

Decision No. 25305.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of G. G. McDaniel for a certifi-
cate of public convenience and
necessity to operate a water system
and for the approval of rates.

Application No. 17992.

ORIGINAL

STEVENOT, Commissioner:

OPINION ON REHEARING

The application for rehearing in the above entitled matter alleged that the Commission's first order in Decision No. 24857, dated June 13, 1932, granting applicant a certificate to operate a water system at Visitacion City, better known as Brisbane-on-the-Bay, near South San Francisco, San Mateo County, imposed an unfair and burdensome condition in that he was required to refund the amount of certain contributions made by consumers toward the installation of the system. Upon rehearing granted, many facts were developed which materially alter the conclusions reached upon the record first made. In view of the order herein recommended, it seems proper that the facts be set forth at some length to supplement the opinion first rendered.

At the present time eighty consumers are served, only fifteen of whom are metered. The entire water supply is obtained by purchase from the City of San Francisco under terms stated in our previous opinion.

It appears that the applicant, Mr. McDaniel, on February 13, 1932, entered into a contract with P. E. Margolis to purchase the distribution system involved for \$4,000., and executed his promissory note for the full amount. The contract of sale and purchase provided, among other things, that McDaniel should apply to the Commission for a certificate to operate the system as a public utility. Water deliveries have been made and charges collected by McDaniel since the date of the contract. Upon application for certificate being filed, the Commission approved the execution of the note and granted the certificate requested upon certain conditions which will now be explained.

It appears that Mr. Margolis has conducted a campaign for the sale of lots in this tract. The record does not clearly show just what representations he made in respect to water service. It is clear that many lot owners by agreements supplemental to their purchase contracts paid or agreed to pay to Margolis \$20.00 per lot to defray in part the cost of installing a water system and in some cases for the installation of both water system and street improvements.

In its former opinion the Commission concluded that these consumers of water, under a public utility operation, were entitled to a refund of the payments they had made to the owner. McDaniel has shown, however, that he was not responsible for the collection of such sums from lot purchasers and has not benefited therefrom.

Whatever may have been the propriety of the condition imposed in the Commission's first order to the effect that McDaniel now refund the amounts actually collected for the installation of water mains, it develops at this time that he is not only financially unable to make such refunds, but is wholly

unable to meet the ordinary expenses necessarily incurred for the maintenance of water service. His bills for water purchased and for electric power required for the pumping of water remain unpaid. He concedes that even with the condition in the first order removed, he cannot continue the operation of this water system or make necessary repairs or improvements. For this reason the discontinuance of all water service to residents within the tract seems imminent if McDaniel be permitted or directed to continue his undertaking. This situation cannot be remedied by the fixing of higher rates than those which he is now attempting to collect, for it appears that, with the present limited number of consumers, the actual cost of water service will be in excess of their reasonable ability to pay.

In the light of these facts it is apparent that it is futile for the applicant McDaniel to attempt the operation of this water system. The residents within the tract rightfully demand service from some source, but it must be concluded that McDaniel is neither able nor obligated to carry on the undertaking during the development stage of the subdivision. That obligation must rest upon the one who installed the water system and who has sold lots upon the representation that water would be supplied therefrom. It is apparent that the proceeding instituted before the Commission should not have been an application for authorization to render a public utility service, but rather should have been an application to transfer a water service already begun. Since the single applicant before us is admittedly unable to continue the operation, we are compelled to deny the application and thus leave McDaniel and his vendor in the same position they were in before the attempted sale of the system was effected. Since, however, no party other than the applicant McDaniel is before the Commission in this proceeding, the order to be made herein must be limited to a grant or denial of his application.

The following order recommended will provide for the annulment of the first order made. The certificate granting to McDaniel a certificate to operate the water system upon the condition recited, as well as the approval given for the execution of a note in payment therefor, will accordingly be voided and set aside.

O R D E R

A rehearing in the above entitled matter having been had and the matter now being ready for decision, therefore,

IT IS HEREBY ORDERED that the order of the Commission, No. 24857 of June 13, 1932, be and the same is hereby wholly annulled and set aside, and that the application of G. G. McDaniel for a certificate of public convenience and necessity for the operation of a water system be denied.

The foregoing opinion and order is 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 31st day of October, 1932.

C. L. Sherry
Leon Whitely
W. A. C.
M. B. Harris
Fred G. Cleveland
Commissioners.