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Decision 92-12-010 December 3, 1992

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

D.M.L. Properties, Inc.,
Complainant,

vs.

California Water Service
Company (U-60-W),
Defendant.

Case 92-04-022
(Filed April 16, 1992)

OPINION

Statement of Facts

Two water systems developed in the 1920s to serve the Palos Verdes area were subsequently consolidated as the Palos Verdes Water Company. In 1956, Palos Verdes Properties, a partnership composed of Ranchos Palos Verdes Corporation and Capital Corporation, for ten dollars and other consideration, by grant deed transferred to this water company two parcels of land approximating 9 acres to be used solely for "water storage reservoir and water tank site purposes, water pump and pumping plant purposes, water well and water well site purposes and water pipeline purposes."

Palos Verdes Water Company distributes water purchased from the West Basin Municipal District and received via facilities of the Metropolitan Water District of Southern California into the Palos Verdes Reservoir.

The design scheme carried out by Palos Verdes Water Company in the early 1960s was to construct a 3-mile long cross-country pipeline from the reservoir up 1,200 feet in elevation to its 9-acre parcel of land where two large water tanks and a

pumping station are sited. Approximately 80% of the water furnished customers in the Palos Verdes peninsula is distributed by gravity flow from this tank yard site.

To the east, the tank yard fronts narrowly into Crownview Drive, adjacent to the point where that road enters Palos Verdes Drive East. The entire area is mountainous with steep slopes and canyons (see Appendix A map).

In 1966, Palos Verdes Water Company sold to the Palos Verdes Peninsula Unified School District an easement for road and retaining wall purposes and for slope rights. The easement ran along the northeastern and northern border of the utility's 9-acre tank yard property, extending from Palos Verdes Drive East to a point adjacent to the Southern California Edison Company property west of the two large tanks. When joined with District land north of the boundary, it made possible a three-lane main entrance and exit mall for autos, buses, and pedestrian traffic to the District's Miraleste Intermediate School site, as well as parking areas for the school.

The water tank and pumping station area is surrounded by utility fencing. Along the north and northeast sides of the utility property, this fence runs along the southern side of the school's easement. At the northernmost apex of the utility property, the nearest part of the fence is 52 feet from reservoir tank 19-1. On the northwest side of the utility property, the land dips into a canyon about 65 feet inside the property line. Here the utility fence leaves the border and runs along the top of the slope into the canyon while extending to the western property line.

Today, giving access to the two reservoir tanks and the pumping station, a utility service road enters the utility property from Crownview Drive near the former's intersection with Palos Verdes Drive East, and extends westward to the tanks and pumping

station area.¹ An extension then passes northwestward of the two large tanks, bending around tank 19-1 before extending southwestward to where it enters upon (and follows alongside the south side of the fence) the easement described further on in the Palos Verdes Properties-Palos Verdes Water Company grant deed. This dirt road extends along the easement line to the western property line. Approximately 150 feet from the property line there is a gate across this dirt road. Under this dirt road west of the reservoir tanks is a pipeline which leads west through adjoining property easements to transport most of the water distributed on the Palos Verdes Peninsula.

When Tract No. 26867, which lies north of Crownview Drive and includes properties west of the utility property, was subdivided, both Palos Verdes Properties and Palos Verdes Water Company consented to the recordation February 7, 1962 of the subdivision map. Both companies certified on that recording that except as shown on the subdivision map, they knew of no easement other than publicly owned water lines, sewers, or storm drains, and the right to make connections therewith from any adjoining properties, and that they were granting no rights or interests to the public within the boundaries of these easements.

Earlier, when Palos Verdes Properties by grant deed (Book 51944 pp 165 et seq.) sold the tank farm property to Palos Verdes Water Company in 1956, it reserved easements and rights of way for road purposes, public utility purposes and sewer line purposes, for use of land it and/or Rancho Palos Verdes Corporation and Capital

¹ Southern California Edison Company, with a small facility on property adjacent to and south of the Miraleste School and its parking lot and Cal Water's tank 19-1, has a utility access easement from Crownview Drive to the Edison property line over this Cal Water access road.

Corporation then owned, or theretofore had sold.² The easement here at issue runs from a point 66 feet south of the northwestern corner boundary of the water utility property, and extends 660 feet across the northwest portion of the utility property where it terminates at what today is the approximate western end of the entrance-exit mall to the Miraleste School. Two matters of special importance to the complaint's interest are: 1) the easement today runs directly under the center of reservoir 19-1, apparently effectively negating any consideration of at least that segment of the easement lying under the tank for road purposes, and 2) that the easement does not give access to Palos Verdes Drive East as desired, but rather to the property of Palos Verdes Peninsula Unified School District's Miraleste Intermediate School site at a point well over 500 feet from nearest access to Palos Verdes Drive East.

About 1972 the Palos Verdes Water Company was merged into California Water Service Company (Palos Verdes Water Co. (1972) 74 CPUC 452). The latter today operates the system as one of its districts.

Complaint's Situation

Beyond and to the west of the Cal Water property, the land forms into a "box canyon." There are two approximate one-acre size adjoining lots (Nos. 11 and 14) in this box canyon. In recent years these two lots were acquired by DML Properties (David M. Leeper). Leeper asserts that there is no vehicle access to these lots from the nearest public streets, Palos Verdes Drive East or

² Palos Verdes Properties, by this reservation of an easement appears to have been a "common grantor" to both Palos Verdes Water Company and to a predecessor in complainant's chain of title, the SOTO Development Company.

Crownview Drive.³ He states that without access across Cal Water's property to one of these public streets no use can be made of these lots.

Basically, Leeper seeks a 15-foot wide easement for road access purposes from Palos Verdes Drive East across Cal Water's property to the DML property. The easement he wants would extend west along the northern boundary and around reservoir tank 19-1, thence southwesterly, but 60 to 90 feet parallel to but inside the boundary and inside a utility fence, using the utility's dirt service road, and thence over the utility's dirt road covering its pipeline, past a utility fence gate to the common Cal Water-DML boundary line. This last stretch would be on the western most segment of the Palos Verdes Properties reserved easement.

Although there have been discussions, Cal Water has not been very receptive to Leeper's proposals. Cal Water has offered to sell Leeper the canyon between its fence and property line on the northwest boundary, but refuses use of its dirt road inside the fence because it does not want to disturb the major water pipeline in its dirt roadway. Asserting safety and access needs within the approximate 52 feet of open space between reservoir tank 19-1 and its fence, Cal Water refuses any passage within that open space. Leeper argues that the utility does not need more than 37 feet of open space and could permit passage. Cal Water offers space beyond the fence at this boundary apex point, but this area is subject to the easement previously granted to the school district, and presently is in use as part of the school's access driveway. To use it DML would also have to mount and cross a 12-foot retaining wall, part of the school's easement. Cal Water also offered to

³ There is a utility access strip easement on the south side of the canyon leading up to Crownview Drive, but as the strip has a 55-60% slope, it is too steep for vehicle access.

sell a strip outside its fence on the northeastern border leading east to Palos Verdes Drive East. But this area is already subject to a road easement granted to the local school district and now comprises the southern half of a 3-lane entrance-exit mall driveway to the Miraleste Intermediate School. The school district refuses to convey any easement, right of access or other ownership interest which would involve its property or easement use rights.⁴

Accordingly, instead of this latter route Leeper proposes a 15-foot wide strip in the adjacent area inside the Cal Water fence, an area now subject to the slope easement earlier granted to the school district in conjunction with the road easement.

Cal Water's Response

Cal water asks for dismissal of the complaint on several grounds. Citing Public Utilities Code § 1702 and the Commission's Rules of Practice and Procedure, which require allegations of violation of a provision of law or of a Commission rule or order before a complaint may be entertained by the Commission, the utility asserts first that, as the complaint fails to set forth any violation, it must be dismissed.

The utility further states that the Commission has no jurisdiction to either adjudicate issues of property title or to order the granting of an easement or sale of its property, or to determine a sale price. It observes that to do so would be tantamount to its conferring the power of eminent domain on a private party.

Cal Water also denies any violation of General Order No. 103 with regard to the cover and depth of its water main pipeline in the dirt road west of tank 19-1 on its own property, pointing

⁴ It contends that any reduction of land use in these earlier easements would greatly impact the safety and welfare of its students.

out that the dirt road involved is not a public street or alley. And finally, the utility refers to the fact that the Commission repeatedly has held that it has no authority to grant declaratory relief, the principal prayer of the complaint.

DML's Superior Court Action

In further efforts to attain his objective, Leeper has brought an action in Los Angeles County Superior Court (Case No. YC002924) and has filed the captioned complaint. His court action is "pending" (with a stipulation that complainant may amend to name an additional defendant and allege different facts learned in cooperative discovery. The stipulation also gives Cal Water the option to file a new answer).

The Complaint

By the captioned complaint, DML seeks an order:

1. That the Commission has no objection to Cal Water granting, or a court ordering, an easement for access purposes to DML's property.
2. That the Commission order Cal Water to grant a road easement, either the one requested or an alternate route.
3. That the Commission approve sale of an easement.
4. That the Commission orders Cal Water to sell complainant the requested strip of land or another route.
5. That the Commission determine the proper formula for the sale price.
6. That the Commission determine the extent of its jurisdiction over Cal Water's property, an easement or sale, and a sale price.
7. That if Cal Water requires Commission authorization to grant or sell an easement, the utility be ordered to apply to do so.
8. That the Commission determine alternate routes of access across Cal Water's property that would not interfere with the utility's operations.

9. That the Commission determine whether the utility's dirt road pipeline is in compliance with General Order No. 103.

10. That the Commission determine whether Cal Water has a duty to allow fire and paramedic vehicles to cross its property.

Discussion

DML, in response to Cal Water's assertion in its motion to dismiss that no provision of law or order or rule of the Commission has been violated, argues that there are two violations, one of law and one of a General Order.

First, DML argues that Cal Water's denial of access over the easement reserved for road purposes earlier by the Palos Verdes Properties grant deed to Palos Verdes Water Company constitutes a violation at law in that it is counter to the reservation of a "30' easement as reserved in O.R. 53128-164..." noted on the 1962 recorded Tract 26867 map creating lots 11 and 14, and certified to by that water company. But this argument simply has ignored the fact that the easement claimed has been long blocked from possible use or enjoyment by the fence and reservoir tank 19-1, so that the easement has been extinguished by adverse use for more than the prescription period by the servient owners, Palos Verdes Water Company and the successor in interest Cal Water.

And, assuming arguendo that the easement has not been extinguished by adverse use, access across this Palos Verdes Properties reserved strip of land would still not benefit DML since the point where it terminates at the eastern end will not serve to give access to any public roadway. The easement, standing alone, did not extend far enough. It extended across part, but not all of the water utility property, but not so far as the Palos Verdes Drive East. The easement terminated at the boundary line of the present Cal Water-Miraleste School line, east to reservoir tank 19-1, but near the western end of the entrance-exit mall driveway to the school--hundreds of feet to the west of Palos Verdes Drive East. Without some access across the school property, or new and

additional access across Cal Water's property to Palos Verdes Drive East, the easement would end nowhere. The evidence submitted indicates that the School District is definitely not disposed to open its access driveway for DML use, and Cal Water's offer north of its fence, standing alone, is not viable. Therefore, reliance upon the Palos Verdes Properties reserved easement contentions does not appear to resolve DML's access problem.

Second, the asserted violation of General Order No. 103 by Cal Water with regard to the depth cover over its water main in the dirt road on its property cannot stand. That fenced-in dirt road is a private way, not a "public street or alley." The General Order requirement of not less than "30 inches of cover over the top of the pipe in public streets or alleys...." does not include private ways.

DML asks that the Commission order Cal Water to grant the requested easement, or determine and grant an easement over another route, or to sell the requested route or another route, or apply for authority from the Commission to sell or grant either. The Commission lacks authority to do any of these acts. Long ago, the California Supreme Court stated:

"With the rights of an intending purchaser the Commission has nothing to do. Nor has it power to determine whether a valid contract of sale exists or whether either party has a legal claim against the other under such a contract. These are questions for the courts and not for the Railroad Commission, which is merely authorized to prevent an owner of a public utility from disposing of it where such disposition would not safeguard the interest of the public. If the owner does not desire to sell, the Commission cannot compel him to do so. If, having contracted to sell, he refuses to comply with the contract, the Commission is not empowered to determine that he should carry out his bargain. The provision of the Public Utilities Act that an owner may not sell without the consent of the Commission implies that there must be an owner ready to sell and seeking authority so to do before the

Commission is called upon to act." Hanlon v. Eshleman (1915) 169 C. 200, 202-203.

While, for purposes specified in the Public Utilities Act, the Commission is empowered to ascertain the value of utility property, it is not required to inquire into the value of property sought to be transferred for the purpose of determining the reasonableness of adequacy of the purchase price (Baldwin v. Railroad Commission (1929) 206 C. 581). The Commission is not concerned, because of want of jurisdiction, with what a purchaser might agree to pay. We are concerned only with the amount that is charged to fixed capital accounts--and this for rate making purposes (American States Water Service Co. (1930) 35 CRRC 659). And the mere making of appraisals is not a duty or the function of the Commission (Southern Sierra Power Co. (1930) 34 CRRC 801). Ordinarily, the Commission will permit a public utility to sell its properties at the best price obtainable (Northern Cal. Power Co. (1919) 17 CRRC 279). Should Cal Water grant or sell an easement or right of way which would require relocation of its pipeline or any of its facilities, the utility must be compensated for the costs of such required relocations.

Clearly the primary object of this complaint is to secure from the Commission an interpretation and construction of what rights, if any, with regard to actual or possible easements or right of way DML may have which derive from or are associated with the Palos Verdes Properties grant deed to Palos Verdes Water Company as well as the reservation of an easement in O.R. 53128 as noted on the 1962 recorded Tract 26867 map which created the lots presently acquired by DML. But long ago, the Commission dismissed a complaint claiming title to a certain right of way and petitioning the Commission for an order affecting usage; the Commission stated that it had no jurisdiction to interpret such contracts, except where incidental to or in connection with some established power or duty of the Commission (A. & E. Ry. v.

Northern Elec. Ry. (1914) 4 CRRC 1155). And to the extent that complainant asks us to determine entitlement to an easement or another property interest providing access to its lots across the utility's property, the California Supreme Court recently held that the Commission is not in the business of adjudicating issues of property title. In Camp Meeker Water System, Inc. v. Public Utilities Commission (1990) 51 C. 3d 845, 861 the Court noted that the Commission:

"expressly recognizes that its functions do not include determining the validity of contracts, whether claims may be asserted under a contract, or interests in or title to property, those being questions for the courts."

Since DML has failed to state a cause of action against Cal Water and the Commission lacks jurisdiction to issue declaratory relief or to order Cal Water to sell, lease, or otherwise transfer its property to complainant, the complaint must be dismissed.

Findings of Fact

1. In 1936 Palos Verdes Properties, a partnership of Rancho Palos Verdes Corporation and Capital Corporation, by grant deed sold to Palos Verdes Water Company a 9-acre site for water storage reservoir, pumping station, and pipeline purposes, while reserving for the benefit of itself and lands it theretofore had sold, easements, and rights of way for road and other purposes across a portion of the land sold to the water utility.

2. In 1962 when an adjacent land tract to the west of the 9-acre site was subdivided, both the partnership and the water utility consented to recordation of the subdivision map, acknowledging as set forth on the recorded tract map, the existence of an easement across part of the water utility's 9 acres.

3. Included in the subdivided land tract were lots Nos. 11 and 14, both in a substantially depressed "box canyon."

4. In the early 1960's Palos Verdes Water Company sited two large water storage reservoir tanks, a pumping station, and large water distribution mains on the 9-acre site.

5. One of these large water storage reservoir tanks, 19-1, was sited and is located squarely across the easement across part of the water utility's property, and alone or in association with a utility-owned and maintained fence and fence gate west of the tank, has long blocked use or enjoyment of the easement by other than the utilities.

6. In 1966 Palos Verdes Water Company sold to the Palos Verdes Peninsula Unified School District an easement along the utility's northeastern and northern boundaries for road, retaining wall, and slope rights, an easement which combined with adjoining school property has been developed as a 3-lane entrance and exit mall driveway from Palos Verdes Drive East into the Miraleste Intermediate School and its parking lots and sporting fields.

7. In 1972 Palos Verdes Water Company was merged into California Water Service Company, which today operates the former's system as one of the latter's districts.

8. Today the Cal Water reservoirs, pumping station, and pipelines on the 9-acre site provide approximately 85% of the water delivered to the Palos Verdes Peninsula.

9. The pipeline serving the Palos Verdes Peninsula is located under a private dirt road on the utility property west of reservoir tank 19-1 in part of the old Palos Verdes Properties reserved easement.

10. Recently the complainant, DML Properties purchased lots Nos. 11 and 14 for development purposes.

11. Bounded by steep slopes unsuitable for vehicle access to Crownview Drive on the south, DML seeks access to Palos Verdes Drive East across Cal Water and the Miraleste School properties to the east.

12. DML has initiated Superior Court proceedings, in abeyance at present, to obtain an easement.

13. While it would appear that the Palos Verdes Properties 1956 reserved easement has been extinguished by adverse use for more than the prescription period by the construction, use, and maintenance of reservoir tank 19-1 and the fence by the servient owners of the easement, Palos Verdes Water Company and Cal Water, in that the Palos Verdes Properties 1956 reserved easement across the utility property terminated on the east on the boundary of the School District property at a point hundreds of feet inland and west of Palos Verdes Drive East, reliance upon that easement alone could not produce the road access result that DML seeks.

14. The School District refuses to share the easement granted it by Palos Verdes Water Company or to grant DML access across the school's property.

Conclusions of Law

1. The Commission has no jurisdiction to issue declaratory relief or to order Cal Water to lease or sell its property, or grant an easement, nor can the Commission determine a purchase price.

2. The Commission has no jurisdiction to adjudicate issues of property title.

3. If the apparent extinguishment of an easement across part of Cal Water's property violates some right of complainant to an alternate access route across that property, the cause of action for violation of such right lies in the courts.

4. Adjudication of issues of property title are for the courts to resolve.

5. Complainant has failed to allege facts which could constitute a cause of action within this Commission's jurisdiction against Cal Water.

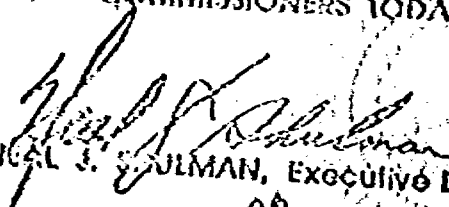
6. In all other aspects, the complaint as to Cal Water should be dismissed either for lack of jurisdiction, or for failure to state a cause of action as required pursuant to Public Utilities Code § 1702.

ORDER

IT IS ORDERED that the complaint is dismissed.
This order becomes effective 30 days from today.
Dated December 3, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL S. SULMAN, Executive Director
ps

MIRALESTE SCHOOL & PARKING LOT

SCHOOL ENTRY-EXIT HALL DRIVE

EASEMENT ROUTE SOUGHT BY DML

RESEVOIR
19-1

RESEVOIR

SOCAL EDISON

DONALD
STN.

FORMER RESERVED ROAD EASEMENT

CAL WTR. PROPERTY

APPENDIX A MAP
C. 92-04-022

DIRT RD

DML LOTS

LOT 14

LOT 11

TRACT 26867

CROWNVIEW DR

PALOS VERDES