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ORIGINAL

Decision No. 89769 DEC 19 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Henning Rasmussen,

Complainant,

v.

California Water Service Company,

Defendant.

Case No. 10623
(Filed July 14, 1978)

O P I N I O N

There is no dispute as to the facts set out in the following narrative. The complainant is a developer of residential housing. He owns two adjacent lots (145 and 149 Lynton Avenue[1]) in San Carlos on which he desires to construct residences for sale. California Water Service Company (defendant) has refused to serve one of the two properties unless complainant pays for a main extension in Lynton Avenue, the installed cost of which was estimated to be $22,857 as of June 16, 1978.

1/ The lot at 145 Lynton Avenue is also referred to as Lot B and as Lot 17 in the pleadings. The lot at 149 Lynton Avenue is also referred to as Lot A and as Lot 29-30 in the pleadings. (See Exhibit 1 to the complaint.)

The Lynton Avenue main extension would pass in front of four lots, three of which defendant admits it now serves through easements from Devonshire Boulevard.

Complainant requests similar service to his lots from the main on Devonshire Boulevard through an existing easement. By using the Devonshire Boulevard main, complainant would merely be required to install two service lines approximately 160 feet long of a 3/4-inch pipe within the existing easement.

Complainant alleges that it would be discriminatory to require him to pay for a main extension when: (1) three of his uphill neighbors are receiving water service from defendant without having been required to pay for a main extension, (2) four neighboring lots downhill from his property would not benefit from the main extension since it would extend only to his property, and (3) the lots across the street from his property are so steep as to make construction impractical and no plans for such construction are known or apparently contemplated.

In its answer the defendant alleged that it has agreed and is still agreeable to serve 149 Lynton Avenue from a meter on Devonshire Boulevard provided that complainant installs his service line to the meter location. Defendant, however, does not concede that such agreement obligates it to provide similar service for complainant's other lot. Defendant continues to assert that service to 145 Lynton Avenue must be provided by main extension. It contends that "service to 145 and 149 Lynton Avenue by a main extension in Lynton Avenue from Dolton Avenue would be in the best interest of all customers who will receive domestic service and fire protection from that main extension." (Answer, p. 6.)

Defendant does not, however, state who those customers might be. In conclusion the defendant alleges that the estimated cost of the main extension was $22,857 as of June 16, 1978, but that said estimate has lapsed and a future estimate for the main extension will, of necessity, reflect the costs effective as of the date of the application for the main extension.

Defendant invites the Commission to dispose of this matter ex parte.

Discussion

This case presents the Commission with a dilemma. On the one hand, the simplest solution to complainant's problem would be to authorize service to his two lots from meters on Devonshire Boulevard. On the other hand, this solution does not consider the welfare of any other customers or potential customers on Lynton Avenue.

It is clear that the defendant believes that the existence of a main extension in Lynton Avenue would be in the best interests of all customers who will receive domestic service and fire protection from that main extension. Although complainant has alleged that the lower lots on Lynton Avenue (Nos. 25, 26, 27, and 28) stand to gain nothing from a main extension since it extends only to Lot 29, this contention is not entirely true. The existence of a main ending at Lot 29 would make a main extension to those lower lot owners less costly. To dispense with a main extension at this time would condemn those lower lot owners to the same fate as to which complainant now complains, that is, the necessity of financing a main extension all the way to Dolton Avenue instead of merely part of the way.

The Commission agrees with the defendant that a main extension in Lynton Avenue is in the best interests of all customers. However, we also agree that it would be inequitable to require complainant to bear the entire cost of the extension back to Dolton Avenue. This is especially true when we consider that the defendant has authorized substandard service to Lots 32, 33, and 34 from the Devonshire main. If the defendant had required the owners of Lots 32, 33, and 34 to pay their proportionate share of the cost of a main extension, the burden on complainant would not be so extreme.

The status of Lot 31[2/] is not clear. Complainant alleges that Lot 31 receives service from defendant, while defendant alleges that it has no record of service to Lot 31. We will require defendant to investigate whether Lot 31 is receiving water service from defendant's system. It may be that Lot 31 has an unauthorized connection with a neighboring service line. If so, defendant may be able to assess to the owner of Lot 31 a portion of the cost of the main extension in Lynton Avenue. Be that as it may, complainant should not be required to bear the entire cost of a main extension in Lynton Avenue from Dolton Avenue. He should, however, bear the cost of such an extension from a point located 50 feet along the line running south 23 degrees 50 minutes west from the intersection of the boundary line of Lots 31 and 32 with the curb line of Lynton Avenue. The defendant

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2/ Lot 31, also referred to as Lot C in the pleadings, has a common boundary with complainant's lot at 145 Lynton Avenue. Lots 32, 33, and 34 (Lots D, E, and F, respectively, in the pleadings) are the three lots immediately east of Lot 31.

should bear the cost of the main extension from that point back to Dolton Avenue. The selection of this point presupposes that complainant has been granted 50 feet free as required by the main extension rule.

Findings

1. Defendant has agreed, and continues to be agreeable, to serve complainant's lot at 149 Lynton Avenue from the main on Devonshire Boulevard.

2. Defendant refuses to serve complainant's adjacent lot at 145 Lynton Avenue in the same manner, but rather insists upon a main extension.

3. On June 1, 1978, complainant, believing that to receive service for 145 Lynton Avenue he had to enter into a main extension agreement, signed the defendant's main extension agreement covering both 145 and 149 Lynton Avenue and remitted by check the sum of $15,837. On June 15, 1978, defendant demanded an additional $4,000 when its contractor determined that hard rock excavation and trenching would be required. By letter dated July 27, 1978, complainant's attorney returned complainant's copy of the main extension agreement stating, "We will consider this agreement rescinded upon receipt of your check for $15,837." By letter dated July 31, 1978, defendant sent its check for $15,837 to complainant's attorney.

4. Each of the two lots could be served through an existing 5-foot wide easement to Devonshire Boulevard. This service would be accomplished by complainant's attaching two service lines 160 feet long to defendant's meters on Devonshire Boulevard.

5. Defendant's reason for according different treatment to complainant's two adjacent building lots is that defendant's employee orally agreed to establish service to 149 Lynton Avenue from the Devonshire Boulevard main. Defendant denies any such agreement with respect to 145 Lynton Avenue.

6. Despite such agreement, service to 145 and 149 Lynton Avenue by a main extension in Lynton Avenue from Dolton Avenue would be in the best interests of all customers who will receive domestic service and fire protection from that main extension.

7. Defendant authorized substandard service from Devonshire Boulevard to three of the four lots between Dolton Avenue and complainant's lots at 145 and 149 Lynton Avenue.

8. In view of Finding 7 it would be inequitable to require complainant to bear the entire cost of a main extension to Dolton Avenue.

9. Complainant should, however, bear the cost of the main extension from a point located 50 feet along the line running south 23 degrees 50 minutes west from the intersection of the boundary line between Lots 31 and 32 with the curb line of Lynton Avenue. The defendant should bear the cost of the main extension from this point back to Dolton Avenue.

Conclusions

1. Defendant should investigate whether Lot 31 receives water from defendant's system. If Lot 31 uses an unauthorized connection to defendant's system, defendant should terminate service and require the owner of Lot 31 to bear an equitable portion of the cost of a main extension back to Dolton Avenue. Defendant should report the results of its investigation and any action taken to the Commission's Hydraulics Branch within 14 days after the effective date of this order.

2. The complainant should bear a portion of the cost of the main extension in Lynton Avenue, based upon the point established by Finding 8.

3. The defendant should bear the remainder of the cost of the main extension.

4. General Order No. 103(V)(2)(b) does not contemplate the extension of customer-owned service lines beyond the property line of the lot.

5. In all other respects the complaint should be denied.

O R D E R

IT IS ORDERED that:

1. California Water Service Company shall expeditiously construct a main extension in Lynton Avenue, San Carlos, and shall serve the properties of Henning Rasmussen at 145 and 149 Lynton Avenue therefrom.

2. California Water Service Company shall bear the cost of the main extension from the point established in Finding 9 back to Dolton Avenue and Henning Rasmussen shall bear the cost of the main extension from such point to his property.

3. California Water Service Company shall investigate whether Lot 31 is served by said company. If such service is determined to be unauthorized, said company shall terminate service and enforce the main extension rule with respect to the owner of Lot 31 to the extent that such owner is required to pay an equitable portion of the cost of the main extension from Dolton Avenue.

4. California Water Service Company shall report to the Hydraulics Branch of the Commission staff the results of its

investigation of Lot 31 and any action taken within 14 days after the effective date hereof.

5. In all other respects the complaint of Henning Rasmussen is denied.

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

Dated at San Francisco, California, this 19th day of DECEMBER, 1978.

Robert Batinovich
President
William Symons, Jr.
Vernon L. Sharp
Leonard M. Grimes, Jr.
Clair T. Dedrick
Commissioners