

LEM

Decision No. 17974.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
H. T. ROBINSON,
doing business under the name and
style of OCEAN PARK HEIGHTS LAND
AND WATER COMPANY to sell, and of
Ocean Park Heights Water Company, a
corporation, to purchase a water
system, and to issue bonds and stock
in payment therefor and for other
purposes.

ORIGINAL

Application No. 13100

In the Matter of the Application of
H. T. ROBINSON,
operating under the name and style of
OCEAN PARK HEIGHTS LAND AND WATER
COMPANY to exercise franchise rights.

Application No. 13198

McAdoo, Neblett & O'Connor,
by W. H. Neblett and H. B. Neblett, for applicant.

Thomas R. Lynch, in propria persona.

BY THE COMMISSION:

O P I N I O N

In Application No. 13198, H. T. Robinson, operating under the name and style of Ocean Park Heights Land and Water Company, asks the Railroad Commission to make an order declaring that public convenience and necessity require the exercise by applicant of rights and privileges granted by the Board of Supervisors of Los Angeles County by Ordinances No. 808, No. 809, No. 860 and No. 1246, New Series.

In Application No. 13100, the Railroad Commission is asked to make an order authorizing H. T. Robinson and Annie Del Segno Robinson, his wife, to transfer a public utility water system known as the Ocean Park Heights Land and Water Company to Ocean Park Heights Water Company, a corporation, and authorizing the corporation to issue stock and bonds in the amounts and for the purposes to which reference is

hereafter made.

A public hearing on the two matters was held before Examiner Fankhauser on October 8, 1926, at which time they were consolidated for the purposes of receiving evidence and for decision. On December 31, 1926 there was filed with the Commission a copy of the corporation's proposed deed of trust and also an amended petition in Application No. 15100. The matters are now ready for decision.

The Ocean Park Heights Land and Water Company, operated by E. T. Robinson, supplies water in an area lying between Culver City and that portion of the City of Los Angeles formerly comprising the City of Venice, approximately eleven miles west of the business center of the City of Los Angeles containing a population reported at about 4000. It is reported that the business is being conducted by virtue of four franchises granted by the Board of Supervisors of the County of Los Angeles, as follows:-

- Franchise Ordinance No. 808, New Series, granted to Ocean Park Heights Land and Water Corporation, a corporation.
- Franchise Ordinance No. 809, New Series, granted Ocean Park Heights Land and Water Company, a corporation.
- Franchise Ordinance No. 860, New Series, granted to Ocean Park Heights Land and Water Company.
- Franchise Ordinance No. 1246, New Series, granted to E.T. Robinson.

It is of record that Ordinances No. 808 and No. 809 were granted to Ocean Park Heights Land and Water Company, a corporation, in error and that this error was corrected by Ordinance No. 860.

It does not appear that the Commission has ever been asked to make an order, as required by Section 50-b of the Public Utilities Act, declaring that public convenience and necessity required the exercise of the rights and privileges granted by these ordinances. In this connection, however, applicants report in Application No. 15198 that for many years prior to the granting of the franchises the predecessors in interest of the water system operated a public utility in the general territory described in the franchises, and that later the franchises were obtained to prevent invasion of the territory by other operators, and that the applicants were not aware that a

certificate of public convenience and necessity from the Railroad Commission was required. When the matter was brought to their attention, however, the present application, No. 13198, was filed for a certificate covering the exercise of such rights and privileges as were acquired.

At the hearing Thomas R. Lynch, appearing on his own behalf, protested the granting of Application No. 13198 insofar as it involved the extension of the service of Ocean Park Heights Land and Water Company or its successor into a tract of land known as No. 8282, containing about thirteen acres situated west of Sawtelle Boulevard. Applicants agreed that they would not extend their system into said tract. It appears from the record that there are other tracts covered by the franchises to which reference has been made, which are not now being served by applicants. There has not been submitted sufficient evidence to warrant the Commission to conclude that public convenience and necessity require applicants to extend their operations into tracts which are not now being served by them or to extend their system in such a way as to interfere with the operations of other water plants. We therefore will authorize applicants to exercise the rights and privileges granted by the several ordinances only to the extent that it is necessary to construct, maintain and operate a water system for the purpose of selling water to consumers residing in tracts now served by applicants. We will not authorize applicants to exercise said rights and privileges for the purpose of competing with other systems or extend their system into tracts not now served by them.

Referring to the physical properties, it appears that the water supply at present is obtained from a twelve inch well 252 feet deep, and from a four teen inch well 200 feet deep. In addition, the utility has three other wells not now equipped with pumps, but which, it is said, can be placed in service in case of need. Water is

pumped from the two operative wells by deep well turbine pumps into concrete settling basins and is then pumped by booster pumping units directly into the distribution mains, any surplus water being discharged into storage tanks located on a hill above the service area, where storage of a total capacity of 106,000 gallons is provided by concrete and redwood stave tanks. The distribution system consists of about forty-two miles of pipe, ranging in diameter from one to eight inches, supplying 815 services, of which 798 are metered. The pressure in the service area ranges from 25 to 60 pounds per square inch, dependent on elevation.

In Exhibit "F", Application No. 15100, The Loveland Engineers, Inc. report the estimated original cost of the properties involved in this application on December 31, 1925 at \$288,399.00; the estimated reproduction cost new at \$283,541.00; and the estimated reproduction cost less accrued depreciation at \$254,489.00. F. E. Van Hoesen, an assistant engineer for the Railroad Commission, in the Commission's Exhibit No. 1 reports the estimated reproduction cost new, depreciated, of the properties as of October 1, 1926 at \$203,988.00. Representatives of applicants did not, though they were given an opportunity, cross examine Engineer Van Hoesen. The \$203,988.00 is made up of the following items:-

Organization	\$500.00
Franchises	1,181.00
Landed capital	21,875.00
Buildings, structures, grounds	3,213.00
Wells	2,475.00
Pumping equipment	7,722.00
Purification equipment	393.00
Distribution mains	140,140.00
Distribution reservoirs	3,736.00
Fire hydrants, etc.	390.00
Services	6,712.00
Meters	10,367.00
Miscellaneous distribution equipment	400.00
General office equipment	<u>4,884.00</u>
Total	<u>\$203,988.00</u>

Applicants stated that for the purpose of this proceeding they had no objection to the Commission considering in evidence the report of F. H. Van Hoesen and that they had no cross examination on the report.

It is proposed to improve the present system by an expenditure of \$20,000.00 for the following purposes:-

50,000 gallon capacity steel tank and tower	\$6,000.00
Additional pumping equipment electrical control apparatus and wiring, pipe connections, etc. to be installed at one of the wells which are at present nonoperative	3,500.00
Distribution pipe lines	7,500.00
Meters and services	3,000.00
	<hr/>
Total.....	<u>\$ 20,000.00</u>

It is reported that there has been a substantial increase in the business of the Ocean Park Heights Land and Water Company since 1914, at which time there were approximately seventy service connections. For the year ending December 31, 1921 the number of service connections is reported at 234; for 1922 at 272; for 1923 at 336; for 1924 at 572; for 1925 at 738; and on May 31, 1926 at 815.

Applicants in Exhibit "E" report operating revenues for the twelve months ending July 31, 1926 at \$24,137.25; and operating expenses exclusive of depreciation, of \$9,262.02; leaving net revenues of \$14,875.23. The depreciation charges are estimated at \$5,992.34, leaving \$10,882.89, after deducting depreciation charges. For the year ending December 31, 1926 the net revenue before depreciation is estimated at \$15,000. and the net revenue after depreciation at \$11,000. It is of record that it is desirable and for the benefit of the public served by the public utility properties of H.T. Robinson and Anna Del Segno Robinson, operating under the name and style of Ocean Park Heights Land and Water Company, that the said properties be transferred to Ocean Park Heights Water Company. It is believed that because of the rapid growth of the business of the water system, additional facil-

ities must be constructed, and that the acquisition and construction of such facilities can be more readily financed through a corporation than by individuals. H. T. Robinson and Annie Del Segno Robinson, his wife, have agreed to sell their properties, referred to herein, to the Ocean Park Heights Water Company, provided said company pay therefor the proceeds realized from the sale of \$80,000.00 of six and one half percent 20-year bonds, and such amount of preferred and/or common stock as may be authorized by the Railroad Commission.

The corporation asks permission to execute a mortgage or deed of trust in substantially the same form as that filed on December 31, 1926 and marked "Exhibit H", to secure the payment of an authorized bond issue of \$500,000.00. At this time it asked permission to issue and sell \$100,000.00 of six and one half percent 20-year bonds secured by said mortgage, at 92 or on a basis of about seven and one quarter percent. The mortgage specifies the purposes for which the \$92,000.00 may be expended, some of which purposes are, and others may be, as the mortgage is now drawn, at variance with the purposes recited in the petition in this proceeding. In the petition the corporation asks that it be permitted to use the proceeds from the sale of \$80,000.00 of bonds to pay in part for the properties it intends to acquire and use the proceeds from the remaining \$20,000.00 of bonds for the purposes mentioned above. The proposed mortgage (Section 21), however, provides that the proceeds from the sale of the \$100,000.00 of bonds shall be disbursed by the trustee for the following purposes and no other:-

1. \$68,600.00 to H.T. Robinson and Annie Del Segno Robinson, his wife, in part payment of the purchase price of the plant and properties acquired from H. T. Robinson and Annie Del Segno Robinson, his wife, doing business under the fictitious firm name and style of Ocean Park Heights Land and Water Company.

2. To the water company such amount as may be authorized by the Railroad Commission of the State of California for organization ex-

penses not exceeding, however, the sum of \$5,000.00.

3. To the water company an amount sufficient to reimburse it for expenditures actually made by it for additions, improvements and betterments made to the plant and properties described herein between the time of the acquisition by the water company of the said plant and properties and the date of the indenture.

4. The balance remaining to be disbursed by the trustee solely for the purpose of reimbursing the water company for expenditures actually made by it subsequent ^{to the} date of the indenture for additions, improvements and betterments approved by Freeman, Smith and Camp Company, the proposed purchaser of the \$100,000.00 of bonds, to the water company's property subject to the limitations of this section. In our opinion we have no authority to authorize the expenditure of bond proceeds for purposes stated so generally as they are in the proposed mortgage or deed of trust, nor will we authorize the execution of a mortgage containing such provisions.

The proposed mortgage contains other provisions that do not meet with our approval. Thus it provides that after the issue of the initial series "A" bonds of \$100,000.00 bonds, no additional bonds may be authenticated except upon the receipt of the trustee of the written approval of Freeman Smith and Camp Company; that the water company will have its books audited by some certified public accountant approved by the trustee and by Freeman, Smith and Camp Company; that it will furnish a report of each such audit to Freeman, Smith and Camp Company; that it will annually have its properties examined by an engineer approved by Freeman, Smith and Camp Company; that it will furnish a copy of his report to said Freeman, Smith and Camp Company; that it will furnish monthly financial statements to Freeman, Smith and Camp Company; that it will on or before November 20, 1927, and annually thereafter pay to the trustee a sum in cash equal to at least three percent of the maximum amount of bonded indebtedness of the company at any time outstanding and that all moneys paid for the account of

the sinking fund shall be applied by the trustee to the purchase through Freeman, Smith and Camp Company of bonds secured by the indanture, at not exceeding the current market price thereof or the current redemption price of the respective series if they shall be redeemable by their terms and accrued interest; that any money obtained from the sale of property may be invested in new property with the approval of Freeman, Smith and Camp Company.

The Commission has heretofore refused to authorize the execution of open end mortgages containing provisions similar to those just recited. We will likewise refuse to grant Ocean Park Heights Water Company permission to execute a mortgage such as that filed in this proceeding on December 31st(Exhibit H) or any other mortgage containing provisions similar to those noted. Moreover, the proposed mortgage should be modified so that the sinking fund payments be calculated on the amount of bonds actually outstanding on the thirty-first day of October of each year, assuming the sinking fund payment is due on or before November twenty of each year; so that depreciation be not included in operating expenses for the purpose of determining the net income of the company as that term is used in section twenty-six of the trust indenture and so that the bonds be payable in gold coin of the United States of America of or equal to the standard of weight and fineness in effect on the date of the trust indenture. Ocean Park Heights Water Company should submit a revised copy of its mortgage.

We will not authorize Ocean Park Heights Water Company to issue bonds on a seven and one quarter percent basis on a record such as we have in this proceeding. If these properties cannot be financed on a better basis, we believe that no advantage will accrue to the consumers through the proposed bond issue. The order herein will permit the company to issue \$100,000.00 of six or six and one half percent twenty year bonds and authorize their sale on a basis of six and three fourths percent, as provided in said order. It will also authorize the issue of \$125,000. of common stock. No evidence was submitted showing the necessity for the issue of any preferred

stock.

ORDER

H. T. Robinson and Annie Del Segno Robinson, his wife, operating a public utility water system under the name and style of the Ocean Park Heights Land and Water Company, having asked permission to exercise franchise rights and to transfer public utility properties to the Ocean Park Heights Water Company and said company having asked permission to purchase said properties and issue stocks and bonds, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the requests of applicants should be granted as herein provided, and that the money, property or labor to be procured or paid for by the issue of the stocks and bonds herein authorized is reasonably required by Ocean Park Heights Water Company, and that the expenditures are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require the exercise by H.T. Robinson and Annie Del Segno Robinson, his wife, operating a public utility water system under the name and style of the Ocean Park Heights Land and Water Company, of the rights and privileges conferred by Ordinance #808, #809, #860, and #1246, New Series, of the County of Los Angeles, provided that they shall first have filed with the Railroad Commission a stipulation declaring that they, their successors and assigns will never claim before the Railroad Commission or any court or other public body a value for said rights and privileges in excess of the amount actually paid the County of Los Angeles as the consideration of the granting of such rights and privileges, which amount shall be set forth in the stipulation, and shall have received from the Railroad Commission a supplemental order declaring that such stipulation has been filed in form satisfactory to the Railroad Commission; and provided

further that the rights and privileges granted by such ordinances may be exercised only to the extent that it is necessary to construct, maintain and operate a water system for the purpose of selling water to consumers residing in tracts now served by said applicants.

IT IS HEREBY ORDERED that H. T. Robinson and Annie Del Segno Robinson, his wife, doing business under the name and style of Ocean Park Heights Land and Water Company be, and they are hereby authorized to transfer their public utility water system, and assets described in Exhibit "F", Application No. 13100, to Ocean Park Heights Water Company, a corporation, which is hereby permitted to acquire said public utility water system and assets.

IT IS HEREBY FURTHER ORDERED that Ocean Park Heights Water Company be, and it hereby is, authorized to issue \$125,000.00 of its common stock and \$100,000.00 of six or six and one half percent twenty year bonds. Said stock and the proceeds obtained from the sale of \$30,000.00 of bonds, which bonds shall be sold on a six and three-fourths percent basis or better, may be used by applicant to pay for the properties to be acquired from H. T. Robinson and Annie Del Segno Robinson, his wife. The proceeds obtained from the sale of \$20,000.00 of bonds, which bonds shall be sold on a six and three fourths percent basis shall be used to pay the cost of the improvements referred to in the foregoing opinion, provided that the authority herein granted to issue said \$100,000.00 of bonds will not become effective until the Commission has authorized Ocean Park Heights Water Company to execute a mortgage or deed of trust to secure the payment of said bonds, nor until the company has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is \$100.00.

IT IS HEREBY FURTHER ORDERED that Ocean Park Heights Water Company shall keep such record of the issue, sale and delivery of the stock and bonds herein authorized and of the disposition of the

proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED that within thirty days after the transfer of the properties referred to herein, Ocean Park Heights Water Company shall file with the Commission a certified copy of all instruments by virtue of which it acquired and holds title to said properties and shall also advise the Commission of the exact date on which it took possession of the properties.

IT IS HEREBY FURTHER ORDERED that the authority herein granted to transfer properties and issue stock will become effective twenty days after the date hereof, and that none of the stock or bonds herein authorized to be issued, may be issued after June 30, 1927.

DATED at San Francisco, California, this 8th day of February 1927.

Frankford
H. B. Budge
C. Seavey
Leon White
Thos. J. Loutin

Commissioners.

See \$ 100.00
RAILROAD COMMISSION
STATE OF CALIFORNIA
FEB 10 1927
A. M. [Signature]
See # 23802