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Decision No. 53348 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BERKELEY SAVINGS AND LOAN ASSOCIATION, a corporation, W. L. NETHERBY and CLARA NETHERBY, Complainants, vs. CALIFORNIA WATER SERVICE COMPANY, a corporation, Defendant.	)	Case No. 5716

John A. Nejedly, for complainants.
McCutchen, Thomas, Matthew, Griffiths & Greene, by A. Crawford Greene, Jr., for defendant.
George F. Tinkler, for the Commission's staff.

O P I N I O N

Defendant rejected complainants' application, initiated in April, 1955, and supplemented in October of that year, for water service from defendant's 4-inch cast iron main in Tice Valley Road, near Alamo, to their adjacent subdivision, known as Tract 2304, situated on Tice Valley Road within defendant's Contra Costa service district. Defendant, as a condition of service, demanded that complainants advance $24,365 as the estimated cost of installing a 6-inch main in Tice Valley Road and within the tract, together with 4 fire hydrants and 31 service connections, subject to refund, however, under defendant's subdivision main extension rule. Defendant, desirous of having installed an 8-inch, rather than a 6-inch main for a distance of 3,020 feet in Tice Valley Road, to connect with the present terminus of its 8-inch transmission main at the intersection of Crest Avenue and

Leilani Lane, east of Tract 2304, offered to contribute the difference in cost between an 8-inch and 6-inch main 3,020 feet in length at a unit cost of $1.05 per foot, or a total of $3,174.

Complainants, who are developing their building project under price limitations imposed by the Veterans Administration, were unwilling to advance the requested sum. In their complaint, filed January 25, 1956, they alleged that adequate service can be provided for the tract through the 4-inch main and that defendant's rejection of their application was unreasonable and arbitrary. They also allege that it is an obligation of the utility, not the subdivider, to provide enlarged facilities required for its existing and potential customers within its dedicated service area.

Defendant, by its answer, asserts that its 4-inch mains in the area in question were originally installed and later extended to serve individual acreages, and were not intended to supply demands created by subdivision developments. The existing 4-inch main in Tice Valley Road, defendant alleges, cannot provide adequate service for both Tract 2304 and defendant's customers now receiving service through that and other 4-inch pipe lines in the vicinity.

Evidence in support of the respective allegations of the parties was received at a public hearing held March 19, 1956, at San Francisco before Examiner John M. Gregory.

The record discloses that when complainant Netherby communicated his proposed subdivision development to defendant's officials in Concord, in April, 1955, he was informed, without qualification, that defendant would provide water service to the tract. He thereupon recorded a plat of the subdivision, proceeded with financial arrangements and construction and finally, in October, approached defendant for an estimate of the cost of installation of water facilities, with the results mentioned above.

Complainants' tract is one of a number of real-estate holdings in the area south of Walnut Creek which are included in the district served by defendant's so-called "San Ramon Valley extension", construction of which was authorized in 1931 (Calif. Water Ser. Co., 36 CRC 452).

The 4-inch main, a portion of which lies in Tice Valley Road, was installed by defendant in a series of extensions, commencing in 1937, to serve individual customers owning sizeable parcels of land. By 1954, approximately 100 such customers were being served from those mains and there are, additionally, about 111 potential homesites in undeveloped holdings in the immediate vicinity which are accessible to defendant's existing facilities. In February, 1956, defendant, in a letter to the Walnut Creek School District, offered to provide a proposed school on Tice Valley Road with a metered service connection to its 4-inch main in the vicinity of Tice Valley Road and Monticello Drive, a short distance west of Tract 2304. The school may eventually have as many as 800 or more pupils.

Complainants' evidence, developed largely through a qualified engineer with extensive hydraulic experience, tended to show that adequate water service could be provided for the 31 homes in the tract and an estimated 120 existing and potential consumers along Tice Valley Road, by means of a 4-inch looped distribution system within the subdivision, with two connections to defendant's existing main in Tice Valley Road. He suggested, however, that it would be better if a 25,000-gallon storage tank could be installed at a higher elevation immediately south of the tract and connected to the system, in order to provide for peak service demands by users within the tract as well as other consumers attached to defendant's 4-inch main. He estimated the cost of such storage facilities at about $5,000.

Defendant's position, developed through testimony of its manager of new business, who is a licensed civil and chemical engineer, was substantially to the effect that good waterworks' practice indicated the need for 6-inch mains in the tract and enlargement of the main in Tice Valley Road, as shown by its preliminary cost estimates, in order to provide adequate service, including fire protection, to the tract and to its existing consumers.

The company took the position that its nearest main of a size adequate to serve the subdivision was the 8-inch main terminating at Crest Avenue and Leilani Lane. In offering to install an 8-inch connection in Tice Valley Road at its own expense, while charging complainants for only a 6-inch main, the company, in reality, according to this witness, was giving complainants an opportunity to participate in future development of the area through installation of the larger facilities.

With regard to the company's expressed willingness to serve the proposed school of the Walnut Creek School District by means of a metered connection from its existing 4-inch main, the witness stated that peak demands of the school and its other consumers on that main, as well as of consumers in Tract 2304, would not occur at the same times of day and would not create a problem during vacation periods or at other times when the school might be closed.

The foregoing recital constitutes, in our opinion, the essential factual background upon which a decision in this case may be premised. The basic issue, raised by the pleadings and framed by the opposing contentions of the parties at the hearing, is whether defendant's action, in refusing to provide water service except under the conditions set forth in its preliminary cost

estimate and pursuant to its filed rules, was unreasonable and arbitrary and was a violation of any legal right possessed by complainants which this Commission has power to redress.

Defendant's subdivision main extension rule (Rule and Regulation No. 15) provides, in part, that:

> "An applicant for a main extension to serve a new subdivision, tract, housing project, industrial development or organized service district shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of the mains, from the nearest existing main at least equal in size to the main required to serve such development, including necessary service stubs or service pipelines, fittings, gates and housings therefor, and including fire hydrants when requested by the applicant or required by public authority, exclusive of meters. If additional facilities are required specifically to provide pressure or storage exclusively for the service requested the cost of such facilities may be included in the advance upon approval of the Commission."

The costs advanced by the applicant for service are subject to refund under other provisions of the rule.

It will be noted that, unless additional facilities are required "specifically to provide pressure or storage exclusively for the service requested", the rule requires that the advance cover only the cost of the mains and related fittings "from the nearest existing main at least equal in size to the main required to serve such development."

Viewing the evidence in the light of the foregoing provisions of defendant's main extension rule, it cannot be said that the position of either party to this controversy is unassailable. Certainly, when complainant Netherby was assured by defendant's local office, even without qualification, that water service was "available", and thereafter proceeded with his investment and development without, so far as the record shows, pursuing his inquiry further until six months later to ascertain what would be

the conditions of such service, he cannot be said to have acted with that degree of prudence for his own concerns that might normally be expected in one making such a substantial investment. As a subdivider dealing with a regulated water utility, whose rates, rules and regulations are filed with this Commission and are open to inspection by the public at its various offices, he should have known that the company would not be likely to commit itself, in an informal telephone conversation, to an extension of service of such proportions without an investigation to determine what facilities might be required and their estimated cost, and then only in accordance with the provisions of the rules which both the utility and those dealing with it are required to observe. Nor is the position of the company tenable when it asks that a subdivider be required to provide the cost of facilities deemed by the company to be necessary or desirable to serve existing or potential system demands in addition to those created by the specific tract involved here. The rule does not require an advance larger than that necessary to provide the cost of mains "from the nearest existing main at least equal in size to the main required to serve such development". In the application of the rule it necessarily becomes a matter for expert judgment by the parties themselves, in the first instance, to determine what facilities may be required, or, if they cannot agree, they may submit the controversy to the Commission for settlement as they have done here.

In our view of the record, it cannot be said that without the provision of additional storage facilities for service to Tract 2304, the already somewhat burdened 4-inch pipe line in Tice Valley Road would be adequate for service to the tract and to the company's present consumers served from that line. Neither complainants nor defendant, however, have indicated a willingness to entertain a proposal for such an installation.

Under the circumstances, we do not feel disposed to direct the company to extend its service to Tract 2304 in the manner requested by complainants. Nor do we consider that the company's proposal, as presented to complainants in December, 1955, in its preliminary cost estimate, is reasonable, especially in view of defendant's frank statement at the hearing that by proposing to enlarge the main in Tice Valley Road to 8-inch pipe it was thereby giving defendant an opportunity to participate in the future development of the area. Defendant's extension rule does not support the position it has taken here.

It would seem to be desirable if the parties might conclude arrangements whereby the subdivider would provide pipe and appurtenances of adequate size to serve the subdivision without the necessity of additional storage facilities in the tract.

We are of the opinion that a 4-inch main would be adequate for residential water service within the proposed subdivision. Certainly, the proposed 31-lot subdivision would not create a greater burden on the extension than that which exists in rendering service to individual acreages on Castle Hill Ranch Road and adjacent areas.

However, we are also of the opinion that the existing 4-inch pipeline on Tice Valley Road is very near its capacity and that this utility would have difficulty in adequately serving the existing customers if an additional 31 homes are developed as proposed. Complainants have conceded this to be a fact by suggesting that some storage might be necessary to meet peak demands. If these 31 homes were being individually developed on some of the existing 111 homesites adjacent to the utility's mains in this general area, the utility would be solely responsible for the replacement or reinforcement of the mains rendered inadequate

through growth. The engineering witness for complainants suggested a 25,000-gallon tank and pipe line connections therefor at a cost of approximately $5,000 to meet the peak demands.

The same general conclusion as to amount can be reached if it is assumed that the cost of enlarging the 4-inch main to an 8-inch main should be shared on the basis of the estimate of the total number of additional customers such a main might be required to serve for the foreseeable immediate future. From this record it appears that a total of about 140 additional customers can be thus expected along the existing 4-inch main, including the 31 customers proposed in Tract No. 2304, or that about 20 to 25 per cent of the cost of replacing the existing 4-inch main could be attributed to the additional requirements of the customers of complainants' subdivision.

Complainants did not offer to include the estimated cost of storage in the advance, and defendant has relied solely on a strict application of its filed main extension rule. We are of the opinion that the circumstances involved in a main extension to serve this subdivision do not lend themselves to the application of Section C of defendant's filed main extension rule but are of the nature which come within the general provisions of Paragraph A5 of said rule which states as follows:

> "In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears impracticable or unjust to either party, the utility, applicant or applicants may refer the matter to the Public Utilities Commission for settlement."

It is, therefore, the responsibility of the Commission to settle the matter. We, therefore, conclude as follows:

1. The amount of the advance subject to refund as provided for in Paragraph C of defendant's filed main extension rule should be based upon no greater than 4-inch mains for complainants' subdivision.

2. In addition, complainants should be required to advance, subject to refund under the same terms as are required for mains, services and hydrants in the subdivision, a reasonable amount for "back-up facilities" outside of its subdivision.

3. The reasonable amount to be advanced for such "back-up facilities" is $5,000.

O R D E R

Public hearing having been held in the above-entitled and numbered proceeding, the matter having been submitted, the Commission now being fully advised and basing its order on the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED as follows:

1. That defendant, California Water Service Company, shall provide service to complainants' subdivision in accordance with Section C of its filed main extension rule, except that the amount of the advance for mains within the subdivision shall be based upon mains of a diameter no greater than 4 inches, and that, in addition, $5,000 shall be required to be advanced subject to refund under the same terms as are required for the mains, services and hydrants in the subdivision. Further, if complainants request larger mains for fire protection purposes, defendant may install 6-inch mains within portions of Tract No. 2304 and may include the additional amount of such cost therefor in the advance.

2. That defendant shall file with the Commission, within ten days after the main extension agreement has been executed, as provided for in Paragraph 1, two certified copies thereof together with a statement of the date on which the agreement is deemed to have become effective.

IT IS HEREBY FURTHER ORDERED that the complaint herein be dismissed, except to the extent that the relief herein requested has been granted by ordering paragraphs 1 and 2 above.

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

Dated at San Francisco, California, this 10th day of July, 1956.

President

Commissioners