

ORIGINAL

Decision No. 55990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

A. J. FIERI,)
)
 Complainant,)
)
 vs.)
)
 NARBONNE RANCH WATER COMPANY)
 NUMBER 2, a corporation,)
)
 Defendant.)

Case No. 5964

Robert C. Pannell, for complainant.

Robert E. Moore, Jr., for the defendant.

Donald Steger, for the Commission staff.

O P I N I O N

In his complaint herein, filed August 13, 1957, A. J. Fieri alleges that he is the owner of three described parcels of land; that defendant is the water service utility for an area which includes said parcels of land; that all of the parcels are being improved; that the distance from the improvements to the nearest existing water main of defendant in the case of each parcel is less than 65 feet; that the defendant allegedly will construct a new main sometime in the future but that the proposed route of said main will likewise be less than 65 feet from each parcel; that the existing main is of thin gauge, riveted steel construction and is adequate to serve complainant's needs; that the defendant utility has failed, refused and neglected to connect the said parcels with the existing main

despite demand for service; that by reason of lack of water service the property is uninhabitable; and that Rule 15 B1^{1/} of the Commission is applicable thereto. Complainant prays for an order requiring the defendant to furnish water service connections to complainant's three parcels.

On October 4, 1957, the defendant filed its answer to the said complaint. Therein, inter alia, it alleges on information and belief that the three parcels of land which complainant claims he owns are 3 of a total of 8 parcels of real property, the separate entity of each parcel of which was and is the result of, and was and is created by, the subdividing by complainant and others of the entire area more properly and particularly described as Lot No. 1 and the easterly 55 feet of Lot No. 2 of Tract No. 847, County of Los Angeles; denies that there is an existing water main either near to or within 65 feet of the parcels of land complainant claims to own; denies that a new main will be constructed near to or within 65 feet of said parcels unless and until the subdividers have complied with the provisions of Subdivision "C" of Rule and Regulation No. 15 of the Commission^{2/}; and denies that there is an existing main near to or within 65 feet of the parcels of real property described in the complaint.

A public hearing on the complaint was held in Los Angeles before Examiner Kent C. Rogers, and the matter was submitted after oral argument by the parties. It was stipulated that complainant's three lots are in defendant's service area.

1/ See Exhibit 2, page 17.

2/ See Exhibit 2, page 19.

The factual situation is rather complicated and requires some explanation. Exhibit No. 1 herein is a map giving a general picture, together with certain markings thereon which will be explained.

General Facts

The defendant is a public utility water company rendering service as such in a portion of the City of Torrance, Los Angeles County. Included in its service area is a group of 10 large lots comprising a portion of Tract No. 847 bounded by Pennsylvania Avenue on the west, 236th Street on the north, and 237th Street on the south. The lots are numbered from Lot No. 1 on the northeast corner of the tract. Lots Nos. 1, 2, 3, 4 and 5 are on 236th Street, with Lot No. 5 being on the southeast corner of Pennsylvania Avenue and 236th Street. Lots Nos. 6, 7, 8, 9 and 10 are on 237th Street, with Lot No. 6 being on the northeast corner of Pennsylvania Avenue and 237th Street. Lots Nos. 3, 4 and 5 each have one house thereon. Lot No. 6 is improved with four houses facing on Pennsylvania Avenue and two houses facing on 237th Street. Lots Nos. 7, 8 and 9 each have two houses thereon. Lot No. 10 has one house, and Lot no. 2 is unimproved. Lot No. 1 has been divided into six parcels, three of which face 236th Street and three of which face 236th Place which is midway between 236th Street and 237th Street and extends westward, approximately 50 feet in width, from Arlington Avenue, which is the first street east of Pennsylvania Avenue, to the eastern edges of Lots Nos. 1 and 10, from which point 236th Place is paved for one-half of its width only to the eastern edge of Lots Nos. 1 and 10, no portion of Lot No. 10 being used for street purposes. Complainant owns the two westerly lots of the three lots comprising the south half of

Lot No. 1, and the easterly one-third of Lot No. 2 (P-1, 2 and 3 on Exhibit No. 1). Mr. Rose owns the remaining lot in the south half of Lot No. 1, being the easterly one-third of the south half of Lot No. 1 (R on Exhibit No. 1). The area to the east of Lots Nos. 1 and 10, between 236th Street, 237th Street and Arlington Avenue, is subdivided and improved.

Between 1901 and 1908, the defendant or its predecessor installed a 6-inch main along Pennsylvania Avenue between 236th Street and 237th Street, and a 6-inch riveted steel main in an easement midway between 236th Street and 237th Street which extended from the main on Pennsylvania Avenue to a point approximately 50 feet from the easterly edge of Lots Nos. 1 and 10. In 1936 defendant commenced serving Lots Nos. 1 through 5 from the east by a 4-inch main on 236th Street. Approximately one year prior to the hearing, the defendant commenced serving the four houses in Lot No. 6 on Pennsylvania Avenue and all of the houses on 237th Street, except the one on Lot No. 10, through a 4-inch main on 237th Street. Until early September, 1957, the defendant continued to serve Lot No. 10 through the 6-inch mains on Pennsylvania Avenue and the easement between 236th Street and 237th Street.

Complainant's Evidence

Lot No. 1 on 236th Street is divided into six lots, three of which face on 236th Street and three of which face on 236th Place. The three facing on 236th Street are owned by Mr. Cox and were improved by him prior to the time complainant purchased his property. The complainant purchased three lots which consist of the easterly one-third of Lot No. 2 and the westerly two lots on the south one-half of Lot No. 1 (P-1, 2 and 3, Exhibit No. 1) in June, 1957. On

June 14, 1957, he commenced building a house on the lot comprising the southwest portion of Lot No. 1 (P-1 on Exhibit No. 1). At about the same time complainant purchased his property, Mr. Rose purchased the southeast corner of Lot No. 1 (R on Exhibit No. 1). The area to the east of Lots Nos. 1 and 10, and west of Arlington Avenue on 236th Place is improved with 30 houses (Areas K and L on Exhibit No. 1). On June 15, 1957, complainant contacted the defendant's vice president and secretary, Mr. A. E. Cook, concerning water service to his three lots and was told by Mr. Cook that he would have to apply for service. The complainant was then advised by his plumber that there was a water meter at Lot No. 10 directly across from one of his lots on 236th Place and approximately 27 feet therefrom. Complainant then returned to Mr. Cook and was advised by him that the line on the easement in the back of Lot No. 10 was unsafe and was to be abandoned. At that time Mr. Cook did not suggest that the breaking up of Lot No. 1 would cause it to be classified as a subdivision. On June 17, 1957, the complainant again talked to Mr. Cook who advised him that the six parcels of Lot No. 1, together with the possible two lots comprising the east 55 feet of Lot No. 2, constituted a subdivision and that it would cost complainant \$260 per lot for water and he gave complainant three subdivision main extension agreements to sign (See Exhibit No. 5 as an example). The complainant then contacted his attorney who wrote to the defendant and demanded that the service be connected (Exhibit No. 3). It was stipulated that Mr. Rose, the owner of the east one-third of the south one-half of Lot No. 1 (R on Exhibit No. 1), is getting water to said lot through the main from Arlington Avenue and 236th Place at the west edge of his lot (see penciled line, Exhibit No. 1). At the time complainant first contact-

ed the defendant, the defendant was furnishing water to Lot No. 10 through the 6-inch main on Pennsylvania Avenue and the easement between 236th Street and 237th Street with a meter located in approximately the middle of the northern boundary of Lot No. 10, from which a 2-inch service line extended to the house. The said 6-inch main extended for several feet east beyond the meter to the approximate middle of Mr. Rose's lot. Since the complainant built his house on the most southwesterly portion of Lot No. 1 (P-1 on Exhibit No. 1), the defendant, in August or September of 1957, ran a 2-inch line from the 6-inch existing line on 236th Place and placed a meter on the most easterly edge of Lot No. 10 (H-6 on Exhibit No. 1) and thereafter served Lot No. 10 therefrom and disconnected and abandoned the 6-inch line on the easement from Pennsylvania Avenue. The Rose lot (R on Exhibit No. 1) is now being served from a westward extension of the 6-inch line on 236th Place from the east edge of Lot No. 10 to a point opposite the west edge of the Rose lot at which point the defendant extended a 1½-inch service line north to the west edge of the Rose lot. The complainant is now receiving water at his lot comprising the southwest one-sixth of Lot No. 1 (P-1 on Exhibit No. 1) through Rose's meter via an extension across his eastern lot (P-2 on Exhibit No. 1). It is complainant's intention to build only one house on the easterly one-third of Lot No. 2 (P-3 on Exhibit No. 1) and he intends to improve his lot next to Mr. Rose's lot (P-2 on Exhibit No. 1). Prior to the time complainant purchased his three lots he saw a water meter at Lot No. 10 directly across 236th Place from his easternmost lot (P-2 on Exhibit No. 1); and there was a water meter box on the northern edge of the property line of Lot No. 10,

29 feet from the northerly edge of 236th Place. At the time complainant purchased the property herein involved, he noticed a meter box on the rear of Lot No. 9 (see Exhibit No. 1), which is the first lot immediately west of Lot No. 10, and metered water service being furnished to the three lots comprising the north one-half of Lot No. 1.

Defendant's Motion to Dismiss

At the conclusion of complainant's case the defendant moved that the complaint be dismissed on the ground that a cause of action had not been proven. The basis of defendant's argument was that to require the defendant to extend service from the 6-inch line on 236th Place would be unreasonable under the facts as developed and the complainant's own testimony would show that while he saw a meter and a piece of 2-inch line on Lot No. 10 shortly after he started to develop the property, he nevertheless brought out the fact that there actually was a change in service from the old line, which Mr. Cook told him was being abandoned, to the 6-inch line on 236th Street, and there was not in fact proof, as alleged in the complaint, that there was an existing line from which a service could be reasonably and safely made.

This motion was taken under submission by the examiner for ruling thereon by the Commission. The motion to dismiss the complaint will be denied. The defendant stipulated that complainant's lots are in its service area. This being so, complainant must secure his water from defendant and the issue of the manner of service having been presented to us we will determine such matter from all facts presented by both parties.

Defendant's Evidence

Mr. William Holden, the defendant's field foreman, testified to the following:

He commenced working for the defendant in 1950 as a laborer, and since 1953 he has been the field foreman. He is familiar with the area involved herein. During his employment with the defendant there was a 6-inch line on Pennsylvania Avenue between 236th Street and 237th Street with a 6-inch line extending along an easement midway between the two streets from Pennsylvania Avenue to approximately 50-75 feet from the east edge of Lots Nos. 1 and 10. During his employment the line on Pennsylvania Avenue was repaired approximately six times, and in the same period the line on the easement between the two streets was repaired approximately 15-20 times, the last repair being in the winter of 1956. In July, 1957, there was a non-repairable break in the Pennsylvania Avenue line. All breaks on the easement line are very difficult to repair because of structures and debris on the easement (Exhibit No. 8 is a picture along the easement from a point near Pennsylvania Avenue looking east). Because of the difficulties of repairing this line, both the Pennsylvania Avenue line and the easement line were abandoned about the first of September, 1957. The Pennsylvania Avenue line was cut off at 236th Street and 237th Street, leaving no water in the main on the easement. Thereafter, service was rendered to the four houses on Pennsylvania Avenue through a 2-inch line from the fire plug at 237th Street and Pennsylvania Avenue (see Exhibit No. 6). Prior to the abandonment of the line along the easement, there was and still is a 4-inch transite line on 237th Street, and there was and is a 4-inch

line on 236th Street. The 236th Street services were all connected to the 4-inch line. All of the 237th Street services were connected to the 4-inch line thereon except Lot No. 10. When the easement line was abandoned, the defendant installed a meter on the east edge of Lot No. 10 at the end of the 6-inch transite line on 236th Place (H-6 on Exhibit No. 1) and ran a 2-inch line from that meter to the house on Lot No. 10. Thereafter, the 6-inch line on 236th Place was extended westward approximately 55 feet to a point opposite the west edge of Mr. Rose's lot, and a 1½-inch service line was extended across the street to Mr. Rose's lot. Exhibit No. 10 herein shows the eastern edge of Lot No. 10 and the western end of 236th Place, with Mr. Rose's house directly across the street to the north in the foreground. The house in the background is complainant's house. Exhibit No. 11 herein shows the west end of 236th Place, together with the barricade at the northeast corner of Lot No. 10, and the one-half street extending the width of Lot No. 10 to the westerly edge of complainant's lot (P-1 on Exhibit No. 1). The cross identified by H-7 on Exhibit No. 11 is the approximate east end of the abandoned 6-inch line. The cross identified as H-8 marks the approximate former location of the meter for Lot No. 10, and the cross identified as H-9 marks the approximate location of the present meter now measuring water service to Lot No. 10 from the 6-inch line on 236th Place. Exhibit No. 12 herein is another picture wherein is shown by H-10, the location of the end of the abandoned main, and by H-11 the former site of the meter to Lot No. 10, and H-12 shows the present location of the meter for service to the Rose lot. The garage in the background is complainant's garage. The 6-inch transite line on

236th Place has been extended to a point even with the west edge of Mr. Rose's lot (R on Exhibit No. 1) and has not been extended beyond to complainant's lots. In July, 1957, the witness suggested to the defendant's vice president, Mr. Cook, that the 6-inch line on the easement be abandoned. He did not consider replacing the line because it was in bad shape and would cost about three times as much to replace as it would to install a new line on 237th Street. In order to serve water to the complainant's three lots it would be necessary that the 6-inch main be extended from the west edge of the Rose lot to the west edge of Lot No. 1, a distance of approximately 100 feet, and it would be necessary to extend a service line a distance of approximately 50 feet across 236th Place.

The defendant's vice president, Mr. Cook, testified that the Pennsylvania Avenue line was installed in 1908 and was abandoned in September, 1957; that the company decided to abandon the line several years ago; that in September, 1957, the line extending eastward from Pennsylvania Avenue along the easement was replaced with a line on 237th Street running from the east side of Lot No. 10 to Pennsylvania Avenue; that in 1936 a 4-inch line had been installed on 236th Street; and that since that time Lots Nos. 1 through 5 had been served from that line. The 4-inch line on 237th Street, he said, was extended to Pennsylvania Avenue one year ago. The witness further testified that the agreements he gave to complainant on June 17, 1957, (see Exhibit No. 5), were defendant's standard forms of subdivision service applications. He also presented Exhibit No. 13 which shows the estimated cost of extending service to the Rose lot and complainant's three lots to be \$1,853.59. He said,

however, that Rose's share of this would be \$918 and that it would cost \$936 to extend the service to applicant's lots. He further stated that complainant's easternmost lot (P-2 on Exhibit No. 1) would be served from the Rose service; that it would be necessary to extend the 6-inch main on 236th Place 100 feet at a cost of from ~~five~~ ^{\$5.00} to \$5.50 a foot and put in a 50-foot service line to serve complainant's other two lots (P-2 and P-3 on Exhibit No. 1); and that the cost of these installations would total in excess of \$550. R

It is the contention of the defendant that it is unreasonable to require it to extend service to complainant's property without being paid the cost thereof citing as authority for this proposition the leading case of Lukrawka v. Spring Valley Water Co., 169 California 318 (1915) which deals with the reasonableness of a demand for an extension of water service. Even if this were a situation in which an entirely new extension were required, which it is not, an extension of 100 feet would certainly be reasonable for service to three lots, whether such service were considered as being made as extensions to serve individuals or an extension to serve a subdivision. The only question here is the apportionment of costs. That the complainant is not seeking an extension to serve a subdivision is obvious. The evidence shows, and such evidence was not disputed, that complainant has only three lots and that he has no interest in the Rose lot nor in the three lots comprising the north one-half of Lot No. 1. The three lots he owns do not constitute a subdivision (see Decision No. 55001, dated May 21, 1957, in Case No. 5880). The facts recited in the body of the opinion do not warrant a finding, under defendant's Rule 15 B2, that complainant be required to pay

all or any portion of the cost of extending service to his property. As the record and the facts recited in the opinion show, defendant had a 6-inch main extending in front of all three of complainant's lots during the time his house was being constructed. This was property useful in the performance of defendant's duties to the public and could not be abandoned without an order from this Commission (Section 851, Public Utilities Code). Defendant did not secure such an order from this Commission but instead chose to serve existing services through different mains. Having chosen to provide service via new mains it must bear the entire cost of those mains for service to customers who would have been served from the existing main. The situation here is no different than it would have been had defendant replaced the existing main on Pennsylvania Avenue and the easement. In that event, complainant and Rose would have received service at no cost inasmuch as it is incumbent on a utility, once a system has been installed, to maintain the system and to replace worn out or obsolete parts thereof.

Upon the evidence of record herein we find that the complainant is entitled to have domestic water service furnished to his lots by defendant without extension cost and it will be so ordered.

O R D E R

A complaint having been filed, a public hearing having been held thereon, and the Commission having made the foregoing finding, and based upon said finding,

IT IS ORDERED that Narbonne Ranch Water Company No. 2, at its own expense, shall immediately extend water service to complainant

at his premises as set out in the complaint herein, said service to be furnished through installations complying in all respects with the provisions of General Order No. 103 of this Commission. Defendant shall report to the Commission, in writing, at the completion of said work, in not to exceed thirty days from the effective date of this order.

IT IS FURTHER ORDERED that defendant's motion to dismiss the complaint herein be, and it hereby is, denied.

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

Dated at San Francisco, California, this 16th day of December, 1957.

E. N. ...
 President

Paula ...

Mark ...

R. Hardy

E. ...
 Commissioners