

Decision No. 38282

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Wm. C. Morehead and L. R. Knutte, et al.,
 Complainants,
 -vs-
 A. J. Cain, doing business under the
 assumed name and title of The Utilities
 Company,
 Defendant.

Case No. 4760

Albert G. Evans, for Complainants...
 Douglas Brookman, for Defendant..

BY THE COMMISSION:

O P I N I O N

Mr. Wm. C. Morehead and Mr. L. R. Knutte, residing in a district known as Indian Valley, near Novato, Marin County, ask the Commission to direct Mr. A. J. Cain, operating under the fictitious firm name and style of The Utilities Company, to extend his water mains approximately two miles to furnish water service to their premises and also to the properties of twenty-two other residents in the Indian Valley section.

A public hearing in this proceeding was held before Examiner Wm. Stava at Novato.

In this complaint, signed only by Wm. C. Morehead and L. R. Knutte, it is alleged that twenty-three listed individuals residing within the service area of The Utilities Company have been refused water service by said company. Request therefore is made that the Railroad Commission order said company to extend service and to provide a total of twenty-five service connections within said service area locally known as Indian Valley. It is further alleged that heretofore the

Commission was notified informally that there had been deposited by said individuals the sum of \$6,199.65 in the Novato Bank subject to the order of The Utilities Company as the petitioners' contribution to the extension, the total estimated cost of which is claimed to be \$10,212. Defendant, A. J. Cain, it is charged, although possessed of ample water resources, has refused and still refuses to install the main extension.

The answer of defendant, as amended, in part enters a general denial upon information and belief, and further denies that the complainants, or any of them, are located within the service area of The Utilities Company and denies that the company has sufficient water resources wherewith to supply the lands referred to in said complaint. In defense it is alleged that the service area of the public utility water system, owned and operated by defendant, is published in his rules and regulations as being in the "City of Novato and the territory immediately contiguous thereto," and that said service area does not extend beyond one mile from the central section of Novato. It is also alleged that the cost of constructing the extension would exceed the sum of \$10,212 and that defendant has never been presented by anyone with an estimate of the cost of the extension to serve complainants. Defendant claims that he has no assurance or guarantee from the complainants that all or any of them would use any water whatsoever or that they would pay a sufficient revenue to compensate him for the construction and operation of said extension, and that in addition thereto the public utility water system is presently being operated at a loss. Defendant therefore prays that the Railroad Commission dismiss the complaint.

Counsel for defendant objected to the complaint as filed as being defective upon the ground that only two of the parties mentioned, Wm. C. Morehead and L. R. Knutte, had actually signed the complaint and that verification was made by Wm. C. Morehead only. From the record it appears that twenty-three parties named in the complaint were signers of a petition, filed informally with the Commission prior to filing this complaint, requesting service extension to their respective properties. Sixteen of the parties named in the complaint were present

at the hearing, seven were called as witnesses to testify during the proceeding. While the complaint undoubtedly is defective to the extent that it does not comply with Rule No. 10 of the Rules of Procedure of the Railroad Commission, nevertheless the testimony of those informal petitioners called as witnesses indicates conclusively their joint and collective interests in this matter and their mutual desire to have water service from the same extension. Under these circumstances it would unnecessarily delay proceedings and serve no useful purpose to dismiss this complaint solely upon this ground of objection and require the refiling of a new formal case.

The district known as Indian Valley is located two and one-half miles westerly of the business section of Novato. The present residents therein mainly are engaged in raising poultry, live stock and fruit; however, there is a gradual occupational transition to country estates and summer homes largely by non-residents whose principal places of business are in the San Francisco Bay Area. Removal of building restrictions and the availability of construction materials and supplies will permit a considerable increase in this type of development. The formal and informal petitioners for service own a total of 260 acres of land in Indian Valley, individual parcels varying from two to eighty-five acres. At present water is obtained by pumping from individual shallow wells. The underground formation throughout this territory bears very little water, the supply is limited to seepage along bedrock collected by dug well pits and is insufficient to meet present demands. The quality of the water is questionable, being subject to surface pollution and contamination. During the months of August to and including November, the underground water yield decreases rapidly, replenished only by winter rains. In other months the wells usually provide sufficient water for general use.

The evidence shows that most of the complainants desire to use water only for domestic and household purposes, relying upon wells for irrigation use during most of the year. In general, the poultry raisers maintain from 1,000 to 8,000 chickens and some large flocks of turkeys which require an outside water supply during the summer months. However, no definite evidence was presented

indicating the quantities of water which the various individuals would take from the proposed service extension during the year, with the exception, perhaps, of one turkey raiser who hauls some 1,500 gallons of water daily throughout the summer.

The request for this service extension was made first to the Railroad Commission through the filing of an informal complaint, rather than following the customary procedure of presenting the demand initially to the utility. Thereafter negotiations by informal methods failed and as a result the present formal complaint was filed. The petitioners, acting independently upon their interpretation of the company's rules and regulations, raised and subscribed the sum of \$6,410 of which \$6,199.65 has been placed in escrow for the purposes of paying their proposed share of the main extension. These petitioners obtained a bid of \$10,212.15 from the Pacific Pipe Company for the construction of 9,500 feet of 4-inch pipe from the end of the company's existing main on Canyon Road. The difference between the amount in escrow and the bid was assumed by the petitioners to be paid by The Utilities Company upon the basis of the cost of 150 feet of pipe for each of the twenty-five service connections. A contract covering this method of installation at the cost estimated, together with provisions for certain rights of way and refunding, was prepared by complainants. This agreement provided for the petitioners to take water for a period of three years and for refunds to consumers by the utility during a ten-year period, or until the deposit be satisfied, of 60% of the monthly water bills of each water user on the new main extension. Apparently these negotiations were conducted and the agreement prepared without the knowledge or consent of the utility. Mr. Cain has refused to sign the agreement or make the extension.

Some years ago, the defendant entered into an agreement with certain land owners and residents located along Canyon Road, providing for the extension of water service into this area. The project included the installation of a booster pump and erection of a 26,000-gallon reservoir. This agreement was not in strict accord with the company's rules and regulations on file with the Commission governing the

extension of mains. It provided for refund to the consumers upon the basis of 60% of the gross revenue received from this extension. In this connection, the evidence shows that the fourteen Canyon Road consumers advanced approximately \$6,900 for the project but that the actual cost thereof was \$10,850, considerably exceeding the original estimated cost. Mr. Cain paid the difference amounting to \$3,950, which also included the cost of 150 feet of water main per consumer.

In 1934 this utility completed an extension to serve Black Point, a community located a little less than four miles east of Novato. The original estimated cost of this extension was \$5,333. The actual cost, however, was \$8,600, of which \$3,513 was advanced by the consumers and certain interested organizations. Mr. Cain testified that neither of these extensions has ever been compensatory.

During the hearing held in Application No. 16306, in the matter of The Utilities Company of Novato for the establishment of rates, a petition was submitted by a committee representing the residents of Black Point asking that the said company be permitted to extend service to that community. The company being agreeable thereto, a special rate was established for this extension if and when installed. That the Commission was well aware of the speculative nature of this venture and was not convinced that it was a prudent investment from the standpoint of financial return, is well illustrated from the following extracts from the decision therein. (Decision 22497, dated June 3, 1930. 34 CRC. 731)..(1).

"There is no objection to the extension of applicant's system to serve the Black Point region provided the utility definitely understands that the rates which will be established in the following order are not designed to provide a full return upon the additional investment which will be required to render this new service. Obviously, it would be improper to place upon the shoulders of the regular consumers in and near Novato the additional costs required to render service to Black Point consumers, which service has not been demonstrated to be fully compensatory at this time."

"The consumers present stated that they were not opposed to a reasonable increase in the charges for water service provided they were not assessed with the burden of serving water to Black Point consumers. As indicated above, no such additional charges will be placed upon the regular consumers. Under the circumstances, it appears that applicant should be granted a readjustment in the present schedule of rates. As the service to be rendered to the consumers in Black Point will be more in the nature of a special class of service, a separate schedule of rates will be established therefor."

(1): See also Decision 28259, dated October 7, 1935.. Not printed..

The record in this proceeding shows that The Utilities Company at the end of 1944 had a fixed capital investment of \$73,521. For the year 1944, the total gross revenues amounted to \$11,089; operating expenses, \$10,998; resulting in net revenues of \$91.

The plan proposed by complainants contemplates a connection to the end of the present 4-inch Canyon Road pipe line, at a point approximately two and one-half miles from the City of Novato, and an extension therefrom of some 9,500 feet, more or less, of 4-inch main, terminating at the property of complainant Wm. C. Morehead, making a total distance of about four miles along the pipe line installed and as proposed from Novato. By reason of the hilly nature of the terrain, this long extension presents a considerable pumping and storage problem. Costs of providing necessary booster pumping equipment, line and terminal storage facilities were not included in the complainants' estimate.

Complainants contend that not only are their lands within defendant's service area but that by reason of the above two extensions heretofore made, the company's refusal in this instance to service them constitutes an unfair discrimination. It is true that this utility's service area is somewhat indefinite. The exact boundaries thereof have never been established by this Commission. It is furthermore equally true from the record herein that this water works very obviously was designed originally to supply the small town of Novato and never contemplated the dedication of its service to the general rural territory surrounding Novato. The two extensions already made were not ordered by this Commission and in view of their financial performance it is extremely doubtful that such an order would have issued from this Commission on formal hearing over serious objection by the utility. Based upon the experience in the two preceding ventures, the reluctance of defendant to risk a third and similar speculative project, while presenting to petitioners certain aspects of discrimination, can in no legal sense of the word be construed as amounting to an unfair discrimination. In the light of the record in this proceeding, which clearly shows that the territory in which complainants have property is not within defendant's service area and further fails

to show any reasonable prospect of the proposed extension being compensatory either now or within a reasonable period of time in the near future, the conclusion is unescapable that the Commission is not warranted at this time to order the extension of water service to complainants in Indian Valley.

A possible solution to this water problem already has been proposed, during the course of the hearing held herein. Complainants with their present organization and funds may make the necessary arrangements to install their own system and can receive water to the extent available through a master meter at the end of the existing Canyon Road pipe line and very probably could arrange with the defendant for its operation and maintenance and the acquisition thereof should future conditions prove its economic feasibility,

ORDER

Complaint having been filed with the Railroad Commission as entitled above, a public hearing having been held thereon, the matter having been duly submitted, and the Commission now being fully informed in the premises, now, therefore,

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

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

Dated at San Francisco, California, this 9th day of October; 1945.

[Signature]

[Signature]

[Signature]

[Signature]

Commissioners.