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ORIGINAL

Decision No. 53145

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROLAND C. PIERCE, Complainant, vs. POMONA VALLEY WATER COMPANY, a corporation, and PAUL GREENING, Defendants.	)	Case No. 5550

Gordon, Knapp & Gill, by Hugh Gordon, for complainant and petitioner.
Harold E. Prudhon, for defendants and respondents.

OPINION ON REHEARING

Roland C. Pierce, alleging ten specifications of error, has challenged Decision No. 50891, issued herein on December 21, 1954, which dismissed his complaint against Pomona Valley Water Company and its president and sole stockholder Paul Greening. We granted rehearing (limited to oral argument), which was held at Los Angeles on August 25, 1955, before Examiner John M. Gregory.

The record upon which Pierce seeks reversal of our decision includes, by reference, pursuant to a stipulation made at the original hearing, some fifteen prior proceedings before the Commission relating to the water company and its predecessors going back to 1945, when the system was first declared to be a public utility and ordered to file rates and improve service. (Babcock v. Don Lugo Corp., 45 CRC 699).[1]

[1] Proceedings incorporated in the record by reference are, in addition to Babcock v. Don Lugo Corp., the following: Don Lugo Corp., 46CRC864; Bell et al., 48 Cal. PUC 632; 49 Cal. PUC 778 and 835; Pomona Valley Water Co., 50 Cal. PUC 201; Bartlett, 50 Cal. PUC 287; 51 Cal. PUC 112, 550, 633 and 710; 52 Cal. PUC 401, 446 and 793; Pomona Valley Water Co., 53 Cal. PUC 509.

We have carefully reviewed the present record as well as portions of the incorporated records deemed by us to be pertinent to the issues to be decided here. Those issues stem from Pierce's demand that the company repair and render service through a water pipe line distribution system installed by him in 1947 in Tract No. 3193, near Los Serranos Village, San Bernardino County, and the company's refusal to accede to such demand.[2]

The Commission concluded from the evidence that Pierce was not entitled to relief because (a) certain oral commitments made by the company's predecessors to furnish water to Tract 3193 were never confirmed in writing, were at variance with the utility's rules then in force, and were never offered for approval to, or approved by, the Commission; (b) title to the water system in Tract 3193 and easements for its installation and repair never reposed in the company or its predecessors, nor were the fixed capital costs of the tract system ever entered in the company's books; (c) replacement and maintenance of the tract system by the company would not be in the public interest; (d) neither the company nor its predecessors held themselves out in writing, according to their authorized rules and regulations, to furnish public utility water service to Tract 3193, other than to Lot 27.

Pierce's original and supplemental petitions for rehearing, summarized, assert that the Commission's findings to the effect that the utility never accepted the water system installed by him, never

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[2] Consolidated for hearing and decision with Pierce's complaint was a complaint (Case No. 5551) filed by Robert S. Miller, owner of Lot 27 in Tract 3193, who sought relief from excessive charges for water passing through a meter relocated outside the tract by the company in 1953 but formerly located on Lot 27. Due to leaks in the pipe line in the tract, on his side of the relocated meter, he was charged for water that did not reach his premises. Decision No. 50891 granted relief to Miller and he has not sought rehearing.

held itself out to serve water to anyone in Tract 3193 except Richard S. Miller (the complainant in Case No. 5551), never acquired title to the Pierce installations or to easements in connection therewith, lack support in or are contrary to the evidence. Other findings, it is asserted, are irrelevant to the issues presented. Moreover, petitioner asserts, the Commission failed to find, in accordance with the uncontradicted evidence, that the water system constructed by him included, at the utility's request, a 6-inch main along Los Serranos Road instead of a 4-inch main, as he had originally proposed, with connections at both ends of the 6-inch main to the utility's then existing water system serving the area immediately adjacent to Tract 3193, in order that a circulating system could be provided which would permit improved service to both areas. Petitioner also asserts that certain findings are inconsistent with others relating to the same subject; that certain evidence is erroneously stated and that improper conclusions have been based thereon; that the decision fails to mention, either in the review of the evidence or in the findings, that Gordon Bell, a predecessor co-owner of the system, according to the uncontradicted evidence was in fact its manager and that his associates in fact confirmed his action in committing the utility to extend service to Tract 3193 through the system constructed by Pierce and donated by him to the utility.

Petitioner maintains that the Commission's action in dismissing his complaint has deprived him of his property without compensation and without due process of law, in violation of state and federal constitutional guarantees.

Re-examination of the facts of record, as to which there is no substantial disagreement, discloses that Pierce and his wife, by deed from Gordon Bell and his associates, dated January 22, 1947,

and pursuant to the terms of an escrow opened January 13, 1947, acquired a 35-acre parcel of land, including a water well limited to irrigation and to Pierce's domestic purposes, in San Bernardino County, adjacent to the golf club and waterworks then owned and operated by Bell and his associates. The escrow instructions relating to the transaction, signed by Pierce and Bell, contained the following provision:

> "You are instructed further that you are not to proceed to completion of this transaction until you are in receipt of written notice from the purchasers herein to the effect that the grantors herein have caused to be furnished said purchasers a statement from the Pomona Valley Resort Water Company to the effect that the said company will service the herein described premises or any portion thereof with water for both domestic and/or irrigation purposes under the rules and regulations of the Public Utilities Commission."

On January 22, 1947, coincident with the execution of the deed, Bell, on behalf of his associates and as general manager of the utility properties, addressed a letter to Mr. and Mrs. Pierce, in compliance with their escrow demand, quoted above, for assurance of water service to the 35-acre parcel of land, which letter the Pierces accepted, in writing, as complying with such demand. The pertinent part of the letter follows:

> "This is to assure you that the property is located within the area served and authorized to be served by the Pomona Valley Resort Co. (Water Dept.), as a public utility under the jurisdiction of the California Railroad Commission and that upon application being made by you or your successors in interest for water service for domestic water or water for irrigation purposes to any owner or any separate lot or portion or all the property, the Pomona Valley Resort Co. (Water Dept.) as a public utility will render such service at its published rates and charges and subject to its rules and regulations filed with the Railroad Commission."

Thereafter, Pierce completed and filed with the Division of Real Estate the form required for subdivisions and also proceeded to record a subdivision plat of Tract 3193 showing public streets and easements for public utility uses.

In a series of conferences between Bell, Pierce and others interested in the transaction, extending into the late summer of 1947, the parties discussed details of the installation and methods of financing and refunding the cost thereof. The evidence shows that an oral agreement was concluded in August between Bell, acting as general manager of the utility, and Pierce for installation of the system by a contractor recommended by Bell. The system was to include, at Bell's insistence, a 6-inch main along Los Serranos Road in order to make it fully circulating with existing facilities serving adjoining Tract 2576. Also, at Bell's suggestion, it was agreed that connections to individual lots would be made at the time of installation of the mains, to avoid having to tear up the streets at a later date.

Early in September, 1947, although the matter had been discussed at previous meetings, Bell and Pierce agreed, following inquiries by Bell to the Commission, that refunds of the costs advanced by Pierce would be made on the basis of one-third of the gross receipts from water served to the subdivision over a period not to exceed 10 years.[3]

The evidence shows that the installation was completed, accepted by Bell on behalf of the utility and connected to the existing water system about the first part of September, 1947, but prior to the final arrangements between Pierce and Bell concerning the method of refund of the costs of the installation. Bell's uncontradicted testimony also shows that he kept his associates

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3 The company's subdivision main extension rule, in effect during 1947 (Rule 19), provided for refunds on the basis that the cost of each 150 feet of main in the subdivision bore to the total amount of the advance, over a period not to exceed 10 years. The arrangements concluded between Bell and Pierce do not appear to have been based on the rule as it then existed, but, instead, constituted a deviation therefrom, requiring prior Commission approval, pursuant to Chapter X of General Order No. 96, which was neither sought nor secured. Neither Bell nor Pierce appeared to be too familiar with the extension rule.

advised at all times of the progress of the Pierce transaction and that they approved his actions, including his acceptance of the installations in Tract 3193 and their connection with the rest of the system.

On January 12, 1948, the Division of Real Estate, acting in accordance with Section 11018, Division 4 of the Business and Professions Code of California, issued to Pierce its inspection report for the information of the public concerning Tract 3193. The report, which is in evidence states, with reference to water utilities, that -

> "Water will be furnished to this subdivision by the Pomona Valley Resort Water Co., a public utility, operating under the supervision of the Public Utilities Commission of the State of California."

On April 14, 1948, the Bell group agreed to sell the combined water system and country club properties to Kenneth A. Rogers and Winnie Mae Rogers, his wife, for $150,000. Although the transfer as regards the water system was not submitted to or approved by the Commission, the agreement executed by the parties contained the following reference to the Pierce transaction (Exhibit 11, Application No. 29767; see 49 Cal. PUC 778, at p. 782), and to the utility's letter to Pierce, dated January 22, 1947, to which reference has been made above:

> "4. The parties of the first part" /the Bell group/ "represent that as the Pomona Valley Resort Water Company, they have installed facilities for furnishing water to a subdivision owned by Roland Pierce and Alice Pierce, husband and wife, and the parties of the second part" /the Kenneth Rogers/ "shall and do hereby expressly agree to assume and perform any and all duties, liabilities and obligations in connection with the furnishing of water to said subdivision as required by the Public Utilities Commission and which is evidenced by letter dated January 22, 1947, attached hereto marked Exhibit "C" and made a part hereof, and shall and do hereby agree to hold first parties harmless from any and all future liability or damages resulting therefrom."

In 1950 and 1951, as the result of a series of intricate transactions, including Commission and court litigation, involving Kenneth and Winnie Mae Rogers, Melville (Kenneth's brother) and Consuelo Rogers, and Clara Blum Bartlett, a single woman, operation and, eventually, ownership of the water system and country club devolved upon Clara Blum Bartlett, who, with Kenneth and Winnie Mae Rogers, had advanced the money with which to purchase the properties from the Bell group in 1948. (See Bell et al., 49 Cal. PUC 778, and Bartlett v. Rogers 103 C.A. 2d 250 - hearing denied by California Supreme Court, May 28, 1951 - for details of these transactions.)

In the Commission proceeding (49 Cal. PUC 778), Miss Bartlett, after having been placed in charge of the utility properties (which were then badly in need of rehabilitation), was directed not to furnish water to any new or additional customers pending further order of the Commission. The evidence shows that in 1950, following imposition of the service restriction, Miss Bartlett refused Pierce's request to make additional water connections in Tract 3193, although she did not otherwise refuse to serve water to the tract. In fact, service was then being rendered to Richard S. Miller, the complainant in Case No. 5551, who, in 1949, had built a home on Lot 27 which he had purchased from Pierce.[4] The service restriction was finally lifted in April, 1952 (51 Cal. PUC 633).

Paul Greening, who acquired ownership of the stock of Pomona Valley Water Company from Clara Blum Bartlett in 1953,[5] testified that, although he knew that Miller was of record on the company's books as a consumer, he did not know of the existence of

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4 See footnote 2, supra.

5 Miss Bartlett, in 1952, had organized a California corporation to which she had transferred the utility properties in exchange for stock (51 Cal. PUC 550).

the distribution system in Tract 3193 until the fall of that year, when his workmen discovered it while laying pipe in Los Serranos Road during a rehabilitation program for the rest of the system. Greening, the record shows, refused Pierce's request to serve water to the tract, other than to Miller, on the ground that "the pipes were in bad condition and he didn't think it was up to him to fix them." (Tr. p. 100.) The record also shows that Greening spent in excess of $90,000 to repair and improve the water system after he acquired it from Miss Bartlett.

The main issue presented for determination here is whether the defendant company or its predecessors ever held themselves out to provide water service, as a public utility, to the general public in Tract 3193. If so, each member of the public in a position to avail himself of such service has the legal right to receive it, so long as it is continued, upon payment of proper rates and subject to proper rules and regulations maintained by the utility. Moreover, once the obligation to serve has been attached to public utility properties, it cannot be extinguished except in the manner provided by law, and it remains attached to the properties used and useful in such service in the hands of successive owners or operators.

The dedication of private property to public utility service, constituting, as it does, a direct limitation upon the prerogatives of private ownership, is not a frivolous matter and the fact of dedication will not be presumed. If, however, in a particular case the evidence clearly indicates that one owning or operating facilities normally found in the provision of a public service has, by open and unequivocal acts or admissions, manifested an intent to devote such facilities to the service of the general public, the fact of dedication may be found to exist.

Our review of the record in this proceeding, and viewing the evidence in a light most favorable to the defendant utility, has

led us to conclude, and we so find, that the water system owned and operated by Gordon Bell and his associates, including the distribution system installed by Pierce, was unequivocally dedicated by the Bell group, in 1947, to the service of the general public in Tract 3193.

We also find from the evidence that nothing has transpired since such dedication, with the exception of the service restriction imposed on Clara Blum Bartlett in 1950, since lifted, that would act to preclude any member of the general public in Tract 3193, including Pierce, from receiving water service upon presentation to the utility of a proper application.

The fact that no effective agreement appears to have been reached by Bell and Pierce on the subject of refunds, either because of a misunderstanding concerning the provisions of the utility's then existing main extension rule, or because their purported agreement constituted a deviation from the rule without prior Commission sanction, cannot operate to prejudice the legal right of members of the public to water service, which right accrued upon the integration of the Pierce installations with the general system.

Nor can the acts or omissions, related earlier, of the successive owners or operators of this system among themselves, with Pierce, or with the Commission, be considered as a bar to the paramount right to service enjoyed by such prospective customers. The law administered by the Commission and the courts in the regulation of public utilities is sufficiently comprehensive, in our opinion, to provide remedies for unauthorized or unwarranted action by owners or operators of such properties without interfering with rights of the general public, the members of which are normally not aware of and certainly are not responsible for the internal problems of the company whose service they expect to receive and pay for.

We recognize, and the evidence to that effect is uncontradicted, that the water pipe lines and facilities in Tract 3193 are in need of rehabilitation. It would be inequitable, in our opinion, to require the expenditure of substantial sums for needed repairs or replacements to that portion of the system, so long allowed to lie idle, without affording the company financial relief, if such be required, although we observe that, by failing to provide adequately for refund of the amounts advanced by Pierce, in 1947, the company and its predecessors have, in effect, been the recipients of donated property with respect to the facilities installed in Tract 3193. Certain preliminary steps, however, designed to acquaint the Commission and the company with the nature and extent of the rehabilitation problem in Tract 3193, should at once be undertaken by the company and reported to the Commission. The order to follow will so provide.

In view of the findings and conclusions we have reached upon reconsideration of the record herein, it follows that Decision No. 50891, issued herein on December 21, 1954, should be vacated and set aside as to those portions, only, of said decision and order which relate to dismissal of the complaint of Roland C. Pierce against the Pomona Valley Water Company, a corporation. With respect to other matters therein ordered, said Decision No. 50891 should be reaffirmed.

O R D E R

Rehearing, limited to oral argument, having been held herein, the matter having been submitted for decision upon the record, including the arguments advanced by the parties at said rehearing, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that:

1. Decision No. 50891, issued herein on December 21, 1954, be and it hereby is vacated and set aside with respect to the dismissal,

therein ordered, of the complaint of Roland C. Pierce against defendant Pomona Valley Water Company, a corporation. Except as herein set aside, said decision and order, in all other respects, shall be and remain in full force and effect.

2. Pomona Valley Water Company, a corporation, is directed, within sixty days from the effective date of this order, to revise its tariff schedules on file with this Commission, including tariff service area maps and other pertinent tariff data, in a manner satisfactory to the Commission, so as to include within said company's area of service Tract 3193, in San Bernardino County, California.

3. Pomona Valley Water Company, a corporation, is directed, within sixty days from the effective date of this order, to submit to the Commission, in writing, plans and specifications, including itemized estimates of cost, for rehabilitation of water distribution facilities in Tract 3193 and connection thereof with the company's general water system, so designed as to provide adequate water service to all portions of said tract.

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

Dated at San Francisco, California, this 28th day of May, 1956.

President

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.