

Decision No. 84853

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Tokay Water Co., Inc., for a Certificate of Public Convenience to operate a public utility water system in the unincorporated town of Woodbridge, San Joaquin County, to establish rates for service, and for an order authorizing the issuance of capital stock.

Application No. 55566
(Filed March 14, 1975)

Stanley D. Kirst, for Tokay Water Co., Inc., applicant.
Phillip D. Montgomery, for Citizens of Kirst Estates & Woodbridge; John C. Ness, for himself and Woodbridge West Subdivision; Laurie Urias, for Residents of Mokelumne Acres; and George D. Fiske, Delmus Gene Stapleton, Harold Stapleton, Jack Comer, H. A. Stapleton, Gerald J. Makowski, Patricia M. Liebelt, and Mr. and Mrs. Evereh W. Reed, for themselves; protestants.
Leonard Ortiz, for Woodbridge Fire District, and B. M. Lipelt; interested parties.
Eugene M. Lill, for the Commission staff.

O P I N I O N

Applicant Tokay Water Co., Inc. (Tokay), a California corporation, requests a certificate of public convenience and necessity to construct and operate a water system in the unincorporated area of Woodbridge located 1-1/2 miles north of the city of Lodi, authority to establish rates, and authority to issue 6,000 shares of stock at \$10 per share. The application was protested by numerous homeowners in the proposed extended service area, and a representative of approximately two-thirds of the 30 homeowners in the area presently being served by Tokay. The secretary of the Woodbridge Sanitary District

also appeared in protest. A hearing on the application was held in Lodi on June 12, 1975 before Examiner Pilling.

The proposed service area, in general, is located in Section 34, Township 4 North, Range 6 East, and includes, among other areas, Tract No. 784, a subdivision of San Joaquin County which was developed by the officers of Tokay and approved by county authorities for subdivision on January 7, 1966. The president of Tokay, Stanley D. Kirst, testified that a water system was installed to serve the subdivision, and water service to customers within the subdivision by Tokay was established in mid-year of 1967. All present users of the water delivered by Tokay reside in the subdivision except for one customer who is located immediately adjacent to the western boundary of the subdivision. Kirst alleges that approximately \$60,000 has been invested in the system. That money, as well as all money for operating expenses, which currently run \$8,400 a year, were monies advanced by the officers of Tokay. Kirst testified that Tokay has not been charging its customers for water service since the inception of the service due to an agreement with the purchaser of each lot, evidenced by the escrow agreement covering each lot, that as part of the consideration for the purchase of each lot, Tokay will furnish water free of charge to the lot until such time as Tokay secures a certificate from the Commission. In the event the Commission denies the certificate, then the purchasers consent to the formation of a County Maintenance District. Kirst testified that he personally contacted members of the Commission's staff on several occasions about applying for a certificate but because of confusion on someone's part, no productive action was taken to secure a certificate until the filing of this application. The proposed service area is approximately 50 times larger than the area in which Tokay is presently giving service.

A member of the Commission's Utilities Division Hydraulic Branch investigated the operations of Tokay and entered his written

report, which recommends that the application be granted, at the hearing. Pertinent portions of that report are as follows:

"Service Area

* * *

- "5. Within the proposed service area is located the Mokelumne Acres Maintenance District which operates a domestic water system and was organized under Sections 5820 - 5856, inclusive, of the California Streets and Highway Code. For the district to expand services or boundaries the County Board of Supervisors must adhere to the procedure outlined in the Improvement Act of 1911 of the California Streets and Highways Code. In summary they include a resolution of intention by the Board, notice requirements, public hearing and protest requirements, estimate of costs involved and determination of assessments. Any assessments collected must be used for the purposes specified in the resolution and only for the area benefitted. In addition, current Revenue and Taxation Code provisions require the approval of the electorate involved where the maximum tax rate is to be increased.

"Facilities

- "6. The distribution system consists of looped pressurized system of 1,050 feet of 8-inch asbestos-cement and 914 feet of 6-inch asbestos-cement mains with a blow-off at each end of the loop. Water is delivered to the system from a hydropneumatic tank designed to maintain a system pressure between 40 to 60 psi. Water supply is obtained from two wells, one of which is 380 feet deep and the other 242 feet deep. The deepest well is equipped with a 50-hp electric motor direct connected to a deep-well turbine pump rated at 2,800 gpm. The second well is equipped with a 25-hp electric motor direct connected to a deep-well turbine pump rated at 2,400 gpm. Meters have been installed at each premise. Service is provided to 60 customers and three fire hydrants. The applicant has been issued permits to provide domestic water service from the Department of Public Health.
- "7. The presently installed facilities are adequate to serve existing customers, meet potential growth of the proposed service area and exceeds the standards of revised

G.O. 103, Rules Governing water Service Including
Minimum Standards for Design and Construction. 1/

- "8. To reflect a more reasonable value for each category of equipment installed the applicant's cost of in-plant facilities were reclassified. The total investment costs, however, remain the same.
- "9. The following table compares the applicant's plant costs, as shown in Exhibit F, attached to application, staff's reclassification of plant costs and staff's adjustment for rate-making purposes:

"Utility Plant

December 31, 1974

Item	: Utility:	: Reclassifi- : cation of : costs	: Rate-Making: : Adjustment :	: Rate-Making: : Plant : Adjusted :
Intangibles	\$ 1,300	\$ 1,300	\$ -	\$ 1,300
Land	12,375	12,375	(10,385)	1,990
Wells	11,590	6,220	-	6,220
Pumping Equipment	1,993	7,000	-	7,000
Reservoirs and Tanks	810	1,173	-	1,173
Water Mains	16,353	17,347	-	17,347
Services	-	-	-	-
Meters	2,929	2,929	-	2,929
Meter Installation	1,918	1,918	-	1,918
Hydrant	2,100	1,106	-	1,106
Structures	898	898	-	898
	<u>52,266</u>	<u>52,266</u>	<u>(10,385)</u>	<u>41,881</u>

(Red Figure)

- "10. The rate-making adjustment for land is based upon the evaluation of the space occupied by the well site and access road serving it.
- "11. An environmental impact statement, report or negative declaration statement are not required for this proceeding in that subject facilities were installed prior to the enactment of the Environmental Quality Act of 1970.

"1/ On April 15, 1975 the Commission ordered revisions to G.O. 103 to include fire protection standards and services to be effective 20 days after such order. This order was amended by extending the effective date to June 5, 1975.

"Rates and Revenues

"12. Applicant has elected to establish a service type rate schedule. This type of rate structure has the advantage of obtaining the required revenue at a level which will not burden other customers, provides the required revenues for level of services which will encourage use to maximum advantage of customer and utility, and meets the utility's overall revenue requirements.

"13. A comparison of applicant's and staff's estimated operating revenues for 1975 is set forth below:

"Operating Revenues
1975 Estimated

Item	Applicant	Staff	Applicant : Exceeds : Staff :
Meter Water Revenues	\$11,400	\$11,040	\$360
Fire Protection Service	117	117	-
Total	11,517	11,157	360

"14. A comparison of applicant's and staff's rate schedules to develop these revenues is set forth below:

"Rate Schedules

<u>Metered Rates</u>	<u>Per Meter Per Month</u>	
	<u>Applicant</u>	<u>Staff</u>
<u>Service Charge:</u>		
For 5/8 x 3/4-inch meter	\$ 3.50	\$ 3.50
For 3/4-inch meter	3.85	3.85
For 1-inch meter	5.25	5.25
For 1-1/2-inch meter	7.00	7.00
For 2-inch meter	9.45	9.45
For 3-inch meter	12.25	12.25
For 4-inch meter	23.80	23.80

Quantity Rates:

For first 1,000 cu.ft., per 100 cu.ft.65	.60
For all over 1,000 cu.ft., per 100 cu.ft.	.55	.50

Fire Protection

	<u>Per Month</u>	
	<u>Applicant</u>	<u>Staff</u>
For each hydrant owned by utility	\$ 3.25	\$ 3.25
For each hydrant owned by municipality or public agency	2.50	2.50

"15. As shown above the staff varies from applicant only in quantity rates for metered water service.

"Operating Expenses

"16. A comparison of applicant's and staff's estimated operating expenses for 1975 is set forth below:

"Operating Expense
1975 Estimated

Item	Applicant	Staff	Applicant : Exceeds : Staff :
Power	\$ 700	\$ 700	\$ -
O&M - Labor	3,600	2,200	1,400
O&M - Materials	50	100	(50)
O&M - Contract	200	200	-
Office & Management Salaries	450	600	(150)
Office Supplies & Expenses	240	240	-
Insurance	482	482	-
Acct. & Legal	200	200	-
General	93	93	-
Vehicle Expenses	200	200	-
Office Rental	400	250	150
Total	6,615	5,265	1,350

"Summary of Earnings

"17. The revenues, operating expenses and utility plant previously developed have been brought together to develop the net operating revenues necessary to operate the utility. The net operating revenues are related to the depreciated rate base to determine the rate of return. The depreciated rate base consists of plant in service, less depreciation reserve, plus working capital. Working capital is a judgment amount to provide funds for payments of operating expenses in advance of receipt of revenues from customers, maintaining working funds, and the incurrence of certain deferred debits and credits not included in the income statement.

"18. A comparison of applicant's and staff's summary of earnings is set forth below:

"Summary of Earnings
1975 Estimated

Item	Applicant	Staff	Applicant Exceeds Staff
<u>Operating Revenues</u>	\$11,517	\$11,157	\$ 360
<u>Operating Revenue Deductions</u>			
Operating Expenses	6,615	5,265	1,350
Depreciation	926	1,043	(117)
Taxes Other Than Income			
Property Taxes	675	540	135
Payroll Taxes	210	185	25
Total Operating Rev. Deductions	8,426	7,033	1,393
Net Operating Revenues			
Before Income Tax	3,091	4,124	(1,033)
CCFT	278	371	(93)
FIT	619	751	(132)
Net Operating Revenues	2,194	3,002	(808)

(Red Figure)"

Tokay intends to issue 6,000 shares of stock to the officers of Tokay in exchange for the assets--plant valued at \$52,266 and cash amounting to \$7,734--previously transferred to Tokay by them.

Many of the protestant homeowners located within the proposed service area but outside of the subdivision testified they were under the impression Tokay was applying to establish a Public Utility Water District with the power to levy a tax on real estate within the district. Since they drew water from their own wells they did not want to pay a tax to support service to other persons. Other homeowners were under the impression that if the Commission granted

the requested certificate Tokay would automatically acquire title to all the water in the service area. The examiner and the staff representative attempted to explain to those protestants that a granting of the certificate would not permit Tokay to levy a tax on their property nor would it give Tokay title to the water in the proposed service area. The protestants, nevertheless, adhered to their protest to the granting of the application, some asserting that if Tokay's wells increased their output it would draw down the water in protestants' wells. ✓

The representative for the owners of the property within the subdivision now served by the Tokay water system requested that the Commission delay a decision in this case while persons living in the general vicinity of the proposed service area investigate other solutions to their problems. He testified that the citizens in that area should be permitted to control their own destiny and in an attempt to do this some of them have met with agencies and officials regarding the establishment of a Community Services District but that no definitive action has as yet been taken. He alleged the proposed rates were unreasonable and presented evidence that lower rates than applicant's were charged for water by the nearby city of Stockton, the city of Lodi, the San Joaquin Water Works No. 2, and the Mutual Water Co. of Country Club Vista, some of which offer flat monthly rates. He also testified that the 36,000-customer system of investor-owned California Water Service Company at North Stockton had rates much lower than proposed to be charged by applicant. He stated that he thought a reasonable rate for the service would be a flat rate of between \$10 and \$15 per month for all the water used by a household. He presented a letter from a firm of consulting civil engineers in which it was represented, without substantiation, that Tokay's wells can not support service to "Old Town" Woodbridge, a section of the proposed service area. Some of the witnesses questioned Tokay's motives for waiting approximately eight years

before filing an application for a certificate and proposing a scale of rates. However, no explanation was given of what those motives might be. Applicant's president testified that he does not propose to seek charges for water service given prior to the time Tokay is recognized as a public utility and is permitted to file rates.

Discussion

Section 216 of the Public Utilities Code states that a public utility includes a water corporation. A water corporation is defined in Section 241 of the Public Utilities Code to include "every corporation or person owning, controlling, operating, or managing any water system for compensation within this state." Tokay dedicated and has continued to dedicate its water system to the public use for service to the lots within the subdivision plus one other lot for approximately eight years. As part of the consideration in the sale of the lots the officers of Tokay, sellers of the lots, promised each purchaser that the officers would provide, without charge, water service through Tokay for the purchasers until final action was taken on Tokay's application by the Commission. The officers furnished to Tokay money for building the water system and furnished money to Tokay for the upkeep of its system. Hence, Tokay received compensation for operating a water system and so meets the definition of a water corporation.

The area in which Tokay has dedicated its service is very small compared to the proposed service area. Tokay made no showing at the hearing either that increasing growth of the area justifies such a large service area or that Tokay had prospective customers outside of the subdivision. Indeed, all homeowners outside of the subdivision who appeared at the hearing requested that they be left out of the service area. Conceivably there may be many persons who did not appear at the hearing who would want Tokay's service. However, the orderly growth of such a small company with limited capital such as Tokay calls for expansion of its system by advice

letter filings when prospective customers for new service appear rather than Tokay undertaking to hold itself out to render service in an area which is beyond its present capital capacity to serve and where no prospective customers were shown to be requesting service.

The request made by some of the protestants that we delay authorizing Tokay to file rates until it is decided whether or not a Community Services District will be formed in the area must be denied. No official steps have been taken toward establishing such a district and we cannot see where Tokay's action in filing rates can have any detrimental effect on the establishment of such a district.

Included in the utility's plant balances totaling \$52,266, which along with the \$7,734 cash are intended as consideration for the issuance of stock, are mains in the amount of \$17,347 and hydrants in the amount of \$1,106 (total of \$18,453). The Commission has previously considered the financing of utilities in connection with Case No. 5501, and in the decision in that case (Decision No. 75205 dated January 21, 1969) we reaffirmed our previous order that all extensions of distribution mains from a utility's basic production or transmission system, of either a newly formed utility or of an existing utility, shall be financed by water main extension agreements. No evidence was presented in this proceeding to justify a deviation from that order. In the absence of such justification we will require applicant to enter into a water main extension agreement with the subdividers (in this instance, the prospective shareholders) to cover the previous advances of \$18,453 and will require that refunds on the water main extension agreement, as earned, be credited to the capital surplus account of the utility. Additionally, as a result of our requirement that a main extension agreement be entered into, we will not authorize the issuance of the full 6,000 shares as requested but only a sufficient number of shares (3,542) to cover the value of assets (\$35,423) properly capitalizable

through the issuance of stock, arrived at by deducting the \$18,453 advance covered by the main extension agreement from the proposed \$60,000 consideration for the stock less \$6,124 depreciation reserve.

Findings

1. Tokay operates a water system which it has dedicated to public use for service to Tract No. 784, San Joaquin County, plus one other lot.
2. Tokay received compensation for operating a water system.
3. Tokay meets the definition of a water corporation as set out in Section 241 of the Public Utilities Code.
4. Tokay does not have a tariff on file with this Commission as required by Section 532 of the Public Utilities Code.
5. A water main extension agreement between the developers of Tract No. 784 and Tokay covering all costs in connection with installing the system's present mains and hydrants should have been entered into as the method of financing the cost of those mains and hydrants.
6. Tokay's proposed rates, as modified by the staff, will render the company viable and in a position to be financially responsive to the maintenance of adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities.
7. A certificate should be issued to Tokay embracing a service area no larger than the present area it is now serving. A finding pursuant to Rule 17.1 on environmental quality is not needed because all facilities were constructed in 1967.
8. No showing has been made that public convenience and necessity require the issuance of a certificate covering a service area larger than the area Tokay is now serving.
9. The staff's estimates of operating revenues and expenses, including taxes and depreciation, for the test year 1975 are reasonable.

10. The proposed security issue to the extent it does not exceed 3,542 shares is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the securities authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

Conclusions

1. Tokay is a public utility water corporation subject to the jurisdiction of this Commission.

2. Tokay should be ordered to file a tariff with the Commission which should include a map of its water service area, which area upon the initial filing of the tariff should be no larger than Tract No. 784, San Joaquin County, plus the one lot it is presently serving outside of said tract.

3. Tokay should be authorized to issue 3,542 shares of stock as described in the application.

4. Tokay should be required to enter into a water main extension agreement, satisfactory to the Commission, with the developers of Tract No. 784, San Joaquin County, covering all costs in connection with the installation of Tokay's present water mains and hydrants and to credit refunds under the agreement, as earned, to the capital surplus account of Tokay.

O R D E R

IT IS ORDERED that:

1. Tokay Water Co., Inc., a corporation, is granted a certificate of public convenience and necessity to operate a public utility water system in Tract No. 784, San Joaquin County.

2. Tokay Water Co., Inc., within thirty days after the effective date of this order, shall file a schedule of rates; a tariff service area map clearly indicating the boundaries of its service area which area should be no larger than Tract No. 784, San Joaquin County, plus the one lot it is presently serving outside of the subdivision;

appropriate general rules; and copies of printed forms to be used in dealing with customers. Such filing shall comply with General Order No. 96-A and the tariff schedules shall become effective on the fourth day after the date of filing.

3. Tokay Water Co., Inc. shall prepare and keep current the system map required by paragraph 1.10.a of General Order No. 103. Tokay Water Co., Inc. shall file with the Commission two copies of the map within ninety days after the effective date of this order.

4. Tokay Water Co., Inc. shall set up formal books of accounting in conformity with the Uniform System of Accounts for Class D Water Utilities as prescribed by this Commission and record therein the appropriate charges to plant accounts.

5. For year 1975, Tokay Water Co., Inc. shall apply a depreciation rate of 2.70 percent to original cost of depreciable plant. Until review indicates otherwise, Tokay Water Co., Inc. shall continue to use this rate. Tokay Water Co., Inc. shall review its depreciation rates at intervals of five years or whenever a major change in depreciable plant occurs.

6. On or after the effective date of this order and on or before November 1, 1975 Tokay Water Co., Inc. may issue not to exceed 3,542 shares of its common stock for \$10 per share.

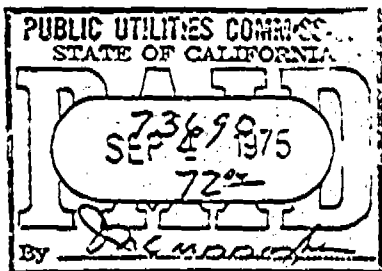
7. In issuing this decision we place the issuer of the authorized stock and its shareholders on notice that we do not regard the number of shares outstanding, the total par (stated) value of the shares, nor the dividends paid, as measuring the return it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a finding of the value of the company's stock or property nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

8. The authority granted by this order to issue stock will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$72.

9. Within sixty days after the effective date of this order Tokay Water Co., Inc. shall file with the Commission a water main extension agreement, satisfactory to the Commission, between itself and developers of Tract No. 784, San Joaquin County, covering advances of all costs in connection with the installation of its present water mains and hydrants and shall credit refunds under such agreements, as earned, to the capital surplus account of Tokay Water Co., Inc.

Except as set out in Ordering Paragraph 8 the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 3rd day of SEPTEMBER, 1975.



William J. Gorman President
Vernon L. Sturgeon
Donald Van
Robert K. ... Commissioners

APPENDIX A
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Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The town of Woodbridge and vicinity, San Joaquin County.

RATES

Service Charge:

Per Meter
Per Month

For 5/8 x 3/4-inch meter	\$ 3.50
For 3/4-inch meter	3.85
For 1-inch meter	5.25
For 1 1/2-inch meter	7.00
For 2-inch meter	9.45
For 3-inch meter	12.25
For 4-inch meter	23.80

Quantity Rates:

For the first 1,000 cu.ft., per 100 cu.ft.60
For all over 1,000 cu.ft., per 100 cu.ft.55

The service charge is applicable to all metered service. It is a readiness-to-serve charge which is added to the charge computed at the quantity rates for water used during the month.

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Schedule No. 5

PUBLIC FIRE HYDRANT RATES

APPLICABILITY

Applicable to all fire hydrant service furnished to municipalities, duly organized fire districts, and other political subdivisions of the State.

TERRITORY

The town of Woodbridge and vicinity, San Joaquin County.

RATES

	<u>Per Month</u>
For each hydrant owned by the utility	\$3.25
For each hydrant owned by the municipality or public agency	2.50

SPECIAL CONDITIONS

1. Hydrants owned by the municipality or other public agency shall be installed, maintained, painted, inspected and relocated at the expense of the municipality or other public agency. The utility will install and own the tie in, the main and the pipe to the hydrant valve.
2. The above rates include use of water for fire fighting and for no other purpose. Quantities of water delivered through fire hydrants for any other purposes will be estimated or measured and charges will be made at the quantity rates under Schedule No. 1, General Metered Service.
3. The utility will supply only such water at such pressure as may be available from time to time as a result of its normal operation of the system.