Decision 82 04 011 APR - 6 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RONALD A. KRATLIAN,

Complainant,

vs.

F. FERRARO (MADERA RANCHOS WATER CO.),

Defendant.

Case 10869 (Filed May 29, 1980)

O P I N I O N

Dennis Sandhurst,

Complainant,

vs.

Madera Ranchos Water Company,

Defendant.

Case 11012 (Filed August 6, 1981)

Ralph L. Holliday and Betty T. Holliday,

Complainants,

vs.

Madera Ranchos Water Company,

Defendant.

Case 11017 (Filed August 17, 1981)

Rauden H. Coburn, III D.D.S. and Shelbourne D. Coburn,

Complainants,

vs.

Madera Ranchos Water Company,

Defendant.

Case 82-02-01 (Filed February 8, 1982)

-1-

Ronald A. Kratlian, Dennis Sandhurst, Ralph Holliday, and Rauden H. Coburn, III, for themselves, complainants.
Palmer & Willoughby, by Michael F. Willoughby, Attorney at Law, for Madera Ranchos Water Company and Francis H. Ferraro, for himself, defendant.
William J. Jennings, Attorney at Law, John A. Yager, and Larry A. Hirsch, for the Commission staff.

O P I N I O N

Introduction

By Decision (D.) 92705 issued February 18, 1981, Francis Ferraro, dba Madera Ranchos Water Company, (defendant) was ordered to enter into a main extension contract with complainant Kratlian and to refund an improperly collected $300 connection charge. D.93123 issued June 2, 1981, granted rehearing of D.92705.

On August 6, 1981, Case (C.) 11012 was filed with the Commission. On August 17, 1981, C.11017 was filed. C.82-02-01 was filed on February 8, 1982. The three complainants request the Commission to direct defendant to provide water service. In all cases defendant answers that the existing system has reached its current capacity and that defendant cannot afford to install additional services.

Given the similarity of issues and the fact that Madera Ranchos Water Company is defendant in all four matters, the above-referenced cases were consolidated for hearing. One day of hearing was held March 3, 1982, in Madera, California. Testimony was received from complainants Sandhurst, Holliday, and Coburn; two

Commission staff (staff) members, and three witnesses for defendant. Upon the hearing's completion, the four matters were submitted for decision.

Discussion

During May 1981, defendant unilaterally imposed a moratorium on new water connections, citing its Tariff Rule 14c which authorizes the utility to refuse to serve new customers if the new connections would be detrimental to its existing customers. C.11012, 11017, and 82-02-01 were filed in direct response to the imposition of the moratorium.

Sandhurst, complainant in C.11012, has obtained building permits and intends to construct a house on Lot 185 in Subdivision 6 of Madera Ranchos. When he applied for water service from defendant, he was denied service on the basis of Rule 14c. Sandhurst has stated that he would prefer to have his own well, but Madera County would not issue him a permit for a well because he is within the service area of a water utility. If the Commission imposes an official moratorium on additional service connections, Sandhurst may be able to get a variance from the County to construct a well. However, a spokesman for the County cautioned that only the County supervisors have the authority to grant a variance.

Holliday, complainant in C.11017, in July 1981 began construction of a house on Lot 152 of Madera Ranchos Subdivision 6 and was denied water service when he made an application to defendant. The house was completed during the fall of 1981, and complainant has been receiving unauthorized water since that time.

Coburn, complainant in C.82-02-01, stated that he owns a house in the Madera Ranchos area. He cannot get a water connection to the existing house, and he cannot sell the house until there is water service.

In response to the complaints, staff analyzed defendant's water supply situation.

Defendant's system was constructed about 1960 as a mutual water company, and the water is supplied from two wells. From pump tests on record, the combined water production of the utility is 1,000 to 1,100 gallons per minute (gpm). Defendant does not have any storage capacity or booster pumps. The water supply is not sufficient to meet the peak summer demand of defendant's approximate 480 customers. The deficiency in water production results in low pressures during the summer high water use periods. In certain areas the pressures are very low. Sprinkler systems and showers will not work properly during times of low pressures.

A failure of either of the two existing pumps during the summer months has resulted in very low water pressure. It has been measured as low as 12 psi. General Order Series (G.O.) 103 requires a minimum pressure of at least 25 psi in designated low-pressure areas and 30 psi as a general rule. The entire service area is a designated low-pressure area and a minimum pressure of 25 psi should be maintained. Both of defendant's pumps receive power from the same Pacific Gas and Electric Company (PG&E) substation; therefore, when there are power outages there is a complete shutdown of the water system. During power failures or other water outages, the mains could dewater and groundwater could infiltrate them. Infiltration of groundwater into the mains could contaminate the water supply because of the use of septic tanks in the area.

The California Department of Health Services (DHS) recommends that defendant install at least 1,000 gpm of additional supply and a backup power source on the largest well so that the mains will not dewater at any time. The DHS would like to have the dead-end pipes on each side of Avenue 12 connected together to improve the water distribution system. The DHS also recommends that all wells be metered. G.O. 103 also requires metering of the sources of supply.

In response to its water supply limitations, defendant sent out notices to customers asking them to alternate irrigation days to help reduce the peak demands. Defendant has also been maintaining a record of persons who contacted defendant requesting a water connection.

The DHS has requested that defendant make plant improvements including additional water supply. Defendant maintains that it does not have the money to make the required improvements. Because of this, the DHS has asked defendant to attempt to get a Safe Drinking Water Bond Act (SDWBA) loan. Defendant is in the preliminary stages of obtaining that SDWBA loan. However, experience indicates that this process can take up to several years before funds are available and the improvements actually installed.

Based upon its analysis of the system's capacity, the staff recommended that:

1. The Commission impose a moratorium on new service connections by defendant to protect the existing customers until a sufficient water supply is obtained.

2. Those houses constructed or under construction as of March 1, 1982 be exempted from the moratorium because of the extreme financial hardship that would be imposed on the owners.

3. Sandhurst's request for a service connection not be granted since he has no other assured source of water for his planned residence.
4. A copy of any decision in this proceeding be sent to the Madera County Engineer.
5. Defendant be ordered to install the additional 1,000 gpm of water supply with a backup power supply as requested by the DHS and to meter all wells.
6. Defendant be ordered to diligently pursue the SDWBA loan in order to make improvements as soon as possible.
7. Defendant submit for the record in this proceeding an outline of the scope of improvements it contemplates providing under an approved SDWBA loan.
8. Defendant be ordered to submit progress reports every six months on the status of obtaining additional sources of supply.
9. The Executive Director be authorized to cancel the moratorium when advised by the staff that the required additional water supply has been achieved.

The staff recommendations are reasonable; and with minor exceptions, they will be adopted. It is apparent, as acknowledged by all the parties, that improvements, including additional supply, are needed to ensure adequate water service by defendant. It is equally clear that such improvements can be funded only through an approved SDWBA loan. Defendant is urged to proceed with all possible haste to process its application for such a loan. We will carefully monitor defendant's progress in securing the SDWBA loan and effecting the necessary improvements.

However, until an additional water supply is connected to the system, a moratorium will be imposed upon new connections to protect existing customers. Houses constructed or under

construction as of the effective date of this order will be exempted from the moratorium to avoid imposition of extreme financial hardship upon the homeowners. Complainant Holliday's home on Lot 152 and complainant Coburn's house on Lot 89 are already constructed and therefore exempted from the moratorium. Furthermore, complainant Sandhurst will be allowed to connect to defendant's water system. Defendant will be directed to immediately connect the above-mentioned complainants to its system and provide water service. Defendant will also be directed to bill complainants Holliday, at its published rate, for water service provided since October 1981.

Staff has recommended that defendant be ordered to submit progress reports every six months on the status of obtaining additional sources of supply. A witness from DHS proposed that such reports be made on a quarterly basis. We will adopt the recommendation of the DHS.

C.10869 involves different issues and warrants separate treatment. At the March 3 hearing, both complainant Kratlian and defendant agreed that the Commission's decision on rehearing could be based on the factual record adduced at the original hearing held on November 24, 1980. Over the objection of defendant's counsel who asserted that such evidence was beyond the scope of the Commission's limited order granting rehearing, a comprehensive staff evaluation of the Kratlian matter was received in evidence.

Before issuing our decision on rehearing, it is appropriate to reiterate the procedural history of C.10869.

On May 29, 1980, Kratlian filed C.10869 against defendant alleging that in order to obtain water service, complainant had to construct a six-inch water main approximately 440 feet long and that a hookup charge of $300 was assessed by defendant. Complainant

seeks reimbursement of the cost of providing the main extension and refund of the $300 hookup fee. Defendant filed an answer to the complaint on August 13, 1980, denying all material allegations of complainant. A public hearing on the matter was held on November 24, 1980, and evidence was presented by complainant and defendant. D.92705 issued February 18, 1981, ordered defendant to (1) pay complainant $793.78; (2) to enter into a main extension agreement with complainant for $2,282.62 which would provide 22% of the revenues from water service to residences located on Lots 210, 214, 215, and 216 of Madera Ranchos Subdivision 2; and (3) to file a new service area map incorporating the above lots into its service area.

On February 25, 1981, defendant filed a petition for rehearing alleging, among other things, that (1) complainant should have been considered as temporary service and thus was responsible for all costs; (2) complainant owes defendant $1,062.36 for damages to a main and $439.40 for water service charges through February 1981; (3) complainant, in his testimony, continually referred to statements made by Mr. Walsh, a defendant employee, who was not mentioned in the complaint and thus was not present at the hearings to rebut the allegations; (4) the Commission erred as a matter of law and equity; and (5) the Commission erred in its computations of the main extension agreement.

D.93123 issued June 2, 1981 granted rehearing of D.92705. By our decision granting rehearing, we intend to reconsider the entire record developed in C.10869.

The staff's review on rehearing contained the following analysis and recommendation:

Based upon defendant's contention that the service be treated as temporary, it is clear that complainant would be responsible for the cost of providing service to his lot. However, G.O. 103 states, "The customer's piping shall extend to that point on the curb line or property line easiest to access to the utility from its existing distribution system or requiring the least extension of the existing distribution main." (Section V.2.b.) Even a cursory examination of the record from the earlier hearings discloses that service could have been provided complainant by connecting a service line from just inside Lot 210 across Marciel Drive directly to defendant's existing main lying on the south side of Marciel Drive. Such a service extension would involve approximately 60 feet of the standard 1" service pipe or the 1½" service pipe requested by complainant. The Hydraulic Branch calculations of trenching across Marciel Drive and laying a 1½" Sch. 40 PVC service line indicate a total cost of approximately $300. It is possible that jacking or jetting a steel pipe under the road would be less expensive.

The total cost of the six-inch main and a 1½-inch service line to the proposed location of complainant's house comes to $3,588.78. However, during cross-examination, complainant admitted that approximately two hours of backhoe time was spent in grading a portion of the lot not associated with construction of the main. The two hours of backhoe time plus the cost of purchasing and placing the 1½-inch service line amounts to $143.13. This amount should be deducted from $3,588.78 to arrive at $3,445.65 as the cost of installation of the six-inch main.

It does not appear reasonable that complainant would have voluntarily installed 440 feet of six-inch main at a cost of $3,445.65 rather than 60 feet of 1½-inch service pipe directly to the existing main. Thus, it appears that the six-inch main was constructed primarily for the benefit of defendant and provided no material benefit to complainant except that his application for water service would be accepted by defendant.

The damages to defendant's main totaling $1,062.36 can be broken down to two separate incidents occurring on two different days. On August 22, 1979, shortly after complainant connected the six-inch main extension to defendant's existing main, the tie-in blew apart due to missing or improperly placed concrete kickers. It cost defendant $450 for excavation, repair, and retesting of the main due to the defective work by complainant.

On August 16, 1979, while excavating for the six-inch main extension, complainant's backhoe operator hit and damaged a four-inch main which is no longer hooked up to defendant's system. At the time of damaging the four-inch main, it was connected to the system but did not service any customers. This main is identified as "Buried 4" pipe" and goes in a northeast direction from the south side of Marciel Drive into complainant's Lot 210. The prior testimony is very confusing as to why the pipe was damaged in more than one location and what Walsh allegedly told complainant to do once the pipe had been hit. However, both sides agreed that the existence of the pipe was unknown prior to hitting it and thus complainant was not advised of it nor advised to look out for it. Complainant states that defendant came out to supervise the putting in of the main and to turn off the water when the existing main was cut to make the connection of the new main. It is the Hydraulic Branch's position that complainant cannot be held financially responsible for damaging the four-inch main since he did not know of its existence; defendant did not advise him of its existence; defendant, in fact, did not know of its existence; and the main served no one and has since been disconnected from the system.

The Hydraulic Branch recommends that defendant be ordered to reimburse complainant $2,995.65 in cash as full settlement of the original claim and defendant's counterclaim. This amount has been determined as follows:

$3,445.65	Adjusted cost of six-inch main
+ 300.00	Improperly collected connection charge
3,745.65	Amount paid by complainant
- 450.00	Repair of kicker and tie-in of the six-inch main
- 300.00	Hydraulic Branch estimate of 1½-inch service connection directly from existing main to Lot 210
$2,995.65	

The staff analysis is essentially consistent with our conclusion in D.92705 that the six-inch main was constructed primarily for the benefit of defendant and provided no material benefit to complainant except that his application for water service would be accepted by defendant. However, the remedy suggested by staff, i.e., immediate cash reimbursement to complainant of $2,995.65, differs from our earlier directive that defendant enter into a main extension agreement for eventual reimbursement of complainant's costs.

Upon reconsideration, we find that the proposed staff remedy is most appropriate. Defendant could simply have provided service to complainant by merely connecting complainant's lot at the property line. Construction of a main extension was not necessary for that purpose. In reliance on defendant's employee's representations the main was built. The cost of such construction should never have been borne by complainant, and defendant cannot be allowed to benefit from unnecessary actions that were taken as a direct result of its representations. We will direct defendant to reimburse complainant the staff-recommended amount of $2,995.65. In recognition of defendant's tenuous financial condition, defendant, in lieu of immediate reimbursement, will be allowed to amortize the $2,995.65 owed over a 36-month period at a nominal 10% annual interest rate. Accordingly, defendant will be directed to make 36 monthly payments of $96.66 to complainant.

Findings of Fact

1. The combined water production of defendant's system is 1,000 to 1,100 gpm and is insufficient to meet the peak summer demand of approximately 480 customers.

2. Failure of either of two existing pumps during summer months has resulted in water pressure as low as 12 psi.

3. G.O. 103 requires a minimum pressure of 25 psi in designated low-pressure areas and 30 psi as a general rule.

4. During power failures or other water outages, the mains can dewater and the possibility of infiltration of groundwater increases.

5. Infiltration of groundwater into mains can contaminate the water supply and represents a potential health hazard.

6. As of May 1981, defendant voluntarily imposed a moratorium on new connections under Tariff Rule 14c.

7. Imposition of a water connection moratorium on houses constructed or under construction as of today's date will impose an extreme financial hardship upon the owners.

8. Defendant is in the preliminary stages of obtaining a SDWBA loan to finance necessary plant improvements, including additions to water supply.

9. Findings 1, 3, 4, 5, 7, and 10 contained in D.92705 are incorporated by reference in this decision.

10. The total cost of the six-inch main and a 1½-inch service line to the proposed location of complainant Kratlian's house totals $3,588.78; the actual installation cost of the six-inch main totals $3,445.65.

11. Complainant Kratlian could have been served by installation of 60 feet of 1½-inch of service pipe at a cost of $300 rather than by installation of a six-inch main at a cost of $3,445.65.

12. The six-inch main was constructed primarily for the benefit of defendant and provided no material benefit to complainant except that his application for water service would be accepted.

13. Complainant Kratlian caused damage to defendant's system in the amount of $450.

Conclusions of Law

1. Defendant should be directed to immediately provide water service to complainants Holliday, Sandhurst, and Coburn.

2. Defendant should bill complainant Holliday, at its published rate, for water service that has been received on an unauthorized basis since October 1981.

3. The Commission should impose a moratorium on new service connections to defendant's system to protect the existing customers until a sufficient water supply is obtained.

4. Houses constructed or under construction as of the effective date of this order should be exempted from the moratorium because of the extreme financial hardship that would be imposed on the owners.

5. Defendant should diligently pursue the SDWBA loan in order to install the additional 1,000 gpm of water supply with a backup power supply, and to meter all wells as requested by the DHS.

6. Within 90 days of the effective date of this order, defendant should submit for the record in this proceeding an outline of the scope of improvements it contemplates providing under an approved SDWBA loan and a schedule for completing the improvements.

7. Defendant should submit progress reports every three months on the status of obtaining additional sources of supply.

8. The Executive Director should be authorized to cancel the moratorium when advised by the staff that the required additional water supply has been achieved.

9. Defendant should reimburse complainant Kratlian in the amount of $2,995.65 for expenses unnecessarily and improperly incurred by complainant on the basis of defendant's representations.

10. This order should become effective immediately in order to provide necessary water service to complainants Sandhurst and Coburn.

O R D E R

IT IS ORDERED that:

1. Francis H. Ferraro, dba Madera Ranchos Water Company, shall immediately provide water service to complainants Holliday, Sandhurst, and Coburn.

2. Francis H. Ferraro shall bill complainant Holliday, at its published tariff rate, for water service that has been received on an unauthorized basis since October 1981.

3. A moratorium shall be imposed on new service connections to Madera Ranchos Water Company to protect the existing customers until a sufficient water supply is obtained.

4. Within 90 days of the effective date of this order, Francis H. Ferraro shall submit to the Docket Office as a compliance filing an outline of the scope of improvements it contemplates providing under an approved Safe Drinking Water Bond Act loan and a schedule for completion of the improvements.

5. Francis H. Ferraro shall submit progress reports to the Hydraulic Branch every three months on the status of obtaining additional sources of supply.

6. The Executive Director shall cancel the moratorium when advised by the staff that the required additional 1,000 gpm water supply has been achieved, with backup power supply and the metering of all wells.

7. Francis H. Ferraro shall reimburse Ronald A. Kratlian $2,995.65 as full settlement of all issues involved in this case. Francis H. Ferraro may discharge this obligation by an immediate cash refund or by 36 monthly payments of $96.66 beginning the first day of the month after the effective date of this order.

8. Ronald A. Kratlian shall relinquish all interests in the new 6-inch main to Francis H. Ferraro upon discharge of the obligations imposed by Ordering Paragraph 7.

9. To the extent relief is not granted here, C.10869, 11012, 11017, and 82-02-01 are denied.

10. Rehearing of D.92705 is concluded and resolved by this order.

This order is effective today.

Dated April 6, 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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

Joseph E. Bodovitz, Executive Director