Decision No. 10241.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of THEO. W. BOSE, FLAKE L. SMITH, ROBERT GERWING and J. SEBASTIAN, for an order declaring the pumping plant of C. J. KLATT a public utility, and for fixing rates for use of water therefrom for irrigating purposes, and prescribing the manner and use of water therefrom to applicants, and for control thereof by the Railroad Commission, and for all proper relief with respect thereto.

Application No. 7450.

West and Buck, by L. A. West, for applicants.

Scarborough, Forgy and Reinhaus, by S. M. Reinhaus, for C. J. Klatt.

BY THE COMMISSION.

O P I N I O N

Applicants herein are a group of ranchers located in Orange County, near Santa Ana. They allege in effect that for several years past they have purchased water for the irrigation of their lands from a well and pumping plant located upon the property of C. J. Klatt, who now refuses to supply applicants with water for such use. The Commission is therefore asked to declare this pumping plant a public utility, to compel the continuation of the service, and for all other proper relief.

A public hearing in this matter was held before Examiner

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Williams, at Santa Ana, at which time a motion for the dismissal of the application was made upon the ground, among others, that the matter should have been brought before the Commission in the form of a complaint instead of in the form of an application, and that respondent Klatt was served merely with a notice of the hearing and not with a copy of the application, as is provided by law. The motion for dismissal was received, judgment reserved for the Commission, testimony was taken and the matter submitted upon briefs, which have now been filed by both parties hereto.

Testimony shows that respondent herein received notice of the hearing and a copy of the application at least ten days previous to the hearing, was fully advised of the matters in controversy, and was present in person and was represented by counsel at the hearing. It does not therefore appear that respondent has suffered injury, especially in view of the fact that testimony was confined solely to the question of the public utility status of respondent and his water system. The motion for dismissal is therefore denied.

It appears that in the year 1900, or thereabouts, H. S. Pankey acquired a tract of land of about twenty-two and one half acres in the vicinity of Santa Ana, drilled a well thereon, and installed a pumping plant. Having developed a greater water supply than was required for the irrigation of his own lands, he proceeded to sell water to neighboring ranchers. All requests for service were granted by Mr. Pankey, and testimony also shows that, in one instance at least, Mr. Pankey advised the owner of adjoining land to set out an orchard and assured him that he could depend upon the Pankey plant for the water required for irrigation.

In 1919 H. S. Pankey transferred the land, including pump-

ing plant and well, to J. H. Pankey and others, who continued the service to the neighboring ranchers in the same manner as in the past.

In 1920 the entire property was transferred to the respondent, C. J. Klatt, who likewise continued service, without interruption, until about August, 1921, when respondent installed a new well and pumping plant and notified the users of water that service would be discontinued to all those who did not purchase an interest in the new system. At the time service was discontinued about 33 acres were being supplied in addition to the 22 acres owned by respondent Klatt. In order to avoid damage to those who had received water from the old plant, service was temporarily furnished upon a stipulation that such continuation of service would not prejudice respondent's claim that he was not operating a public utility.

The old well, which had an estimated capacity of from 30 to 35 inches, was 10 inches in diameter and 60 feet deep. The new plant, which is located about 25 feet distant from the old, consists of a 12 inch well, 386 feet deep, and a No.12 Layne-Bowler pump driven by a 20 horse power electric motor. The new plant delivers about 70 inches of water. The rate paid for water service, previous to the transfer to respondent, was 60 cents per hour operation of the pump. This rate was raised to 85 cents per hour by respondent previous to the construction of the new plant. By stipulation of all parties hereto the rate now charged is $1.50 per hour.

The record clearly shows that the original owner furnished water to other ranchers for compensation; that no applicants were ever refused service; and that all water desired by consumers was supplied to them. It was further shown that the rela-

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tion between buyer and seller of water was entered into with an apparent understanding that such relations would continue. Water was supplied upon application by consumers in the order in which the applications were received, and this method does not thereby differ from the usual practice followed on systems of this type. Furthermore, it was not shown that any consumer was deprived of water or was subjected to undue delay because of the claim that only surplus water was sold or that the use of water by purchasers was through a right which was inferior or secondary to the right of the owner of the plant.

The claim that no profit was made through sales of water is not a material matter. It frequently happens that admitted public utilities make application to this Commission for increased rates, alleging that their revenues are insufficient to pay operating expenses.

It is further apparent that the obligation to render service cannot be avoided through changes in location or equipment of the plant at the option of the owner. Once assumed, the obligations to serve the public continue until this Commission has acted favorably upon an application for authority to discontinue service. Should the service to the public prove non-compensatory the remedy lies in an application to this Commission for authority to increase rates.

The only written agreement of record in this matter is one dated October 18, 1917, between J. H. Pankey, party of the first part, and Myra E. Holderman, party of the second part. This agreement grants second party the right to purchase water from the pumping plant of first party for the irrigation of seven acres of land at the same rate per hour as is paid by other parties in the same locality who purchase water from the plant. The agreement also

provides that water is to be distributed among the various users of the plant in the same manner as heretofore. A further provision is as follows:

> "It being further agreed and understood that should the water in said well become insufficient to justify pumping that first party shall not be required to furnish water for said seven acres until such time as water in said well shall increase to a point where a reasonable amount can be pumped therefrom or said first party shall have developed another well on the same premises. It being further agreed and understood that second party shall, in the event she disposes of the above described seven acres, have the privilege of transferring to the purchaser the right to purchase water under the same terms as above set forth."

This agreement is signed by H. S. Pankey, J. H. Pankey and Myra E. Holderman. The seven acre tract was afterward transferred to one Burr Talbert and subsequently by Talbert to Theo. W. Bose, one of the applicants herein.

Nothing contained in the foregoing agreement can be construed to mean that water was furnished as an accommodation, or as a neighborly act, or that the right granted was for surplus water and was inferior or secondary to the right of the owner of the plant. The possibility that another well might be required was distinctly recognized and it was provided that should the second well be developed the supply of water would be continued. It is obvious, if the intention was to sell only surplus water or to sell water only as an accommodation or as a neighborly act, that such intention would have been clearly stated.

A careful consideration of the evidence leads to the conclusion that the proprietor of the original plant willingly assumed the obligation of serving the public; that this obligation

was transferred to the respondent herein when the property was purchased by him; and that service to applicants should be resumed.

As no evidence regarding proper rates to be charged for the service rendered was introduced, such rates as were fixed by stipulation at the hearing in this matter on January 26, 1922, will be held as reasonable rates until such time as they are changed through proper procedure before this Commission.

No testimony was offered to show that any consumer had suffered damage or undue delay through the methods of deliveries in effect on this system. On the other hand, testimony shows that consumers secured water practically at any time they desired to irrigate. It will therefore be unnecessary to specify any manner or order of deliveries of water.

O R D E R

Theo. W. Bose, Flake L. Smith, Robert Gerwing and J. Sebastian, having made application as entitled above, a public hearing having been held thereon, briefs having been filed, the matter having been submitted, and the Commission being fully advised in the matter:

It Is Hereby Found as a Fact that the water system operated by C. J. Klatt, in the vicinity of Santa Ana, Orange County, is a public utility subject to the jurisdiction of the Railroad Commission of the State of California.

And basing the order upon the foregoing finding of fact and upon the statements of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that C. J. Klatt be and he is hereby directed to resume service of water for irrigation use to such persons as were formerly served by the pumping plant located up-

on the property of said C. J. Klatt, and who in the future may demand such service.

IT IS HEREBY FURTHER ORDERED that C. J. Klatt be and he is hereby directed to file with this Commission, within twenty (20) days from the date of this order, a schedule setting forth the rates at which water is supplied to consumers, also rules and regulations to govern relations with consumers.

Dated at San Francisco, California, this 27th day of March, 1922.

H. B. Rounds

Irving Martin

D. E. Thomas

Commissioners.