

Decision No. 2713

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

F.W. Gehrig,
G.L. Bishop,
H.J. Bemiss,

Complainants,

vs.

E.I. de Laveaga,

Defendant.

Case No. 2713.

G.L. Bishop, for Complainants.

Stanley J. Smith, for Defendant.

BY THE COMMISSION:

O P I N I O N

The above mentioned water users complain that by charging excessive and non-uniform rates the defendant E.I. de Laveaga has violated the representations for water service made to them at the time they purchased from him certain properties in the Montera Tract, Oakland.

Defendant has filed a general denial by way of answer.

A public hearing in the above entitled matter was held before Examiner Gannon at Oakland.

On or about the year 1924, E.I. de Laveaga subdivided a tract of land called the Montera Tract in the City of Oakland, agreeing to furnish water to the lot purchasers from the mains of the East Bay Water Company. Pipe lines were installed by

the defendant in the above tract and the water supply was obtained by purchase from the above source. There are at present but five consumers on the tract. As the premises occupied by the three complainants herein are located at a higher elevation than could be reached by the average working pressure furnished from the East Bay Water Company's system, it was necessary for defendant to install storage tanks and elevate the water by booster pumping equipment to supply said premises. Complainants allege that at the time they purchased their properties defendant agreed to supply to them water from the mains of the East Bay Water Company at the same rates charged its own consumers by said company. They further allege that in actual practice defendant has charged them with the extra costs necessary to boost the water to their premises and that such charges have been excessive, unreasonable and contrary to the terms of their original agreement. From the evidence it appears that defendant has been supplying water to these consumers continuously since 1924 and that no application has ever been made by him to the Commission for a certificate of public convenience and necessity, nor have the rates which have been charged to the consumers ever been filed with this Commission. However, although defendant has alleged that he did not believe he was operating as a public utility nor intended to so operate, nevertheless the evidence is conclusive that his operations in the past have been such as to dedicate his water service to the general public within the Montera Tract, and, as a result thereof, the service is unquestionably public utility in character. In view of the fact that no testimony was presented to this Commission showing any written contracts or other specific arrangements wherein defendant was under the duty and obligation of supplying water continuously at the rates established

and in effect on the system of the East Bay Water Company, it appears that defendant could not reasonably be expected to continue the service of water to his consumers at the present out-of-pocket loss. Insofar as the testimony in this proceeding is concerned, there is insufficient evidence to warrant the Commission in finding that the charges made to complainants for water service have been or are now unreasonable and excessive.

The area in which the complainants live and in which defendant operates his water system is entirely surrounded by the mains of East Bay Municipal Utility District, successor in interest to the former East Bay Water Company. This tract being wholly within the service area of the above District, it appears to the Commission that the proper solution of the problem presented herein is for these consumers to make proper demand upon the said District to take over and assume the duty of supplying them directly with water at their regularly established rates. However, until this is accomplished, the service supplied by defendant must be continued as a public utility obligation and defendant should file without further delay with the Commission, subject to its approval, the schedule of rates now being charged to the consumers.

O R D E R

Complaint having been made to this Commission as entitled above, 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 E.I. de Laveaga file with this Commission, within thirty (30) days from the date of this

order and subject to this Commission's approval, the schedule of rates now in effect on the water system owned and operated by him and used for the purpose of supplying water for domestic and other purposes to consumers in the Montera Tract, City of Oakland, County of Alameda, and

IT IS HEREBY FURTHER ORDERED that, within thirty (30) days from the date of this order, E.I. de Laveaga file with this Commission rules and regulations governing the relations with his consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

Dated at San Francisco, California, this 1st day of October, 1929.

Thos B. Loutin

C. Seaver

M. H. Lee
Commissioners.