

ORIGINAL

Decision No. 62864

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LUTHER E. BERRY,

Complainant,

vs.

CALIFORNIA WATER SERVICE
COMPANY,

Defendant.

Case No. 7213

Luther E. Berry, complainant.
McCutchen, Doyle, Brown & Enersen, by
A. Crawford Greene, Jr., for defendant.
Elmer Sjostrom, for the Commission staff.

O P I N I O N

Luther E. Berry filed the above-numbered complaint against California Water Service Company on October 26, 1961. Defendant filed its answer on November 8, 1961. Public hearing in the matter was held before Commissioner C. Lyn Fox and Examiner James F. Haley at San Francisco on November 10, 1961; evidence was adduced, and the matter was taken under submission.

Allegations of the Complaint

In substance, complainant alleges that:

1. Complainant was the owner of certain property in South San Francisco described as Conmur Street southeast of Granada Drive, and that he sold said property under the obligation of arranging for water service to be provided to the purchasers thereof.

2. Upon making application to defendant for said service, complainant was notified that, under Section C of defendant's Rule 15 pertaining to main extensions, he would have to advance the entire cost of the required extension, in the amount of \$1,186 to the utility.

3. Complainant is not a subdivider; therefore, Section B of defendant's main extension rule should apply, rather than Section C.

Relief Sought

Complainant seeks an order from the Commission directing defendant to install water service immediately to said property in accordance with Section B of Rule 15.

Answer of Defendant

Defendant admits that it notified complainant that, under Section C of Rule 15, he would have to advance the entire cost of the extension, in the amount of \$1,186. Defendant denies the allegation that complainant is under obligation to provide water facilities to the purchasers of said property as well as the allegation that complainant is not a subdivider. As a separate and independent defense, defendant cites portions of its Rule 15 and alleges substantially as follows:

1. Complainant is not the owner of said property and is not a water customer with respect thereto, but is the real estate developer thereof.

2. Under the provisions of Ordinance No. 297 of the City of South San Francisco complainant was considered a subdivider and was required to, and did, secure approval of the City Council of South San Francisco to subdivide certain real estate into four parcels, one of which is the parcel for which complainant seeks water service.

3. Defendant was not and is not obligated to extend its facilities to said property under Section B of Rule 15.

4. Defendant is and has been prepared to extend its facilities to serve said property in accordance with Section C, the appropriate and applicable section of Rule 15.

Rule 15 - Main Extensions

Defendant's filed main extension rule consists of three sections: Section A contains the general provisions of the rule; Section B covers extensions to serve individual customers; and Section C pertains principally to extensions to serve subdividers.

Section B of Rule 15 is more liberal than Section C. It provides that extensions not in excess of 65 feet in length per new bona fide customer will be made free; that costs on excess footage shall not normally be based on a pipe size greater than 4 inches in diameter; and that refunds will be computed according to the proportionate cost method.

Section C of Rule 15 does not allow any free footage. It provides that the amount advanced for an extension shall be based on the estimated reasonable cost of installation of the mains, but it does not place a specific maximum limitation on the diameter which the utility may require. Section C affords the utility the option of determining whether refund shall be made according to the proportionate cost method or according to the less liberal percentage of revenue method.

This Commission currently has before it Case No. 5501, an investigation on its own motion into the reasonableness of the water main extension rules presently effective for water utilities throughout the State, and the development of such revised extension rule as appears reasonable.

Summary of Evidence

Complainant was for many years the owner of certain land in South San Francisco shown as Parcel 17, Zone E, on the assessment map of that city. In 1953, complainant requested, and was granted, authorization by the City Council to divide the land into 4 lots,

designated Parcels 1, 2, 3 and 4 on Exhibit B attached to the answer to the complaint. Complainant subsequently sold Parcel 1, the property at issue herein, to one William Botieff, with the understanding that complainant would arrange for water service to be extended thereto. Complainant still owns Parcels 2, 3 and 4, all of which defendant presently supplies with water through two services from its 6-inch main on Alta Vista Drive. Parcel 1 is zoned for single-family residential usage. It is now undeveloped, but the present owner intends to construct a house thereon and then sell the developed lot.

Defendant proposes to serve Parcel 1 in the most direct practicable manner, by extending a distance of 160 feet on Conmur Street from the existing 6-inch diameter main on La Granada Drive. The deposit of \$1,186 demanded from complainant represents the entire cost of a 6-inch diameter extension for that distance. Across Conmur Street from complainant's property are three lots, the owner of one of which has applied to defendant for service. Defendant has tendered this property owner a main extension estimate based on a 4-inch diameter extension under Section B of Rule 15. Said property owner has not yet indicated acceptance of the estimate. Meanwhile, should complainant acquiesce and deposit the amount of \$1,186, this property owner could then receive service from the extended main without paying any extension charges. Conversely, should the property owner proceed to pay the required deposit for an extension to his property, Parcel 1 could then be served from the extended main without main extension charges applying.

Defendant's witness, when questioned as to the possibility of pooling the two requests into a single project to the mutual

advantage of the two service applicants, replied to the effect that this was not possible because complainant, being regarded by defendant as a subdivider, falls under Section C of Rule 15; whereas the owner of the across-the-street property, being regarded by defendant as an individual customer, falls under Section B of the rule.

According to the testimony presented by an engineer of the Commission's staff, a pipe of 6 inches in diameter is not required to serve complainant's single lot. He testified that a 2-inch diameter main extension would provide adequate service to Parcel 1 and would, as well, meet the minimum requirements of this Commission's General Order No. 103.

Discussion

The problem here presented for this Commission to resolve occurs simply because complainant's situation falls neither under Section B nor under Section C of defendant's Rule 15. Complainant is caught in a no-man's land lying between the coverage of the two sections of Rule 15.

Section B of defendant's Rule 15 provides in part as follows:

"The utility will extend its water distribution mains to serve new bona fide customers at its own expense, other than to serve subdivisions, tracts, housing projects, industrial developments or organized service districts, when the required total length of main extension from the nearest existing distribution main is not in excess of 65 feet per service connection."

Section A of said Rule 15 defines a bona fide customer as:

"a customer of permanent and established character, exclusive of the real estate developer or builder, who receives water service at a premises improved with structures of a permanent nature."

Complainant certainly is not a customer with respect to Parcel 1, which he no longer owns. He more properly fits within the category of the real estate developer thereof and thus, by technicality, is excluded from treatment according to Section B of the rule.

The coverage of Section C is defined by its title which reads: "Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments or Organized Service Districts".

Parcel 1 is a single lot and cannot possibly be construed as a subdivision or tract, even when lumped together, as defendant would have it, with complainant's already served Parcels 2, 3 and 4. Nor is it conceivable that a 6-inch main is reasonably required to serve the single-family residence to be erected on the 50 x 115-foot lot. Section C is plainly not applicable to complainant's main extension request. Defendant, therefore, has no license to treat complainant under Section C merely because he does not qualify under Section B. Section C is intended to protect the utility and its ratepayers from large, speculative outlays in connection with the extending of its facilities to multiple-service developments. The utility is not here faced with such an outlay.

Findings

Upon consideration of the evidence, the Commission finds as follows:

1. Complainant's main extension application falls under neither Section B nor Section C of defendant's Rule 15.
2. A deposit based upon the cost of a 6-inch main extension would unreasonably burden complainant, the deposit should be based upon the cost of a main no greater than 4 inches in diameter.
3. Complainant's main extension should be treated under Section B of Rule 15, with such treatment modified, as provided in the following order, to remove any risk to the utility or its

ratepayers which might exist because of the possibility that a bona fide customer may never be located on Parcel 1.

O R D E R

The above-entitled complaint having been filed with this Commission, a public hearing held thereon, the matter submitted and now being ready for decision,

IT IS ORDERED that:

1. Upon receipt from complainant of a deposit computed as specified in paragraph 2 of this order, defendant shall forthwith extend its main in such a manner that water service may be provided to Parcel No. 1, as described in Exhibit B to the answer herein.

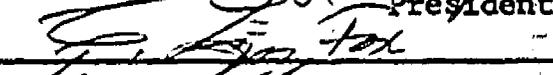
2. Said deposit shall be computed as provided by Section B of Rule 15, except that the full cost of the main extension without an allowance for free footage shall be advanced to defendant by complainant.

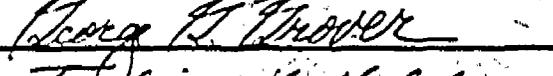
3. When a bona fide customer has been established at said Parcel 1, defendant shall immediately refund to complainant the average cost of 65 feet of the extension.

4. All other refunds of complainant's deposits shall be made by defendant in accordance with the provisions of Section B of its Rule 15.

The effective date of this order shall be twenty days after service upon the defendant California Water Service Company. Dated at San Francisco, California, this 29th day of NOVEMBER, 1961.



President






Commissioners

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