

Decision No.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 1872

Mrs. J. N. Hoffman et al.,
)
 Complainants,)
 vs.)
 W. E. Hughes, owner of)
 Olivito Water Company.)
 Defendant.)

Case No. 656

Walter Gould Lincoln for complainants
Frank D. McClure and Minor Moore for
defendant.

EDGERTON, Commissioner.

O P I N I O N

This complaint was brought by Mrs. J. N. Hoffman and twenty-eight others residing in Olivito Heights, a subdivision adjoining the City of Los Angeles on the south, alleging that poor service is being furnished by the water system owned by W. E. Hughes.

The defendant in this action, Mr. W. E. Hughes, was the owner of the subdivision which is supplied with water by a well and pipe system which he constructed. The subdivision was put on the market some six or seven years ago, and the equipment for supplying water has been changed in several particulars since its inception.

Defendant claims he is not a public utility because water is being delivered to consumers at cost or less than cost.

There is in evidence a clause contained in a deed given by Hughes to purchasers of land to the following effect:

"The said party of the second part, his heirs and assigns of the above described land shall at all times be entitled to secure water from the pumping plant and well on said tract upon payment of his

proportional share of the actual cost of operation and maintenance of said plant, and said party of the second part agrees for himself and his heirs and assigns forever not to divert or cause to be diverted any water from the said Olivito Heights plant."

The definition contained in the Public Utilities Act is as follows:

"The term 'water corporation' when used in this Act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this state."

In effect the argument is made that the terms "compensation" and "profit" are synonymous, and that because Mr. Hughes is selling his water at the cost of production, that he is not receiving compensation. Obviously, this argument if successfully maintained would sweep out from the jurisdiction of the Commission all public utility properties on which no profit was being made, or which were incurring losses. I believe the word "compensation" in the Act has a very much broader meaning, and in effect, means charge. This being true, Hughes is making a charge for the service rendered although this charge may be only equal to the cost of rendering service.

I am satisfied that Mr. Hughes is a public utility operating a water system.

During March of this year, the well furnishing water to this system sanded up and was in such poor condition that the pump was unable to work. After the well was cleaned out it was decided that it would not be wise to install the plunger pump again, so a verbal contract was entered into between W. E. Hughes and Frank S. Livingston, whereby the latter was to install a new pump operated by compressed air. Mechanical difficulties have been encountered in the installation of the new pump by Mr. Livingston due to many causes. The well is not straight and the perforations have been made so generously in the casing that sand and gravel

have continuously entered the well and made it difficult to secure water.

Defendant acknowledged that there has been considerable shortage of water this summer. All parties, however, have agreed that the conditions for the last two weeks, with the exception of a shut down for the installation of two valves in the distributing system, were so materially better as to be considered as good as the service formerly accorded.

There was a difference of opinion among the consumers expressed at the hearing in this case as to the probability of the consumers taking over the system from Mr. Hughes, subject to the debt incurred for the present pumping equipment now installed. Mr. Hughes' representatives made the offer but many of the consumers objected to paying for the new pump.

I find that the installation of the new pump required several months, and confidence was lost by the consumers as to its ultimate success, leaving them now in the belief that the pump is a failure.

An investigation of the situation was made by one of our hydraulic engineers, and an installation of two valves recommended which were later installed by defendant in order to afford some better control of the water. Our engineer found that defendant was making reasonable effort to rehabilitate the system.

Time and experience may prove that another well will have to be built, but this would cost a considerable sum and in view of the present service being rendered, I think that the new pump should be given a trial over a reasonable period before a final conclusion is reached as to its efficiency.

I therefore recommend that this complaint be dismissed without prejudice to the filing of another complaint hereafter if the service rendered by defendant does not prove reasonable.

I submit herewith the following form of order:

O R D E R

Complaint having been made by Mrs. J. N. Hoffman et al vs. W. B. Hughes, and a public hearing having been had, and it appearing to the Commission that this complaint should be dismissed for the reasons set out in the foregoing opinion,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that the complaint herein be and the same is hereby dismissed.

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 21st day of September, 1914.

John M. Eschleman

H. S. Toland

Max Thelen

Edwin C. Edgerton

Commissioners.