

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application)
of DR. C. EDGAR SMITH to sell pub-)
lic utility water system to M. J.)
MILLER and for M. J. MILLER to pur-)
chase said public utility water)
system.)

Application No. 6234.

G. D. Meikeljohn, for Dr. C. Edgar Smith.
H. B. Cornell, for M. J. Miller.

BY THE COMMISSION.

O P I N I O N

Dr. C. Edgar Smith and M. J. Miller join in the above entitled application for authority to transfer a domestic water system supplying consumers in a tract known as Sunnyside Garden Acres in Los Angeles County, California.

A public hearing was held upon the application by Examiner Westover in Los Angeles, of which all interested parties were notified and given an opportunity to be present and be heard.

This utility has been before the Commission in another proceeding, namely, Case No. 1292, entitled, "Francis R. Schmitt, et al., vs. Emil Firth and Dr. Edgar Smith." This was a complaint brought by certain water users alleging inadequate service due to the excessive waste from badly deteriorated and leaky mains. In its Decision No. 6220 in the above entitled matter issued March 24, 1919, page 588, Vol. 16, Opinions and Orders of the Railroad Commission of California, the Commission ordered the complaint dismissed insofar as it related to defendant Emil Firth, but ordered

defendant Charles Edgar Smith to file with the Commission for its approval plans and specifications for the reconstruction of the distribution system. It was further ordered that upon approval of these plans defendant Smith was to proceed to reconstruct and repair the system as provided in the approved plans, the said repairs to be complete on or before May 15, 1919.

These plans and specifications were finally submitted on May 17, 1919, after additional time had been requested by defendant Smith and granted by the Commission, and defendant proceeded with the installation of the improvements. There was considerable delay with the installation and upon investigation it developed that certain of the pipe lines installed were of poor quality and in an unsatisfactory condition, and resulted finally in making a further investigation advisable. Accordingly, a further hearing was held in this matter and evidence taken, which disclosed the fact that certain of the pipe lines installed by defendant were of such poor quality that unsatisfactory service conditions would inevitably ensue, and further that there were other improvements necessary in order that the Commission's requirements would be complied with. Whereupon a supplemental order was issued, Decision No. 8526, dated January 8, 1921, in which defendant Smith was specifically ordered to make the following installation:

1. In Normandie Avenue, from the tanks of this utility northerly to 100th Street a pipe of six inch internal diameter.
2. In 100th, 101st, 102nd and 103rd Streets from the main pipe in Normandie Avenue westerly to Harvard Boulevard, pipe of not less than two inches internal diameter.

The above pipe was required by the order to be in first-class condition, either new or second-hand, standard screw, and dipped in molten asphalt conforming to standard practice. It was further ordered that defendant Smith was to actually begin the installation within thirty days of the date of the order and to have the work

completed on or before April 1, 1921, also weekly reports of the progress of the work were to be rendered to the Commission, and further that the Commission was to be notified when the material had been selected for the improvement in order that an inspection could be made by a representative of its Engineering Department, before the installation was made.

On February 14, 1921, defendant Smith asked for a modification of the order in the Commission's Supplemental Decision No. 8526 supra, alleging that in attempting to comply with the order in the Commission's Decision No. 6220 supra, a six-inch O. D. screw casing had been installed in Normandie Avenue in place of the standard screw pipe specified in the Supplemental Decision No. 8526, for the reason that the standard screw pipe could not be purchased in the market or supplied by manufacturers within sixty to ninety days because of the war conditions then prevailing. It was further alleged that, due to the possibility of a delay in the delivery of the pipe, preventing defendant from completing the installation within the time specified in the Commission's order, the work was carried on with whatever material was available, which in this instance was the six-inch screw casing. For the same reason, it was alleged that a 2½-inch pipe painted with asphaltum was installed in the cross streets in place of the two-inch dipped pipe specified in the Commission's order.

The evidence at the hearing upon the above application shows that the parties had executed a written agreement providing that Dr. Smith will comply with all of the Commission's orders concerning the water plant and system, without cost or expense to Mr. Miller, and that during a period of 3½ years from the date of the agreement he will perform every order or demand of the Commission made by it concerning the water pipe on Normandie Avenue and on the streets west of Normandie Avenue in Tract No. 3002, being Sunnyside Garden Acres, without cost or

expense to Mr. Miller, and will indemnify him against cost or expense which he may be required to pay or become obligated for in an attempt to comply with any orders made by the Commission in reference to said pipe; Dr. Smith's agreement to be further secured by giving an indemnity bond of a reputable bonding company in the sum of not less than \$5000.00. The 3½ year period referred to in the agreement corresponds to the period during which the firm selling the pipe in question guaranteed its service life.

The purpose of the Commission in ordering the installation of a special kind of pipe was to assure high class service to the consumers. It has no objection to the size of the 2½ inch pipe installed in this instance, but does object to its condition.

The report of one of the Commission's engineers upon the system was placed in evidence at the hearing in Case No. 1375, an investigation upon the Commission's own motion of the failure and refusal of Dr. Smith to install certain improvements ordered by the Commission, which was dismissed owing to the pendency of above Case No. 1292. The records, files and proceedings in both cases were placed in evidence at the hearing upon above application. The engineer's report showed that it would be necessary to renew a portion of the substituted 2½ inch pipe at an early date in order to maintain good service over the area served through it. From the testimony it appears that to permit the transfer under the conditions above described might result in continued interruptions to service, beginning soon after the expiration of the bond, yet allowing applicant Smith to evade responsibility, although his failure to comply with the Commission's orders would be responsible for the condition complained of.

If applicant Smith really desires to protect applicant Miller and to guarantee the substituted installation to perform the service required by the Commission's order, he should increase the

time limit of the guarantee to more nearly approximate the useful life of the installation ordered by the Commission. This extension of the guaranteed period appears to be a reasonable requirement and will be one of the conditions upon which the authority for transfer will be granted.

ORDER

A public hearing having been held upon the above entitled application, the matter being submitted and now ready for decision, and it appearing that the transfer requested will be in the interest of consumers,

IT IS HEREBY ORDERED that Dr. C. Edgar Smith be and he is hereby authorized and empowered to transfer to M. J. Miller, Lot 40 Original Sunnyside, as per map recorded in Book 7 of Maps at Page 171, Los Angeles County Records, together with the pumping plant, wells, tanks and other property thereon, and the distribution mains and other facilities used in connection therewith, in serving the tract of land known as Sunnyside Garden Acres, in Los Angeles County, and other property in that vicinity.

1. The authority herein granted shall apply only to such transfer as may have been made on or before sixty days from the date of this order.

2. The consideration given for the transfer of said system shall not be urged before this Commission or any other public body as a finding of the value of said property for rate fixing or any purpose other than the transfer herein authorized.

3. The parties to the application shall, by agreement supplemental to their agreement entitled "Contract and Guaranty", placed in evidence as applicants' Exhibit No. 1 herein, extend until July 1, 1929, the period during which said Smith shall guarantee the sufficiency and adequacy of the pipes in said water system lying in Normandie Avenue and in streets west of Normandie Avenue in said Tract No. 3002, referred to in said Contract and Guaranty, and con-

cerning which he agrees to indemnify said Miller. Said Exhibit No. 1 and said supplemental agreement herein referred to both to be secured by good and sufficient bond of some reputable bonding company in the principal sum of not less than \$5000.00, said supplemental agreement and bond to be filed with the Commission for approval within 20 days from date hereof.

4. Applicant Miller shall file with this Commission, within 20 days after the date thereof, a certified copy of the instrument of conveyance hereinabove authorized

5. Within 10 days after the execution of said conveyance, Dr. C. Edgar Smith shall relinquish possession of said plant and property and shall file with the Commission a certified statement setting forth the date on which such possession was actually relinquished.

6. Said proposed transfer herein referred to shall not become effective until the Commission has approved said supplemental agreement and indemnity bond by supplemental order herein.

Dated at San Francisco, California, this 19th day of September, 1921.

H. A. Loveland
During Absence
Charles H. Rance

Commissioners.