ORIGINAL

Decision No. 1472

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

J. H. BROCKMAN,

Complainant,

vs.

INGLEWOOD WATER COMPANY, a corporation,

Defendant.

Case No. 553.

James L. Irwin for complainant.
W. J. Carr for defendant.

THELEN, Commissioner.

O P I N I O N.

This complaint grew out of this Commission's opinion and order in Case No. 437, Slinack vs. Inglewood Water Company, decided on October 16, 1913.

A portion of this Commission's opinion in the Slinack case reads as follows:

> "Although not a part of the complaint in this case, I find, as developed by the testimony, that the rates of the defendant, the Inglewood Water Company, are discriminatory, in that a less rate is made to consumers who use the water for lawns than is made to consumers who use the water for other domestic purposes. While it is commendable on the part of the defendant, the Inglewood Water Company, to encourage the developing and keeping up of lawns, it has no right to discriminate in its charge for water between consumers who use the water for lawns or for rose bushes or other purposes. This discrimination should be removed."

The order contains the following paragraph, among others:

> "It is further ordered that the Inglewood Water Company eliminate the discrimination which now exists in its rates by reason of making a different rate to consumers who have lawns than is made to other patrons and customers."

The rate for lawns which was referred to in the Slinack case is as follows:

"Consumers who maintain in reasonably good order lawns, either grass or clover, covering not less than 900 square feet shall

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pay 10¢ per 100 cubic feet for all water used, provided, however, that the minimum bill for any calendar month shall not be less than $1.00."

The usual rate is 20¢ per 100 cubic feet for the first 500 cubic feet and 10¢ per 100 cubic feet for all water used in excess of 500 cubic feet, provided, however, that the minimum bill for any calendar month shall be not less than $1.00.

It is clear that there are two ways to remove a discrimination in rates, the one being to raise the lower rate and the other to reduce the higher rate. In this case, the Inglewood Water Company chose to raise the lower rate. Mr. H. L. Martin, auditor of the Inglewood Water Company, testified that by discontinuing the lawn rate, his company had secured an additional revenue of about $150.00 per year, but that if the higher rate had been reduced, a loss in revenue amounting to some $1500 would have resulted.

The Commission's order in the Slinack case has effect only in the territory over which this Commission has authority to establish rates for the defendant, which territory in this case is the unincorporated territory lying outside of the city limits of the city of Inglewood. The evidence shows that between 60 and 100 of defendant's consumers residing outside of the city limits of Inglewood are affected by the elimination of the lawn rate. These people appeared before the Commission and drew the Commission's attention to the fact that when they bought their land from the Inglewood Land Company they received from the Inglewood Domestic Water Company, being a water company controlled by the same people who control the land company, water certificates, in which certificates the Inglewood Domestic Water Company agreed to deliver to the purchasers of the land, water for all domestic purposes "at the same rates and under the same conditions as may prevail from time to time in the city of Inglewood, California."

These people drew attention to the fact that the existing ordinance of the city of Inglewood establishing the rates to be paid

for water for the fiscal year beginning July 1, 1914 and ending June 30, 1915, continues the lawn rate, and that if this rate is now eliminated in the outside territory, they will not be receiving their water at the same rates as prevail in the city of Inglewood, as it was agreed that they should do.

This provision in the water certificates was not drawn to this Commission's attention in the Slinack case.

The Commission is accordingly in this position--if it insists on the removal of discrimination as between the lawn rate and the rate for other classes of gardens in outside territory, the result will be the establishment of a discrimination as between the outside consumers and those within the city of Inglewood in all cases in which outside customers maintain lawns covering not less than 900 square feet. The Commission naturally hesitates to remove one discrimination in such a way as to create another. The matter of the rate within the city of Inglewood is entirely in the hands of the local authorities. While this Commission is, of course, not bound as to the outside rates by what the city authorities may do with reference to the rates inside the city, nevertheless, we feel strongly that in so far as possible, effect should be given to contracts entered into by land and water companies agreeing to make deliveries of water at specified rates, in consideration for the purchase of land by intending purchasers. While this Commission clearly has authority at all times over the rates of public utilities, irrespective of such contracts as may have been entered into, as has been frequently held by this Commission, we shall certainly desire to give effect, in so far as possible, in favor of the purchasers of land, to contracts which have been entered into for the delivery of water by the people who sold the land and pocketed the proceeds. Too frequently we find the original owners of the land, under these circumstances, trying to "get out from under," and after they have received the money from the purchasers of the land, trying to evade every obligation which they undertook before. In so far as it lawfully may be done, this

Commission will certainly seek to do all it can to prevent the wrong and injustice which we find in these cases.

In the present case, the Inglewood Water Company had two ways within which to comply with this Commission's order, and naturally selected the way which would result in an increase in its revenue. I have conferred with Commissioner Loveland, who heard the Slinack case, and we both agree that in view of the provisions in the water certificates, it would be more just to permit the lawn rate to continue than to produce another discrimination by compelling the outside consumers to pay more for water than the inside consumers, contrary to the provisions of the water certificates. In reaching this conclusion, it must be understood that this Commission, of course, is not bound even on an issue of discrimination, within its own field, by such action as may be taken in cities which have not surrendered to this Commission their control over public utilities, and also that it will not always be possible for this Commission to act in accordance with the provisions of contracts or agreements made by land companies for the supply of water, for the reason that in certain cases these contracts and agreements may be unjust and unreasonable. In the present case, however, we find that the equity of the situation will be best met by the re-establishment of the lawn rate to outside consumers, and by its maintenance until the further order of this Commission.

As the defendant acted in accordance with this Commission's order and chose one of two alternatives which were open to it under that order, it would not be fair to penalize the defendant for the action which it took, and to require that it repay to its consumers the rates which it has collected in excess of the lawn rate. Beginning May 1, 1914, however, the lawn rate must be re-established to defendant's outside consumers.

I submit herewith the following form of order:

O R D E R.

A public hearing having been held in the above entitled complaint and the matter being at issue and ready for decision,

IT IS HEREBY ORDERED that defendant be directed to re-establish, effective for the period beginning May 1, 1914, its so-called "lawn rate", referred to in the opinion which precedes this order, and to re-establish the same in the entire unincorporated territory served by the company, and that within ten days from the receipt of a copy of this order the company file with this Commission such re-established rate.

The foregoing opinion and order are 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 1st day of ~~April~~ May, 1914.

H D Loveland

Max Thelen

Edwin O Edgerton

Commissioners.