JA

Decision No. 43824

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALFRED E. STARR AND MARY K. STARR, REVEREND CECIL ANN BECK, W. L. POLLARD, W. L. BRAZELL, DALE KILER, J. E. THOMPSON AND MATTIE R. THOMPSON, Complainants, vs. MECCA WATER & DEVELOPMENT COMPANY, a corporation, and DR. C. S. JOHNSON, Defendants.	Case No. 5157

Dale Kiler, in propia persona, and for complainants; Phillips, Bonpane & Leighton by L. H. Phillips for defendants.

O P I N I O N

Complainants, Alfred E. Starr and Mary K. Starr, Reverend Cecil Ann Beck, W. L. Pollard, W. L. Brazell, Dale Kiler, J. E. Thompson and Mattie R. Thompson, each for himself, ask the Commission to issue an order directing Mecca Water & Development Company, owned and operated under a fictitious name by Dr. C. S. Johnson, to deliver water to them in accordance with Rule and Regulation No. 19, subsection (a), General Extensions, of said company's rules and regulations.

A public hearing was held in Mecca, before Examiner Warner, on January 12, 1950.

Complainants are owners of portions of the southwest quarter of the southeast quarter of Section 8, Township 7 South, Range 9 East, SBB & M, Riverside County. Such portions are more particularly shown on the map filed as Exhibit No. 2. The portions lie north of an easterly extension of Third Street, commencing at a point 149.2 feet

east of Kiler Road, and extend to Home Avenue, all just outside the easterly limits of the townsite of Mecca, California.

Complainants allege in the complaint filed October 25, 1949, that they, as owners of the above-noted certain properties, were refused water service by defendant; that upon application to the company for service, defendant refused to make the necessary water service extensions to their properties; and that, pursuant to a Commission letter dated August 4, 1949, in settlement of Informal Complaint No. I. C. 21002, defendant was advised that water service should be rendered under its Rule and Regulation No. 19, subsection (a), which covers general extensions and provides that the first 100 feet of water main for each new consumer be installed by the company at its own expense.1/

The question in issue is which of the two subsections of Rule and Regulation No. 19, (a), or (b) which applies to main extensions into subdivisions, should apply in the circumstances; and, as a result thereof, whether defendant should be required to extend its mains at its cost or whether this complaint should be dismissed.

The evidence indicates, and Kiler testified, that in March, 1947, a lot was sold by him, under contract, to Thompson, and in April, 1947, an adjoining lot was likewise sold by him to Beck, such lots being 50 by 145 feet in dimensions; in April, 1948, a lot 85 by 145 feet was sold by Kiler to Starr; in October, 1948, a lot 100 by 145 feet was sold by Kiler to Brazell. In 1948, a lot 50 by 145 feet adjoining the Thompson property to the east was sold by Kiler to a Mrs. Lloyd, but upon her inability to keep up payments, such money as she had paid was returned to her, and in the summer of 1949

1/ Copy of Rule and Regulation No. 19, Main Extensions, attached as Exhibit A.

this lot was sold by Kiler to Pollard. Each of these property transfers was effected under contract. Each contract provided for an initial down payment of $25 or $50, depending upon the size of lot, and each contract stipulated the amounts of monthly payments. The Thompson and Beck properties sold for $200 each; the Starr property for $400; the Brazell property for $800; and the Pollard property for $400.

In October, 1948, the contracts for the Thompson and Beck properties were sold to Starr by Kiler.

On March 30, 1949, a deed was issued to Starr by Kiler covering the properties contracted for by Thompson, Beck, Starr, and Pollard

On April 4, 1949, Starr issued a deed to Beck; on April 7, 1949, to Thompson; and on July 22, 1949, to Pollard.

Exhibits Nos. 8 and 9 show that easements were granted and recorded for the crossing of not only the northern boundaries of complainants' properties, but also the property of B. H. Tyler immediately adjacent, westerly thereto. The easements permitted the laying of gas, water, and sewer pipes, and the construction of electric and telephone lines. The granting and filing of such easements clears the way, in that regard, for the rendering of water service. They were granted March 19, 1949.

By Commission Decision No. 37847 in Application No. 26558, dated May 1, 1945, defendant was granted a certificate of public convenience and necessity to operate a water system within the boundaries of the townsite of Mecca. Also included within the certificated area were the 80 acres immediately adjoining the townsite of Mecca, to the east, which comprise the west half of the southeast quarter of Section 8, Township 7 South, Range 9 East. There is no qualification in the Commission decision which restricts the extent of the service area within the 80 acres. Had the defendant desired such qualification or indicated lack of comprehension of the meaning of the

Commission decision as shown by Paragraph 2 of its answer to this complaint, such desires or indications should have been made ~~other than at this hearing~~. when suit was filed.

The financial position of the defendants as purportedly shown by Exhibit No. 21 is not clearly related in the evidence to the effect of either of the two possible interpretations of Rule and Regulation No. 19. However, the record does show that the area proposed to be served is unproven economically. The record is not clear about future consumer growth or consumer consumption.

The record shows that three of the prospective customers, Beck, Lloyd, and Brazell, in April, 1949, agreed to share the cost of the installation of water to their properties, but that such agreement was prevented from going into effect by Kiler through an arrangement with Starr, across whose property pipes would have had to be laid. Kiler testified that the reason he prevented the installation of water service was that he had not been included in the agreement and that, therefore, he would be without water.

A certified check for $1,000, dated March 28, 1949, was introduced by Witness Kiler as Exhibit No. 10. He testified that he had offered the check to defendant as a deposit for the estimated cost of extension to all properties in question. Kiler stated, however, that upon reading the contract proposed by defendant, it appeared to him that he would be obligated to pay the cost of all future extensions throughout his property in the entire 80-acre plot, and he refused to sign the contract.

The extension rules which defendant has on file were designed primarily to protect the interests of the utility's consumers, both present and prospective. If the utility were subject to the requirement to extend its facilities to new consumers without any limitation, where the revenue to be derived was insufficient to carry the new

investment, the added financial burden would fall upon the existing consumers. After a careful review of the record, we are of the opinion that the defendant is obligated to serve the area in question as a part of its certificated service area, but must do so in a manner that will protect the interests of all its consumers. While there are circumstances of a similar nature in which the utility could be ordered to extend service to consumers within a new residential development under Section A of Rule and Regulation No. 19, as recommended by the staff's informal letter, the circumstances, here of record, are not pursuasive that this is such a case.

We believe that extension of defendant's water system into the territory in which complainants reside properly falls within the meaning and intent of Section B of Rule and Regulation No. 19, and that the estimated cost of installing the facilities should be deposited in advance with defendant. In accordance with the provisions of the rule, the deposit should be adjusted to actual costs upon completion of the installation and should be subject to refund for a period of ten years from the completion of the extension at the rate of 35% of the gross revenues obtained from services connected to that extension. It is further evident that future extensions to serve other consumers within the same area must be made under the same provisions, and that by accepting the initial deposit to serve this restricted portion of the area, defendant is in no way obligated to extend its facilities into other parts of the area without being afforded adequate protection for its other consumers.

Complainant Kiler indicated a willingness to make such a deposit. As the owner of the majority of the property to be benefited, complainant Kiler is at liberty to enter into the agreement for the construction of the facilities by making the appropriate deposit to cover the entire project, in which case he would become eligible to

receive the refunds resulting from service rendered therefrom; likewise the several applicants, jointly, can enter into the agreement by putting up such portions of the deposits as they may mutually agree upon and setting up provisions for the repayment of such refunds as may accrue. A third alternative, of course, is for complainants jointly to construct facilities to a point of connection on defendant's existing system, a solution which was unsuccessfully attempted by some of the parties.

ORDER

Complaint as entitled above having been filed with this Commission, a public hearing having been held thereon, and the Commission having been fully advised in the premises, and it basing this order upon the facts herein and the evidence of record,

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

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

Dated at San Francisco, California, this 14th day of February, 1950.

R. T. [signature]
Justus F. Craemer
[signature]
Harold P. Hule
Kenneth Potter
Commissioners.

C-5157
DH

Rule and Regulation No. 19

MAIN EXTENSIONS

A. General Extensions:

The company will extend its water distribution mains to new customers at its own expense when the required total length of main extension from the existing facilities is not in excess of 100 feet per service connection. If the total length of main extension is in excess of 100 feet per service, the applicant or applicants for such service shall be required to advance that portion of the reasonable estimated cost of such extension over and above the estimated cost of the said 100 feet of main per service; provided, however, that in no case will the above estimate be based upon a main in excess of four (4) inches in diameter. The money so advanced will be refunded, without interest, upon the basis of the cost of 100 feet of main for each additional service connected, within a period of ten years, to the extension for which deposit has been made, but in no case shall the total refund exceed the original deposit. Adjustment of any substantial difference between the estimated and the reasonable actual cost will be made after completion of the installation. No deposit will be required from an applicant requesting service from a main extension already in place.

B. Extensions to Serve Tracts or Subdivisions:

Applicants for main extensions to serve subdivision, tracts, and housing projects shall be required to deposit with the Company before construction is commenced the estimated reasonable costs of the necessary facilities exclusive of service connections and meters. The size, type, and quality of materials and location of the lines shall be specified by the Company and the actual construction will be done by the Company or by a contractor acceptable to it. In case of disagreement over size, type, and location of the pipe lines and the constructing medium the matter may be referred to the California Public Utilities Commission for settlement. Adjustment of any substantial differences between the estimated and reasonable actual cost thereof shall be made after the completion of the installation, subject to review by the Commission.

For a period not exceeding ten years from the date of completion of the main extension, the Company will refund to the depositer, or other party entitled thereto, annually, 35% of the gross revenues collected from consumer or consumers occupying the property to which the said extension has been made; provided, however, that the total payments thus made by the Company shall not exceed the amount of the original deposit without interest.