Decision No. 713

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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CITY OF GLENDALE, a municipal corporation, Complainant, - vs. - TITLE GUARANTEE and TRUST COMPANY, a corporation, Trustee for the Glendale Consolidated Water Company, Defendant.	Case No. 365.
CITY OF GLENDALE, a municipal corporation, Complainant, - vs. - MIRADERO WATER COMPANY, a corporation, Defendant.	Case No. 383.

W. E. Evans for plaintiff.
W. G. Cooke and W. Andrews for defendants.

THELEN, Commissioner.

O P I N I O N.

The above two cases were brought by the City of Glendale for the purpose of compelling two water companies delivering water to the citizens of Glendale to install service connections and meters without direct charge therefor, upon application of prospective consumers along the mains of said companies. No question of extension of mains is involved in these cases.

The complaint in Case No. 365 was filed on February 3, 1913. It alleges, in effect, that the defendant on or about November 7, 1912, purchased at foreclosure sale, as trustee for the bondholders, the property of the Glendale Consolidated Water Company, which prior to said date, was supplying water for domestic use to inhabitants of the city of Glendale; that from July 1, 1912, to the time at which the Title Guarantee and Trust Company took charge of said water system, service connections were furnished at the expense of the Water Company,

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but that when the Trustee took charge of the property, a charge of $15.00 per service connection was imposed, which charge has thereafter been maintained; that said Title Guarantee and Trust Company refused to make a service connection to the property of one W. K. Dobbins from the main in the street unless he paid in advance the said sum of $15.00; that said Company has taken the same position with reference to a number of other service connections; that the actual cost of making a service connection is considerably less than $15.00; and that the complaint was filed under resolution of the Board of Trustees of Glendale, passed January 31, 1913.

Thereafter, a copy of the complaint was mailed to the defendant, who, on February 21, 1913, filed with this Commission a formal statement of defects contained in the complaint, the main alleged defect being a lack of jurisdiction on the part of the Railroad Commission and a claim that the matter at issue was one of water rates, which was a matter subject to the authority of the city of Glendale.

The hearing on the question of jurisdiction was thereafter held on March 12, 1913.

On April 28, 1913, the Commission rendered its opinion and order overruling the objections of the defendant and directing that the complaint take its usual course to a hearing. The Commission held that the question was one of service and not of rates; that towns of the sixth class have no authority over the service of public utilities; and that this authority is vested in the Railroad Commission. The Commission thereupon ordered the defendant to satisfy the complaint within ten days or to answer the same.

The defendant thereafter, on the 14th day of May, 1913, filed its answer. The answer admits certain allegations of the complaint and sets up three main defenses as will hereinafter appear.

In case No. 383, the complaint was filed on March 26, 1913.

The answer in this case was filed on May 17, 1913. The complaint and answer raise substantially the same issues as are raised in Case No. 365, except that the issue as to the trusteeship is not involved.

The hearing in this case was held in the city of Los Angeles on May 29, 1913. Upon agreement of all the parties, the cases were consolidated for hearing.

The evidence shows that the Glendale Consolidated Water Company, a California corporation, supplies water in the cities of Glendale, Tropico, South Pasadena and Los Angeles and certain adjacent territory. The Company has 1048 consumers in the city of Glendale.

The Miradero Water Company also supplies a portion of the city of Glendale with water and has in said city about 160 consumers.

From July 1, 1912, until its property was sold at foreclosure in November, 1912, the Glendale Consolidated Water Company furnished service connections and meters free. The Miradero Water Company did likewise from July 1, 1912, until about March 1, 1913. Both the defendants are now charging the sum of $15.00 for the service connections, including meter, and insist on their right to impose this charge.

The defendant's witnesses testified that the cost of the service connection and the meter varies between $12.45 and $14.15 as follows:

Meter.....	$7.25
Pipe,-5¢ per foot for an average length of not to exceed 18 feet, amounting to a maximum average of.....	.90
Labor,.....	1.80 to 2.70
Clamps,.....	.75 to 1.50

Box for meter,.....	$ .45 to .50
Gate valve,.....	.65
L's and T's.....	.15
City License fee for tearing up streets,.....	.50

The complainant, at the hearing, contended that it was the duty of the defendant, as a matter of law, to install the service connections and meters without exacting a fee therefor. The defendants made three main defenses, as follows:

1. They contended that they are not under a duty to install connections free.

2. They urged that their revenues are insufficient to permit such installation.

3. The Title Guarantee and Trust Company contended that its water supply is limited and that it cannot serve additional customers without additional development.

I shall consider these defenses in order.

That it is the duty of a water company to supply service connections up to the property line and meters, where meters are used, without direct expense to the consumer, seems clear both on principle and on authority. Such requirement seems entirely reasonable. The service pipe up to the property line and the meters, where used, are as necessary in the performance of the water company's duty to the public as its reservoirs, wells or mains. The consumer has no right to dig up the streets to lay a service pipe. That right belongs to the water company alone. It seems unreasonable to ask that the consumer should pay for service pipes and meters which are a part of the water company's system, which the consumer has no legal right to install and which are under the complete control of the water company.

The authorities are in line with what I believe to be the correct rule on principle. In Spring Valley Water Works vs. City and

County of San Francisco, 82 Cal. 286, one of the questions at issue was the validity of the requirement of an ordinance of the City and County of San Francisco requiring the Water Company to supply the meters at its own expense. Referring to this issue, the court says at page 316:

> "It is also contended that the requirement that meters shall be furnished by the plaintiff is unreasonable and can not be enforced, but we think otherwise. The requirement that the party furnishing water shall provide the meters necessary for its measurement, so that the quantity furnished and to be paid for may be known, is not an unreasonable requirement. The expense of the meter could not be imposed on the consumer. (Red Star Steamship Co. vs. Jersey City, 45 N.J.L. 246)."

The leading case on the question of the duty of a water company to install service connections and meters is the case of Hatch vs. Consumers Company, 17 Idaho 204, 104 Pac. 670. This is an action of mandamus to compel a water company to make a service connection between a lot in the city of Coeur d'Alene in Idaho and the Water Company's mains located in the street in front of the property. The Water Company claimed the right to collect a fee of $8.50 for making the tap and service connection. The Supreme Court of Idaho, in directing that the writ issue, uses in part the following language at page 672 of the Pacific Reporter, referring specifically to the duty of the Water Company to make the connection to the property line at its own expense:

> "On the other hand, the consumer has no right or franchise to excavate the streets or to lay or maintain pipes therein. When he undertakes to pass beyond his property line with pipes, he is met by the public authorities and the franchise held by the water company. He is in no position to acquire a property right in the streets and alleys by laying pipes therein. The water company, on the contrary, is clothed with this power and right and all the necessary authority for creating and establishing property rights therein and the protection of such property. There is no reason in saying that the company has no interest in laterals it may lay in the streets from its main to the line of abutting property owners. These laterals are of just as much use and as valuable to the company as its mains in proportion to the amount of water to be delivered through such laterals as compared with that delivered through the main. The only difference whatever is in the extent of the service. The capacity of a main is ordinarily such that it will supply a large number of consumers along the street from the one main. The capacity of a lateral is ordinarily such that it will only supply one or two consumers. The relative value to the company of the main and laterals is measured by the extent of the service from the two. The necessity, however, for one is just as great as for the other. Without a main none of the residents along a street can be supplied. Without a lateral the individual consumer cannot be supplied. The

law of ownership is the same in the one case as the other, and the right of property and control is the same in each instance. Water companies maintain water works for the purpose of collecting rates and tolls. They operate them for gain. In order to collect tolls, they must deliver water. The consumer, on the other hand, pays his money for service. Unless he is served, there is nothing for which he may be called upon to pay."

This case was later appealed to the United States Supreme Court on the ground that the decision violated the water company's constitutional rights. The Supreme Court, by its decision rendered on April 1, 1912, affirmed the judgment. (Consumers Co. vs. Hatch, 224 U.S. 148.) In its opinion, the court refers with approval to the decision of the Supreme Court of Idaho in the case of Pocatello Water Company vs. Standley, 7 Idaho 155, 61 Pac. 518, in which case the court uses the following language:

"It (the water company) cannot compel the user of water to pay for such work or pipes, but it may require him to pay a reasonable compensation for furnishing him the water. In other words, the company cannot compel the citizen to pay for a part of the system of water works it has agreed to construct, but it must construct its own system within its franchise limits, at its own expense."

The same doctrine is laid down in the case of Bothwell vs. Consumers Company, 13 Idaho 568, 92 Pac. 533. See also Wyman, Public Service Corporations, section 406.

This Commission has heretofore in several cases issued orders in reliance on the principle established by the foregoing cases. In the following cases the Commission ordered a water company to install service pipes to the property line or meters or both, at the company's own expense:

Application No. 5, Decision No. 356, application of Hawthorne Electric and Water Company.

Application No. 118, Decision No. 536, application of James A. Murray and Ed Fletcher.

M. Case ~~Application~~ No. 308, Decision No. 608, application of San Gorgonio Water Company and the Beaumont Land and Water Company.

Application No. 370, and No. 426, Decision No. 660, application of the Lawndale Land and Water Company.

Defendants have filed in this case a brief in which they

rely on certain cases as establishing the rule that a water company may reasonably demand that the consumer pay for the entire service connection and also the meter. While it is true that there are certain cases which seem to adopt this view, the contrary rule seems to be the better one on principle and to be sustained by the weight of authority.

With reference to the second defense, both defendants urge that their revenues are not sufficient to enable them to make service connections and install meters at their own expense. In support of this contention, the Title Guarantee and Trust Company at the hearing presented evidence showing the receipts and expenditures of the Glendale Consolidated Water Company over its entire system, but no segregation was made to show the conditions as affecting the city of Glendale. In response to the request of the defendants in both cases, permission was given to file supplemental statements, showing the receipts and expenditures for the city of Glendale. These statements have been filed and purport to show that the business of both companies is carried on at a loss. To ascertain their real condition would demand a careful analysis of values and expenditures. Such analysis is not necessary to the decision of these cases for the reason that if the present revenues of these companies are ~~xxxx~~ insufficient, the remedy is in an application to the city of Glendale, which city has the power to fix water rates within its limits, for authority to charge a rate for water which shall be just and reasonable. The water companies are entitled to have the rate fixing authority consider their expenses for service connections and meters, but they should not labor under the delusion that they have the right to pay for their capital out of income and to compel their consumers in that way to donate to them their systems.

The Title Guarantee and Trust Company claimed also that it was merely in the position of a trustee for the bondholders of the Glendale Consolidated Water Company and that it could not be compelled

to secure funds in addition to those in its treasury, as such trustee, in order to pay for the service connections and meters. The duty of a water utility to the public can not be avoided in any such way by a sale of the plant at foreclosure. The purchaser takes the property subject to all obligations to the public. It is the duty of the bondholders in this case to see to it that the Water Company performs its duties to the public. If the bondholders are unwilling to do so they should dispose of the plant to somebody who will do so.

The Title Guarantee and Trust Company, as trustee, also contends that it does not have a sufficient supply of water to supply additional consumers. This claim is made for the first time in the answer in this proceeding. It appears from the evidence that additional service connections are being made by this company in the city of Glendale at the rate of about fifteen per week, and that the Company has never heretofore made the claim that it does not have a sufficient supply of water to take on new consumers and that water has never been refused by this Company to any person in the city of Glendale because of an alleged insufficient supply. There is no satisfactory evidence to support the Company's contention.

I find that the rule or regulation of the defendant Water Companies requiring the payment of a fee for a service connection and the installation of a meter is an unjust and unreasonable rule and that it should be abrogated, and that the defendant Companies are under the duty of furnishing service connections to the property line and meters at their own expense. A proper return on the investment so made must be allowed in fixing rates.

I recommend the following form of order:

O R D E R.

The City of Glendale having filed its complaint against Title Guarantee and Trust Company, as trustee for the Glendale Consolidated Water Company, in Case No. 365, and likewise its complaint against the Miradero Water Company, in Case No. 383, and answers having been filed therein, and all the parties having agreed that

said cases might be consolidated for hearing, and said cases having been heard and submitted and being now ready for decision,

THE COMMISSION FINDS that the rule or regulation of said Companies imposing a charge of fifteen ($15.00) dollars to be paid by the consumer of water for service connection to the property line and meter is an unjust and unreasonable rule, and that it is the duty of the Water Company to make such connection and furnish such meter at its own expense.

Basing its order on said finding and on the further findings contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that said rule or regulation be and the same is hereby abrogated, and that said defendants be and they are hereby ordered to make service connections to the property line and install meters free of charge for persons living in the city of Glendale along the mains or pipe lines of said Companies and desiring connection for the service of water.

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 11th day of June, 1913.

John M. Eshleman

A. E. Lovelace

Alex Gordon

Max Thelen

Edwin O. Edgerton

Commissioners.