

Decision No. 5956

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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ANNA SILVA,  
 Complainant,  
 vs.  
 WILLIAM F. VAN HOOSEAR,  
 Defendant.

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 )  
 ) Case No. 1194.  
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Oliver Ellsworth for applicant.  
 W. B. Rinehart by H. S. Craig, for  
 defendant.

BY THE COMMISSION:

O P I N I O N

The amended complaint alleges that defendant formerly supplied water for domestic use to the property now owned by her in Castro Valley near Hayward, Alameda County; that just before the acquisition of the property by her defendant removed his pipes and has ever since refused to supply water to her said property although it is located within the district in which defendant, as a public utility, is serving water; that defendant has an adequate supply of water, or that an adequate supply of water could be obtained by defendant at a reasonable expense, with which to serve

plaintiff's property.

The answer, which by stipulation stands as the answer to the amended complaint, admits all the allegations of fact, except adequacy of the water supply.

Defendant filed with the answer a demurrer alleging that the complaint does not state facts sufficient to constitute<sup>a</sup> cause of action, and further alleging that the Commission has no jurisdiction of the subject matter or of the person of defendant, and that he is not subject to the regulation and control of the Commission.

A public hearing upon the issues raised by the pleadings was held by Examiner Westover at San Francisco, at which defendant appeared in person and by attorney and testified in his own behalf.

Heretofore defendant applied for authority to discontinue service of water to his fifteen or sixteen consumers. By Decision No. 4845 of November 15, 1917, the application was denied. Defendant did not challenge the jurisdiction of the Commission to make such an order by any pleading or by applying for a rehearing therein or otherwise. Jurisdiction of the Commission over the subject matter was necessarily admitted by his application for authority to discontinue service. The opinion referred to shows that for several years Mr. Van Hoosear<sup>has</sup> served water at regular rates; some 2000 feet of pipe, in addition to that connecting his springs and house, having been laid for that purpose. (See Vol. 14, Opinions and Orders of the Railroad Commission, p. 457).

The evidence presented at the present hearing shows that defendant now serves 11 consumers, 8 of whom have wells capable of supplying their own needs and that 5 services, including that at complainant's property, have been discontinued since the above decision, No. 4845, was rendered.

The evidence presented herein further shows that complainant acquired the property in question through foreclosure proceedings, a certificate of sale being issued July 26, 1916; that she got possession July 27, 1917, the day after the mortgagor's time for redemption expired; that defendant furnished water to the former owner of the property until May, 1917, when he discontinued service on account of non payment of bills; that between July 8th and 12th, 1917, he cut off the pipe line which supplied the premises and took up some 10 or 12 feet of pipe, so that, as he testified, complainant, as the new owner, could not claim the right to water service.

Defendant is clearly a public utility within the meaning of the Public Utilities Act and of Chapter 80, Laws of 1913. His obligation to continue service was determined by Decision No. 4845 of November 15, 1917, above referred to. Such obligation cannot be terminated in a particular instance by removing the facilities by which service can be rendered.

Defendant testified that his refusal to supply complainant with water was not because of personal feeling or a desire to discriminate, but because his present supply is limited, and he needs it all on his ranch to make the property

salable, and because of alleged financial inability to develop a further supply. Undoubtedly metering of services and establishing measured rates would be equivalent to providing an additional supply through conservation of the water now available. He shows that water can be developed throughout the neighborhood by wells of comparatively shallow depth. Most of defendant's consumers, who have wells, however, prefer the spring water served by defendant for domestic uses because it is soft while most of the well water is hard.

O R D E R

A public hearing having been held upon the issues raised by the pleadings in the above case, the matter being submitted and now ready for decision.

IT IS HEREBY ORDERED that within 10 days from date hereof defendant replace the facilities for serving water for domestic purposes to the property of plaintiff formerly served by him, and that he thereafter continue such service at his regularly scheduled rates without discrimination in rates or service.

Dated at San Francisco, California, this 23<sup>d</sup>  
day of November, 1918.

Edw. O. Egan  
W. H. Howard  
W. H. Brown  
Frank B. Smith  
Commissioners.