

ORIGINAL

Decision No. 88398 JAN 24 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUNRISE OASIS ESTATES, a California Corporation,

Complainant,

vs.

SOUTHERN CALIFORNIA GAS COMPANY,

Defendant.

Case No. 10341
(Filed May 31, 1977)

Richard Ehrlich, for complainant.
Leslie E. LoBaugh, Jr., Attorney
at Law, for defendant.
Robert C. Durkin, for the
Commission staff.

O P I N I O N

Complainant, Sunrise Oasis Estates (Oasis), recorded a subdivision, Tract No. 32890, in the city of San Dimas (City), Los Angeles County (County). The subdivision contains 56 lots and borders on the north side of Cienega Avenue. City required Oasis to pave the north side of Cienega Avenue and to install curbs, gutters, and sidewalks as a condition of recording the tract.

The complaint alleges that an ultra-hazardous condition exists because the cover over a 10-inch gas transmission line in Cienega Avenue is within 5 inches of the existing unpaved ground surface, that Southern California Gas Company (SoCal) was aware of and permitted this hazardous condition to exist for several years, and that SoCal should be ordered to immediately lower the main

without cost to complainant and eliminate the dangerous condition caused by the lack of adequate cover over the main.

SoCal's answer denies the allegations concerning its negligence and its responsibility for paying for the cost of relocating the main. SoCal alleges that on June 6, 1977, approximately two weeks after the complaint was filed, SoCal and Mr. Ehrlich (Oasis' only stockholder) entered into an agreement to lower the portion of the 10-inch gas line in question and Oasis agreed to deposit \$10,000 with this Commission for payment to SoCal in the event that the Commission or the court required reimbursement for lowering the line; the \$10,000 was not deposited with the Commission; the line in question was lowered to a depth of approximately 60 inches at a cost of \$3,855.40;^{1/} the line was and is a distribution supply line lawfully in place in a dedicated street; Oasis, its agents, and its employees graded and removed the cover over the line and made it necessary for SoCal to lower the line; payment by Oasis of the actual cost of lowering the facilities located in a dedicated street is consistent with SoCal's practice of recovering the costs associated with private development from developers. SoCal contends that requiring it to pay the costs associated with relocating mains installed along public streets, roads, and highways, which it has legal right to occupy, would unreasonably burden its ratepayers and would enrich developers. SoCal requested the Commission to issue its order requiring Oasis to pay SoCal \$3,855.40, the actual cost of the work.

^{1/} Actual field conditions permitted SoCal to eliminate some of the construction items contained in its estimate for the lowering of the line.

Public hearing was held on this matter in the city of Los Angeles on September 2, 1977 before Administrative Law Judge Jerry Levander. The matter was submitted subject to the receipt of late-filed exhibits which have been received.

The evidence shows that grading activities on behalf of Oasis damaged the pipeline wrapping; the line was originally built under four feet of cover within a raised unpaved portion of a county road right-of-way; Oasis and/or its engineer did not adequately ascertain the location of underground utilities in Cienega Avenue; and that further charges for lowering the line were subsequently received, increasing the cost of the job to \$4,527.88 excluding the costs of rewrapping of the pipe damaged by Oasis' equipment. Exhibits 3 and 4 contain the substantiation of SoCal's costs exclusive of rewrapping costs.

A SoCal's distribution supervisor was aware that Oasis or its subcontractor was grading the affected area on April 6, 1977. The grading exposed the line in three locations and damaged the wrapping around the line. The maximum allowable operating pressure of the line is 270 psi and its normal operating pressure is 220 psi. SoCal installed markers and signs indicating the line location, informed Oasis' foreman of the presence of the high pressure gas line and of the hazard of damaging the line and advised him to be careful in emphatic terms, monitored the construction activities adjacent to the line, and sent letters and telegrams to Oasis concerning this hazard.

A Commission staff engineer reviewed SoCal's letter response dated May 27, 1977 to an informal complaint in this matter. SoCal's letter stated that the Commission does not have jurisdiction in this controversy and that it is a matter for civil court action.^{2/} He requested the Commission's Consumer Affairs Branch to tell SoCal to lower the line because it did not have the cover required in the Commission's General Order No. 112-C. He was concerned about the potential explosion hazard if the exposed line was damaged by construction equipment. Subsequently, the staff engineer made a field trip and verified that the line had been lowered.

Discussion

City required Oasis to agree to make street improvements in Cienega Avenue as a condition of recording Tract No. 32890. Those street improvements necessitated the lowering of SoCal's line. We do not accept Oasis' argument that City's requirements relating to this tract constitutes a City requirement that SoCal lower its line in City's street, without reimbursement, pursuant to SoCal's franchise. However, City could improve Cienega Avenue and direct SoCal to lower its line pursuant to the terms of the franchise it issued to SoCal.^{3/}

Oasis suggested utilizing the excess free footage allowance for installing the in-tract distribution system in Tract No. 32890 to offset the cost of lowering the line. This is not an appropriate use of the allowance.

^{2/} SoCal modified its position and responded to Oasis' formal complaint.

^{3/} County could have taken similar action under the franchise it issued to SoCal, prior to City's annexation of the affected area.

On July 22, 1977 Oasis deposited a \$3,855.40 check with the Commission, pending Commission resolution of this complaint. At the hearing SoCal reasserted its claim for \$3,855.40 even though it had incurred an actual job cost of \$4,527.88, excluding wrapping costs. SoCal is entitled to payment from Oasis for lowering its line. Since SoCal is not seeking reimbursement for the full cost of the work done, the balance of the cost should be charged to SoCal's surplus account and should not be expensed.

The aspect of this case most disturbing to the Commission is SoCal's business-as-usual attitude in permitting Oasis to run equipment over its line for almost two months before acting to eliminate the hazard. The potential cost in life and property should have governed SoCal's actions in eliminating the hazard. We will require SoCal to outline the procedures it will follow to avoid prolonging the existence of dangerous conditions in the type of situation described herein.

Findings

1. Oasis is subdividing Tract No. 32890 in the city of San Dimas, Los Angeles County.
2. City required Oasis to make certain street improvements in Cienega Avenue as a condition of recording Tract No. 32890.
3. The lowering of SoCal's 10-inch gas line is required to complete the Cienega Avenue improvements.
4. City's requirements imposed on Oasis do not require SoCal to lower its line in Cienega Avenue without compensation pursuant to its franchise to operate in City's streets.

5. SoCal is entitled to reimbursement for lowering its line in Cienega Avenue.

6. SoCal asserted a claim for less than the cost of lowering its line. SoCal's claim is understated by the cost of repairing the damaged wrapping on the line plus \$672.48.

7. SoCal's surplus account should be charged \$672.48 plus the cost of repairing the wrapping on its 10-inch line.

8. SoCal permitted the existence of a hazardous condition for an excessive length of time.

9. SoCal should develop procedures to follow in the future to avoid prolonging the existence of the hazardous conditions such as those described herein. SoCal should file three copies of these procedures with the Commission.

10. Oasis deposited a \$3,855.40 check with the Commission pending resolution of this complaint. A check in this amount should be forwarded to SoCal to pay its claim for lowering its Cienega Avenue line.

Conclusions

1. City required Oasis to make certain street improvements in Cienega Avenue as a condition of recording Tract No. 32890. The lowering of SoCal's line is required to complete these street improvements.

2. SoCal's lowering of its line in City's street was done to enable Oasis to meet the conditions City required of Oasis. It was not an action City required of SoCal pursuant to the franchise issued to SoCal.

3. SoCal should receive a check for \$3,855.40 to pay its claim against Oasis for lowering its line. SoCal's surplus account should be charged \$672.48 plus the cost of repairing the wrapping on its 10-inch line.

4. SoCal permitted the existence of a hazardous condition for an excessive length of time. Corrective procedures should be developed and implemented to avoid a recurrence of this condition.

O R D E R

IT IS ORDERED that:

1. The Executive Director of this Commission shall forward a check in the amount of \$3,855.40 to Southern California Gas Company to reimburse it for costs incurred in lowering its 10-inch line in Cienega Avenue adjacent to Tract No. 32890 in the city of San Dimas, Los Angeles County.

2. Southern California Gas Company shall charge its surplus account in the amount of \$672.48 plus the cost incurred in repairing the wrapping damage to its 10-inch line in Cienega Avenue.

3. Southern California Gas Company shall develop procedures to follow in the future to avoid prolonging the existence of dangerous conditions such as those described herein. One copy of these procedures shall be filed with the Commission and two copies shall be directed to the Gas Branch of the Utilities Division, within thirty days after the effective date of this order.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 24th day of JANUARY, 1978.

Robert B. Babinich
President
William Sproule Jr.
Viggo L. Stutzgen
Clayton D. Howell
Clare T. DeWitt
Commissioners