

Decision No. 18658

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

OCEAN PARK HEIGHTS LAND AND WATER COMPANY,
Complainant.

vs.

SUBURBAN MUTUAL WATER COMPANY,
Defendant.

Case No. 2238.

ORIGINAL

McAdoo, Neblett and O'Connor, by W.E. Neblett,
for Complainant.

Maurice C. Sparling, for Defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding H.T. Robinson, doing business under the fictitious name and style of Ocean Park Heights Land and Water Company, operating a public utility water system supplying water for domestic and other purposes near the City of Venice, in Los Angeles County, has filed a complaint against the Suburban Mutual Water Company, a corporation, which is also engaged in the business of supplying water for domestic purposes as a public utility to consumers residing in Tracts Nos. 6115, 7358 and 7135, in Los Angeles County.

The amended complaint in this proceeding alleges in effect that complainant is a public utility, supplying water for domestic purposes to consumers in Los Angeles County within the territory covered by Ordinance No. 809 (new series) and Ordinance No. 850 (new series) of the Board of Supervisors of said County; that defendant, on or about May 4, 1926, without authority from

the Railroad Commission, constructed a pipe line across Short Avenue, thereby connecting its water system supplying Tract No. 6115 with the water mains which had heretofore been installed in the adjoining Tracts No. 7358 and No. 7135; that said Tracts No. 7358 and No. 7135 lie within the limits of the franchise as granted to complainant by the Board of Supervisors of Los Angeles County; that said pipe connection across Short Avenue and extension of defendant's water system was made and is now being maintained wrongfully and in violation of the rights of complainant and without defendant having first obtained a certificate of public convenience and necessity or other authorization from the Railroad Commission; that complainant is now ready and willing to furnish adequate service from its own water system to said Tracts No. 7358 and No. 7135 in accordance with the terms of its franchise and under the orders and direction of the Railroad Commission. The complaint requests that this Commission issue an order directing the defendant to remove all pipe lines connecting said Tract No. 6115 with said Tracts No. 7358 and No. 7135, and also asks for further order perpetually restraining defendant from making any other or further connections between said tracts or any other tracts or parcels of land within the limits of the franchise of complainant.

Defendant, by way of answer, enters a general denial of all of the essential allegations of the complaint and asks that the complaint be dismissed.

Public hearings were held in this matter before Examiner Williams at Los Angeles after all interested parties had been duly notified thereof and given an opportunity to appear and be heard.

The complainant herein, Ocean Park Heights Land and Water Company, has been operating for many years as a public utility. Some time about the year 1911, the system was originally installed

and operated by one Anna Del Segno, now the wife of the present owner, and supplied water for domestic and other purposes to consumers in Ocean Park Heights District near the City of Venice, in Los Angeles County. Rates on this system were first established by the Commission in Decision No. 2065, dated January 13, 1915.

On January 2, 1923, complainant was granted a franchise by Ordinance No. 809 (new series) issued by the Board of Supervisors of Los Angeles County to construct and operate a water system in a rather large territory near Venice. This franchise was amended by Ordinance No. 860 (new series) passed April 23, 1923. The territory covered by the present franchise embraces the present existing service area of the Ocean Park Heights Land and Water Company and Tracts No. 6115, No. 7135 and No. 7358, involved herein, as well as considerable additional area as yet undeveloped. Although this utility has been before the Commission on a number of different proceedings, up to the time of submission of this case it had never applied for or been granted a certificate of public convenience and necessity. However, subsequent to the filing of this case, complainant herein made application to this Commission for authority to transfer its properties to a new corporation called Ocean Park Heights Water Company and, at the same time, another application was filed asking for a certificate of public convenience and necessity to furnish water throughout the entire area covered by his county franchises. Decision No. 17974, decided February 8, 1924, granted a certificate limited, however, to the exercise of the rights and privileges arising under the county franchises "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" and therefore did not authorize this complainant to compete with other water plants by extending his system into tracts

not served by him at that time.

About four years ago, defendant started in the business of installing and operating water systems to serve small real estate subdivisions and attempted to sell water under a form of corporate organization which it called a "business trust" and which it alleged was a mutual water company and not subject to the jurisdiction or control of the Railroad Commission. However, this Commission, in Case No. 2074, instituted on its own motion an investigation into the affairs of defendant, as a result of which it was declared to be operating a public utility in Decision No. 16329, dated March 30, 1926, and, as such, was directed to file its rates, rules and regulations with the Commission. At the time of the above investigation, it was found that defendant had acquired and was operating six separate water plants serving different real estate tracts located in various sections of Los Angeles County; one of these plants supplied water in Tract No. 6115 mentioned above. Subsequent to the instituting of said investigation but prior to the rendering of the decision therein, defendant entered into a contract with the T.W. Haas Realty Company of Los Angeles to take over and operate the water system installed by said company in Tracts No. 7135 and No. 7358, located immediately north of Tract No. 6115. From the evidence in this case, it appears that the pipe lines and water mains of the systems serving these tracts had been installed before the tracts were recorded and the streets and alleys therein dedicated to the public, and no franchise was necessary for such construction. The realty company had not operated the system as a public utility previous to acquisition by the defendant but had furnished water to consumers without charge.

Complainant contends that the extension by defendant of its public utility service into Tracts No. 7135 and No. 7358 was

illegal and unlawful by reason of the fact that defendant has never received a certificate of public convenience and necessity from this Commission to operate a public utility in said tracts; that defendant had no authority from the County of Los Angeles to lay and install water mains in Short Avenue, which had to be crossed to connect the systems together, and that such acts constitute an unwarranted invasion of complainant's territory as covered by its franchise, which franchise area complainant has for a long time past held itself ready and willing to serve by extending its own water system whenever demand therefor arose.

From the evidence it is clear that complainant holds a county franchise embracing the entire area in question and that defendant has no such county permit. However, at the time Tracts No. 7358 and No. 7135 were being subdivided and developed for marketing, complainant submitted to the tract owners a proposal covering the terms and conditions under which he would install the necessary mains and other water distributing facilities. This offer, however, was not accepted by the tract owners, and they installed their own water system to serve the tracts, which, as mentioned above, was subsequently acquired by defendant. As the pipe lines were installed prior to the dedication of the streets in the tracts to the public use, no franchise was required. It further appears that at the time the connection was made between the two systems across Short Avenue said avenue was within the newly formed and incorporated City of Barnes and that written permission was obtained from the city authorities of Barnes allowing the installation to be made.

As to the contention of complainant that defendant has extended its system to include service in Tracts No. 7135 and No. 7358 without a certificate of public convenience and necessity

from this Commission authorizing such extension, it should be noted that complainant itself has no such certificate. It is apparent, therefore, that, if there is any blame to attach from this standpoint, both complainant and defendant are equally negligent.

The matter of extensions is covered by Section 50(a) which, in so far as is here pertinent, reads as follows:

"No***water corporation shall henceforth begin the construction of a***plant or system or of any extension of such***plant or system, without first having obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county, or city or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city and county, or city or town, contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; and provided, further, that if any public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility, already constructed, the Commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable."

Although defendant had never applied for a certificate to operate a water system, it was in fact declared to be a public utility by formal order of this Commission, and was directed to file its rates, rules and regulations with the Commission. This order has been fully complied with, and it therefore appears to us that it is not necessary that the defendant apply for any certificate to cover its existing operations. Under these circumstances, the Commission would be unwarranted in attempting at this time to issue an order designed to restrain defendant from future activities of

a public utility nature in this territory. In this connection, it should be noted that a stipulation was entered into by and between the parties at the hearing in which it was agreed that defendant would not make further extensions in other tracts within the present franchise area of complainant without first applying to this Commission and receiving authority so to do.

From the foregoing we are of the opinion that the complaint should be dismissed.

O R D E R

H. T. Robinson, operating a water system under the fictitious name and style of Ocean Park Heights Land and Water Company, having filed complaint against Suburban Mutual Water Company, a corporation, alleging illegal and unlawful invasion of territory, public hearings having been held thereon, the matter having been submitted and the Commission being now fully informed thereon,

IT IS HEREBY ORDERED that the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 21st day of

July, 1927.

Ernest C. ...

...

Thos. S. ...
Commissioners.