

Decision No. 92234 SEP 16 1980

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Russell A. Richardson, Jr.,
Complainant,

vs.

Yucca Water Company,
Defendant.

Case No. 10787
(Filed September 25, 1979)

Earl Oakley, Attorney at Law, for
complainant.
John E. Sisson, Attorney at Law,
for defendant.
Robert M. Mann, for the Commission staff.

O P I N I O N

Complainant alleges that on or about September 5, 1979 he inquired of defendant Yucca Water Company (Yucca) as to the availability of water to Lot 109 of Tract 7064 located in Yucca Valley, as he wanted to build a home on the property. Complainant alleges that he was advised that it was not possible to supply water to his lot since it would require a pressure tank, pumps, etc., which had not been installed at the time the tract was developed. Complainant seeks an order from this Commission that water be made available by Yucca to Lot 109 of Tract 7064.

Defendant's answer admits that on or about September 5, 1979 complainant informed Yucca that he was purchasing Lot 109 of Tract 7064 and was inquiring as to the availability of water after being assured by the seller, Ralph Mick (Mick), that water was immediately available from Yucca for this property. Defendant alleges that it informed complainant that all of the 48 lots situated within the pressure zone area of the tract were without water due to the fact that Mick, the original subdivider of Tract 7064, never completed the water system for the pressure zone area. Defendant alleges it informed complainant that in order to supply water to the pressure zone area, it would be necessary for Mick to complete the system by installing a 5,000-gallon pressure tank, a 350-gpm booster pump, and standard appurtenances.

Defendant admits that it holds a certificate of public convenience and necessity to serve Tract 7064 which was granted by this Commission in Decision No. 53837 dated October 9, 1956, and further admits that it cannot refuse to offer water service to any bona fide applicant in the area. However, defendant cites its tariff Rule 15.C. covering main extensions to serve subdivisions, tracts, etc., and points out that said rule requires that the applicant must advance the reasonable estimated cost of the extension before construction commenced, or else install the facilities himself, at his own expense. According to defendant's answer, Mick insisted on installing the system himself, but failed to complete the pressure system portion of the water system to the tract. Defendant admits that it sent a letter to the California Department of Real Estate (DRE) on June 15, 1964, informing

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that agency that the installation of the required facilities to serve Tract 7064 had been completed and that it was able and willing to serve water to Tract 7064 immediately, but alleges that, in doing so, it relied upon the honesty and integrity of the subdivider (Mick) who furnished this information to Yucca. Defendant further alleges that Rule 15 does not require the water company to pay for any part of the water system except as spelled out in the refund portion of the rule and that without a usable water system, it cannot deliver water service to potential water users in the pressure zone area. Defendant thus asks that the complaint be dismissed.

After proper notice, hearings were held before Administrative Law Judge William A. Turkish in Los Angeles on January 18, 1980 and February 8, 1980, and the matter was submitted upon the filing of concurrent briefs due February 29, 1980. Testifying on behalf of complainant were complainant and Mrs. Joyce Richardson, complainant's spouse. Testifying on behalf of defendant was Ted Jurling, president of Yucca. Also testifying in this matter were Robert Mann, senior utilities engineer with the Commission staff; Abraham Werda, ✓ DRE deputy commissioner; and Mick.

According to the testimony of complainant, he and his spouse purchased a lot (No. 109) in Tract 7064 in July 1979 from Mick and was assured by Mick that there was water available to the lot from Yucca. When complainant decided to build a house on the lot, he contacted Jurling about the availability of water and was told by Jurling that there was no water available to complainant's lot because Mick had not

completed the pressure system portion of the tract's water system. Complainant testified that he intended to give the lot back to Mick and could not do it. He then contacted a Commission staff representative and was told that he should be able to have water available to his lot because it was within the certificated service area of Yucca. He also stated that after purchasing Lot 109 and after learning of the water problem, he purchased another lot (No. 111) in the same pressure zone area of the tract from another party.

Upon cross-examination, complainant denied that he was advised that there was a cease and desist order issued by the DRE concerning any more sales in Tract 7064, although he admitted that he was advised that there was a probability that water would not be available to the newly purchased Lot 111, which he purchased on October 5, 1979. He related that after talking with Jurling, he spoke again with Mick and was told by Mick that there was water available to Lot 109 because he had the water pressure in the area checked. He admitted that he had been told many different things by Mick and that Mick had stated that he had an agreement with Jurling to the effect that he Mick would improve or put in the water system. When he purchased the lot from Mick, complainant was given the option of keeping the lot or getting his money back. Complainant decided to keep the lot even after being put on notice of the controversy concerning the availability of water to Lot 109. Complainant stated he never saw the public report on the tract filed with DRE.

Mrs. Richardson testified that she attempted to contact Jurling by phone but was unable to do so, and that he failed to return her calls. She stated that she spoke with the office manager of Yucca who informed her that there was a certain amount of money which was required before water could be supplied to the pressure zone area lots and suggested that perhaps the lot owners could get together to raise the money. The witness testified that she asked if the manager could arrange a meeting with Jurling and was told that he was not in and that the manager could not give out any information.

She also testified that the escrow papers (Exhibit 1) signed by Mick certify that there was water to Lot 109. She also stated that the word "available" following the word "water" was deleted and initialed by all parties because she and complainant wanted to make sure water was available at that time and not merely sometime in the future. She stated that Mick admitted to having a problem with Jurling about the water system, but that it was not complainant's concern. She admitted that she and complainant purchased Lot 111 for speculation even with the knowledge that there was no water on it.

Defendant's counsel and all parties stipulated that Tract 7064 was within the service area to be served water by Yucca.

John Werda testified with respect to a desist and refrain order, No. H-19030 LA (Exhibit 8), issued by DRE on March 17, 1975 with respect to Tract 7064. The order was addressed to respondent Title Insurance and Trust Company, as trustee, and Valley-Hi Sales and Investment Company, a partnership, and alleged that on or about June 11, 1964 Mick, as owner of the subdivision, filed documents with DRE and that relying upon the statements by Mick in said documents to the effect that the installation of the required facilities to serve water to the tract had been completed and that Yucca was now able and willing to serve water to the tract, DRE issued a final public report for the subdivision. The order declares that since the required facilities to serve water to the subdivision have not been installed and Yucca was unable to serve water to the lots in the subdivision, respondents were ordered to desist and refrain from selling or leasing, or offering for sale or lease, lots in the subdivision until they notified the DRE in writing of such material changes as set forth above, and until such time as respondents have obtained an amended report.

Jurling testified that Tract 7064 has two water zones due to differences in elevation. A 210,000-gallon water tank supplies 77 lower elevation lots by a gravity flow system. The upper elevation, which contains 48 lots including complainant's Lots 109 and 111, is in the pressure zone area and requires a 5,000-gallon pressure tank with a 350-gpm booster pump in order to furnish water to those lots. Although distribution lines were installed by Mick to serve both zones, only the gravity flow water system was completed

and is in operation. According to Jurling, Mick never installed the pressure tank, booster pump, and necessary fittings to connect with the pressure zone distribution system to supply water to the 48 lots in the pressure zone area, and, as a result, no water is available to those lots. Jurling stated that Mick notified Yucca in 1964 that installation of the entire water system in Tract 7064 was completed and that he wanted to start selling lots. Mick requested the utility write to DRE stating that the system was completed and that Yucca was willing and able to supply water to the tract.

Jurling, who was living in Los Angeles at the time, admitted that after receiving the information he never went out to Yucca Valley to make an on-site inspection of the system, but, instead, relying on the honesty and integrity of Mick concerning the completion of the system, wrote a letter to DRE on June 15, 1964 stating that the installation of the required facilities to serve Tract 7064 had been completed and that Yucca was willing and able to serve water to the area immediately. Sometime later, Jurling discovered that the pressure tank, booster pump, etc., necessary to carry water to the pressure zone area lots had not been installed. He wrote a letter to Mick on March 21, 1966 (Exhibit 5) about a number of discrepancies in the water system, among which he pointed out the incomplete pressure system installation. The letter informed Mick that Yucca could not accept the pipeline system in Tract 7064 because of the many discrepancies. The letter further pointed out that the problems would have to be resolved before Yucca could accept the water system. A copy of this letter was sent to DRE, the California Public Utilities Commission, and

other designated parties. Jurling related that over the years he attempted to get Mick to complete the pressure area system, and that Mick acknowledged responsibility to complete the system until January 4, 1980 when Jurling received a letter from an attorney stating that Mick had no obligation to pay for any improvements to Tract 7064.

According to Jurling, he is ready and willing to serve water to the 48 lots in the pressure zone area whenever the pressure tank, booster pump, and other appurtenances are installed by either Mick or the property owners. At the present time, there are 12 homes in the 125-homesite tract either completed or in construction which have had meters installed by Yucca, but none of those homes are in the pressure zone area. He estimated it would require \$25,000 to complete the necessary pressure zone area water installation. ✓

The relevant portions of the testimony of Mick is as follows. He was owner of some acreage in Yucca Valley and developed this acreage into a subdivision, known as Tract 7064, in 1964. In developing this property, he had a water system designed by an engineering firm which was laid out on a civil engineering tract map. He acknowledged that the water system called for a 5,000-gallon pressure tank and booster pump for the higher elevation lots in the pressure zone area, and that he was responsible for putting in the system. He acknowledged telling Jurling that he would put it in. Mick does not remember informing Yucca in 1964 that the system was completely installed

and requesting Yucca to write a letter to that effect to the DRE, but acknowledged that it was possible that he had done so since he wanted to start selling lots as soon as possible. He testified that he was not aware at first that the pressure zone area installation had not been completed but had learned of it sometime later. He claimed ignorance as a land developer and that being a layman involved in his first attempt to subdivide, with no engineering knowledge, he hired and relied on others. He had the pipeline distribution system in the tract installed at his own expense and never executed a main extension or refund agreement with Yucca. He admitted that over the past 16 years he had agreed to complete the necessary pressure zone area installation and had requested cost and installation figures, but claims that he received no cooperation or assistance from Jurling. Throughout his testimony, Mick acknowledged that the pressure zone area system should have been put in by him and that he felt a moral obligation to have it installed. However, he failed to make any commitment or offer to negotiate the completion of the system.

After receiving a final public report from the DRE in 1964, Mick began selling lots in the subdivision, but due to the fact that many others in the area were subdividing at the same time, sales were terrible and he sold only a total of 14 lots out of the 125-lot tract. Mick had to borrow money, pay off another note, and he put the tract up as security. When this note came due, he was unable to meet it and, as a result, lost the remainder of the unsold lots through foreclosure in 1967. At several points in his testimony, Mick expressed the belief that the eventual successors to the

tract should have taken over the liability of completing the water system since they acquired all the assets. He had retained a homesite for his own personal use and in 1979 sold this lot (No. 109), located in the pressure zone area, to complainant. He admitted that he informed complainant that water was available because he had previously had a test made on the line approximately four years earlier and that it tested out in excess of 30 or 34 psi. At the time of sale, he offered complainant the option of keeping the lot or reimbursing complainant's money and taking the property back if there were any problems.

Discussion

The issue before us is whether a public utility, because of its negligent acts, should be required to expend sums of money to complete a water system which it had incorrectly certified as completed so that water can be provided to those requesting it within its certified service area. At the present time, complainant would be the sole beneficiary of such an order, although, eventually, owners of the 49 other lots in the pressure zone area would likewise benefit from completion of the pressure zone water system.

Complainant argues that Yucca has obligated itself as a public utility to furnish water to Tract 7064 and should be ordered to provide such water service to all property owners in the tract requesting water service. We have not previously considered any cases with facts similar to those present herein. This Commission has previously considered and ordered a water company to provide water service to complaining parties where the evidence indicated the utility made representations to the complainants that water service would be available and complainants acted in reliance thereon,^{1/} and another case wherein we ordered the utility to continue to deliver

1/ California Water Service Co. (1956) 55 CPUC 285.

water even though it would impose a financial hardship.^{2/} Although the fact situations in those cases are not exactly on point with the facts here, there is a similarity here wherein purchasers of property relied on the assurances contained in the final report issued by the DRE that water would be supplied by Yucca and there is also the possibility here that ordering Yucca to complete the water system would impose a financial hardship on it. Yucca argues that responsibility for completing the system lies with Mick since he failed to complete the undertaking. However, Yucca must also assume some responsibility for creating the situation which now confronts the purchasers of property in Tract 7064, Yucca, and this Commission.

Yucca was grossly negligent when it failed to enter into a main extension agreement with Mick under its Rule 15 for the installation of the mains and distribution system for the tract. Although Mick assumed responsibility for the installation, Yucca was again negligent in not having Mick produce a surety bond to ensure completion of the system. To further add to its negligence, Yucca wrote a letter to the DRE, at Mick's request, informing that agency that installation of the water system was completed and that it was ready, willing, and able to serve water to the tract, when in fact the system was not completed and Yucca never made an inspection to verify its status. Yucca indicates that it made many attempts, over the years, to get Mick to complete the system after its discovery of the noncompletion, but we note that it failed to take any legal action against Mick to compel such completion.

This Commission has no jurisdiction over Mick. It does have jurisdiction over Yucca. It is possible that purchasers of property from Mick who purchased on the assurance contained in the original final public report, to the effect that water was available from Yucca may still have a possible cause of action against Mick,

^{2/} Pacific Water Co. (1958) Decision No. 57704 in Application No. 40260.

but those possibilities exist in another forum and not before this Commission.

If Yucca had desired to divest itself of any responsibilities concerning the furnishing of water to the pressure zone area after it discovered the system had not been completed, it could have sought authority from this Commission to either abandon service to that area or seek a change in its service area to exclude that area from its service area. While it is true that Yucca mailed a letter in 1966 to Mick outlining the deficiencies in the water system of Tract 7064 and sent informational copies to the DRE and this Commission, it did not suffice to relieve Yucca of any of its previously mentioned acts of negligence. Both the Commission and the DRE relied on the statements of Yucca relative to furnishing water to Tract 7064 and the members of the public relied on the assurances contained in the public reports issued on the basis of information supplied by Yucca. We do not believe that the burden of completing the water system should be placed on the property owners of the tract. Many of them purchased lots believing water to be available.

Since we do have jurisdiction over Yucca and since it is largely responsible for the situation created by its own negligence, we believe it should be made to rectify the situation by completing the installation necessary to furnish water to the pressure zone area. The cost of installation can be added to its rate base and eventually recovered through rates. The cost of installation of the remainder of the main and distribution system in Tract 7064 was installed by Mick, and was not the subject of a refund contract under Rule 15. Under the circumstances described above it will be reasonable for Yucca to include costs associated with this contribution in its rate base, except for the storage tank used to serve other portions of Yucca's service area in addition to the subdivision.

Findings of Fact

1. Complainant is the owner of two lots in Tract 7064 which are within the pressure zone area of that tract.

2. Complainant has requested water service to his Lot 109 in Tract 7064.

3. Yucca is certified as a public utility, and Tract 7064 is within its dedicated service area.

4. Tract 7064 was developed by Mick in 1974 and Mick elected to install the necessary mains and distribution system for Tract 7064 rather than advance the costs for installation by Yucca.

5. Tract 7064 requires two separate water systems - one, a gravity flow system to supply water to 76 lower elevation lots, and another, a pressure tank and booster system to supply water to 49 higher elevation lots (pressure zone area). ✓

6. Mick completed the gravity flow system but failed to complete the pressure zone area system. ✓

7. Mick represented to Yucca that the complete water system was installed and requested Yucca to notify the DRE that installation was complete so he could begin selling lots.

8. Yucca, relying on the information given by Mick and without verification of the facts, wrote a letter to the DRE stating that installation of the water system to Tract 7064 was complete and that it was ready, willing, and able to serve water to the tract.

9. After discovery of the incomplete pressure zone system, Yucca informed Mick by letter of the defect and its inability to serve water to the pressure zone area and sent copies to the DRE and to the California Public Utilities Commission in 1966.

10. The original subdivision final public report issued by the DRE, on the basis of information furnished them by Mick and Yucca, states that water would be provided to Tract 7064 by Yucca.

11. Yucca failed to execute a main extension contract or refund contract with the developer, under tariff Rule 15, for the water distribution system within Tract 7064 and was negligent in failing to do so.

12. Yucca was negligent in informing the DRE that the water system installation in Tract 7064 was complete without performing an inspection to verify such fact.

13. While the complaint involves only a 125-lot subdivision, Yucca presently has approximately 6,000 water customers. Addition to rate base of the approximate \$50,000, (exclusive of storage tank) for subdivision, will have very little impact on Yucca's total revenue requirements.

Conclusions of Law

1. This Commission has jurisdiction only over Yucca.
2. Since Yucca is in large part responsible, due to its negligence, for creating the situation in which it finds itself, it should bear the burden of providing the remedy - namely, completing the water system so that it can serve those requesting water in Tract 7064.

O R D E R

IT IS ORDERED that:

1. The relief sought by complainant is granted.
2. Yucca Water Company (Yucca) shall, at its own expense, take immediate steps to complete the pressure zone area water

system of Tract 7064 by connecting and installing a 5,000-gallon pressure tank, a 350-gpm booster pump, and other required appurtenances between the water tank serving the lower elevation lots and the distribution system serving the pressure zone area lots. Such facilities shall be in service by December 15, 1980.

3. Yucca may include the costs associated with completion of the upper elevation water system in its rate base.

4. Yucca may include the cost of the main extension and water distribution system installed by Mr. Ralph Mick in its rate base, excluding the cost of the storage tank installed by Ralph Mick and others.

5. Yucca shall file a report with this Commission within one hundred twenty days of this date indicating the status of the installation ordered herein.

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

Dated SEP 16 1980, at San Francisco, California.

John E. Bryan
President

Deborah L. Stanger

Michael D. Gaele

Clare J. Deed

Stanley J. Smith
Commissioners