Decision 82 09 021 SEP 8 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of FRANCIS H. FERRARO for a Certificate of Public Convenience and Necessity and to Establish Rates for Service.	Application 58607 (Filed January 17, 1979)
MARY E. SHORT, Complainant, vs. FRANCIS H. FERRARO, Defendant.	Case 10927 (Filed November 26, 1980)
ROBERT T. DABNEY, Complainant, vs. FRANCIS H. FERRARO dba MADERA RANCHOS WATER COMPANY, Defendant.	Case 10956 (Filed February 17, 1981)
LLOYD BUSH, Complainant, vs. FRANCIS H. FERRARO dba MADERA RANCHOS WATER COMPANY, Defendant.	Case 10975 (Filed April 3, 1981)

CHARLENE L. CARPENTER, Complainant, vs. FRANCIS H. FERRARO dba MADERA RANCHOS WATER COMPANY, Defendant.	Case 10990 (Filed May 29, 1981; (Petition for Modification filed October 5, 1981)

(See Decisions 91425 and 93431 for appearances.)

OPINION ON PETITION FOR MODIFICATION

Introduction

Decision (D.) 93431 issued August 18, 1981 directed Madera Ranchos Water Company (Madera Ranchos) to, among other things, immediately refund improperly collected connection charges to complainants Bush and Carpenter, irrespective of whether complainants were customers of Madera Ranchos or contractor/developers. By Petition for Modification dated October 5, 1981, Madera Ranchos seeks clarification of D.93431 with regard to the rights of contractors and developers to receive refunds rather than to enter into main extension contracts for the return of improperly collected connection charges.

Position of Madera Ranchos

It is the contention of Madera Ranchos that D.93431 is plainly inconsistent with D.91425 issued March 18, 1980. D.91425, inter alia, ordered Madera Ranchos to make specific efforts to refund certain connection charge fees collected from customers and contractor/developers as a prerequisite for water service.

Madera Ranchos argues that D.91425 made the fundamentally correct and traditional distinction between bona fide customers and contractor/developers in determining the right to a refund of the connection charge and the manner in which the refund must be made. In that decision, the respective rights of bona fide customers and contractor/developers to refunds for "tap" or "connection" charges were determined by the Commission as follows:

> Ferraro shall immediately refund all "tap charges" collected from Madera Ranchos' customers or former customers as though Madera Ranchos had been operated in accordance with Water Main Extension Rule Section B.1, Extensions to Serve Individuals.
>
> For services that were installed at the request of builders or developers who did not actually occupy the premises, Ferraro shall enter into main extension agreements, as though the services had been installed under the Water Main Extension Rule Section C.1, Extensions to Serve Subdivisions. Any amounts that cannot be refunded to customers or former customers, or included in main extension agreements, shall be accounted for as contributions in aid of construction.
>
> Ferraro shall enter into a main extension agreement with Shell that will provide that Shell will receive a refund of 22% of revenues from water service to his residence for a period of 20 years. Ferraro shall enter into a similar agreement with the contractors who installed the "Shell extension" providing for refunds based on revenues from other dwellings presently served by this extension.

Madera Ranchos maintains that this analysis of the respective rights of bona fide customers as opposed to those of contractor/developers is completely consistent with General Order (G.O.) 103 and Rule 15 governing main extensions. Madera Ranchos

claims that D.93431 directly contradicts these provisions of D.91425 by ignoring this fundamental distinction and granting to complainants Bush and Carpenter, who are clearly contractor/developers, cash refunds instead of main extension contracts awarded to all other contractor/developers in D.91425. Fairness dictates that complainants Bush and Carpenter should be treated as all other contractor/developers for the purposes of these refunds. Their circumstances are identical to all other contractor/developers. There are no special facts or changes of circumstances which would justify different treatment of complainants Bush or Carpenter than that provided by D.91425. Main extension agreements provide a definite and predictable method for payment of these refunds, and given the instant facts, a relatively short period over which they would be paid. Madera Ranchos concludes that complainants Bush and Carpenter should be awarded main extension agreements under Rule 15C(2), and not cash refunds.

Position of Staff

The staff acknowledges that D.93431 ordered Madera Ranchos to refund $900 in cash to complainant Carpenter and $1,545 in cash to complainant Bush. Staff further acknowledges that the record in Case (C.) 10975 and C.10990 establishes both Carpenter and Bush as contractors, thereby substantiating Madera Ranchos' claim that a cash refund under D.93431 to complainants would not be equitable to all other contrators offered main extension contracts under D.91425 unless there were special circumstances to justify the different method of refund. Staff admits that with respect to Carpenter there are no special circumstances on the record to justify a different method of refund than that accorded to other contractors. Staff does contend that the record in C.10975 reveals special circumstances regarding Bush's complaint.

However, staff takes the broader view that the status of Carpenter and Bush cannot properly be defined as that of

"contractor/developer"; and, therefore, it is inappropriate to refund improperly collected connection charges through main extension agreements.

Staff disagrees with Madera Ranchos' assertion that G.O. 103 and Rule 15 establish a distinction between customer and contractor/developer that leads to the conclusion that Bush, Carpenter, and all other contractors should be refunded the connection fee by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

Staff contests Madera Ranchos' conclusions for the following reasons:

1. G.O. 103 does not define a contractor/developer.
2. Rule 15 establishes a differentiation between "bona fide customer" and a "real estate developer" and "builder" but does not place the contractors discussed here in either category. Rule 15A(3b) states:

> "A 'real estate developer' or 'builder,' for the purposes of this rule, shall include any individual, association of individuals, partnership, or corporation that divides a parcel of land into two or more portions."

Staff feels that the first reason is self-explanatory, whereas the second point results from the fact that the contractors did not "divide a parcel of land into two or more portions." It is staff's understanding that the initial developer subdivided the land into lots and installed the water mains. These lots were sold to individuals and contractors who constructed or had others construct houses which were then connected to the existing water mains. In a "normal" situation, the developer would have been required to

construct or advance funds to construct the mains including service pipes to each lot. In Madera Ranchos, the developer subdivided the land, installed the mains, then established a mutual water company. Subsequently, the mutual was transferred to Francis Ferraro, the present owner of Madera Ranchos, for a token amount of less than $5,000 (as estimated by Ferraro). Since the mains were already in place, staff is of the opinion that Rule 15, Main Extensions, does not apply to either a customer or a contractor except in the specific case of an extension of a main to serve a new area.

G.O. 103 V2a(1), Rule 16 A1a(1), and Rule 16 B1 establish the utility's responsibility for the cost of the service connection. Therefore, based on the inapplicability of Rule 15 C1, which would transfer the utility's responsibility for the service connection to a contractor/developer, and the relevant sections of G.O. 103 and Rule 16, staff claims that there is no question that Madera Ranchos should not have collected the connection fees in the first place and should refund such fees as rapidly as possible.

Furthermore, staff's calculations based on present rates show that it would take a minimum of 4.5 years to a maximum of 15.7 years to refund $300 at a rate of 22% of gross revenues since the revenues vary from $7.25 per month to $25.28 per month for the affected lots. The average refund period would be approximately 13.6 years. In addition, these connection charges were assessed during the period 1977 through early 1980. Staff considers this length of repayment to be excessive and unwarranted, particularly in light of the fact that the connection charges were collected from two to five years ago.

Staff notes that in Order Instituting Investigation 17, D.91546 issued April 15, 1980, the Commission allowed Ridgecrest Heights Land and Water Company a five-year period to refund illegally collected connection charges due to the financial condition of that

utility. Staff considers a similar refund period of five years advisable in the instant case due to Madera Ranchos' alleged dire financial status. Staff recommends that this treatment apply to Carpenter and all contractors who paid the $300 connection fee.

Staff feels that complainant Bush's case is different in that Bush claimed that Madera Ranchos owed him $2,280 but that he would be willing to settle the dispute for $1,545 in cash.

Bush presented evidence which showed that he paid Madera Ranchos a total of $1,700, which Madera Ranchos claims consisted of $1,545 for connection charges and $155 for construction water. Bush claims that in addition to the $1,700 paid to Madera Ranchos, he also paid $580 to a plumber for making six service connections, some of which were to houses for which he made an additional payment to Madera Ranchos. Madera Ranchos, in Exhibit 11 of Application (A.) 58607, stated:

> "3.b. No customers were charged advances. There were advances by approximately over 50 different contractors and the basic computation was $300, but if a contractor had the saddle, valves and etc. similar to our standards the basic cost was reduced making the cost less and almost different in every case."

Staff argues that it is obvious from the evidence of Madera Ranchos that when a contractor was charged less than the basic $300 connection fee it was due to the fact that the contractor had already contributed something for which Madera Ranchos gave credit. Therefore, staff concludes that Bush and all other contractors who were charged less than the $300 should be refunded the full $300 since the difference represented a cost which the contractor had already expended toward the actual cost of the service connection. From lists compiled by Madera Ranchos there were 18 lots which were assessed from $55 to $220 instead of the basic $300.

Bush was assessed $215 on each of three lots and $300 on each of another three lots. At the hearing Bush supplied receipts showing $85 for the water tap for Lot 10 in Subdivision 2 and $150 for bringing the water line under the road for Lot 248 in Subdivision 6. Lot 10 in Subdivision 2 is one of the lots that Ferraro assessed a $215 tap fee, apparently giving Bush credit for the $85 already expended by complainant for the tap. Lot 248 in Subdivision 2 is a unique case since Bush paid $300 to Madera Ranchos for the water line tap and then had to expend an additional $150 to bring the water line under the road to his lot. A review of the Madera Ranchos system map shows that the main serving Lot 248 dead-ends on the opposite side of Road 37. Apparently, Bush was required to extend the service line from Lot 248, under the road, to the tap which Madera Ranchos installed near the end of the main. It is Madera Ranchos' responsibility to bring the service line to or into the customer's property (G.O. 103 V2a(2)) unless a main extension is required. Therefore, staff concludes that complainant should be refunded this additional amount.

Bush also claims to have paid a plumber $90 for Lot 73 and $85 for Lot 1 in Subdivision 2. Madera Ranchos has no record of these service connections. Both of these lots show up in Madera Ranchos' billing summary as having active service connections. Lot 1 was determined to have been hooked up by Bush prior to December 1976. Since this is prior to Ferraro's acquiring Madera Ranchos and becoming a de facto public utility on January 1, 1977, it appears that complainant has no valid claim against Ferraro for Lot 1. Staff is of the opinion that the $90 payment to a plumber for Lot 73 should also be refunded to complainant since it is part of Madera Ranchos' plant, is generating monthly revenue for Madera Ranchos, and Madera Ranchos has no record of expending funds for this connection.

The following is a summary of the Bush claim in C.10975 as discussed above:

		Paid To: Madera Ranchos	Paid To: Plumber	To Be Refunded
Subdivision 2, Lot	1	$ 0	85	$ 0(1)
	9	215	85	300
	10	215	85	300
	11	215	85	300
	73	0	90	90
	117	300	0	300
Subdivision 6, Lot	248	300	150	450
	277	300	0	300
Construction Water		155 (2)	0	0
		$1,700		$2,040

(1) Connected prior to January 1, 1977.
(2) Included in $800 check for Lots 9, 10, and 11.

Bush stated he was willing to accept $1,545 in cash as settlement of his claim. Therefore, staff suggests that Madera Ranchos be given the option of refunding $2,040 in equal installments over a five-year period or $1,545 in cash as full settlement of C.10975.

Discussion

We agree with Madera Ranchos that there is an inconsistency between D.91425 and D.93431 concerning the method of refunding improperly collected connection fees to contractor/developers. D.91425 concluded that:

> "Ferraro should enter into main extension contracts with all persons who paid 'tap charges' but who did not actually occupy the premises. The main extension contracts shall provide for payments of 22 percent of gross revenues until the amount of the 'tap charges' have been repaid." (Conclusion of Law No. 6, page 25.)

D.93431 ordered Madera Ranchos to refund $900 in cash to complainant Carpenter and $1,545 in cash to complainant Bush. As staff notes, the record in C.10975 and C.10990 clearly established both Carpenter and Bush as contractors, thereby substantiating Madera Ranchos' claim that a cash refund under D.93431 to complainants would not be equitable to all other contractors offered main extension contracts under D.91425, unless there were special circumstances to justify the different method of refund. This decision will resolve the inconsistency.

Madera Ranchos' petition asserts that G.O. 103 and Rule 15 establish a distinction between customer and contractor/developer that leads to the conclusion that Bush, Carpenter, and all other contractors should be refunded the connection fee by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenue received. We agree with Madera Ranchos' conclusion.

This treatment of "connection charges" advanced by contractor/developers recognizes the traditional distinction between bona fide customers and the contractor/developers as explicitly provided in G.O. 103 and Rule 15. Without question, a bona fide customer may not be charged for a "service connection" under G.O. 103 V2a(1). This protection does not extend to contractor/developers who are not "customers" for the purpose of that section of G.O. 103 or Rule 15. "Customer" is defined in both G.O. 103 I3(c) as well as Rule 15A(3)(a). In both contexts the customer-contractor/developer distinction is honored. Rule 15A(3)(a) specifically excludes real estate developers and builders from the definition of "bona fide" customer.

In addition, Rule 15C(1) governing advances for extensions to serve subdivisions, tracts, housing projects, and other large industrial or commercial developments specifically defines the items

to be included in the extensions. Whether the funds for those facilities are advanced by the contractor/developer under Rule 15C(1)(a) or the facilities are actually installed by the contractor/developer under Rule 15C(1)(c), in each case the cost is refunded under the Main Extension Rule 15C(2).

Staff argues that Rule 15 does not cover complainants since they did not actually divide the parcel of land into two or more portions. Staff's argument that complainants' are not developer/builders under Rule 15 since they purchased lots which were previously subdivided elevates form over substance and does not conform with the intent and policy underlying Rule 15. The rule seeks to make a fundamental distinction between bona fide customers and all other classes of customers, be they developers, contractors, builders, etc. Those individuals who occupy a dwelling and receive permanent utility service are afforded different treatment than those who purchase several lots with the notion of constructing houses for sale. Those who have no intention of occupying the premises are not accorded the same, preferential treatment as a bona fide customer. It is improper to collect any connection charge from bona fide customers while the builder/developers are required to advance funds, subject to refund through main extension agreement, for construction of main and service connections.

Bush and Carpenter are more accurately defined as developer/builders than bona fide customers. As such, their advances made to Madera Ranchos for service connections fall within the scope of Rule 15. Bush and Carpenter and all other contractors should be refunded the connection fee by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received. We will order Madera Ranchos to enter into main extension agreements with Bush, Carpenter, and all other similarly situated contractors. In recognition of the fact that it has been over two years and up to five years since the utility collected these charges, we will also

order that refunds shall be computed beginning with calendar year 1980 and that the refunds for calendar years 1980 and 1981 should be paid within 90 days of the effective date of this order. Refunds for the 1982 calendar year and each succeeding year will be due and payable by April 1 of the following year.

Findings of Fact

1. The findings of fact contained in D.93431, except as modified by this decision, are incorporated by reference.

2. Bush tendered $1,700 to Madera Ranchos in payment of $155 for construction water and $1,545 in payment of connection charges covering six lots.

3. Bush paid $495 to install all or a portion of the service pipe to five lots being served by Madera Ranchos.

4. In those instances where contractors paid less than the basic $300 connection charge, the difference represents facilities and/or labor paid by the contractor.

5. The total cost to a contractor for each connection charge, including the amount paid to Madera Ranchos and the amount attributed to the contractor, was $300.

6. Madera Ranchos received a total of $300 in cash, labor, and/or parts from each person assessed a connection charge.

7. Bush was required to expend $150 to extend the service line under the road from Madera Ranchos' tap to Lot 248, Subdivision 6.

Conclusions of Law

1. The conclusions of law contained in D.93431, except as modified by this decision, are incorporated by reference.

2. Madera Ranchos should refund the sum of $2,040 to Bush by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

3. Madera Ranchos should refund the sum of $900 to Carpenter by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

4. Madera Ranchos should refund $300 for each service connection for which it collected a connection charge from a contractor by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

5. To the extent this decision conflicts with D.91425 and 93431, this decision should take precedence.

O R D E R

IT IS ORDERED that:

1. Madera Ranchos Water Company (Madera Ranchos) shall refund $300 for each connection charge collected from a contractor. This obligation to contractors may be discharged by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

2. Madera Ranchos shall refund a total of $2,040 to Lloyd Bush by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

3. Madera Ranchos shall refund $900 to Charlene Carpenter by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

4. The main extension contracts entered into pursuant to the above orders shall be deemed effective since the beginning of 1980 and the refunds due for calendar years 1980 and 1981 shall be paid by Madera Ranchos within 90 days of the effective date of this order. Refunds for each succeeding year shall be due and payable by April 1 of the following year.

5. To the extent that this decision conflicts with or modifies D.91425 and D.93431, this decision shall take precedence.

This order becomes effective 30 days from today.

Dated September 8, 1982, at San Francisco, California.

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

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

Joseph E. Bodovitz, Executive Director

Bush was assessed $215 on each of three lots and $300 on each of another three lots. At the hearing Bush supplied receipts showing $85 for the water tap for Lot 10 in Subdivision 2 and $150 for bringing the water line under the road for Lot 248 in Subdivision 6. Lot 10 in Subdivision 2 is one of the lots that Ferraro assessed a $215 tap fee, apparently giving Bush credit for the $85 already expended by complainant for the tap. Lot 248 in Subdivision 2 is a unique case since Bush paid $300 to Madera Ranchos for the water line tap and then had to expend an additional $150 to bring the water line under the road to his lot. A review of the Madera Ranchos system map shows that the main serving Lot 248 deadends on the opposite side of Road 37. Apparently, Bush was required to extend the service line from Lot 248, under the road, to the tap which Madera Ranchos installed near the end of the main. It is Madera Ranchos' responsibility to bring the service line to or into the customer's property (G.O. 103 V2a(2)) unless a main extension is required. Therefore, staff concludes that complainant should be refunded this additional amount.

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Discussion

We agree with Madera Ranchos that there is an inconsistency between D.91425 and D.93431 concerning the method of refunding improperly collected connection fees to contractor/developers. D.91425 concluded that:

> "Ferraro should enter into main extension contracts with all persons who paid 'tap charges' but who did not actually occupy the premises. The main extension contracts shall provide for payments of 22 percent of gross revenues until the amount of the 'tap charges' have been repaid." (Conclusion of Law No. 6, page 25.)

to be included in the extensions. Whether the funds for those facilities are advanced by the contractor/developer under Rule 15C(1)(a) or the facilities are actually installed by the contractor/developer under Rule 15C(1)(c), in each case the cost is refunded under the Main Extension Rule 15C(2).

Staff argues that Rule 15 does not cover complainants since they did not actually divide the parcel of land into two or more portions. Staff's argument that complainants' are not developer/builders under Rule 15 since they purchased lots which were previously subdivided elevates form over substance and does not conform with the intent and policy underlying Rule 15. The rule seeks to make a fundamental distinction between bona fide customers and all other classes of customers, be they developers, contractors, builders, etc. Those individuals who occupy a dwelling and receive permanent utility service are afforded different treatment than those who purchase several lots with the notion of constructing houses for sale. Those who have no intention of occupying the premises are not accorded the same, preferential treatment as a bona fide customer. It is improper to collect any connection charge from bona fide customers while the builder/developers are required to advance funds, subject to refund through main extension agreement, for construction of main and service connections.

Bush and Carpenter are more accurately defined as developer/builders than bona fide customers. As such, their advances made to Madera Ranchos for service connections fall within the scope of Rule 15. Bush and Carpenter and all other contractors should be refunded the connection fee by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received. We will order Madera Ranchos to enter into main extension agreements with Bush, Carpenter, and all other similarly situated contractors.

Findings of Fact

1. The findings of fact contained in D.93431, except as modified by this decision, are incorporated by reference.

2. Bush tendered $1,700 to Madera Ranchos in payment of $155 for construction water and $1,545 in payment of connection charges covering six lots.

3. Bush paid $495 to install all or a portion of the service pipe to five lots being served by Madera Ranchos.

4. In those instances where contractors paid less than the basic $300 connection charge, the difference represents facilities and/or labor paid by the contractor.

5. The total cost to a contractor for each connection charge, including the amount paid to Madera Ranchos and the amount attributed to the contractor, was $300.

6. Madera Ranchos received a total of $300 in cash, labor, and/or parts from each person assessed a connection charge.

7. Bush was required to expend $150 to extend the service line under the road from Madera Ranchos' tap to Lot 248, Subdivision 6.

Conclusions of Law

1. The conclusions of law contained in D.93431, except as modified by this decision, are incorporated by reference.

2. Madera Ranchos should refund the sum of $2,040 to Bush by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

3. Madera Ranchos should refund the sum of $900 to Carpenter by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

4. Madera Ranchos should refund $300 for each service connection for which it collected a connection charge from a contractor by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received.

5. To the extent this decision conflicts with D.91425 and 93431, this decision should take precedence.

O R D E R

IT IS ORDERED that:

1. Madera Ranchos Water Company (Madera Ranchos) shall refund $300 for each connection charge collected from a contractor. This obligation to contractors may be discharged by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenue received entered into within 90 days of the effective date of this order.

2. Madera Ranchos shall refund a total of $2,040 to Lloyd Bush by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenues received entered into within 90 days of the effective date of this order.

3. Madera Ranchos shall refund $900 to Charlene Carpenter by means of a main extension contract under Rule 15C(2) at the rate of 22% of the revenue received entered into within 90 days of the effective date of this order.

4. To the extent that this decision conflicts with or modifies D.91425 and 93431, this decision shall take precedence.

This order becomes effective 30 days from today.

Dated SEP 8 1982, at San Francisco, California.

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