

ORIGINAL

Decision No. 2644

Decision No. _____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

FRANK TURNBULL COMPANY,

Complainant,

vs.

Case No. 472.

SWEETWATER WATER COMPANY,

Defendant.

Edger A. Luce and Harrison G. Sloan for complainant.
Eunsaker & Britt, A. E. Sweet and F. S. Jennings for
defendant
Johnson W. Puterbaugh for National City.
F. E. Andrews for Chula Vista.

EDGERTON, Commissioner.

OPINION ON APPLICATION FOR REHEARING.

This is an application for rehearing made by Sweetwater Water Company, defendant.

The Commission heretofore made its order to the effect that defendant, Sweetwater Water Company, accept the offer of Frank Turnbull Company to convey a small water distributing plant located near the city of San Diego, and after such conveyance said defendant was ordered to operate this plant and to accept and serve as its own consumers, the consumers located on the Turnbull system.

A hearing on this application was had, evidence was introduced and arguments made, and the matter is now submitted.

I joined in the order complained of but upon more mature reflection and consideration of this case, I am convinced we should recede from the position taken therein and the Commissioner who wrote the decision on the former application agrees with me in this position.

I believe that the only power of the Commission in the premises is to order Sweetwater Water Company, defendant, to produce better wholesale service at the point of delivery

into the pipes of the Turnbull Company, or to extend its own system into the territory covered by the Turnbull Company, and thereupon to serve the Turnbull consumers directly from its own system. I do not believe this Commission has power to compel defendant to accept a conveyance of the Turnbull system and thereupon to operate it.

The evidence makes it clear that defendant, Sweetwater Water Company, has never obligated itself to do more than to deliver water wholesale at a designated point into the pipes of the Turnbull Company. In fact, the evidence shows that the defendant has, with great care, safeguarded itself against any claim that it had agreed to furnish the territory covered by the Turnbull system with water direct.

The service furnished the Turnbull company appears to be as good as is possible under all the circumstances, unless defendant were compelled to go to a very considerable expense by way of pumping or other device, to increase pressure at the point of delivery. If defendant were compelled to do this it would mean that a better service would be compelled to be given the Turnbull company than is provided for the direct consumers of defendant on other parts of its system. Therefore, I do not believe that the defendant should be ordered to improve this service.

To adopt the other alternative of ordering defendant to extend its system and service into the territory now served by the Turnbull company would open the way to immensely increase the territory to be served by defendant's plant, as there are many thousands of acres located as close or closer to defendant's system than the Turnbull company lands, and if extension be compelled to this property, no just reason could be given for refusing an extension to large amounts of other property.

When it is remembered that this Sweetwater system,

according to the testimony in this and other matters before the Commission, is taxed by existing consumers and those who have the right to demand water from it almost to capacity, it does not seem just or safe at this time to order any extension of applicant's system.

The cities of National City and Chula Vista intervened in this proceeding at the hearing, and protested vigorously against any new consumers being taken on by defendant, Sweetwater Water Company, because it was insisted that new consumers would deplete or endanger the supply of present consumers.

The evidence shows that the consumers on the Turnbull system do not get good or adequate service, but I believe the full responsibility for this situation rests upon the Turnbull company. It laid out this tract of land, made its contract for the delivery of water wholesale with the defendant company, installed its own water distributing system and sold a part of its land to people who made their homes thereon, undoubtedly believing that the water supply would be adequate.

It will be possible for the Turnbull company by the expenditure of a comparatively small sum of money to erect a tank to provide a water supply for the people whom it has induced to locate on its lands, and this I believe to be its duty.

I recommend that the order heretofore made be annulled and the complaint herein be dismissed.

Herewith a form of order:

O R D E R

Complaint having been made by Frank Turnbull Company against Sweetwater Water Company and a hearing having been had on said complaint and an order thereafter made by this Commission, and thereafter application having been made for a re-

hearing in said matter and evidence having been introduced and argument made on said application for rehearing, and the matter being now submitted, and the Commission being fully apprised in the premises,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that the Order heretofore made by this Commission on the 30th day of January, 1914, be and the same is hereby annulled, and the complaint in this proceeding 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 30th day of July, 1915.

Max Thelen
H. H. Valand
W. G. Gordon
Edwin O. Edgerton

Commissioners.