Decision No. 28600.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MARK S. COLLINS,

Complainant,

vs.

SOUTHERN CALIFORNIA GAS COMPANY, a corporation,

Defendant.

Case No. 4075.

ORIGINAL

P. T. Hannigan, for Complainant.

T. J. Reynolds, for Defendant.

BY THE COMMISSION:

O P I N I O N

This proceeding involves a complaint on the part of Mark S. Collins, a real estate subdivider, against the Southern California Gas Company, resulting from the latter's refusal to render gas service to certain properties of the former in La Crescenta, Los Angeles County, and to make refunds therefor, as well as for certain other service connections served from extensions of the gas main extension for which complainant advanced money in aid of construction. Complainant asks that defendant be ordered to make the requested gas service connections and to refund the total amount advanced, some Six Hundred and Six Dollars and Thirty-two cents ($606.32).

A public hearing was had before Examiner McCaffrey in Los Angeles on November 21st, 1935, at which time evidence was taken and the matter submitted for decision.

It appears that complainant entered into a contract for gas service with defendant under date of April 24th, 1928, as follows:

"SOUTHERN CALIFORNIA GAS COMPANY
Contract for Gas Main Extension

This agreement, made and entered into in duplicate this 24th day of April, 1928, by and between the Southern California Gas Company, a California corporation, hereinafter called the 'Company,' and MARK S. COLLINS, La Crescenta, California, hereinafter called the 'Consumer.'

WITNESSETH: The Company agrees to make the following gas main extensions:-

IN LA CRESCENTA:

On New York Ave. north from main on Michigan to unnamed St. approximately 600 ft. North of Alabama; thence East approximately 290 ft. on unnamed St. to reach two houses now under construction on N.S. of street; on Alabama S.E. from proposed line on New York 466 ft. of Main to cover Lot 36, Tract 6157.

A total distance of approximately 3089 feet of pipe at an estimated cost of $2718.32.

The consumer agrees to deposit with the Company the sum of Six Hundred Six and 32/100 ($606.32) Dollars towards the cost of making this extension.

It is understood and agreed that if streets are paved before mains are laid hereunder and/or if mains are laid hereunder in streets which are hereafter brought to subgrade, then in any such event or events, the consumer shall deposit with the Company such sum of money as will cover any and all expense to be incurred by the Gas Company in connection therewith.

The Company agrees to refund to the consumer the sum of One Hundred Thirty-two and no/100 ($132.00) Dollars for each bona fide gas consumer who is connected and supplied by an independent meter from a service connected to said main within seven (7) years from the date of this agreement.

Excepting no refunds be made for the first sixteen (16) consumers connected.

Refunds to be made January 1st and July 1st of each year for all consumers connected as provided for above during the preceding six months.

"Total amount of refunds not to exceed the total amount deposited by the Consumer.

This contract shall at all times be subject to such changes or modifications by the Railroad Commission of California, as said Commission may, from time to time, direct in the exercise of its jurisdiction.

SOUTHERN CALIFORNIA GAS COMPANY

(Signed) By S. C. Singer

(Signed) Mark S. Collins."

The basis upon which defendant is required to make main extensions and refunds therefor is incorporated in its Rule No. 20, which was made a part of the record for reference purposes. This rule,(1) in effect for a number of years, is as follows:

"RULE AND REGULATION NO. 20
MAIN EXTENSIONS

(a) The Company will in general extend its gas mains on dedicated streets for a distance of 150 feet in all territory served by the Company, for each bona fide applicant, who will agree to take service within thirty days from the date the Company is ready to render service; provided, however, where in the Company's opinion, conditions do not warrant the said extension, the Company reserves the right to submit the matter to the Railroad Commission of the State of California for decision.

(b) The Company will extend its gas mains in excess of the amount as stated in the above Section (a), provided that the applicants for service will deposit with the Company an amount of money equal to the estimated cost of such excess portion of the extension.

(c) Refunds will be made to the person or persons advancing the deposit upon the following basis:

(1) For extensions into real estate subdivisions where the contract is entered into by party owning the subdivision, the refund to be at the rate of the cost of 150 feet of main per consumer connected to the original extension within a period of 7 years after the date of the original contract.

(1) Revised Sheet C.R.C. No. 330-G, filed October 15th, 1927, and made effective November 15th, 1927.

"(2) For all extensions other than stated in the above Section C-1, the refund will be at the rate of the cost of 150 feet of main per consumer connected to the original extension within a period of ten years from the date of the original contract."

It is to be noted that, under such rule, defendant is required to extend its gas mains free of charge one hundred and fifty (150) feet for each bona fide applicant and, in the case of real estate subdivisions ((c)-(1)), to make refunds at the rate of the cost of one hundred and fifty (150) feet of main of the original extension for each consumer connected thereto within a period of seven (7) years after the date of contract.

Complainant contends that within the seven (7) years period nineteen (19) premises were, and now are, being served by means of the extension for which he made an advance. The record shows and the contract indicates that complainant, upon entering into the agreement, was given credit for the existence of sixteen (16) bona fide gas consumers that could be served along the line of the proposed main extension, leaving a balance of Six Hundred Six Dollars and Thirty-two cents ($606.32),(2) to be, and which was advanced by complainant to defendant. Such advance, under the terms of the contract and in conformity with the principles of defendant's Rule No. 20, was made subject to refund at the rate of One Hundred Thirty-two Dollars ($132.00) for each additional bona fide gas consumer subsequently connected to and supplied by an independent meter from a service connected to the said main extension, within seven (7) years from the date of the agreement.

(2) The contract sets forth a total footage of approximately 3089 feet, constructed at an estimated cost of $2,718.32, or an average cost of 88 cents per foot. The required allowance specified in defendant's Rule No. 20, of 150 feet per consumer for 16 consumers, at 88 cents per foot, amounts to $2,112.00, thus leaving a balance of $606.32, the amount which was advanced and made subject to refund

Complainant seeks refunds for the three (3) additional premises, on the ground that they are served from extensions that lead off from the main for which he made an advance. These are listed as 3300 Alabama Avenue, 3301 Rita Avenue and 3345 Los Olivos Avenue. It was stipulated that defendant, in rendering such service, in each instance had extended its mains (3) and, in addition thereto, had run a service line from such respective extensions to the related premises. A check of complainant's list of consumers developed the fact that the premises at 3329 Rita Avenue, while not on complainant's list, also were served under similar conditions during the contract period; that is, by a service connection attached to an extension of the original main extension.

Defendant testified that, in applying its Rule No.20, it had always followed the practice of making refunds on the basis stated in the instant contract, only "for each bona fide gas consumer who is connected and supplied by an independent meter from a service connected to said main extension" during the contract period. The import of this testimony is that defendant, in applying its Rule No. 20, has made refunds only for service connections attached directly to the original main, for which the advance had been made, and not for service connections attached to extensions thereof.

It further appears that defendant, in installing the above cited individual main extensions and services made the free footage allowance required by its extension rule. This rule as has been shown requires that defendant extend its gas mains One

(3) Defendant's Exhibit No. 1 indicates individual main extensions of the following lengths were constructed to serve the respective premises: 140 feet for 3300 Alabama Avenue, 161 feet for 3301 Rita Avenue; 133 feet for 3345 Los Olivos Avenue; and 78 feet for 3329 Rita Avenue.

Hundred and fifty (150) for each bona fide applicant. Since an allowance had been made in each instance, the rule cannot reasonably be construed to require defendant also to make an additional allowance in the form of refunds to complainant. To do so, would result in a duplicate allowance. This, obviously, is not contemplated. Unquestionably the rule was so designed that each gas main extension must, so to speak, stand upon its own feet.

The only issue presented here involves the interpretation of the rule and the contract entered into pursuant to its provisions. Undeniably, the contract is in conformity with the rule and it follows the form established for this purpose and filed with the Commission, as its records will show. There can be no question as to the meaning of the rule or the contract: both alike preclude the award of any refund to complainant for the afore-cited services connected to subsequent main extensions.

As above set forth, complainant also asks that defendant be ordered to render gas service to certain buildings and to make refunds therefor. The record shows that complainant constructed three (3) small one-room houses (ten (10) feet wide by eighteen (18) feet long), without plumbing or electric wiring facilities, and upon their completion, as such, requested gas service from defendant. Defendant refused the request, on the ground that the three connections, as ordered by complainant, were not for bona fide gas consumers. Complainant, in testifying, admitted that it was his intention to use the refunds to further improve the buildings and, also, that he did not think they could be rented permanently as they are now or lived in until they were further improved.

The record shows that defendant classified these houses as of a temporary nature. Undisputed testimony was pre-

sented to the effect that the foundations were comprised of blocks of concrete hauled in as such, without being poured, and upon which the buildings were bolted, the entire installation being easily moved. The record also shows that defendant, in classifying the installations as of a temporary nature, offered to render service in conformity with its Rule 22, "Temporary Service,"(4) and in so doing further offered to refund any advances made under said Rule No. 22 at the end of a three-year period, if service had been and was of a permanent nature.

It is contended by complainant that one of the buildings was to be used as a real estate office and complainant endeavored to show that, as such, it was entitled to service, regardless of the absence of water or electric service. Defendant, on the other hand, testified that, while real estate offices had been served without being provided with water or electric facilities, most of such offices had a conference room and lobby and were built on a permanent foundation and that service was not even then rendered, unless the applicant could satisfy defendant that the service would be used for at least three years.

As to the other buildings, complainant testified that, in addition to his plan of using one as a real estate office, he proposed to use another, located on a Mr. Martin's property, for his health; that is, he intended to sleep there in the winter time when it became damp. As to the other, he stated that he expected to develop it into a larger building and sell it.

It is of record that requests for service to these buildings were made on March 15th, March 20th and April 2nd,

(4) Original Sheet C.R.C. No. 141-G, filed September 16th, 1919, effective October 16th, 1919.

respectively, 1935, Since complainant admitted that said houses, with the exception of the one to be used for a real estate office, would have to be improved before they were liveable and, since he relied upon the refunds to make them so, it is apparent that they could not be made ready to use service before the expiration date of the contract (April 24th, 1935). This is true because the contract provides that refunds are payable only on January 1st and July 1st of each year for all consumers connected during the preceding six months and therefore any refunds which might be claimed as due thereunder would not have been forthcoming until July 1st, 1935.

There remains only the question of the justification of a refund for the building planned as a real estate office. In this respect, complainant testified that he did not use this building as a real estate office but moved his operations down to another place since, without gas, he could not develop the tract. Complainant's statements are not convincing. Had he desired to go ahead with any part of his plan to use the aforesaid buildings, he could have received service for a nominal advance and acceptance of defendant's offer on a temporary service basis would have made possible the return of such advances and refunds upon a showing of permanency of gas usage.

Defendant is not justified, in equity to its other consumers, to render service or make refunds in cases of questionable permanency. Complainant did not show that the buildings at the time service was requested were ready for permanent occupancy or that they would be until he made further improvements. Their permanency on this ground, alone, was made insecure.

For the reasons mentioned, the complaint must be dismissed.

ORDER

Complaint having been made by Mark S. Collins against Southern California Gas Company, public hearing having been held and the matter now being submitted and ready for decision;

IT IS HEREBY ORDERED that the above-entitled proceeding be and the same is hereby dismissed.

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

Dated at San Francisco, California, this 24th day of February, 1936.

M B Harris

Leon Whitsell

W J Carr

Wallace Ware

Frank R Devlin

Commissioners