

Decision No. 27727

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

R. McDaniel, D.W. Hawthorne,
F.E. Wright, A.E. Wheeler,
John Ivelich, Walter Cox,
F.J. Hall, Paul Cook, W.D.
Cook, K. Farrington, Hans
Nissen and M.A. Peterson,

Complainants,

vs.

L.C. Smith,

Defendant.

ORIGINAL

Case No. 3892.

R. McDaniel, for himself and
other complainants.

L.C. Smith, for himself.

BY THE COMMISSION:

O P I N I O N

In this proceeding R. McDaniel and eleven other residents of the Payer Subdivision situated in unincorporated territory about three miles northeasterly from the City of Watsonville, Santa Cruz County, complain that existing facilities owned by defendant L.C. Smith and used to supply them with domestic water are inadequate and ask for an order by the Commission directing the defendant to install a larger pump, higher storage tank and replace the existing distribution mains.

Defendant in his answer states that he purchased for a home the property upon which the well and pumping plant are located

and was informed at that time by the agent handling the transaction that he was under no obligation to provide water for his neighbors and could discontinue serving them at any time. Defendant denies operating as a public utility and asks that this complaint be dismissed.

A public hearing in this matter was held in Watsonville before Examiner MacKall.

According to the evidence the tract of land upon which complainants reside was subdivided about 1926 by one Max Payer who installed thereon a small water system to supply lot purchasers. Immediately thereafter water was sold to said purchasers at the rate of one dollar and fifty cents (\$1.50) and in some instances two dollars (\$2.00) per month. In 1927 the one-acre lot upon which the water plant was located was sold by Max Payer to W.D. Cook and Louise Cook, his wife, who continued the operation of the plant serving through the distribution mains all residents of the tract. In August of 1927 this lot, together with the water plant, was sold to defendant L.C. Smith and at that time was furnishing water to eight residents of the Payer Subdivision. All of these transactions were handled through the real estate firm of A.J. Meidl and Son of Watsonville, which concern acted in the capacity of sales agent for Max Payer and also as agent for the Cooks. All original sales for said Max Payer were made through this firm which still handles the local affairs of defendant, who is a non-resident living at present in Coalinga.

Most of the original sales contracts in the Payer Subdivision contained substantially the following clause:

"Mr. Max Payer, party of the first part, hereby agrees to lay a water main on the proposed road running through said subdivision to the (S.W.) corner of the above mentioned lot and agrees to furnish or cause to be furnished water to the party of the second part, a nominal sum to be charged for such water service or rental."

The above extract is from the sales agreement entered into by and between Max Payer and the purchasers, Rhuben McDaniel and Gladys R. McDaniel. Certain of the other agreements set out a monthly charge of one dollar and fifty cents (\$1.50) and two dollars (\$2.00) for water and a few placed a definite limitation on the amount of water to be furnished at the monthly rate set forth.

According to the testimony of Mrs. W.D. Cook who, with her husband, at one time owned and operated the water works, one of the inducements to purchase the lot was the representation of A.J. Meidl that the water system supplied the residents of the subdivision and that the water sales "would net her a nice little income." L.C. Smith testified that said Meidl had told him that he could discontinue selling water to the residents of the tract at any time but that, when the consumers showed him their sales contracts providing for water through the pipe lines described therein, he had continued the service to date. From the facts set out above, it is conclusive that this water service from its very inception has been dedicated to the public use, has so continued without interruption thereafter, and is now a public utility operating under the jurisdiction and control of the Railroad Commission.

At present the plant consists of a 12-inch cased well 165 feet deep, a displacement pump operated by a 5 horsepower

motor, a 2,000-gallon storage tank and a distribution system composed mainly of 1½-inch pipe. There are thirteen consumers.

All parties concerned concede the service rendered is poor and inadequate. Defendant states that he purchased three adjoining acre lots, including the water works, in the Payer tract for a home and that it was through the misrepresentations of the real estate agent that he also acquired the water system. It appears that the improvements demanded by complainants will cost not less than twelve hundred dollars (\$1,200), which amount defendant states he is in no financial condition to provide. However unfortunate this situation may be, there can be no doubt but that defendant is under the obligation to supply a reasonable quality of service; if the rates are inadequate to insure satisfactory operation, he has his remedy in applying to this Commission for the establishment of a reasonable rate. The record shows that the average annual revenues for the past two years have been approximately one hundred and eighty dollars (\$180), with corresponding expenses including thirty dollars (\$30.00) for depreciation amounting to one hundred and ten dollars (\$110), resulting in seventy dollars (\$70.00) for a net return, or the equivalent to a yield of five per cent (5%) on the investment of fifteen hundred dollars (\$1,500), which defendant stated represented a fair estimate of the cost of the plant. This indicates that the system is not being operated at an out-of-pocket loss but at a substantial profit. The purported deficit occurs because his records of expenditures include capital charges and moneys paid out to agents for looking after his private affairs in connection with his property in the subdivision, not any of which expenditures are proper operating expenses assessable against utility business.

High class service in this tract would require the complete rebuilding of the entire system. This, of course, is out of the question. There are, however, a few improvements which are not costly and which defendant reasonably should be required to make. The present location of the storage tank in one of the lowest points of elevation in the tract can readily be moved to a higher position which will insure gravity delivery to all parts of the service area. The evidence shows that such a tank site already is available on the land owned by defendant. Although the mains unquestionably are inadequate in size and capacity, their replacement at this time would place an impossible financial burden upon the owner of this utility and cannot in fairness be ordered under the rates in effect and the circumstances now existing. The well supply apparently is adequate for present demands. Defendant will, therefore, be directed to install a storage tank at an elevation sufficient to deliver water by gravity at a fair pressure to all his consumers. Should he care to provide such service through other means and methods such, for instance, as a pressure tank, there will be no objection. Should the consumers desire additional improvements in the immediate future, it is suggested that a collective effort be made to raise the necessary funds which may be loaned to defendant for such purpose with the understanding that the monies so advanced will be refunded by way of credit for water furnished, or upon any other acceptable basis.

O R D E R

Complaint as entitled above having been filed with this Commission, a public hearing having been held thereon, the matter having been submitted and the Commission now being fully advised

in the premises,

It is hereby found as a fact that L.C. Smith is operating a public utility water works supplying water to consumers in and in the vicinity of the Payer Subdivision situate near the City of Watsonville in the County of Santa Cruz and that therefore the operation of said water works is under and subject to the control and jurisdiction of the Railroad Commission of the State of California; now, therefore,

IT IS HEREBY ORDERED that L.C. Smith be and he is hereby directed to file with this Commission, within thirty (30) days from the date of this Order, the schedule of rates charged for water service delivered to his consumers in and in the vicinity of the unincorporated area known as the Payer Subdivision in Santa Cruz County, California.

IT IS HEREBY FURTHER ORDERED that L.C. Smith be and he is hereby directed to file with this Commission, within thirty (30) days from the date of this Order, rules and regulations governing the relations with his consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

IT IS HEREBY FURTHER ORDERED that L.C. Smith be and he is hereby directed to install or cause to be installed, on or before the first day of June, 1935, in proper and satisfactory working order, such improvements as may be necessary to provide water to all of his water consumers at a reasonable pressure, said improvements to be provided through the erection of a storage tank at a suitable elevation, or through the installation of a pressure-tank water system, or new pumping equipment designed to accomplish this purpose, or by any other acceptable, reliable and satisfactory

means, each and all of such improvements being subject to the approval of the Railroad Commission.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 4th day of February, 1935.

Leon Whitney
Atty. Gen.

W. H. [Signature]
Frank R. [Signature]
Commissioners.

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IT IS HEREBY ORDERED that L.C. Smith be and he is hereby directed to file with this Commission, within thirty (30) days from the date of this Order, the schedule of rates charged for water service delivered to his consumers in and in the vicinity of the unincorporated area known as the Payer Subdivision in Santa Cruz County, California.

IT IS HEREBY FURTHER ORDERED that L.C. Smith be and he is hereby directed to file with this Commission, within thirty (30) days from the date of this Order, rules and regulations governing the relations with his consumers, said rules and regulations to become effective upon their acceptance for filing by this Commission.

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means, each and all of such improvements being subject to the approval of the Railroad Commission.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 4th day of February, 1935.

Leon A. Wiley
Atty. Gen.

William H. Brown
Frank R. Brown
Commissioners.