

ALJ/BRS/jc

Decision 90 09 067 SEP 25 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

William Hatch, et al.,  
Complainants,

vs.

Southern California Water  
Company,

Defendant.

ORIGINAL

Case 89-11-030  
(Filed November 27, 1989)

William E. Hatch, for himself, complainant.  
Barbara Kirschner, for Southern California  
Water Company, defendant.  
Richard Finnstrom, for the Commission  
Advisory and Compliance Division.

O P I N I O N

Summary

Defendant Southern California Water Company (SCWC) is ordered to refund \$2,111.07 to complainant William Hatch (Hatch), as provided under SCWC Rule 15 for water main extensions.

Background

In order to obtain service to his new house at 1440 East San Gabriel Street in Ojai, Hatch paid SCWC \$10,302.03 for the installation of 244 feet of six-inch water main.

The six-inch main paid for by Hatch extends to the property line of Dan Madrid (Madrid), a neighbor directly across the street from Hatch. Madrid received water service after paying for a 30-foot extension added to the 244-foot main serving Hatch. SCWC did not ask Madrid to contribute to the cost of installing the 244-foot main.

Discussion

The only contested issue in this case is the meaning of Rule 15. Rule 15 states, in pertinent part, that refunds are available "If subsequent applicants for water service are connected directly to the main extension contributed by the original customer..."

Hatch contends that the intent of Rule 15 is clear, that "connected directly to" is satisfied by a service that is connected to a further main extension. Hatch believes that he is entitled to a refund due to the connection of Madrid under Rule 15.

Defendant argues that "direct connection to an existing main" means that a service must connect directly to the main. According to defendant, if the main is extended and the service is connected to that main extension, Rule 15 does not provide refunds.

In its Answer to Complaint, SCWC argues:

"The current version of Rule No. 15 became effective on May 24, 1982. The superseded rule which was referred to as the '50-foot-Rule' was not specific about refund applicability only for service connections directly connected to main extensions. However, the current rule specifically includes such language. It is SCWC's belief that the exclusion of that language was intentional and, therefore, only includes refunds for service connections made directly to the main extension and not additional main extensions. If this were not the case, the refunding process would be unending." (Answer to complaint, p. 2.)

In SCWC's view, the current language which became effective on May 24, 1982, ("connected directly to the main extension") was intended to eliminate refunds of the type Hatch seeks. When questioned about whether a shorter main extension, such as one foot or five feet, would have the same result under Rule 15, SCWC was less clear. SCWC witness Frank Bennett testified that such instances would have to be carefully reviewed.

SCWC states that the 30-foot extension was not requested by Madrid; rather it was required by SCWC. Madrid intended to offer to sell a portion of his lot to his neighbor. In order to serve the remaining portion, Madrid requested an angled service from the end of the existing main. However, SCWC refused since such a service is against company policy, and the City of Ojai would not allow the street to be trenched at an angle. As a result, Madrid was required to extend the main 30 feet in order to allow a normal service connection at right angle to the street centerline.

In a letter of June 22, 1989 regarding this case, James McVicar, then Chief of the Water Utilities Branch of the Commission Advisory and Compliance Division (Water Branch), advised R. L. Anthony, Senior Vice President of SCWC:

"It is our opinion that refunds as outlined in Rule 15, B.2., should be made to the customer who originally paid for and contributed the main extension to the utility whether service is provided to a new customer by a service from the original main extension or by a new main extension connected to the original main extension."

Water Branch witness Richard Finnstrom interprets Rule 15 slightly differently than McVicar, but agrees that Hatch is entitled to a refund due to the Madrid service. Finnstrom believes that when a short main extension is made for a new service connection, such as the 30-foot Madrid main extension, the party who paid for the original main is entitled to a refund based on the cost of 50 feet of the original main. Finnstrom believes that in other circumstances, such as when longer main extensions are installed or paid for by the new customer, the individual circumstances should be considered in determining whether a refund is appropriate.

We disagree with SCWC's interpretation of the rule. The rule provides that refunds are available "If subsequent applicants

for water service are connected directly to the main extension contributed by the original customer..." There is no requirement that the service connection be connected directly to the main extension, rather only that "subsequent applicants" be connected directly. We interpret this to mean that complainant is entitled to a refund due to Madrid's service connection, since Madrid is connected directly to the main, by way of the 30-foot main extension which was installed.

We further note that equity supports a refund to Hatch. Had Hatch not been the first party to obtain service on East San Gabriel Street, Madrid would have had to pay for the 244-foot main extension in addition to the 30-foot extension. Any other customer who obtains service downstream from the main provided by Hatch will also benefit from it. We don't believe that the intent of the Rule was to give subsequent customers a free ride on the 244 feet of main installed at Hatch's expense. We also note that Madrid originally requested that the service connection be made directly at the end of the 244-foot main and that, as a result of SCWC policy, an additional 30 feet of main was installed to allow a normal connection at right angle to the street center line.

We are not impressed with SCWC's argument that if a refund were allowed in this case, the refund process would be unending. Rule 15 specifies that refunds are available for 10 years after completion of the main extension. We believe that the period of refund availability recognizes that further development requiring service from the main may take time, but the 10-year limit prevents the refund process from being unending.

We conclude that Hatch is entitled to a refund based on the service connection of Madrid. The amount of refund specified under Section B.2. of Rule 15 is "an amount equal to the cost of 50 feet of the original extension."

The final cost to Hatch of the original 244-foot main was \$10,302.03. The proportionate cost of 50 feet of the main is \$2,111.07. We will order SCWC to refund this amount to Hatch.

Findings of Fact

1. Hatch was required to pay \$10,302.03 for, and contribute to SCWC, 244 feet of six-inch water main in order to obtain water service at his new residence at 1440 East San Gabriel Street in Ojai.

2. Madrid obtained water service from SCWC after extending the 244-foot main 30 feet.

3. SCWC Rule 15 covers refunds to customers who originally paid for and contributed a main extension to the utility.

4. Hatch and Water Branch believe that Madrid's service connection entitles Hatch to a refund.

5. SCWC believes that Hatch is not entitled to a refund.

Conclusions of Law

1. Under SCWC Rule 15, Hatch is entitled to a refund of the proportionate cost of 50 feet of the 244-foot main he paid for.

2. SCWC should be ordered to refund \$2,111.07 to Hatch.

O R D E R

IT IS ORDERED that Southern California Water Company shall refund to complainant William Hatch the amount of \$2,111.07 within 30 days of the effective date of this order.

This order becomes effective 30 days from today.

Dated SEP 25 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
PATRICIA M. ECKERT  
Commissioners

Commissioner John B. Ohanian,  
being necessarily absent, did  
not participate.

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

  
NEAL J. STULMAN, Executive Director