

Decision No. 24577

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Delia R. Mohr, Geo. H. Riley,
A.F. McD. Craig, A.F. Craige,
T.A. Svainic, Henry McGrimley,
G.W. Peck, Harvey H. Skinner,
Rose E. Davies and Freda M.
Freyer,

Complainants,

vs.

Frank Chambers, Gwen Mortensen
and Freda M. Freyer,

Defendants.

ORIGINAL

Case No. 3141.

Delia R. Mohr, in propria persona.
D. Herndon, for Frank Chambers, et al.,
defendants.

BY THE COMMISSION:

O P I N I O N

In this proceeding, filed November 6, 1931, it is alleged that defendants Frank Chambers, Gwen Mortensen and Freda M. Freyer own and operate a certain water system at Brighton Beach, San Mateo County, which was installed by defendants' predecessors some eighteen or twenty years ago for the purpose of supplying water to complainants and others. The complainants further allege that water service was discontinued on September 2, 1931, causing serious financial loss and inconvenience to them and that no other satisfactory water supply is available. The Commission therefore is asked to declare defendants' water system a public utility and order defendants to resume service under reasonable rates and regulations.

Defendants, by way of answer, denied that water service was discontinued or that serious loss or damage was caused and also denied that no other satisfactory water supply is available to the complainants. The answer further alleges that the well referred to became dry on or about September 1, 1931, thereby rendering it impossible to furnish water therefrom. At this time, the answer states, defendants arranged for and entered into an agreement with Salada Beach Public Utility District wherein said District agreed to and ever since has supplied the above complainants with a good and sufficient water supply. On these grounds, the Commission is asked to dismiss this complaint.

A public hearing was held on this matter before Examiner Satterwhite on February 4, 1932.

The testimony shows that the water system involved in this complaint was installed in or about the year 1907 by Percy T. Hannigan for the purpose of supplying water to residents of Brighton Beach, a subdivision on the ocean shore in San Mateo County about four miles south of the San Francisco county line. The facilities consist of a 12-inch drilled well, equipped with an electrically-driven deep-well pump, a distributing pipe system and a 10,000-gallon storage tank. Water was delivered, for compensation, to residents of this area by Mr. Hannigan for many years without restriction or limitation. Later he became involved in financial difficulties and on June 1, ¹⁹²⁷ 1927, the pump and well, together with the parcel of land upon which they were located, were acquired by Frank Chambers, Gwen Mortensen and Walter Freyer at a court sale in bankruptcy proceedings. Approximately thirty consumers were served at one time but this number has decreased until in 1931 there were but twenty. The operation of the water system was carried on by Mr. Chambers and his associates as a joint enter-

prise. The transfer included only the well and pump and the land upon which this equipment was situated. The balance of the facilities, consisting of the distributing system and storage tank, were not included. Sales of water were made to residents of Brighton Beach subdivision as heretofore for amounts varying from one dollar to four dollars per month. This was continued without interruption until September, 1931, when the well, according to the testimony of defendant Chambers, became dry. Thereafter a petition was circulated among the water users of Brighton Beach, addressed to the Board of Directors of Salada Beach Public Utility District, San Mateo County, requesting said District to annex the Brighton Beach area and to undertake the supply of water to the residents thereof. This petition was signed by fifteen residents of Brighton Beach, including two of the defendants in this action. Complainants in this proceeding did not join in this petition. The record shows that after defendants ceased supplying water from the well, the distributing system was connected to the mains of the Salada Beach Public Utility District which continued the service under the somewhat higher district rates. The rendering of service in this area was approved by a resolution of the Board of Directors of said Utility District, dated September 1, 1931, although no steps were taken by said District to purchase the mains and pipe lines which apparently were used without objection on the part of defendants. Complainants herein, together with certain other residents of the Brighton Beach subdivision, testified that they objected to paying the higher District rate and did not wish their property to be included in the Salada Beach Public Utility District. They stated that they had purchased their property with the understanding that water service could be obtained from the water system serving

Brighton Beach and demanded that this service be continued. The Board of Supervisors of San Mateo County on January 8, 1932, was petitioned by certain parties to form the "Salada-Brighton Beach Public Utility District," to embrace not only the present Salada Beach Public Utility District but also the Brighton Beach section. However, upon objection filed by certain of the residents in this territory, the Board of Supervisors declined to act further in the formation of this new utility district.

Although neither the defendants nor their predecessors in interest have ever filed their rates, rules and/or regulations with this Commission nor have they at any time ever applied for a certificate of public convenience and necessity, yet there is no question but that for a period of twenty years last past the various owners and/or operators of this water system have sold water continuously for compensation to various residents of Brighton Beach without refusal and without restriction and, by so doing, have dedicated the service to the public use and therefore are operating a public utility water system and subject to the control and jurisdiction of this Commission.

No adequate or convincing testimony was presented for or in behalf of defendants which would tend to indicate that the well had in fact actually become dry and incapable of supplying sufficient water to the consumers. As a matter of fact, there was considerable conflict in the testimony as to the supply of water actually available in this well, several of the consumers claiming that the well was not dry and that permission to make an inspection to determine its condition had been repeatedly refused them by the owners and/or operators of the water plant.

A consideration of the evidence presented in this pro-

ceeding indicates that the consumers are legally entitled to water service from the system operated by defendants and will continue to be so entitled unless and until authority to discontinue or abandon service is granted by this Commission. Defendants therefore will be directed to file their rates, rules and regulations with this Commission and to resume water service to those consumers within their dedicated service area who desire and apply for water service. In the event this utility has not or cannot obtain an adequate water supply to serve the reasonable demands of its consumers or is unable to continue the service of water to such consumers who apply therefor without operating at an out-of-pocket loss which would amount to a confiscation of its property, it may then apply to this Commission either for authority to discontinue further public utility service or for the adjustment of its rates to a basis which will insure a reasonable return upon the investment, whichever course conditions may warrant.

O R D E R

Complaint as entitled above having been filed with this Commission, a public hearing having been held thereon, the matter having been submitted and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that Frank Chambers, Gwen Mortensen and Freda M. Freyer be and they are hereby directed to resume, within thirty (30) days from the date of this Order, water service to all those consumers residing in the area heretofore served by the water system owned and/or operated or controlled by them in the vicinity of Brighton Beach, San Mateo County.

IT IS HEREBY FURTHER ORDERED that Frank Chambers, Gwen

Mortensen and Freda M. Freyer be and they are hereby directed to file with this Commission, within thirty (30) days from the date of this Order, the schedule of rates charged for water service delivered to their consumers at the time service to said consumers was discontinued on or about the month of September, 1931.

IT IS HEREBY FURTHER ORDERED that Frank Chambers, Gwen Mortensen and Freda M. Freyer be and they are hereby directed to file with this Commission, within thirty (30) days from the date of this Order, rules and regulations governing the relations with their consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

Dated at San Francisco, California, this 14th day of March, 1932.

O. C. Deane
Leon Whiskey
W. A. Con
W. B. Haines
Fred A. Stewart
Commissioners.