

Decision No. 22010

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HORACE CONYERS,  
Complainant,  
vs.  
SUBURBAN DEVELOPMENT CO.,  
Defendant.

ORIGINAL

Case No. 2773.

Julian H. Biddle, for Complainant.

Young & Hudson, by B.F. Rabinowitz,  
for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant herein seeks an order from the Railroad Commission declaring defendant a public utility and, as such, that it be required to furnish him with water for domestic and irrigation purposes. Defendant denies that it is a public utility and asks for a dismissal of the complaint.

A public hearing upon the issues joined was held by Examiner Williams at Hayward.

Complainant is the owner of two and one-half acres of land fronting on Second Street adjoining Hayward Highlands, a real estate tract owned principally by defendant, near, but not in, the corporate limits of Hayward. He alleges that his property has been connected to defendant's water system which was installed to furnish domestic water to the above Hayward Highlands tract, a

subdivision of more than 200 lots; that complainant's predecessors were furnished water; that until July, 1929, complainant depended on a well for his supply for domestic use and for a poultry-raising plant, housing about 2,500 fowls; that the well failed and complainant demanded water service from defendant, who refused to render service and removed the pipe connecting complainant's place with its water system.

Complainant sought to establish as a fact that his property was supplied by defendant between September, 1923, and June, 1925. The evidence shows that water was furnished during this period to an indigent person but that no charge therefor was made by defendant, and no service has been rendered since June, 1925, to any one on the premises, and no charge of any kind has been borne and paid by complainant or his immediate predecessor. It appears, therefore, that the only service rendered to complainant's property was without compensation.

The evidence seems conclusive that defendant's water system, installed by one of its predecessors in interest as an aid to the sale of lots, was dedicated exclusively to the tract as recorded, with the then purpose of organizing a mutual water company among the lot owners. The system was maintained by the original subdivider on a cost-to-consumer basis pending the formation of a mutual company. By decision of this Commission in Ellis v. George Schmidt et al. (Decision No. 6998 in Case No. 1105, decided December 31, 1919, 17 CRC 641), it was held that this system was not then a public utility. The evidence in the present proceeding, however, places defendant in a much different aspect. Defendant admits that it owns the distribution system; that it purchases water from the City of Hayward and resells it to ap-

proximately fifty-two consumers, all residents of the tract, at established rates per month; that it will supply water to any resident or owner in the tract upon demand therefor; that it purchases on a consumer basis from the City of Hayward, paying therefor \$1.50 per 1,000 cubic feet and reselling at \$2.00 per 1,000 cubic feet; that no mutual water company ever has been formed and that defendant is the sole purchaser and vendor of the water. Its rules and practices are almost identical with those of public utilities. Sol Koff, President of defendant company, testified that the company sustains a loss of approximately \$2,000. annually in thus supplying water. The company charges its consumers a higher monthly minimum for the initial rate block, otherwise the rates and regulations are the same as those in effect on the municipal water works operated by the City of Hayward. The evidence, we conclude, shows clearly that defendant is now in fact conducting a public utility business dedicated to the tract known as Hayward Highlands, as per map thereof on file in this proceeding and designated as Exhibit No. 1. Therefore, as a public utility, it will be required to file its rates, rules and regulations with this Commission and an order accordingly will be entered.

As to complainant's prayer that this service be extended to him, we must find that complainant, not being in the dedicated service area of this utility and defendant declining to enlarge its domain, is not entitled to receive its service. Complainant's prayer in this respect therefore will be dismissed.

C R D E R

Complaint having been filed 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, and basing its order on the findings of fact and the conclusions set forth in the opinion which precedes this order,

IT IS HEREBY ORDERED that Suburban Development Company, a corporation, be and it is hereby directed to file with this Commission, within thirty (30) days from the date of this order, the present rates charged for water delivered to its consumers, and

IT IS HEREBY FURTHER ORDERED that Suburban Development Company file with this Commission, within thirty (30) days from the date of this order, rules and regulations governing its relations with its consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission, and

IT IS HEREBY FURTHER ORDERED that Suburban Development Company file with this Commission, within thirty (30) days from the date of this order, a certified copy of its Articles of Incorporation, and

IT IS HEREBY FURTHER ORDERED that in all other respects this complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 14<sup>th</sup> day of January, 1930.

P. L. Seaver  
Emmanuel  
Thos. D. Lattin  
Leon Cavallari  
M. J. Am  
Commissioners.