ORIGINAL

Decision No. 18544

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation upon the Commission's own motion into the reasonableness of the rates, charges, practices, contracts, rules, regulations, schedules and conditions of service, or any of them, of DILLON BEACH COMPANY, a corporation operating a water system in vicinity of Dillon Beach, Marin County.

Case No. 2228.

A. E. Shaw, for Dillon Beach Company.
Emmet J. Donohue, for T. Edwin Cornett and Joe Doss.
William Gould, for himself and certain other owners of property in Dillon Beach.
J. H. Kuser, for California State Board of Health.

BY THE COMMISSION:

OPINION

This is an investigation by the Railroad Commission instituted upon its own motion to inquire into the reasonableness of the rates, charges, practices, contracts, rules, regulations and conditions of service, etc., of Dillon Beach Company, a corporation, engaged among other things in the operation of a water system supplying water for domestic purposes to consumers residing in Dillon Beach, in Marin County.

During the last two years the Commission has received a large number of complaints by consumers of this system to the effect that during the summer the water supply was wholly inadequate to take care of the necessary household and sanitary requirements, that service was frequently interrupted and entirely discontinued for many hours and sometimes for several days; that

the water was generally offensive as to odor, taste and at times highly discolored. It was further complained that certain consumers paid at the rate of five dollars per year while others were charged ten and twelve dollars per year for the same class of service, and that rates had been arbitrarily increased as to some consumers without authority from the Railroad Commission. When these various matters were taken up informally the Dillon Beach Company informed the Commission that it was not operating as a public utility but only as a strictly private enterprise and was therefore not subject to the authority and jurisdiction of the Railroad Commission. Thereupon the Commission, by its order dated April 12, 1926, instituted this proceeding to determine the status of the operations of this company as to the conduct of its water system. Answer was filed by the Dillon Beach Company wherein it alleged in effect that said company owns and controls certain subdivided property in Marin County, consisting of a hotel resort and attached cottages, and also lots which the company is now in the business of selling to the public; that it operates a water system to supply water to the said hotel and premises and to the purchasers of lots in the subdivision but that such water is delivered under private contracts and agreements with said lot owners, and that the said company has at all times refused to supply water to any persons except in pursuance of the contracts and agreements made by and between said company and the lot purchasers. It is further alleged that the company is not operating the water system as a source of profit and that the compensation for such service as is rendered is set out in said contracts and is used solely for the purpose of upkeep and expense of said water system; that the company has at no time dedicated any of its water supply to the use of the general public or any portion thereof and is therefore operating its water system in a strictly private capacity, is not a public utility, and is not subject to the jurisdiction of the Commission. The company

therefore requests that this proceeding be dismissed for lack of jurisdiction.

Public hearings in this matter were held before Examiner Austin at Dillon Beach and San Francisco, after due notice thereof had been given and all interested parties afforded an opportunity to appear and be heard.

From the evidence presented in this matter it appears that at some time prior to 1905 one John W. Keegan subdivided into lots a tract of land containing approximately 23½ acres, and now known as Subdivisions Nos. 1 and 2, Dillon Beach. A few lots were sold from time to time by Keegan, who installed a 3/4 inch pipe line from a spring to supply water to those who required it. In 1911 Dillon Beach Company was incorporated and acquired from Keegan the resort and all of the unsold property in the tract. At the time this transfer was made there were only four houses built upon the lots sold by the former owner. The articles of incorporation of Dillon Beach Company were filed in the office of the Secretary of State on July 8, 1911, and provide principally for the operation of hotels and sea beach and pleasure resorts and for the conduct of a general real estate business. Except as may be implied indirectly in connection with the specific authority granted, nothing is contained in these articles of incorporation authorizing the conduct of a general water business.

Soon after the purchase of this property the company abandoned the water system installed by Keegan and acquired additional springs, built a dam and reservoir, dug wells, installed a pumping plant, and constructed a new distribution system consisting of two inch pipe. At present the water supply is obtained from three springs located on a hill above the tract and from a dug well about 15 feet deep located in a canyon near the hotel. Water is stored from the springs in a reservoir of about 250,000 gallons capacity and also in two tanks of 3000 and 8000 gallons respectively.

Water is pumped directly into the mains from the wells at times when the gravity supply runs low in the summer. The resort properties consist of a hotel with thirty-three small cottages or cabins and also a dancing pavilion, a bath house and garage. These properties, while owned by Dillon Beach Company, have been operated by other parties for the last ten years under a lease, which among other things provided therein that water would be furnished by the company to the hotel and its properties for a sum of $20.00 per year.

The community served is essentially a summer resort, there being in addition to the hotel and resort about seventy privately-owned cottages occupied for perhaps an average of three months during the summer. There are not over a dozen permanent consumers who reside in their homes throughout the entire year. The water supply capable of being developed at this particular location is very limited, with the result that during weekends and holidays in the summer the influx of many hundreds of visitors creates a demand for water which the system cannot meet. According to the testimony the system has cost approximately $10,000 to install and is entirely unmetered. The rate now charged by the company is $10.00 per year, payable in advance, for all service rendered to private cottages.

At the outset of the hearing in this matter a general objection against the entire proceeding was made by counsel for the company upon the grounds that Dillon Beach Company is not a public utility, is not a water company selling water to consumers generally or otherwise, that said company is a private concern engaged in a strictly private business of operating a beach resort and the selling of certain lots to which water is furnished under contract with the lot owners and not otherwise, and that any attempt by the Railroad Commission to declare this said company to be a public utility and to assume jurisdiction over its water operations will amount to the

confiscation of its property for a public use without due process of the law, in violation of the State and Federal Constitutions.

In general the testimony presented by consumers is to the effect that the water supply is entirely inadequate during the summer when most necessary. Water is very frequently not available to properly flush toilets and to provide for cooking and drinking, and in order to conserve the supply it has frequently been necessary for the operator of the system to shut off all water and then serve in rotation for an hour or so one street main at a time. The testimony of Dr. Kuser, Marin County Health Officer, indicates that the water is potable and not contaminated in any way, although he recommended that certain improvements be installed for the further protection of the springs against the entry of rodents and small animals and reptiles.

While only a few persons objected to the payment of more than five dollars per year for water service, the majority of the consumers did not object to the present charge of ten dollars per annum provided there was a more adequate water supply and no further discrimination as to charges. During the year 1926 the transmission line was replaced with new two inch galvanized pipe, which should very materially increase the water available, and also to a considerable extent eliminate the effects of the rust which existed in the former wornout pipe.

Prior to 1921 the company generally charged $5.00 per year for service, Subsequent thereto various charges have been made for water service to the consumers. Some paid $5.00, others $7.50, $10.00 and $12.00. The policy was also adopted by the company of charging $12.00 per year for water where the cottage was not occupied by the owner or his family but rented. Starting with the service for 1926 the company has billed all consumers $10.00 per year in advance, whether the premises served is rented or occupied by the owner. None of the above charges were based upon any authority of this Commission, nor has the company at any

time applied for any such authority. In addition to this the company has consistently refused to file with the Commission its rates, rules and regulations governing water service to its consumers based upon its claim that it is not a public utility.

The evidence shows that this company has never served water to any consumers other than those located upon lots within its subdivided properties. It was also the practice of the company in connection with the sale of lots to require the prospective purchaser to sign an agreement for the sale of the property which set out therein, among other restrictive clauses concerning the use of the property, that the company upon demand would furnish an adequate supply of water to the premises for domestic purposes at such price as may be fixed by the company, not exceeding $12.00 per year. Although the restrictive clauses in the agreements to purchase were usually set out in the actual deeds to the property delivered by the company upon completion of the transaction, yet the early deeds left out this clause concerning the furnishing of water. In 1916 the agreement and deed forms were revised and both definitely set out in more detail the clause concerning the water.

The evidence indicates that many of the lot purchasers did not sign the form agreements for the purchase of the lots and that there is nothing contained in the deeds they received from the company for their lots relating to the furnishing of water. Nothing concerning water supply was set out by contract or deed to the few lots acquired from John W. Keegan prior to the sale of the tract to the Dillon Beach Company.

It is the contention of this company that all water furnished by it has been and now is served upon a contractual basis, and, with the possible exception of the four lot owners who were using water at the time of acquisition of the property by the company, all lot sales were based upon either written or verbal agreements to furnish water to each lot sold upon a price to be fixed by the company.

A study of the evidence presented in connection with this case indicates that upon the taking over of this resort and real estate project Dillon Beach Company abandoned the former makeshift water plant and installed an entirely different and completely new water system, and that it thereafter commenced the delivery of water with the very evident intention of supplying water only to the owners of lots within its subdivided properties. In so far as it was able the company attempted to confine its service under written agreements, and although such written agreements were not obtained in all cases it is clear that since some time in 1916 all deeds to lots purchased contained the clause governing the furnishing of water to the lots by the company. The evidence is somewhat conflicting as to the exact time the water clause was inserted in the deeds, the testimony of Mr. Wilson, Secretary of the company, being to the effect that it was his opinion that the change in the form of deed used by the company was made at some time during the year 1914. However, it is established that the deeds have covered this point for at least the past ten years.

In view of the fact that it was the evident intent of this company to avoid the dedication of its water supply to the public generally and to confine its service to private arrangements with its consumers upon a non-profit basis, it appears that the service rendered has been private in nature and that the water supply has not in fact been dedicated to the public use. It therefore follows that this matter should be dismissed for lack of jurisdiction.

O R D E R

The Railroad Commission of the State of California having instituted upon its own motion an investigation to determine whether the rates, charges, practices, contracts, rules, regulations, schedules and conditions of service, or any of them, of Dillon Beach Company, a corporation operating a water system furnishing water for

domestic and other purposes at Dillon Beach, Marin County, are unjust, unreasonable, discriminatory or preferential in any particular, and to determine the just, reasonable and sufficient rates, charges, practices, contracts, rules, regulations and conditions of service to be observed and enforced in connection with such service of water by said Dillon Beach Company and to fix the same by order, public hearings having been held thereon, the matter having been submitted and the Commission being fully informed thereon and being of the opinion that the water supplied by Dillon Beach Company, a corporation, to its consumers has not been dedicated to the public use and that said company is not furnishing water to its consumers as a public utility,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby dismissed for lack of jurisdiction.

Dated at San Francisco, California, this 27th day of June, 1927.

Ervin Seavey [signature]

C. L. Seavey [signature]

Leon O. Whitsell [signature]

Thos. S. Louttit [signature]

Commissioners.