

Decision 83 02 068 FEB 16 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANSEL CATES, EMMA CATES,)
)
 Complainants,)
)
 v)
)
 GIBBS RANCH SEWER COMPANY,)
)
 Defendant.)

Case 82-05-09
(Filed May 25, 1982)

O P I N I O N

Complainants, Ansel Cates and Emma Cates, 11233 Coopers Court, Sonora, aver that two sewage overflows from Gibbs Ranch Sewer Company (Gibbs) damaged their home and furnishings. Cates request an order requiring Gibbs to pay damages, make its facilities adequate, and in the interim reduce the rates of all customers.

Complaint

In their complaint, Cates allege that sewage backed up into their house in February 1981 causing damage to their furnishings. They further allege that on September 29, 1981 sewage backed up into their house, again causing damage to their furnishings. They state that they had to replace carpets, pay a cleanup bill, and suffered permanent furniture damage.

In connection with their problem and claim for damages, they state that they had to pay an engineer and an attorney. They had a backflow prevention device put in by their contractor.

Gibbs rejected their claim, stating that the fault must lie with someone else, like their contractor. Cates' engineer reported to them that it was not the contractor's fault. The insurance company for Gibbs rejected their claim stating that the sewer problem is normal blockage.

Cates request an order that:

1. Gibbs pay the Cates \$10,000 for damages and expenses suffered as a result of improper design, incorrect installation, inadequate maintenance, or negligent operation of the sewer system serving their house.
2. Gibbs file with the Commission plans for correcting inadequate facilities as necessary to prevent further sewer overflows.
3. After approval of the plans, Gibbs replace the existing sewer system as necessary.
4. Gibbs reduce the sewer bills of all customers by 5% until the work is completed.

Cates made a supplemental filing after the answer was filed stating that initially Cates thought that their building contractor might have created the flooding problem so they hired R. F. Walter, civil engineer, to prove that the building contractor was liable. Walter made an investigation and concluded that it was really the fault of Gibbs. While working for Cates, Walter spoke to Charles DeVries, Cates' contractor, and got him to agree to install a backflow prevention device on the grounds that it was needed to protect Cates from Gibbs. Walter advised Cates that DeVries could not be held responsible as he had completed his work properly in conformance with the law.

The Cates stated that they are retired and have a limited income. They have already paid an engineer and an attorney, both of whom are expensive. They ask the Commission for relief.

Answer

Defendant, Gibbs, stated that it provides sewer service through its collection system to complainants and, in turn, delivers the waste water to the Tuolumne Regional Water District's (District) collection system.

Gibbs stated that the first stoppage occurred in the metering manhole of the District as a result of grease buildup at its entrance. Upon notification by Gibbs the District cleared the stoppage. Three residences were affected, but only the Cates' home

suffered flood damage. Gibbs then recommended to the Cates that they install a backflow preventive device.

Gibbs further stated that the second stoppage occurred in the Gibbs facilities. The stoppage was caused by an accumulation of grease, paper, sand, and roots. This stoppage affected two homes. Once again, Cates was the only house which suffered flooding. Gibbs' facilities were cleared by Roto-Rooter.

Since the second stoppage Gibbs stated that it made minor corrections and provides greater maintenance for this area of its collection system. However, it concluded that increased maintenance is not the entire solution to a problem which was created, at least in part, by the builder of the home.

Gibbs contended that the manhole covers in the street are visible at ground level and that it can be readily seen that the door-stoop of the Cates' house is lower than the manhole covers. Gibbs stated that when the contractor built the house he created the potential problem.

Gibbs stated that since the contractor had a backflow preventer installed on the Cates' sewer lateral on February 16, 1982, that is an indication that he admits responsibility for the occurrence.

Gibbs stated that the sewer facilities were designed by a civil engineer. Adequate flow was provided for in the design, and only because tree roots and grease accumulation occurred did the stoppage come about, circumstances which cannot be foreseen.

Gibbs argued that manholes are placed at locations to allow stoppages to overflow them rather than customers' residences. When a residence is constructed the contractor should assure that the floor is above the elevation of the top of the next upstream waste water manhole. If it is not, it is incumbent upon the contractor to have installed a backflow preventive device.

Gibbs concluded that:

1. The Cates have not proven their allegations.
2. The first stoppage was the fault of the District. The second stoppage would have caused no damage if Cates had installed the recommended backflow preventive device.
3. The Commission cannot award damages.
4. Gibbs should not be required to take corrective measures because:
 - a. The facilities were designed by a civil engineer and are adequate to carry the flow.
 - b. If a backflow preventive device had been placed on complainants' lateral, there would not have been damage to Cates.
 - c. Gibbs has started to provide additional maintenance and surveillance to decrease chances of future stoppages.
 - d. Gibbs' operation and maintenance practices are adequate, and that as potential problem areas are found, additional maintenance is provided.

Gibbs should not be required to reduce its sewer bills by 5% for all customers because:

1. Complainants have produced no evidence that service is not adequate.
2. Complainants have not shown that defendant is earning an excessive rate of return.

Hearing

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) J. J. Doran in Sonora and the matter was submitted on November 16, 1982.

Cates presented three witnesses: Emma Cates, Charles DeVries, building contractor, and R. F. Walter, civil engineer. Cates also called Harrison Gibbs, owner of the sewer system, as a witness. Gibbs presented two witnesses: Mel Wallace, operator of the sewer system, and Gibbs.

Witness Emma Cates testified that the Cates moved into their new home on December 19, 1979. The first sewer backup occurred in February 1981 while the Cates were in San Jose. The backup of clear water came out of the laundry drain and flooded two bedrooms and four clothes closets. When the second sewer backup occurred on September 29, 1981 the Cates were in St. Louis. The backup caused raw sewage to cover the carpets and dirty the furniture. When they arrived home they found the house unfit to live and sleep in, even though the carpets had been professionally cleaned, and the house aired-out by Audrey Zink. The witness stated they had phoned Gibbs many times but never spoke with him until the hearing. They did, however, speak with Gibbs' secretary who told them the backups were the builder's fault and that a backflow prevention device was needed. DeVries, their builder, installed a backflow prevention device about six months after the second backup. Complainants seek a finding that Gibbs is at fault.

Charles DeVries, building contractor for complainant, testified that Cates' house was built by Village Properties of which Gibbs and DeVries were members. DeVries had the plumbing contractor put on the backflow device sometime after the second incident, but without acknowledging that anything was wrong with the house. He obtained a release from liability from Cates for C & W Plumbing and Village Properties.

R. F. Walter, a civil engineer who has designed sewer systems, testified for complainants and stated that he was hired by the Cates' after the backflows. Walter testified the side sewer gradient from the house to the street was in excess of the minimum required by the Uniform Building Code. It was 1.3 feet below the level of the house floor at the property line. He testified that the sewer lines on the Cates' property were properly installed. Further, with respect to the sewer main in the street, he stated in all his firm's experience there is no such thing as normal blockage of a

sewer main. He further stated that a maintenance schedule for rodding the main line, a new line such as this, of once in 3 to 5 years should be reasonable. In a 30-year or older line it might be once a year or more often.

The complainants called Gibbs to the stand. Gibbs testified that he did not have plans prior to construction, but has as-built plans for this section of the sewer system (18 lots), that an engineer drew the plans under the supervision of Charles Moore, a civil engineer, but that plans are not stamped by Moore, and that Gibbs was the contractor.

During cross-examination, witness Gibbs stated that the sewer system was constructed in 1967. The utility has only had one other overflow, a toilet fixture claim. He gave the claimant the name and address of Gibbs' insurance company and it paid the claim. He stated with respect to the Cates claim that was denied by the insurance company:

"I am quite frankly surprised that this insurance company chose not to pay the claim. It was not my intent whatsoever for that claim to be denied.

"The people from the insurance company did call and they asked about it. I answered their questions, and Mel sent in his report. And, then, we never heard anything from them until we got a copy of that letter.

"But other than that, that is the procedure."

In response to the ALJ's request, Gibbs, following the hearing, reviewed the Insurance Company of North America's letter dated May 4, 1982 denying the Cates' claim (Exhibit F to the complaint), and then wrote to the Cates by letter dated December 28, 1982. These two letters are received in the record and attached as Appendix A.

Mel Wallace, operator of the Gibbs sewer system, testified for defendant that the first incident occurred because of a blockage

caused by an accumulation of grease in the metering manhole of the District which receives all of the waste water from Gibbs. Three residences were affected, but only the Cates' house had flood damage. When the second incident occurred, Wallace had Roto-Rooter clean out the Gibbs line in front the Cates house. The distance from the street manhole near the Cates house to the Districts' metering manhole is about 300 feet (a 6" transit line, with two other manholes in between). After the first incident, Wallace made a visual inspection of the line once a month. Following the second incident, he conducts a physical cleaning once a month and calls Roto-Rooter as necessary.

Discussion

Improved maintenance measures have been undertaken by Gibbs following each of the two incidents. The sewer line in front of the Cates house has been visually inspected through the manholes following the first incident. That line is physically cleaned once a month, and roto-rootered as necessary following the second incident. The Cates' sewer lateral is properly installed. The Cates' contractor installed a backflow prevention device on the Cates system following the second incident. Since then, no other incidents have been reported. The present sewer service and maintenance now appears to be adequate.

Two sewer systems were involved in the first incident in which a backflow caused flood damage in the Cates house. If the accumulated grease had not caused a blockage, there would not have been the backflow. Sewer service and maintenance was not adequate at the time of the second incident, vis-a-vis, the flood damage in the Cates house. Further, Gibbs was on notice since the first incident.

We conclude that inadequate sewer service and maintenance by Gibbs was the cause of the damage to Cates at least in the second incident. This Commission, however, cannot award damages to the

Cates because it does not have that authority. Rather, this matter is one which comes under the jurisdiction of the civil courts. We understand that bringing this matter before a civil court will create inconvenience and expense for the Cates and the utility, and therefore encourage Gibbs to negotiate a reasonable settlement with the Cates.

The need to rod the main line once a month and to further clear out this relatively new line is unusual and suggests problems that may impair the future level of service. Therefore we will require Gibbs to engage a consultant engineer to study the sewer system in the vicinity of the overflows from the three houses affected to the Districts' manhole. The consultant should inspect the facilities, measure the gradients, inspect the operations and maintenance practices, recommend any necessary corrective measures together with a statement of their costs, furnish an implementation plan, and report to Gibbs and the Commission. Gibbs should select a consulting engineer in consultation with our staff. The report should be filed within 120 days, after which our staff should recommend a course of action. Based on that report and staff's comments, complainants may petition the Commission to modify this decision to require specific improvements in a subsequent order.

Findings of Fact

1. Cates are sewer customers of Gibbs.
2. Cates' sewer lateral is properly installed.
3. In February 1981 District, the collector of Gibbs' waste water, had a blockage in its manhole which meters the Gibbs flow. This blockage backed up into Gibbs' system which caused sewer water to overflow into Cates' house resulting in flood damage (the first incident).
4. Gibbs modified its maintenance practices after the first incident and started once-a-month visual inspection of the line in front of Cates' house.

5. On September 29, 1981, Gibbs' system had a blockage in front of Cates' house and raw sewage overflowed into the Cates house and caused flood damage.

6. Gibbs again modified its maintenance practices by starting once-a-month physical cleaning of the line in front of Cates' house and calling Roto-Rooter as necessary.

7. After the second incident, a sewer backflow prevention device was installed on the Cates property by their contractor.

8. No further incidents have been reported.

9. The present sewer service and maintenance now appear to be adequate.

10. There was inadequate service and maintenance prior to the start of physical cleaning of the sewer main in front of the Cates' house, which was begun after the second incident.

11. Cates filed a claim for damages with Gibbs and its insurance company, which has been denied by both Gibbs and its insurance company.

12. Maintenance rodding and clearing of the Gibbs' main sewer line, a relatively new line, once-a-month is unusual and suggests problems that may impair and reduce the future level of service to less than adequate.

Conclusions of Law

1. The relief requested should be granted as provided for in the following order.

2. Inadequate service and maintenance by Gibbs was the cause of the damage to Cates, at least in the second incident.

3. Gibbs should be ordered to engage a consulting engineer to inspect and report on the Gibbs' system in the vicinity of the overflows as specified in the opinion.

4. The Commission has no jurisdiction to award damages for tortious conduct (Mak v PT&T, 72 CPUC 735).

5. The Commission cannot lower rates in this complaint case (Public Utilities Code § 1702).

O R D E R

IT IS ORDERED that:

1. Gibbs Ranch Sewer Company (Gibbs) shall engage a consulting engineer to inspect and report to Gibbs and to the Commission within 120 days on the Gibbs sewer system in the vicinity of the overflows as specified in the opinion.

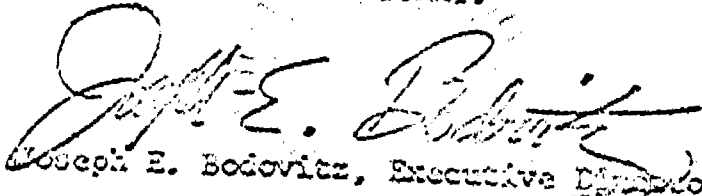
2. Our Hydraulic Branch shall recommend a course of action on the Gibbs system within 30 days after the consulting engineer's report is filed.

This order becomes effective 30 days from today.

Dated FEB 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director



Insurance Company of North America
350 University Avenue P.O. Box 11412 Sacramento CA 95813
916 929 1300

May 4, 1982

Richard Matranga
23 West Snell Street
Sonora, CA 95370

Re: Our File Number: 154 L 32 72 83-0 - Our Insured: Gibbs Ranch Water and Sewer - Your Client: Mr. & Mrs. Ansel Cates - Date of Event: 9-29-81

Dear Mr. Matranga:

Our investigation of the above-captioned event reveals the sewer backup resulting in damages to your client's property was not caused by our insured or their negligence.

The sewer system is designed for maximum flows and is adequate. The damage was caused by normal blockage occurring in the line which was discovered by our insured during a routine inspection. Our insured has an adequate maintenance schedule which reveals such problems.

We find no liability on the part of our insured and must therefore respectfully deny your claim.

If you can provide us with documentation to support your contingency that our insured is liable, INA will reconsider its denial of this claim.

Very truly yours,

INSURANCE COMPANY OF NORTH AMERICA

Linda Hoover
Claims Representative

LH:ACS/db

GIBBS RANCH SEWER CO.

GIBBS RANCH

COLUMBIA, CA 95310

CODE 209 532-3771

December 28, 1982

Ansel and Emma Cates
11233 Coopers Court
Sonora, CA 95370

RE: Sewer Backup, 9/29/81

Dear Mr. and Mrs. Cates:

At the Public Utilities Commission hearing on November 16, 1982, Judge Doran asked that we write to you regarding the letter of May 4, 1982, which was sent to Attorney Richard Matranga by Insurance Company of North America regarding the above-entitled matter.

Please be advised that the term "normal blockage" was the insurance company's term and not that of Gibbs Ranch Sewer Company. While all sewer systems experience blockage from time to time, we do not regard blockage as "normal".

As indicated in our letter of January 8, 1982, we regret the blockage that occurred and the damage and inconvenience which resulted. As indicated in the letter from Insurance Company of North America, our sewer system is designed for maximum flows and, absent vandalism or other unavoidable blockage, is more than adequate to handle its service area.

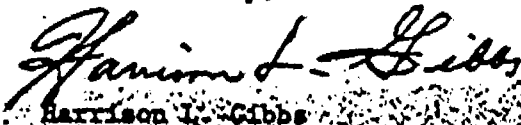
As we indicated at the hearing we have stepped up the maintenance of the sewer line into which your lateral flows. We believe that the increased maintenance, together with your backflow prevention device, will prevent the problem from occurring again.

I would like to apologize for the delay in writing you this letter, I have been out of town for several weeks.

If you have any questions, please do not hesitate to contact me.

My very best wishes for a Happy New Year.

Most sincerely,



Harrison I. Gibbs

cc: Judge Doran, Public Utilities Commission

(END OF APPENDIX A)



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SS The need to rod the main line once a month and to Roto-Root as necessary for this relatively new line is unusual and suggests problems that may impair the future level of service. Therefore we will require Gibbs to engage a consultant engineer to study the sewer system in the vicinity of the overflows from the three houses affected to the Districts' manhole. The consultant should inspect the facilities, measure the gradients, inspect the operations and maintenance practices, recommend any necessary corrective measures together with a statement of their costs, furnish an implementation plan, and report to Gibbs and the Commission. Gibbs should select a consulting engineer in consultation with our staff. The report should be filed within 120 days, after which our staff ~~shall~~ *should* recommend a course of action. Based on that report and staff's comments, complainants may petition the Commission to modify this decision to require specific improvements on a subsequent order.

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