

Decision 89 02 073 FEB 24 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ranchero Partners, a General Partnership,)

Mailed

Complainant,)

FEB 27 1989

vs.)

Case 88-11-037
(Filed November 18, 1988)

Alisal Water Corporation, dba
Alco Water Service, and
Does 1 through 10, inclusive,)

Defendants.)

INTERIM OPINION

This complaint was filed on November 18, 1988. On December 7, 1988, complainant filed a motion requesting:

1. The answer, be filed on or before December 16, 1988. (The answer was due on December 22, 1988.)
2. The matter be set for hearing on or before December 23, 1988.

The motion alleged that irreparable harm would result if the relief prayed for in the complaint was not granted on or before December 23, 1988.

On December 15, 1988, Administrative Law Judge (ALJ) O'Leary issued his ruling denying the motion. In the ruling the ALJ properly commented that:

"Even if the motion were granted, the Commission would be unable to evaluate the evidence and issue a decision in this matter by December 23, 1988. The motion should be denied. However, since there is an alleged urgency, the hearing should be scheduled as soon as practically possible."

The ruling scheduled the hearing in Salinas on January 9, 1989.

The hearing was held as scheduled; however, the matter was not submitted and was continued to March 14, 1989.

The complaint alleges that:

"1. The defendant is ALISAL WATER CORPORATION dba ALCO WATER SERVICE (hereafter 'ALCO'), 249 Williams Road, Salinas, California 93905. ALCO is a public water utility.

"2. Complainant is the owner and developer of the real property known as Las Casitas Unit 4 and Village, Assessors Parcel No. 00435138, located in the city of Salinas, California (hereafter 'Las Casitas Subdivision').

"3. On or about March of 1986, engineering plans for the Las Casitas Subdivision were prepared by WWD Corporation, a registered civil engineer. WWD Corporation is also a civil engineer employed from time to time by defendant for the design of water systems. Complainant is aware of four water systems designed by WWD and accepted by ALCO. ✓

"4. On or about November of 1987, water mains were installed in the Las Casitas Subdivision to provide water service to an adjoining parcel. The water mains were installed in accordance with the plans prepared by WWD Corporation for the Las Casitas Subdivision. ✓

"5. Complainant has requested of ALCO that it provide a cost estimate for completion of the water system for the Las Casitas Subdivision. Defendant has demanded payment from complainant of a deposit of \$15,000 in order to provide such a cost estimate. This demand by defendant is unjust and unreasonable in that the water system is fully designed by an approved ALCO engineer, ALCO provided input and consultation during the water system design, and the water system has already been substantially installed in accordance with the WWD plans.

"6. Complainant is presently commencing grading of the Las Casitas Subdivision. Complainant will be unable to proceed with the subdivision improvements until and unless defendant provides a

cost estimate in accordance with PUC Rule 15 and executes a main extension agreement for each of the subdivision phases. Delay in construction will cause irreparable injury to complainant.

"7. Complainant desires to have the water system installed by Design Build Associates, Inc., a general contractor, under the supervision of their Director of Engineering, David K. Fuller, a licensed engineer who is also the President of WWD Corporation.

"8. Complainant has further demanded from defendant as-built drawings for the main extensions already installed. Defendant has failed and refused to provide the as-built drawings.

"9. Complainant will suffer irreparable injury unless immediate relief is granted.

Complainant requests an order as follows:

"1. That defendant be ordered to immediately provide a cost estimate for the completion of the water system;

"2. That a just and reasonable main extension agreement for each phase of the Las Casitas Subdivision be provided to complainant by defendant;

"3. That Design Build Associates, Inc. be authorized to install the remaining portions of the water system for the Las Casitas Subdivision;

"4. That defendant immediately provide to complainant as-built drawings for the water mains previously installed in the Las Casitas Subdivision; and

"5. For such further relief as the Commission deems appropriate."

On February 2, 1989, defendant filed a "MOTION FOR RULING TO ALLOW ALISAL WATER CORPORATION TO SEVER ANY UNAUTHORIZED CONNECTION MADE BY COMPLAINANT TO ALISAL'S EXISTING WATER SYSTEM (IMMEDIATE RELIEF REQUIRED)." Attached to the motion is the declaration of Robert T. Adcock, the president of defendant. The declaration states in part:

"On January 23, 1989, ALISAL WATER CORPORATION was informed that RANCHERO PARTNERS had decided

to install the water system immediately and to tap into the water utility's water mains without benefit of a main extension agreement and without waiting until the hearing before the PUBLIC UTILITIES COMMISSION has been concluded.

*ALCO immediately filed a Complaint for injunctive relief in the Superior Court of the County of Monterey, Case No. 88181, to enjoin RANCHERO PARTNERS from tapping into the water mains belonging to ALCO. A temporary restraining order was granted on January 25, 1989. Furthermore, on January 26, 1989, ALCO filed a Request for Intervention with the CALIFORNIA PUBLIC UTILITIES COMMISSION. On January 27, 1989, the Court dissolved the temporary restraining order stating that the dispute should be resolved before the CALIFORNIA PUBLIC UTILITIES COMMISSION.

*ALCO has learned of the following facts which has forced it to file this motion:

- *1) RANCHERO PARTNERS will install the water system and connect it with ALCO's existing water system without preparing final plans and specifications as required by the utility.
- *2) The water system will be installed by GOLDEN VALLEY SEPTIC SYSTEMS AND EXCAVATING in violation of Rule 15, in that GOLDEN VALLEY SEPTIC is not a constructing agency approved by ALCO and was not selected through a competitive bidding process.
- *3) No main extension agreement has been executed between RANCHERO PARTNERS and ALCO. RANCHERO PARTNERS has stated that it intends to tap into and connect with ALCO's existing water mains even though ALCO has not authorized such interconnection.
- *4) RANCHERO PARTNERS has stated that it will not wait until the hearing in this matter has been concluded before

installing its intract water system. I have been informed and believe that RANCHERO PARTNERS will tap into ALCO WATER SYSTEM on February 1, 1989.

"These acts on the part of RANCHERO PARTNERS will undermine the authority and decision-making process of the Administrative Law Judge as well as trample the rights of ALCO.

"Complainant is circumventing the administrative process it invoked by filing the Complaint herein at the expense of the utility's rights and obligations under Rule 15."

On February 15, 1989, complainant filed a pleading entitled "OPPOSITION TO MOTION FOR RULING TO ALLOW ALISAL WATER CORPORATION TO SEVER ANY UNAUTHORIZED CONNECTION" (Opposition Motion). The opposition motion alleges that:

"Rule 15 of the Public Utilities Commission, provides in Section A(5)(b):

"Any applicant for a main extension requesting the utility to prepare detailed plans, specifications, and cost estimates shall be required to deposit with the utility an amount equal to the estimated costs of preparation of such material.

"The amount of the deposit, pursuant to this provision, is limited only to the enumerated items and must be equal to the costs of preparation. As set forth in the Declaration of Carl Hooper filed herewith, the costs for preparation of the engineering plans for the water system is \$1,200. Mr. Adcock, President of ALISAL WATER CORPORATION, has demanded a deposit in the sum of \$15,000. There is a gross discrepancy between the amount estimated by Mr. Hooper and the demand by Mr. Adcock. Public Utilities Code Section 451 provides:

"All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and

reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

"Clearly, a charge of 12.5 times the estimated cost for preparing engineering plans is unreasonable. Additionally, the charge should be even less than \$1,200 because plans have already been prepared by WWD Corporation.

"Rule 15 Section A(1)(a) provides:
A main extension contract shall be executed by the utility and the applicant or applicants for the main extension before the utility commences construction work on said extensions or, if constructed by applicant or applicants, before the facilities comprising the main extension are transferred to the utility. (Emphasis added.)

"This provision makes clear that the applicant may install the water system. Rule 15 Section C(1)(c) provides:

"In lieu of providing the advances in accordance with Sections C(1)(a) and C(1)(b), the applicant for a main extension shall be permitted, if qualified in the judgment of the utility, to construct and install the facilities himself, or arrange further installation pursuant to competitive bidding procedures initiated by him and limited to the qualified bidders.

"While it is true that the utility has the right to determine whether or not the applicant is qualified, this issue is presently before the Public Utilities Commission and the utility should not be allowed to benefit from its unlawful and extortionate demands for money by now preventing the developer from proceeding with installation of the water system. No one can take advantage of his own wrong. Civil Code Section 3517.

"III.

"DEFENDANT WILL SUFFER UNDUE HARDSHIP

"A court may deny injunctive relief and relegate the plaintiff to his or her remedy at law if the benefit resulting to

him or her from the granting of the injunction will be slight as compared to the injury caused to the defendant thereby. Wright v. Best (1942) 19 Cal.2d 368, 386, 121 P.2d 702. The instant case is a classic example of where substantial hardship would result from the granting of the requested relief as opposed to slight or no injury to ALCO if the relief is denied. The relief requested in this case would literally bring defendant's subdivision project to a screeching halt.

"IV.
"LACHES

"Where a plaintiff has passively permitted defendant to spend money and effort in building an illegal structure, he or she is not entitled to an injunction. Los Angeles Athletic Club v. Long Beach (1932) 128 Cal.App. 427, 433, 17 P.2d 1061. At the time of the PUC hearing on January 9, 1989, the water company learned that Rancho Partners intended to install the water system. Thereafter, Mr. Adcock, President of the water company, visited the Las Casitas Subdivision on almost a daily basis to observe the project. It was not until the day before installation of the water system was to commence that he sought to enjoin the installation.

"V.
"PUBLIC POLICY FAVORS LOW INCOME HOUSING

"Government Code 65580 sets forth the public policy of this State in favor of low and moderate income housing. The Las Casitas Subdivision will provide such housing and should be allowed to proceed without delay."

On February 15, 1989, the additional declaration of Adcock was filed. The additional declaration states that:

- "1) RANCHERO PARTNERS has commenced the installation of the water system and has connected it with ALCO's existing water system without preparing final plans and specifications as required by the utility.
- "2) The water system is being installed by GOLDEN VALLEY SEPTIC SYSTEMS AND EXCAVATING in

violation of Rule 15, in that GOLDEN VALLEY SEPTIC is not a constructing agency approved by ALCO and was not selected through a competitive bidding process.

- "3) No main extension agreement has been executed between RANCHERO PARTNERS and ALCO. RANCHERO PARTNERS has tapped into and connected with ALCO's existing water mains even though ALCO has not authorized such interconnection.
- "4) The installation of the water system by RANCHERO PARTNERS does not meet ALCO's material specifications or installation specifications.
- "5) On February 13, 1989, RANCHERO PARTNERS ruptured ALCO's 12 inch water main which is located in the Las Casitas Subdivision. By reason of such rupture, the water pressure in the entire ALCO water system went from an average of 65 pounds to 18 pounds. This extreme drop in pressure resulted in no water service to two elementary schools and hundreds of our customers. This caused a direct threat to the health and safety of the public, as there was no fire protection and possible contamination to the domestic water supply. The rupture took place at approximately 9:45 A.M. Pressure was restored to normal at approximately 10:40 A.M. The valves on the 12" main which were ruptured, was turned off to stop the leak and to restore pressure to the remaining portion of the system.
- "6) ALCO has demanded access to repair its water main. RANCHERO PARTNERS has denied access to ALCO and continues to deny access to ALCO to repair the water main."
- "7) RANCHERO PARTNERS has consistently denied unfettered access to ALCO to its easement on the property since on or about January 23, 1989.
- "8) RANCHERO PARTNERS is installing an in-tract water system in violation of Rule 15 and is jeopardizing ALCO's entire water system by its unauthorized tapping in and connecting with ALCO's system."

Discussion

Rule 15 of defendant's tariff covers Main Extensions. This rule is commonly referred to as the "Main Extension Rule" and is similar in most Public Utility Water Company tariffs.

Section A. 8. of Rule 15 provides the following:

"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."

This Commission has the responsibility of resolving the dispute concerning the deposit and other matters under the defendant's main extension rule. Until that dispute is resolved, complainant has no right to unlawfully make connections to defendant's water systems.

The additional declaration of Adcock does not specify what caused the rupture of the 12-inch main. We cannot tell with certainty whether it was caused because of the connection referred in Fact 1 or whether it was an accident or some other cause. In any event, defendant has an obligation as a public utility to continue to serve its customers. We will order defendant to take whatever means are necessary including legal action in the courts if necessary to obtain access to its 12-inch main in order to restore service to its existing customers.

Findings of Fact

1. Complainant is the owner and developer of the real property known as Las Casitas Unit 4 and Village.
2. The property set forth in Finding 1 is within defendant's service territory.
3. No main extension agreement has been executed between complainant and defendant.
- 3.a. Rule 15 provides that all extensions of distribution mains to serve new customers shall be made under Rule 15, unless

specific authority if first obtained from the Commission to deviate therefrom, and that actual construction shall be done by the utility or a construction agency acceptable to it.

4. Defendant has demanded a deposit of \$15,000 pursuant to Rule 15 of its tariff.

5. Complainant believes the \$15,000 figure is excessive.

6. This proceeding is the vehicle through which the dispute between the parties is to be resolved.

6.a. The parties dispute whether complainant and its contractor are qualified to perform the installation. That issue is also before the Commission.

7. Hearings on the case are in progress.

8. Rule 15 provides a main extension contract must be executed before the utility commences construction work or if constructed by applicant, in this case the complainant, before the facilities comprising the main extension are transferred to the utility.

9. On February 13, 1989, defendant's 12-inch water main was ruptured causing the pressure to drop from 65 pounds to 18 pounds.

10. The rupture set forth in Finding 9 resulted in the loss of service to certain customers.

11. The rupture created a threat to the health and public safety of defendant's customers. ✓

12. The additional declaration of Adcock does not specify what caused the rupture.

Conclusions of Law

1. Defendant's motion should be granted.

2. Defendant should be authorized to sever any unauthorized connection to its system made by defendant.

3. Defendant should be ordered to take whatever actions are necessary, including legal action, to gain access to its water main for the purpose of making repairs and performing maintenance so that normal service to its customers can be provided.

Notice of this matter did not appear on the Commission's public agenda; however, an emergency exists in that the rupture and loss of water pressure severely impair the public health and safety of defendant's customers, which justifies our action today under Public Utilities Code § 306(b).

INTERIM ORDER

IT IS ORDERED that:

1. The motion for ruling to allow Alisal Water Corporation to sever any unauthorized connection made by complainant to Alisal's existing water system is granted.
2. Defendant is authorized to sever any unauthorized connection made by complainant to its water system. -
3. Defendant shall take whatever action is necessary, including legal action, to gain access to the 12-inch main that was ruptured for the purpose of making repairs and performing maintenance on its water lines so that normal service to its customers can be provided.

This order is effective today.

Dated Feb 24 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weisler, Executive Director

The hearing was held as scheduled; however, the matter was not submitted and was continued to March 14, 1989.

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This order is effective today.

Dated _____, at San Francisco, California.