT connects the water transmission line to be constructed by it to the water service facilities of those persons presently being supplied with surplus water from the pipeline owned by SP at an earlier date, then this term of years shall cease and determine at that earlier date. If at the end of said term of ten (10) years the water service facilities of those persons presently being supplied with surplus water from the pipeline owned by SP have not yet been connected to the DISTRICT's proposed water transmission line, said term shall be extended from year to year and DISTRICT will continue the operation of said pipeline and related facilities, until the DISTRICT is able to provide State Water Project water and to supply the same through its said water transmission lines to the water service facilities of those persons being supplied with surplus water from the pipeline owned by SP.

3. For a period of five (5) years from the date DISTRICT assumes responsibility for operation of the pipeline, SP will assume responsibility for any repairs, renewals or replacements to said pipeline, water production or storage facilities, the cost of which amounts to more than Five Hundred Dollars (\$500.00) per occurrence, provided that District will pay the first Five Hundred Dollars (\$500.00) of any such repair, renewal or replacement. SP will also assume the responsibility and pay the costs of such repairs, renewals or replacements which aggregate in excess of Two Thousand Five Hundred Dollars (\$2,500.00) in any

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twelve (12) calendar month period beginning with the month in which DISTRICT assumes responsibility for said pipeline. All amounts payable by SP to DISTRICT hereunder shall be paid promptly upon receipt of written demand by DISTRICT.

4. The necessity for any repairs, renewals or replacements referred to in Paragraph 3, other than emergency repairs necessary to maintain or restore water service, shall be determined by the Superintendent of the San Joaquin Division of SP, or his representative, and the Chief Engineering officer of DISTRICT, or such other representative of DISTRICT as may be designated by its Board of Directors. If these two parties cannot reach an agreement as to the necessity for said repairs, renewals or replacements, the question will be determined in accordance with the Rules of the American Arbitration Association in existence at the time the question arises.

5. DISTRICT shall have the right to perform or contract for the work necessary to make emergency repairs to restore or maintain service, and as to other repairs, renewals or replacements, SP reserves the right to (a) perform said repairs, renewals or replacements with its own forces, (b) to have said repairs, renewals or replacements performed by an independent contractor, or (c) to require DISTRICT to perform said repairs, renewals or replacements for the account of SP. In the event SP requires DISTRICT to perform said repairs, renewals or replacements, SP shall give written notice to DISTRICT thereof. Following the completion by DISTRICT of said repairs, renewals or replacements and the submission of a statement therefor, SP shall promptly pay all costs incurred by DISTRICT in connection therewith.

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6. SP reserves the right to at any time terminate the operation of said pipeline below the community known as Lower Keene, and to drill a well in the community of Caliente to replace the water currently brought to that community by the pipeline. In the event SP has not exercised this option at the time DISTRICT assumes responsibility for the operation of the said pipeline, DISTRICT agrees that it will continue to offer for sale to the residents of the community of Caliente surplus water to the extent available until that community develops an alternative source of supply.

7. DISTRICT agrees that during the period of time it operates the pipeline herein referred to it will assume the obligation to pay any tax imposed upon the right to produce water at the well belonging to SP in the City of Tehachapi by the Tehachapi-Cummings County Water District or any other entity having the right to impose such a water production tax, but only to the extent that such right is exercised by DISTRICT.

8. DISTRICT agrees that during the period of time it operates the pipeline herein referred to, it will hold SP harmless for any injuries resulting to employees of DISTRICT or to agents of other persons performing work for DISTRICT arising out of or in any way connected with the operation or maintenance of the said pipeline unless caused by the sole negligence of SP.

9. SP agrees that it will cooperate with DISTRICT and DISTRICT's employees during the period of operation by DISTRICT of said pipeline and related facilities by providing access thereto. DISTRICT agrees that its employees, agents, or independent contractors performing work for it will not enter any of SP's railroad right of way without first obtaining permission from SP's San Joaquin Division Superintendent at Bakersfield.

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10. If DISTRICT determines to use any portion of the said pipeline as part of its permanent system of water supply facilities, SP will grant to DISTRICT the right to maintain that portion of the pipeline on its right-of-way until out of face replacements of any one section involving 200 linear feet or more become necessary and DISTRICT agrees at that time to remove that section of said pipeline from the railroad right-of-way of SP.

11. SP agrees to execute and deliver to DISTRICT such documents and assignments as may be required to implement this agreement, including but not limited to assignments of water rights or other rights to the production of water from the groundwater basin underlying the well site of SP in the City of Tehachapi.

12. DISTRICT shall have no responsibility for the protection of the water rights of SP, and SP will hold DISTRICT harmless against any cost or expense which DISTRICT may incur because of litigation or other dispute which DISTRICT may become involved in by reason of its use or exercise of the water rights of SP except, however, this paragraph shall not affect DISTRICT's responsibility for payment of taxes or assessments levied on the production of water and measured by the amount produced.

13. Title to the pipeline and related facilities of SP and its water rights subject to the provisions of this agreement shall remain in SP and all personal and real property taxes levied thereon shall be paid by SP.

14. Until DISTRICT has completed construction of its water transmission line and has imported water available to serve those persons presently being supplied with surplus water from the pipeline owned by SP, DISTRICT's responsibility to operate and maintain said pipeline and related facilities and DISTRICT's obli-

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gation to serve water to those persons, shall be conditioned upon SP's being able to continue supplying DISTRICT with the quantities of water required.

15. In the event DISTRICT is dissolved by operation of law or otherwise, its obligations and responsibilities hereunder shall cease upon such dissolution and any rights acquired by it from SP shall revert to SP.