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ORIGINAL

Decision No. 67009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dr. Bela Thury, Complainant, vs. The Lucerne Water Company, a corporation, and Stan Korth, Defendants.	)	Case No. 7718

Dr. Bela Thury, in propria persona, complainant, and also for Charles and Piroska Komar, intervenors.
John E. Callouette, for Lucerne Water Company
Edmund J. Texeira, for the Commission staff.

O P I N I O N

This complaint alleges that complainant is the owner of Lot No. 177 of Clear Lake Beach Subdivision No. 5; that Lot No. 177 is within defendants' service area; that the manager of defendants' water company promised to provide service to Lot No. 177 and that defendants refuse to do so. The complaint requests an order directing defendants to serve Lot No. 177 and all lots in the area below defendants' reservoir which is located nearby.

Stan Korth and Lucille E. Korth, doing business as Lucerne Water Company, answered the complaint. The answer denied that complainant is the owner of Lot No. 177, that Lot No. 177 is within defendants' service area and that defendants or any of their agents ever promised to serve water to Lot No. 177. The answer also alleged that complainant is a real estate developer, that Lot No. 177 was transferred by complainant and his wife to Charles Komar

and Piroska Komar prior to the filing of this complaint and that defendants are willing to extend their service to Lot No. 177 under the terms of their main extension rule.

Subsequently, Charles Komar and Piroska Komar filed a Petition for Leave to Intervene alleging that they had purchased the lot from complainant. On January 14, 1964 the Commission entered an order granting the Komars leave to intervene in this proceeding.

A duly noticed public hearing was held before Examiner Jarvis at Lucerne on February 5, 1964, and the matter was submitted on that date. During the course of the hearing the Examiner, accompanied by representatives of the parties of record, visited the area in question.

The record discloses that Lot No. 177 is undeveloped. Complainant, who sold the lot to the Komars, owns between seven and ten additional lots within 1,000 feet of Lot No. 177. He intends to sell the other lots if he can get the right price for them. There are at least 1,500 undeveloped lots in the general area. All of these lots, including those owned by complainant, were acquired with the knowledge that there was no utility water service in the area.

Defendants' reservoir is approximately 400 feet from Lot No. 177. The bottom of the reservoir is about 35 feet higher than Lot No. 177. Lot No. 177 is on a private road which has not been accepted into the county road system and the grade of the road has not yet been officially established. Defendants have a 2- and 3-inch main which are, at points, 300 to 500 feet from Lot No. 177. Complainant and the Komars propose that the Komars run a line to intersect with one of said mains. It is conceded that if this is done the pressure at Lot No. 177 would be inadequate. The evidence

shows that in these circumstances the static pressure at Lot No. 177 would be 18 psi and that the pressure would be lower at peak times - far below the minimum pressures required by General Order No. 103. To meet this deficiency complainant and the Komars propose that the Komars install on their property a booster pump to increase pressure. Defendants contend that this is not a proper way to bring water to the property. They contend that the Komars intend to build a house for resale on Lot No. 177;[1] that a subsequent owner may not be satisfied with the water service and may file a complaint with this Commission asking that the utility be ordered to make the service comply with the standards of General Order No. 103; and that if this occurs, the utility and its customers will have to bear the expense of properly bringing water to Lot No. 177.

Defendants also contend that since the roads which might provide an easement for access of water mains to Lot No. 177 have not been accepted into the county road system and the grades therefor have not been established, defendants run the risk of having to relocate mains at their expense when this occurs. Defendants point to the fact that they recently had to spend $300 to relocate a main leading to complainant's residence - which they presently serve and which is in the area - because the county accepted the road leading to complainant's house and lowered its grade three feet. Defendants further contend that they acquired the water system in May 1961; that at the time of acquisition the system was run down and inadequate; that prior owners had extended service to contiguous areas with substandard connection facilities; that defendants have embarked on a program of improving and upgrading their water system

1 The record discloses that Mr. Komar recently built a house for one Illes in another area of Lucerne.

(see Decision No. 66649 in Application No. 45574); and that it is defendants' policy not to extend or furnish any new service other than in accordance with the requirements of General Order No. 103. Defendants argue that complainant is using this proceeding as a test case; that if they are compelled to furnish the type of connection sought herein, complainant and others will seek similar connections for all the undeveloped lots in the area.

Defendants indicated that they would render service to Lot No. 177 under the terms of their filed main extension rule if the Komars would make application for service under the rule and furnish an advance sufficient: (1) to provide for the installation by the utility of a hydropneumatic tank facility to insure adequate pressure to Lot No. 177 and other potential customers in the area; (2) to provide a reserve for the utility to pay for the cost of relocating mains when the county accepts the roads in the area and requires relocation because of changes in grade; and (3) to provide for the pipe required to make the extension.

The record discloses that Lot No. 177 is outside of defendants' filed service area. Defendants have not dedicated their service to the lot. Complainant and the Komars take the position that defendants or their predecessors in interest have extended, under Section 1001 of the Public Utilities Code, service to locations outside of defendants' service area, and that a refusal to extend service to Lot No. 177 constitutes discrimination. However, no basis for unlawful discrimination has been shown; the question of dedicating facilities in new areas is a matter of discretion for the utility. (California Water & Telephone Co. v. Public Utilities Comm., 51 Cal.2d 478.)

There is a conflict in the evidence as to whether defendants' manager promised to extend service to Lot No. 177. It is unnecessary

to resolve the conflict. The only type of service the manager could legally have promised was service in accordance with General Order No. 103 and the main extension rule in defendants' service regulations. Defendants indicated in their answer and at the hearing that they were willing to extend their service to Lot No. 177, although they may not be legally bound to so do, in accordance with General Order No. 103 and the main extension rule. Even if it be assumed for the sake of argument that the alleged promise to give water service was made, complainant and the Komars would be in no better position.

The gist of this controversy is that certain persons dealing in land desire that defendants (Lucerne Water Company) install substandard water connections in order to enhance the value of the land. Defendants are properly resisting this procedure. The effect of failing to resist would be to shift to defendants, and ultimately to the ratepayers, the cost of getting water to undeveloped lots, which cost should properly be borne by the developers or land speculators.

Assuming the main extension rule is to be applied to the situation, the parties disagree as to whether the extension to serve Lot No. 177 should be under the provisions dealing with individuals or those dealing with subdivisions. The utility claims that complainant is a subdivider or builder and any extension should be done under the subdivision portion of the rule. The reason for this position is that the subdivision portion of the rule has provisions dealing with special facilities whereas the portion of the rule governing service to individuals is silent on the subject. At issue is the utility's claim that complainant or the Komars should advance the cost of the installation of a hydropneumatic tank facility to provide adequate pressure. Complainant and the Komars

deny that Lot No. 177 is being developed by a builder or developer, and contend that any extension should be made under the portion of the rule applicable to service to individuals.

Section A.1.c. of the Main Extension Rule, which permits a utility to require a deposit to pay for the cost of relocating mains where final grades have not been established to the property involved, applies to extensions for both individuals and subdivisions. For individuals, the rule provides a free-footage allowance of 50 feet, whereas the subdivision portion does not. Because of the small amount of money involved, this provision is inconsequential in this matter. The refund provisions vary between the two portions of the rule, but, except for the question of the hydropneumatic tank facility, they have little monetary significance in this situation. Section C.1.b. of the Main Extension Rule provides in part that "If, for any purpose, special facilities are required primarily for the service requested, the cost of such special facilities may be included in the advance, subject to refund ...." The portion of the rule dealing with service to individuals does not have a provision dealing with special facilities. However, Section A.8. provides that "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 unreasonable to either party, the utility, applicant or applicants may refer the matter to the Commission for determination."

The record discloses that the Komars have legal title to Lot No. 177. Complainant, therefore, has no standing as a bona fide customer in this proceeding with respect to Lot No. 177. The record indicates that Mr. Komar recently built one house for resale in another part of Lucerne. However, this proceeding does not involve construction water, so that we need not determine whether

he is a "real estate developer" or "builder." It does appear that the service requested would be reasonably permanent and that the Komars otherwise qualify as bona fide customers for Lot No. 177. A single service to this lot does not involve a subdivision tract, housing project, industrial development or organized commercial district. (See Section A.3.a. of defendants' Main Extension Rule.) Thus, any extension made to Lot No. 177 only, would need to be made under the portion of the rule relating to service to individuals. In the circumstances, the utility's proposal to extend under the rule constitutes, in part, a request to deviate from the rule with respect to the hydropneumatic tank backup facility. Furthermore, the record discloses that defendants' outstanding advance contract balances exceed 50 percent of their total water utility plant, less depreciation reserve, and that, by reason of Section A.2. of the rule, defendants could not extend service to Lot No. 177 without authorization from this Commission.

As indicated, defendants have no legal obligation to serve Lot No. 177. Defendants have indicated that they would serve the lot under their main extension rule, as modified for the circumstances of this situation. The ensuing order will authorize, but not require, such an extension.

No other points require discussion.

The Commission makes the following findings and conclusions.

Findings of Fact

1. The Lucerne Water Company is a fictitious name under which Stan Korth and Lucille E. Korth, defendants herein, are doing business as a public utility water corporation.

2. Interested parties, Charles Komar and Piroska Komar, are the record owners of Lot No. 177, Clear Lake Beach Subdivision No. 5, Lake County, California.

3. Lot No. 177 is an undeveloped parcel of land.

4. Legal title of Lot No. 177 was transferred to Charles Komar and Piroska Komar from Bela Thury and his wife, Helene Thury. Bela Thury owns between seven and ten undeveloped lots within approximately 1,000 feet from Lot No. 177.

5. Lot No. 177 is outside of defendants' service area.

6. Defendants have not dedicated their service to Lot No. 177.

7. The seven to ten undeveloped lots owned by Bela Thury in the vicinity of Lot No. 177 are outside of defendants' service area.

8. Defendants have not dedicated their service to any of these lots.

9. Defendants have offered to extend their service to Lot No. 177 under their main extension rule, with certain modifications.

10. Final grades have not been established on the roads leading to Lot No. 177. If defendants voluntarily extend water service to Lot No. 177, there is a reasonable probability that the existing grades may be changed, and defendants reasonably should be permitted to require, at the time of execution of the main extension agreement, a deposit for the estimated net cost of relocating, raising or lowering facilities upon establishment of final grades. Any deposit made for the cost of changing grades should be placed in a separate bank account and should be used only for that purpose.

11. If defendants voluntarily extend their water service to Lot No. 177 only, such extension should be made under the provisions of their main extension rule relating to service to individuals;

provided, however, that under the special circumstances of this case, defendants should be authorized to require to be included in the advance an amount for the installation of a hydropneumatic tank facility, which latter amount should be subject to refund in the following manner: the utility should determine the revenue received from customers, including fire protection agencies, supplied by service pipes connected to this extension only (not defendants' entire system or any other part thereof), and the utility should refund without interest 22 percent of such revenue for a period not to exceed 20 years, and the amount refunded should not exceed the total amount advanced for the hydropneumatic tank facility.

12. Defendants' outstanding main extension contract balances exceed 50 percent of their total water utility plant, less depreciation. If defendants decide to extend water service voluntarily to Lot No. 177, authorization to do so should be granted, notwithstanding such percentage.

Conclusions of Law

1. Defendants may not be compelled to serve Lot No. 177.

2. Defendants may not be compelled to serve the undeveloped lots owned by complainant in the vicinity of Lot No. 177.

3. Complainant is not entitled to any relief in this proproceeding.

4. Charles Komar and Piroska Komar are not entitled to any relief in this proceeding.

5. If defendants desire to extend their water service area voluntarily to Lot No. 177, they should be authorized to do so in accordance with the above findings of fact.

O R D E R

IT IS ORDERED that:

1. Bela T. Thury is entitled to no relief in this complaint.

2. Charles Komar and Piroska Komar are entitled to no relief in this complaint.

3. If defendants decide to extend their public utility water service voluntarily to Lot No. 177, Clear Lake Beach Subdivision No. 5, Lake County, defendants are hereby authorized to make such extension as follows:

   a. Said extension shall be made under the portion of defendants' main extension rule relating to service to individuals, except as herein provided.

   b. Defendants may require, in addition to any other advances or deposits, at the time of execution of the main extension agreement, a deposit in accordance with Section A.1.c. of the Main Extension Rule for the estimated net cost of relocating, raising or lowering facilities upon establishment of final grades. Any deposit made for establishing final grades shall be placed in a separate bank account and shall be used only for that purpose.

   c. Defendants may require, in addition to any other advances or deposits, at the time of execution of the main extension agreement, an advance for the installation of a hydropneumatic tank facility to provide adequate pressure. Adjustment of any difference between the amount advanced and the actual cost of installing said hydropneumatic tank facility shall be made within ten days after defendants have ascertained such actual cost. Said advance for the hydropneumatic tank facility, as adjusted, shall be refunded as follows: defendants shall determine the revenue received from customers, including fire protection agencies, supplied by service pipes connected to this extension only (not defendants' entire system or any other part thereof), and defendants shall refund, without interest, 22 percent of such revenue for a period not to exceed 20 years, but the

total amount refunded pursuant to this subparagraph (c) shall not exceed the amount advanced for the hydropneumatic tank facility.

d.. Defendants may deviate from Section A.2.a. of their Main Extension Rule for the purpose of making an extension only to Lot No. 177, in accordance with the terms of this order.

e. The authority contained in this ordering paragraph 3 shall expire if it is not exercised within one year after the effective date of this order.

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

Dated at San Francisco, California, this 31st day of March, 1964.

President

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.