

Decision No. 18944

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation on  
 the Commission's own motion of the  
 reasonableness of the rates, charges,  
 practices, contracts, rules, regulations,  
 schedules and conditions of service, or  
 any of them, of THE MARIN LUMBER AND SUPPLY  
 COMPANY, a corporation, operating a water  
 system supplying consumers in and in the  
 vicinity of Duncan Mills, Sonoma County,  
 California.

Case No. 2386.

LOUTTIT, COMMISSIONER:

O P I N I O N

This is an investigation on the Commission's own motion to inquire into the reasons for the failure of Marin Lumber and Supply Company, a corporation, to continue to render proper and adequate water service from the water system owned by it and used for the purpose of supplying water to certain consumers in and in the vicinity of the Town of Duncan's Mills, or Duncan Mills as it is also called, in Sonoma County, California.

In January of this year, informal complaints were made to this Commission to the effect that Marin Lumber and Supply Company, owner of the water system serving the Town of Duncan's Mills, had allowed the system to become so run-down and out of repair that it was practically impossible to obtain an adequate or continuous supply of water and that all requests made upon the company to make the necessary repairs had met with complete refusal. Upon taking this matter up informally with Marin Lumber and Supply Com-

pany, Philip R. Thayer, in his capacity of President of said company, denied that the system was operated as a public utility and flatly refused to expend any time or money whatsoever in placing the system in a proper operating condition. All informal negotiations on the part of this Commission with the company having resulted in failure to obtain the improvement of conditions complained of, on the thirteenth day of July, 1927, the Commission, on its own motion, instituted an investigation into the affairs of Marin Lumber and Supply Company to determine the status of the water service heretofore rendered by it and its predecessors in interest and the reasons, if any, for the failure of said company to continue the service to the public and to determine by order the nature of the duties and the extent of the obligations of said company to continue its public utility obligations and liabilities in the furnishing of water to consumers in the Town of Duncan's Mills.

A public hearing in this matter was held in Duncan's Mills on Tuesday, August 30, 1927, after all interested parties had been duly notified and given an opportunity to appear and be heard.

The record herein discloses that a copy of the Commission's order instituting this investigation and containing a notice of this hearing was served upon Marin Lumber and Supply Company, a corporation, at its offices, 215 Market Street, San Francisco, California, by registered mail, and that acknowledgment of the receipt of such service on the part of Marin Lumber and Supply Company was made by Philip R. Thayer, President, in a letter to the Commission under date of August 19, 1927, which reads in part as follows:

"The Marin Lumber and Supply Company is

not operating a water system and has no intention of doing so. The company came into possession of certain lands in and near Duncan Mills, Sonoma County, by foreclosure of a mortgage. The company has taken over no public utility by purchase or otherwise. The water on its own property is for its own needs.

The writer will be unable to attend the hearing scheduled for August 30th, as he will be in the east at the time. The company will, therefore, have no representative at the hearing."

As forecast by the above letter, no one appeared at the hearing for or in behalf of Marin Lumber and Supply Company.

From the documentary evidence, it appears that certain property in and about the present Town of Duncan's Mills was acquired in the early 70's by Alexander Duncan and Samuel M. Duncan, Jr. Thereafter, on February 3, 1877, said Alexander Duncan, Samuel M. Duncan, Jr., and John F. Bixbee, together with certain other associates, formed and organized the Duncan's Mills Land and Lumber Company, a corporation, the articles of incorporation of which were filed in the office of the County Clerk of the City and County of San Francisco, State of California, on the sixth day of February, 1877, and filed in the office of the Secretary of State of the State of California on the seventh day of February, 1877. Duncan's Mills Land and Lumber Company applied for authority to change its corporate name to Marin Lumber and Supply Company, which was granted by a decree of the Superior Court of the State of California, City and County of San Francisco, endorsed and filed January 29, 1918. The corporate existence of Marin Lumber and Supply Company was extended for a period of fifty years from and after the fifteenth day of January, 1927, a certificate of the proceedings thereof having been filed on the fifth day of February, 1927, in the office of the County Clerk of Sonoma County and filed in the office of the Secretary of State of the State of California

on the third day of February, 1927.

According to the testimony, logging and milling operations had been conducted by, or on the property of, the Duncan's Mills Land and Lumber Company for a great many years and by various individuals, firms or corporations until about four years ago, at which time the mill was burned. Since then no further logging or milling operations have been conducted on these properties. For a great many years, the mill was operated by the Duncan's Mills Land and Lumber Company; other interests acquired the properties by purchase, or by lease, or otherwise operated and were in control thereof at various times. On the eighteenth day of January, 1921, W.D. Mitchell and S.A. Mitchell by indenture recorded in the office of the County Recorder of Sonoma County April 5, 1921, purchased these properties from Marin Lumber and Supply Company and the said Mitchells, together with other associates formed a corporation under the laws of the State of Delaware known as Mitchell and Virden Lumber Company for the purpose of continuing the logging and milling industries and otherwise developing the properties. The original and the amended articles of incorporation of this company were filed with the Secretary of State of the State of Delaware on the twenty-fourth day of October and the thirteenth day of November, 1922, respectively, and were filed in the office of the Secretary of State of the State of California on the twenty-ninth day of November, 1922.

It further appears from the record that in negotiating for the purchase of the mill and other properties of Marin Lumber and Supply Company, W.D. Mitchell and S.A. Mitchell, on the eighteenth of January, 1921, mortgaged the said properties to Marin Lumber and Supply Company. Thereafter, said Marin Lumber and Supply Company regained ownership, control and possession of

the above properties by a foreclosure sale under, and by virtue of, judgment and a decree of the Superior Court of the County of Sonoma, entered October 1, 1925, and commissioner's sale under date of November 16, 1926, and has been ever since and is now in control and possession of said properties.

The evidence in this proceeding also establishes the fact that the water system involved in this proceeding was originally installed for the purpose of supplying the water necessary for the operation of the sawmill and other activities, together with the supplying of water for domestic and other purposes to employees of the mill and residents of the town-site of Duncan's Mills, and that water has been so supplied by this water system for a long period of years. The water for this system originally was and still is obtained from a small stream fed by a spring at a point about three miles north of Duncan's Mills and located on lands belonging to Marin Lumber and Supply Company. The water is diverted through a timber flume about 6 inches by 12 inches in section and approximately 100 feet in length, flowing into a wood-stave storage tank of about 1,300-gallons capacity. A transmission line, mainly  $3\frac{1}{2}$ -inch casing, carries this water approximately three miles and delivers it into two tanks of about 18,000-gallons capacity each, situated at the northern edge of the town. From these latter two tanks, distribution is made to the about twenty-two consumers, including the Northwestern Pacific Railroad Company which uses the water for station and engine purposes. No definite information is available as to the exact date of the installation of the tanks and pipe lines. However, from the testimony, it is certain that practically all of the present equipment, including most of the pipe lines, has been in place for well over thirty years and a portion of the plant has undoubtedly been in service

for a considerably greater period.

Marin Lumber and Supply Company supplies water to twelve consumers living in cottages which it owns, the water charges being included in the rent collected therefor. There are eight other consumers not occupying houses or buildings owned by the company but who for a great many years last past have been charged and have paid a monthly water rate to this company and/or its predecessors in interest up to and including the month of December, 1926. In addition to these, the Northwestern Pacific Railroad Company, formerly the North Pacific Coast Railroad, for many years has received and now receives water service for the use at its station and for two engine tanks, one located in Duncan's Mills and the other on the Cazadero branch line near Fraser. There are no private wells in the vicinity furnishing a potable water supply and no water system other than a private supply furnishing water to the properties of the Morrell Ranch situated adjacent to the town.

The evidence shows that since January, 1927, Marin Lumber and Supply Company has refused to accept payment for water service and has wholly failed to repair and maintain the pipe lines, storage tanks and connecting facilities, with the result that since that time the water supply has been intermittent and interrupted for long periods of time and, in general, the supply has been wholly undependable. The refusal of Marin Lumber and Supply Company to make the required improvements has made it necessary for the various consumers to patch up the system themselves in order to maintain a sufficient supply of water for household and sanitary purposes. The testimony of E.S. Hall, appearing for and in behalf of the Northwestern Pacific Railroad Company, shows that this company has been compelled to send its own crew of men over this water

system at various times during this year in order to obtain a sufficient supply of water for the use of the station and its employees living in the Town of Duncan's Mills. The railroad company has also been forced to secure water for engine purposes at other points by reason of the fact that many times the water supply was insufficient for domestic requirements, thereby leaving no water available for engine use. The testimony further indicates that, although the entire system needs renewal and replacement, the tanks, intake and pipe lines can be put in such condition as to render a reasonable service for at least two more years by the expenditure of a sum of money not in excess of \$300.

In view of the attitude of Marin Lumber and Supply Company that it is not now delivering or selling water to anyone as a public utility and that it has at no time ever engaged in such a business, it may be well to discuss in some detail the evidence presented by the record as to the sale and distribution of water by various owners and operators of this system.

For a great number of years, the Duncan's Mills Land and Lumber Company supplied water service to the Northwestern Pacific Railroad Company or its predecessor in interest, the North Pacific Coast Railroad Company, at Duncan's Mills for use in the station and for engine purposes. This service has been charged for at the rate of \$15. per month and payment has been made therefor and entered into the books by vouchers of the Northwestern Pacific Railroad Company. This service has been rendered continuously and without interruption throughout the succession of various ownerships and managements of the mill and other properties now belonging to Marin Lumber and Supply Company. General service to the community has been so delivered during the period in which the Mitchell and Virden Lumber Company operated the properties,

during most of the time the said properties were owned or controlled by the Duncan's Mills Land and Lumber Company and, since regaining control and possession, Marin Lumber and Supply Company has also delivered water to the consumers for which it has accepted payment up to and including the month of December, 1926.

Mrs. M. (Modesta) DeCarley, who has been a resident of the Town of Duncan's Mills for over forty years, testified that she owns property in the said town which was acquired from Alexander Duncan and Ann Jane Duncan, his wife, by her husband, J.B. DeCarley, now deceased, on the eighth day of August, 1896, and duly recorded August 15, 1896, in the office of the County Recorder of Sonoma County, and was acquired by her upon the probate and distribution of the estate of her husband through a court decree of the Superior Court of Sonoma County, dated June 4, 1900, that this property has never at any time been owned or controlled by the Duncan's Mills Land and Lumber Company or any of its successors in interest; that she is now operating a general merchandise store on a part of said property and occupying a residence located on another part thereof; that for the past thirty years she has received water from the water system now owned by Marin Lumber and Supply Company and has been charged for such service and has paid for same up to and including the month of December, 1926. It furthermore appears that water service has been rendered to her property through and by means of this water system continuously during this period.

Victor Pedroia, a resident of Duncan's Mills for sixteen years last past, testified that he has been a customer of this water utility for the last fourteen years, receiving water for use at his residence, slaughter-house, and livery stable during the entire period; that none of the property served belongs to Marin Lumber and Supply Company or any of its predecessors in interest,



and, in so far as his knowledge goes, has never at any time been owned or controlled by it or any of its predecessors in interest. The rate charged for this service has been \$3.50 per month.

Mrs. W.F. Wiley's testimony shows that she has been a resident of Duncan's Mills for more than fourteen years; that she lives in property not owned or controlled by Marin Lumber and Supply Company and has received and paid for water furnished by this system to this property during the entire fourteen years.

The testimony of S.R. Hayden, a resident of Duncan's Mills for fifteen years last past, and also the testimony of Harry McLaren, a resident of the same town for well over thirty years, is to the effect that water has been served by the Duncan's Mills Land and Lumber Company and its successors in interest without interruption to any and all applicants for such service and that it has always been customary and the practice of the operators of the said mill properties to make a charge and collect for the water supplied from this system to those consumers not occupying houses owned by the company, firm or individual then operating the properties; that water service has never been refused to anyone requesting the same, irrespective of whether or not such request came from a person living in a company house and working for the company or from a person living on private property and engaged in private enterprise.

The testimony of Joe Acquistapace, a resident of Duncan's Mills and a former employee for a great many years of the Duncan's Mills Land and Lumber Company and its successors in interest, is to the effect that within his own knowledge water has been supplied to the entire community from this system continuously for at least forty years.

At the request of the Commission, rates charged for service rendered to consumers by means of this system were filed with the

Commission on April 6, 1921. This occurred during the period the properties involved herein were operated by Mitchell and Virden Lumber Company and the rates were filed under the name of Duncans Mills Water Company, signed by W.P. McFaul, manager. According to the evidence, said McFaul was associated with the Mitchell and Virden interests and the name given the water system was merely a fictitious name, apparently arbitrarily chosen to segregate the water operations from the other activities of the lumber company.

During the latter period of the regime of the Mitchell and Virden Lumber Company, Silvio DeCarley was appointed as its agent in looking after and operating the water system, collecting rents from the said company's houses and other of its properties, and collecting bills for water service. Since Marin Lumber and Supply Company regained control and possession of the mill and other properties under foreclosure proceedings referred to above, said DeCarley has remained in the capacity of collector of rents and water bills for the present owner, and, although still receiving rents paid by tenants of the company's properties, has been notified by said company to collect no more bills for water service after bills rendered for the month of December, 1926. None of the moneys collected for water service and paid to Marin Lumber and Supply Company by DeCarley since said company regained control and possession of its properties have been returned to any of the consumers.

At no time during the operation of this water system have any of its owners, operators, agents or representatives ever applied to this Commission or been granted authority to increase the rates charged for service or to encumber, sell, or transfer said water system or any part thereof, or to abandon or discontinue

its public utility obligations and liabilities.

The evidence, both oral and documentary, presented in this case establishes to the satisfaction of this Commission that the owner of the water system supplying water to the consumers in and in the vicinity of Duncan's Mills is the Marin Lumber and Supply Company; that, except as to those portions of the pipe lines located on public highways, streets or alleys, the entire intake, collection, storage and distribution facilities are located upon lands belonging to said company; that for a period of at least forty years last past the waters of this system have been dedicated to the public use without interruption, except possibly as to fluctuation of flow or accident; that water has been sold for compensation to all applicants for service whether or not said applicants have been residing in houses owned by Marin Lumber and Supply Company or its predecessors in interest; that no water service has ever been refused to anyone residing in or in the vicinity of Duncan's Mills and within the service area of this system who has requested same; that the service has been rendered continuously throughout the above period up to and including the month of December, 1926; that the several purported transfers of the property thus devoted to public service were void because never authorized by this Commission; and that the defendant, as successor to the Duncan's Mills Land and Lumber Company, is now in possession of this system, and must continue to render this service unless and until authorized to discontinue the same by this Commission.

There can be no other conclusion than that the waters of this system were originally dedicated to the public use by the Duncan's Mills Land and Lumber Company and that such dedication has continued unimpaired throughout a succession of various operators to and including the present owner, Marin Lumber and Supply Company.

Although the rates of this water system were not filed with this Commission until the sixth day of April, 1921, nevertheless, the public utility obligations and liabilities had impressed and attached themselves to this water system from the beginning of the dedication of the waters thereof to public use and were not at any time terminated in any legal manner by any of the successive owners or operators of this system, and, since the establishment of this Commission, could not have been so terminated without its authority which has never been granted. It is therefore apparent that Marin Lumber and Supply Company has not properly fulfilled its duties and obligations to the public as an operator of a public utility water system by reason of its failure to maintain properly its water system and its failure to provide an adequate and sufficient water supply to its consumers. This corporation may not now arbitrarily discontinue the service to the public and Marin Lumber and Supply Company will therefore be required to take immediate steps toward placing its water system in suitable operating condition, and will be required to render continuous and adequate service to all of its public utility consumers.

The evidence in this matter shows that this company has failed to maintain a proper structure to insure diversion of water from the stream into the intake flume; that said flume or trough used to transmit water from the stream into the collecting tank has rotted away to such an extent that it cannot carry sufficient water to meet the system's demands; that the collecting tank and the two distribution storage tanks, together with their supporting structures, are in such a state of disrepair as to be incapable of proper functioning without immediate attention; that one of the storage tanks already has fallen down through lack of proper maintenance and that the transmission and distribution mains are badly rusted and leaking in many places.

The following form of order is recommended:

O R D E R

The Commission having upon its own motion instituted an investigation into the reasonableness of the rates, charges, practices, contracts, rules, regulations, schedules and conditions of service, or any of them, of Marin Lumber and Supply Company, a corporation, operating a water system supplying consumers in and in the vicinity of Duncan's Mills, Sonoma County, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that Marin Lumber and Supply Company, a corporation, resume the delivery of water to all of its public utility consumers in and in the vicinity of Duncan's Mills, Sonoma County, on or before twenty (20) days from the date of this order and thereafter continue to render said service to said consumers until further order of this Commission.

IT IS HEREBY FURTHER ORDERED that Marin Lumber and Supply Company, a corporation, file with this Commission, within twenty (20) days from the date of this order, the schedule of rates now in effect on its water system supplying consumers in and in the vicinity of Duncan's Mills, Sonoma County, together with rules and regulations governing service to its consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

IT IS HEREBY FURTHER ORDERED that Marin Lumber and Supply Company, a corporation, within twenty (20) days from the date of this order, file with this Commission, and subject to its approval, plans for the improvement of its water system supplying water to certain consumers in and in the vicinity of Duncan's Mills, Sonoma County, such plans to provide for the de-

livery to said consumers of an adequate and dependable water supply and said improvements to be installed and in proper operation, in a manner acceptable to this Commission, on or before the thirtieth day of November, 1927.

The effective date of this order shall be twenty (20) days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25<sup>th</sup> day of October, 1927.

Emmett J. Adams  
Chairman  
John S. Lott  
Commissioners