

Decision No. 23841

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Nellie Marchbank,
Complainant,

vs.

Portola Water Company,
Defendant.

ORIGINAL

Case No. 4110

Jessie W. Carter, for Complainant.

Young & McMillan, and H. A. Encell,
by H. A. Encell, for Defendant.

BY THE COMMISSION:

O P I N I O N

The complaint in this matter, filed February 13, 1936, alleged the illegal discontinuance of water service to complainant's properties, consisting of about thirty auto-camp cabins and cottages, for the non-payment of bills, the amounts of which were in dispute.

The defendant utility claimed that the disputed bills were rendered in exact accordance with its established rates. Upon the filing of this complaint before the Commission, it promptly brought an action against Mrs. Marchbank in the Superior Court of Plumas County to collect the amount it claimed to be due. That action was tried prior to the hearing in this proceeding before the Commission and later, on September 4, 1936, judgment was rendered by the Court in favor of the company covering bills for all service ren-

dered to December 31, 1935.

Because the only issue before the Superior Court was whether any money was due the company for water service actually rendered at its regularly published rates, it is apparent that the Court had full jurisdiction to hear the cause and that its judgment in the matter must be recognized by this Commission. Therefore, we feel that it is incumbent upon us now to dismiss the within complaint without attempting to decide the same issue.

There is one problem resulting from this disposition of the matter which requires brief comment. When Mrs. Marchbank filed her complaint with the Commission, she made a deposit in the sum of one hundred twenty dollars and ten cents (\$120.10) to partially cover the amount of the disputed bills. Subsequent to the judgment of the Superior Court, as we are now informed, Mrs. Marchbank became a bankrupt, and we are advised by the trustee appointed in the bankruptcy proceeding that the amount on deposit with the Commission should be considered as an asset of the bankrupt's estate, available for the pro rata payment of all claims including that of the water utility. We believe that we may properly accede to this demand inasmuch as our dismissal of this complaint without decision on the merits would require the return of the deposit to Mrs. Marchbank rather than to the utility.

It should be added that we are not called upon in this proceeding to fix rates applicable in the future for water service to the Marchbank auto-camp or to similar properties. Doubtless there should be some tariff provision made for this distinctive

class of service, but any action to be taken in this regard must be by appropriate proceeding.

O R D E R

A public hearing having been held in the above entitled complaint and the matter duly submitted, therefore,

IT IS HEREBY ORDERED that the complaint be and hereby is dismissed, and that the Secretary be directed to remit the amount deposited by the complainant, Mrs. Nellie Marchbank, to the Referee in Bankruptcy for the account of her estate.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 7th day of June, 1937.

Matthew Mann
Leon A. Sullivan
Frank R. W. M.
Raf. Wahlgren
Ray & Riley
Commissioners