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ORIGINAL

Decision No. 59203

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLARENCE ERNEST HENDERSON, Complainant, vs. HIGHLANDERS WATER COMPANY, Defendant.	Case No. 6269

Francis G. Welton for complainant.
Best, Best & Krieger, by Richard Edsall, for defendant.
Donald B. Steger for the Commission's staff.

O P I N I O N

By the complaint herein, filed on May 12, 1959, Clarence Ernest Henderson, hereinafter referred to as complainant, alleges that on February 20, 1959, complainant applied for individual water service from defendant to supply water for the construction and operation of a service station on a parcel of land on the north side of Blaine Street near the City of Riverside in Riverside County, California; that the defendant installed a 3/4-inch temporary water line pursuant to said request; that at that time the defendant informed complainant that the service was temporary and that a cash deposit would be required, in an amount to be established by the defendant, to construct a water main from an existing main; that the defendant prepared a form of main extension agreement to serve an individual for complainant; that the estimated cost was $4,264 and the complainant protested the amount; that on March 4, 1959, the

defendant refused to execute the individual main extension agreement, prepared a subdivision main extension agreement and requested that complainant execute said document; that defendant informed complainant that a 12-inch main extension would be installed; that complainant signed the said main extension agreement for service to a subdivision after the defendant informed complainant that otherwise it would be a long time before service would be provided to complainant's property; that complainant paid the required $4,264 deposit; and that the cost was computed on the basis of a 12-inch main for service to a subdivision and the cost should have been computed on the basis of a 4-inch main to serve an individual. The complainant prays that defendant be required to refund the excess of the deposit not required by the main extension rule to serve an individual.

On June 15, 1959, the defendant filed its answer wherein, inter alia, it alleges as a first affirmative defense that prior to February 17, 1959, the owner of a proposed commercial subdivision adjacent to complainant's property had requested service thereto; that a 12-inch main was contemplated by defendant which would pass in front of complainant's property; that complainant was informed of this fact and that the main would be constructed; that complainant informed defendant he was in a hurry for service and that he was willing that his property be treated as a portion of the proposed subdivision; that on or about March 4, 1959, complainant entered into a subdivision main extension agreement with defendant and the 12-inch main was constructed; and that therefore complainant is estopped to assert that his property is not part of said subdivision.

As a second affirmative defense, defendant alleges that on or about December 23, 1958, the defendant received an application

from the Texas Company for new service at complainant's property; that on or about February 17, 1959, defendant received a request from a real estate developer for service to complainant's property; that said request was not made by a bona fide customer as defined in defendant's Rule No. 15 A. 1.; that on or about March 4, 1959, defendant entered into a subdivision main extension agreement with said real estate developer, and did not enter into an individual main extension agreement with complainant since complainant was not a bona fide customer of defendant.

As a third affirmative defense, defendant alleges that on or about December 23, 1958, defendant received an application for new service from the Texas Company, which said application sought to obtain water service for the property of complainant; that on or about February 17, 1959, defendant received a request for a water main extension to serve said property; that said application for water main extension represented to defendant that said water service was planned for use at an automobile service station which said use falls within the provisions of defendant's Rule 15 C. 1.

Public hearings on the complaint were held before Examiner Kent C. Rogers in Riverside, California, on August 5, 1959, and in Los Angeles, California, on September 3, 1959. At the conclusion of the last day of hearing the matter was argued and submitted. It is ready for decision.

At the outset of the first day of hearing, the defendant moved to dismiss the complaint on the grounds that it should have been signed by 25 actual or prospective consumers pursuant to Rule No. 9 of this Commission's Order Revising Rules of Procedure and Section 1702 of the Public Utilities Code. The motion was denied by

the examiner, and the ruling is affirmed. The gist of the complaint is to recover allegedly excessive charges assessed by the defendant for a main extension and claimed to be a violation of defendant's filed main extension rule for service to an individual. Obviously, the only party aggrieved is the person or party who paid the charges.

The Area Involved

The property in question is shown on Exhibit No. 1 herein. It comprises something less than an acre, is a triangle, and extends 218.45 feet east and west on Blaine Street, and 235.45 feet north from Blaine Street. The easterly boundary is the right of way of The Atchison, Topeka and Santa Fe Railway. It is bounded on the west by a 10-acre parcel of land known as the Tavaglioni property, in which it is proposed to develop a shopping center.

The complainant's property is included in defendant's tariff area (Highlanders Water Company, Revised Cal. P.U.C. Sheet No. 47-W), and defendant plans to extend its system to provide service to the entire area (Exhibit No. 10). Defendant has never secured a certificate of public convenience and necessity to serve complainant's property, although it has certificated authority to serve several areas south and east of complainant's property (Decision No. 52736, dated March 16, 1956, in Application No. 37069), and two areas northwest of the complainant's property (Decision No. 56599, dated April 29, 1958, in Application No. 39199). It is not presently, however, providing service to the entire area due to lack of demand therefor. At the hearing herein it was stipulated that there is no other public utility water company in the dedicated service area, and the record herein shows that the defendant has undertaken to provide service

to the Tavaglioni property through a 12-inch main passing along Blaine Street along the southern edge of complainant's property from one of defendant's reservoirs east of the railroad right of way.

While a public utility may limit its dedication to a territorial area, and may not be compelled to extend service beyond the territorial limits of its dedication, dedication may be inferred from the acts of the utility. Dedication is normally evidenced by some act which is reasonably interpreted and relied upon by the public as a "holding out" or indication of a willingness to provide service.

In the instant case defendant has filed a tariff which contains a tariff area map which includes the complainant's property, and has prepared plans for a water system covering the entire area. This, in our opinion, is an unequivocal dedication to serve complainant's property according to defendant's established rates, rules and regulations, which include its rule relative to main extensions. We find that the property here involved is in defendant's dedicated service area and hence, on demand, it must provide service according to its filed tariffs.

The defendant asserts complainant's property was outside ot its service area at the time service was extended thereto by the above referred to 12-inch main, and asserts that therefore it was not bound by the main extension rule and could enter into a special agreement for service. This contention is not correct. If defendant undertakes to serve water as a public utility outside of its certificated area, such service must be at its filed tariffs, rules and regulations (Cal. Water and Tel. Co. v. Public Utilities Commission, 51 Cal. 2d, 478 at 501). Regardless of whether complainant's property constitutes a subdivision or an individual service, the main extension must be made in accordance with the defendant's filed main extension rule.

Summary of Evidence

During the year 1958 and until February 17, 1959, complainant was the owner of the land involved. On July 28, 1958, he leased the land to the Texas Company for a service station. At that time defendant had a 12-inch main running from the east along Blaine Street and terminating somewhere east of the east edge of the railroad right of way. The Tavaglioni company owned the 10-acre parcel of land adjacent to and immediately west of complainant's land. Early in September, 1958, the defendant and Tavaglioni company commenced negotiations, looking toward the extension of the 12-inch main across the right of way and past complainant's property. During the course of these events, a representative of the Texas Company, acting for complainant, contacted defendant relative to serving water on complainant's property. He was told by defendant that he could secure a temporary 3/4-inch line for construction purposes and that negotiations were under way for a large main to the Tavaglioni property and that when that main was installed, complainant could have an extension to his property at no cost. The defendant and Tavaglioni continued negotiations and determined that a 12-inch main was necessary to provide adequate service to the Tavaglioni property, and the cost of said extension was estimated to be $11,900. On or about December 2, 1958, it was tentatively agreed that Tavaglioni would advance this sum but no construction date was determined. On December 23,1958, the Texas Company secured the temporary connection from defendant. The complainant had entered into a lease of his property to the Texas Company and had agreed to have water furnished to the property. On or about February 20, 1959, complainant signed a form of main extension agreement for service to an individual and deposited the sum of $4,264 as the estimated cost of extending the

12-inch main across the railroad right of way in front of his property (Exhibit No. 2). The defendant refused to execute the agreement and on March 4, 1959, the parties entered into a main extension agreement of the type for service to a subdivision (Exhibit No. 3), which was dated the same as the said individual main extension agreement. Subsequently defendant entered into a main extension agreement with Tavaglioni whereby that company was required to deposit only the difference between the $11,900 and the $4,264 deposited by complainant. There is no development except a second service station at the Tavaglioni property at present.

In January 1959, complainant became ill and was in a hospital until February, 1959. He was unable to secure the required deposit for the extension, and on February 17, 1959, he sold the property to the City Improvement Company (Exhibit No. 4), and instructed the escrow company to deliver the extension deposit to the defendant (Exhibit No. 6). On February 20, 1959, complainant applied for water service to the service station property (Exhibit No. 8). Defendant's system as it existed prior to complainant's extension is shown on Exhibit No. 1 herein. There was a 12-inch main on Blaine Street extending from the east to a point approximately 120 feet east of the railroad right of way. This main has been extended to the Tavaglioni property, serving complainant's property en route. If neither the complainant nor Tavaglioni had requested service, defendant planned to extend at least an 8-inch main from the existing 12-inch main on Blaine Street to the east edge of the railroad right of way as a part of its proposed water system (Exhibit No. 10) but the construction date was undetermined.

Argument

The complainant argues that the service extension costs should be calculated on the basis of the cost of an extension to serve individuals pursuant to defendant's Rule No. 15 B. 1.; that it

was stipulated that a 4-inch main was adequate to serve the complainant's property; and that therefore complainant should recover from defendant the difference between the amount deposited and the cost of a 4-inch main less the 65-foot free extension pursuant to Rule No. 15 B.1.

The defendant argued that there are three possible alternatives relative to the extension:

(1) That service to the property is service to a subdivision, the 12-inch main is necessary, and hence the charge is correct;

(2) That service to the property is service to a subdivision but the size main is excessive and hence the complainant is entitled to a refund of the difference between the cost of the 12-inch main and the cost of a main held to be of adequate size; and

(3) That cost should be calculated on the basis of an extension of service to an individual.

The defendant argued that the company would not have entered into a main extension agreement with complainant as the area was outside its service area; that complainant was informed of this and insisted on service; and that complainant is therefore estopped to deny that a 12-inch main is proper.

We have heretofore held that complainant is required to extend service according to its filed tariffs. These tariffs have the force and effect of law and any deviation therefrom, without authority from this Commission, is illegal. Even if complainant were outside the service area, the main extension rule would apply.

The defendant argued also that complainant was not a bona fide customer at the time the main extension agreement was signed (Exhibit No. 3) on March 4, 1959, as he had then transferred the property to the City Improvement Company (Exhibit No. 4).

Regardless of who the future customer of the defendant is in the property, complainant deposited the money and is entitled to any refund that may be ordered herein (Exhibit No. 6).

To us Rule No. 15 appears clear. Whoever owns the property involved, it is clear from Rule No. 15 that said property is not a subdivision, tract, housing project, industrial development or organized service district as contemplated by Rule No. 15 C, and we so hold. There will be one meter and one connection. The argument that complainant is not a bona fide customer for the reason that he had transferred the property to the City Improvement Company or leased it to the Texas Company is specious. The bona fide customer referred to in Rule No. 15 A. 1. obviously refers to the permanency of the installation of service and not to the particular water user who may at the precise moment be liable for the cost of the water.

The record shows, and we find, that the property formerly owned by complainant and herein referred to is to be served on the basis of an extension for service to an individual and that, regardless of present ownership, complainant paid the deposit for the extension of service and is entitled to any refund found due. Inasmuch as the evidence does not enable us to determine the proper refund, the order herein will be subject to modification, if the parties cannot agree on the correct refund.

O R D E R

Public hearings having been held, and the Commission having made the foregoing findings and based on said findings,

IT IS HEREBY ORDERED that defendant refund to the complainant the difference between the sum of $4,264 and the estimated cost of a 4-inch main as of the date the 12-inch main in Blaine Street was

extended west to the complainant's property, less 65 feet, between the place on Blaine Street where the 12-inch main terminated at the time complainant made his original application for services and the point where the present service connection for the Texas Company service station is now installed.

IT IS FURTHER ORDERED that if within sixty days after the effective date of this order the parties cannot agree on the amount of the refund, the Commission shall thereafter determine the proper refund and make a final order relative to this complaint.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the parties hereto and this order shall be effective twenty days after the completion of such service upon said parties.

Dated at San Francisco, California, this 27th day of October, 1959.

President

Commissioners