

Decision No. 19684

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

<p>Fred Meyers (Pullman Water Company) Complainant, vs. East Bay Water Company, Defendant.</p>
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ORIGINAL

Case No. 2334.

C.D. Horner, for Complainant.
A.G. Tasheira, for Defendant.
Thomas Carlson, for City of Richmond.

LOUTTIT, COMMISSIONER:

O P I N I O N

Fred Meyers, the complainant in this proceeding as above entitled, owns and operates a public utility under the fictitious name and style of Pullman Water Company, which supplies water for domestic purposes in certain territory located within the corporate limits of the City of Richmond, County of Contra Costa. The East Bay Water Company is a public utility corporation which supplies water for domestic, municipal and industrial purposes to a number of East Bay cities located in Alameda and Contra Costa Counties, including the greater portion of the City of Richmond.

In his complaint, as filed herein, Fred Meyers alleges in effect that the California Railroad Commission issued its Decision No. 13237, dated March 4, 1924, on Application No. 9508 of

the City of Richmond for an order permitting the East Bay Water Company to lay mains in territory of the Pullman Water Company, wherein it was ordered as follows:

"It is hereby ordered by the Railroad Commission of the State of California that the East Bay Water Company be and it is hereby authorized to install, in the territory now served with domestic water by the Pullman Water Company in the City of Richmond, Contra Costa County, for public purposes and domestic consumption, the mains and hydrants more particularly described in the application herein, provided the East Bay Water Company purchase, at the present fair value, from the Pullman Water Company the mains, services and meters displaced by the former company, or such part of said equipment as the Pullman Water Company may desire to sell.";

that thereafter the East Bay Water Company installed mains and hydrants in the said territory of the Pullman Water Company covered by above mentioned order and at present are supplying from said pipe mains some thirty domestic consumers. However, the said East Bay Water Company has never made any attempt to purchase, as provided in said order, any part of the mains, services and meters of the Pullman Water Company which were displaced; wherefore, the complainant asks that said East Bay Water Company be ordered to desist from serving domestic consumers in any of the territory occupied by Pullman Water Company, and for such further order as may be proper in the premises.

In its answer, the defendant, East Bay Water Company, generally admits the several allegations set forth in the complaint herein, but, on the other hand, alleges in effect that the order in said Decision No. 13237, dated March 4, 1924, was rendered inoperative by reason of the opinion and order which the Commission issued subsequent thereto, being Decision No. 13331, dated March 27, 1924, in Case No. 1977, wherein said East Bay Water Company was ordered by the Commission to immediately

install in a number of the East Bay cities, including the City of Richmond, certain improvements in extensions of and additions to its distribution system; that said order specified the particular improvements to be installed in the City of Richmond, which included the installation of mains on the two streets complained of herein by the Pullman Water Company; that the mains installed by the East Bay Water Company were the ones ordered by the Commission in its Decision No. 13331 and the service complained of is the service performed in pursuance of authority granted by said last named order.

Public hearings in this proceeding were held at Richmond on May 10th and October 18th, 1927, after due notice thereof had been given.

Complainant stated at the hearing that it had no evidence to submit, other than the facts as set forth in its complaint herein which were admitted by the defendant in its answer.

Defendant contends that the order of the Commission in Decision No. 13237, dated March 4, 1924, on which the complaint herein is based, was permissive only in that said defendant was authorized thereby to enter complainant's territory with two six-inch pipe mains on two streets, provided it first purchased such part of complainant's system as was thereby displaced; that defendant, however, did not install said pipe mains under this order, but in fact installed larger mains in compliance with the order of the Commission in its Decision No. 13331, subsequently issued.

The order in Decision No. 13331 specifically directed the installation of mains and provided that their "use will not be restricted to the service of water to municipalities alone".

It is apparent from this language that the Commission did contemplate the use of the mains for general service to prospective consumers located in proximity to the mains ordered to be installed. The service complained of herein is furnished through and by means of the mains that were installed in pursuance of said decision and it follows therefore that defendant has not acted in any unlawful or illegal manner, either in installing these mains or furnishing domestic service therefrom.

The following form of order is suggested:

O R D E R

Complaint having been made by Fred Meyers, operating a public utility water system under the fictitious firm name and style of Pullman Water Company, against East Bay Water Company, a corporation, public hearings having been held thereon, the matter having been submitted and being now ready for decision,

Good cause appearing therefor,

IT IS HEREBY ORDERED that complainant in the above entitled proceeding take nothing herein and that said complaint be and the same is hereby dismissed.

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 17th day of

April, 1928.

Leon Whitwell
Chairman
Paul D. Smith
W. H. C. C.
 Commissioners.