

Decision No. 92705 - February 18, 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RONALD A. KRATLIAN,)
)
 Complainant,)
 vs.)
)
 F. FERRARO (MADERA RANCHOS)
 WATER CO.),)
)
 Defendant.)
)

Case No. 10869
(Filed May 29, 1980)

Ronald A. Kratlian, for himself, complainant.
Francis H. Ferraro, for Madera Ranchos Water
 Company, defendant.
Herbert R. McDonald, for the Commission staff.

O P I N I O N

Mr. and Mrs. Ronald A. Kratlian are the owners of Lot 210 in ✓
 Madera Ranchos Subdivision No. 2 (Madera County). That lot is located
 on the north side of Marciel Drive and is not within the service area
 of any water company.

The filed service area map of Madera Ranchos Water Company ✓
 (Water Company) shows that it provides service to lots in Madera
 Ranchos Subdivision lying south of Marciel Drive.

The complaint states, inter alia, that Ronald A. Kratlian
 (complainant) constructed a 6-inch water main at the verbal direction
 of defendant's employee and that a hook-up charge of \$300 was assessed
 by defendant. Complainant seeks reimbursement of his cost of
 providing a main extension to Lots 214, 215, and 216 adjacent to

his property and any other lots that may hook up to that extension in the future. Complainant alleges that his cost to construct the pipeline was \$3,612.79. The complaint also seeks reimbursement of the \$300 hook-up charge.

Frances H. Ferraro (Ferraro), defendant, owner of the Water Company, filed an answer to the complaint on August 13, 1980 denying all material allegations of the complaint.

Public hearing in Case No. 10869 was held before Administrative Law Judge Mallory in San Francisco on November 24, 1980, and the matter was submitted. Evidence was presented by complainant and defendant. Defendant's Exhibit 1, a map of the portion of Madera Ranchos Subdivision No. 2, in issue, is attached as Appendix A.

Complainant testified that he applied for water service at the office of defendant on July 31, 1979. Ferraro was not present. Complainant made his request to a Bud Walsh,^{1/} who advised him that in order to receive water service from defendant, he would have to construct a 6-inch water main which would connect at defendant's 9-inch main on the south side of Marciel Drive. The new main should extend to near the back of defendant's lot so that service from the 6-inch main could be provided to adjacent Lots 214, 215, and 216.

^{1/} Bud Walsh was identified by Ferraro as the company superintendent of maintenance and in charge of field operations.

According to complainant, Walsh told him that he would be reimbursed for all costs of installation of the main. At that time, complainant paid \$300 by check to Madera Ranchos Water Company. Complainant believed this amount to be a hook-up charge.^{2/}

Complainant further testified that based on Walsh's oral representation a 6-inch main was constructed across Marciel Drive and along the utility easement between his Lot 210 and Lots 214, 215, and 216 for a total length of 152.58 feet. The ownership of Lots 214, 215, and 216 is unknown to complainant. According to complainant, it was his intent to locate a house near the front of his 5+-acre parcel near Marciel Drive and that the main extension to the back of his lot was not needed by him, but is needed only to serve Lots 214, 215, and 216. Complainant constructed a 100-foot 1-1/2 inch line from the 6-inch main to the proposed location of his residence.

Exhibits 2 through 6 were submitted by complainant. Exhibit 2 contains copies of building permits and an inspection record issued by Madera County to complainant on July 30, 1979 for the construction of a single-family dwelling at 37367 Marciel Drive.

^{2/} Decision No. 91425 dated March 18, 1980 in Case No. 10862 and Application No. 58607 directed Ferraro to refund service connection charges of \$300 per customer. That decision also ordered Ferraro to enter into a main extension contract with the complainant in Case No. 10862.

Exhibit 3 is a bill issued by the Water Company in the amount of \$1,062.36 for "damages to water main". Exhibit 4 is a paid check made out by complainant to defendant dated July 31, 1979 in the amount of \$300. Exhibit 5 is a copy of Madera County land use regulations indicating that complainant's Lot 210 cannot be subdivided. Exhibit 6 contains receipted bills and paid checks covering the expense of constructing the 6-inch main and 1-1/2 inch service line.

Cross-examination developed that a limited portion of the expenses shown in Exhibit 6 apply to construction of the service line and to grading the back portion of complainant's lot, which expenses are not attributable to construction of the 6-inch water main.

Ferraro testified that he is willing to enter into a main extension agreement with complainant, but only after a building is completed on Lot 210 and water service is provided to such building. Ferraro made the settlement offer during a recess of the hearing, but complainant refused the offer as he has no immediate plans to build because of current high interest rates for real estate loans.

Ferraro also testified to the alleged damages for which the bill to complainant was issued in Exhibit 3. Direct and cross-examination revealed that a portion of this bill covers damages to a pipe not used or useful by the water company and the balance in the

sum of \$450 was for the repair of the connection made by complainant to defendant's main in Marciel Drive. The repair was necessary because the connection was improperly made by complainant.

Discussion

Complainant, at all times, acted in good faith in constructing the 6-inch main based on his reliance on the oral instructions of Bud Walsh as to actions necessary to receive water service from the Water Company. It appears from the map in Exhibit 1 that a service connection could have been made across Marciel Drive from defendant's main on the south side of that street to complainant's property on the north side. Thus, the 6-inch main was constructed primarily for the benefit of the water company, and provided no material benefit to complainant except that his application for water service would be accepted by defendant.

Although defendant denied the material allegations of the complaint in his answer, he acknowledged at the hearing that complainant was entitled to a main extension contract, but only after a building is erected on complainant's lot and water service is provided. Defendant relies upon Rules 13 and 15 of his filed tariff for denial of a main extension contract until such time as water service is provided to complainant's lot.

The applicable provisions of Tariff Rule 15 are set forth in Appendix B.

Paragraph A.1.a. covers the general circumstances under which the water utility line extensions will be made. A main extension contract must be issued before the facilities comprising the main extension are transferred to the utility.

Under Paragraph A.3.a. (definitions), a bona fide customer is one who has given satisfactory evidence that service will be reasonably permanent to the property which has been improved with a building of a permanent nature, and to which service has commenced.

Under Paragraph A.3.b., the definitions of "real estate developer" and "builder" do not apply to complainant as he does not intend to divide a parcel of land into two or more portions. Thus, service is requested as an individual.

Under Paragraph A.4.a., the facilities installed by complainant become the sole property of defendant. Under Paragraph A.4.b., defendant has specified the size of main and its location, and the oral statements of Bud Walsh authorized complainant to construct the facility.

Under Paragraph A.8., the Commission may resolve disputes or disagreements arising under the application of Tariff Rule 15.

Paragraphs B.1. and 2 cover extensions to serve individuals, and paragraph C.1.c covers extensions to serve subdivisions and tracts. Complainant applied for a water service as an individual; therefore, Paragraphs B.1. and B.2 apply to him. It appears that service

could have been provided under Rule 15, Paragraph B.1. by defendant merely by a connection from complainant's lot at the property line, and that a main need not be constructed for that purpose. However, relying on defendant's employee's representations that main was built. The installed main exceeds 50 feet in length. Under Paragraph B.2, defendant must furnish 50 feet of main without cost to complainant. The balance of the main extension should be covered by a main extension contract.

Complainant qualifies in all respects for a main extension contract, except that he does not fit the definition of a "bona fide customer" as no dwelling has been constructed on his property. It was the intent of complainant to build such residence, as evidenced by the building permits obtained by him and the construction of the water main. Since mid-1979 when such permits were obtained and the main installed, complainant asserts he has been unable to construct a dwelling because of the large increase in real estate loan interest rates. Under Paragraph 8 of Rule 15, we can waive, as a matter of equity, the requirements that a dwelling be constructed and that service commence.

Based on our analysis of the facts and our interpretation of Rule 15, we will order defendant to enter into a main extension contract with complainant and we also will order the following described offsets:

- (1) A portion of the labor and materials included in Exhibit 6 were for personal labor and backhoe work not involving construction of the main, and for the materials used in the installation of the 1-1/2 inch service line from the main to the site of complainant's future dwelling. Such unrelated materials and labor amounting to \$386.39 should be deducted from the total expenditure of \$3,612.79.
- (2) The first 50 feet of the main should be paid for by defendant, and the balance should be covered by the main extension contract. The amount to be borne by defendant is \$943.78 and the remainder is \$2,282.62.
- (3) Complainant improperly connected the new main to the existing main. The cost to defendant of repairing and replacing that connection is \$450.
- (4) Defendant should immediately reimburse complainant for the first 50 feet of the 6-inch main, in the amount of \$943.78. From that amount should be deducted \$450, the cost of reconnecting the 6-inch main extension to defendant's system. The total immediate reimbursement should be \$493.78.
- (5) Defendant should enter in a main extension contract with complainant in the amount of \$2,282.62.
- (6) The \$300 collected by defendant from complainant at the time of complainant's request for service appears to be a connection charge of the same amount and type as that ordered to be refunded to all water customers of the Water Company in Decision No. 91425, dated March 18, 1980 in Case No. 10862 and Application No. 58607. The amount of \$300 also should be refunded to complainant.

Findings of Fact

1. Complainant applied for water service from the Water Company on July 31, 1979. Complainant was referred to Bud Walsh, an employee of the Water Company.

2. Based on oral representations of Walsh (a) that water service could be obtained for his Lot 210 only by the construction of a 6-inch water main to serve adjacent Lots 214, 215, and 216 (all of which were outside defendant's filed service area) and (b) that all costs of construction would be reimbursed, complainant constructed such 6-inch water main at a net cost to him of \$3,226.40.

3. Complainant's request for reimbursement from Ferraro, owner of the Water Company, was denied.

4. Complainant paid a charge of \$300 to defendant on the same date that he made his initial request for service.

5. Complainant improperly made the connection of the 6-inch main extension to defendant's existing water main on the south side of Marciel Drive (Exhibit 1). The cost to defendant to repair the improperly made connection was \$450.

6. Complainant's actions meet all requirements for the issuance of a main extension contract to him under defendant's Tariff Rule 15, except that he has not built a residence on Lot 210 nor accepted permanent water service.

7. Complainant intended to become a permanent water customer of defendant at the time his request for service was made, as evidenced by:

- (a) The acquisition of a building permit.
- (b) The expenditure of money and effort to construct the 6-inch water main in issue.
- (c) The construction of a 1-1/2 inch service pipe from the 6-inch main to the proposed building site on Lot 210.

8. Complainant is not a land developer or builder. He is not personally acquainted with the owner of Lots 214, 215, and 216 in Madera Ranchos Subdivision No. 2.

9. Complainant is prevented by land use requirement from subdividing the 5+-acres in his Lot 210.

10. The 6-inch water main constructed by complainant is needed solely for purposes of serving adjacent Lots 214, 215, and 216, since service to his Lot 210, which lies directly across Marciel Drive from defendant's existing main, could be accomplished under the 50-foot free footage allowance of defendant's Tariff Rule 15.B.1.

11. Defendant should enter into a main extension contract with complainant in the net amount of \$2,282.62, and should reimburse complainant for the free-footage allowance provided in Tariff Rule 15.B.1 in the amount of \$493.78 (net after deducting the cost to reconnecting the 6-inch main to defendant's system).

12. The \$300 assessed at the time complainant initially requested service is a connection charge of the same amount and type ordered to be refunded in Decision No. 91425, supra.

Conclusion of Law

Defendant should be ordered to:

- (a) Enter into a main extension contract.
- (b) Refund the net amount of the free-footage allowance of \$493.78.
- (c) Refund the \$300 connection charge.

O R D E R

IT IS ORDERED that:

1. Francis H. Ferraro (Madera Ranchos Water Company) shall, within thirty days after the effective date of this order, pay to Ronald A. Kratljan the sum of \$793.78.

2. Francis H. Ferraro shall enter into a main extension agreement with Ronald A. Kratljan in the amount of \$2,282.62, providing for refunds of 22 percent of revenues from water service to residences located on Lots 210, 214, 215 and 216 of Madera Ranchos Subdivision No. 2 in Madera County.

3. Within sixty days after the effective date of this order, Francis H. Ferraro shall file two copies of a new system map as required by General Order 103, paragraph I.10.a, showing that Lots Nos. 210, 214, 215, and 216 of Madera Ranchos Subdivision No. 2 are located within his service area.

4. To the extent not granted herein, the complaint of Ronald A. Kratlian in Case No. 10869 is denied.

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

Dated FEB 18 1981, at San Francisco, California.

John E. Bryan

President
Richard D. Howell

Samuel M. Harris

Commissioners

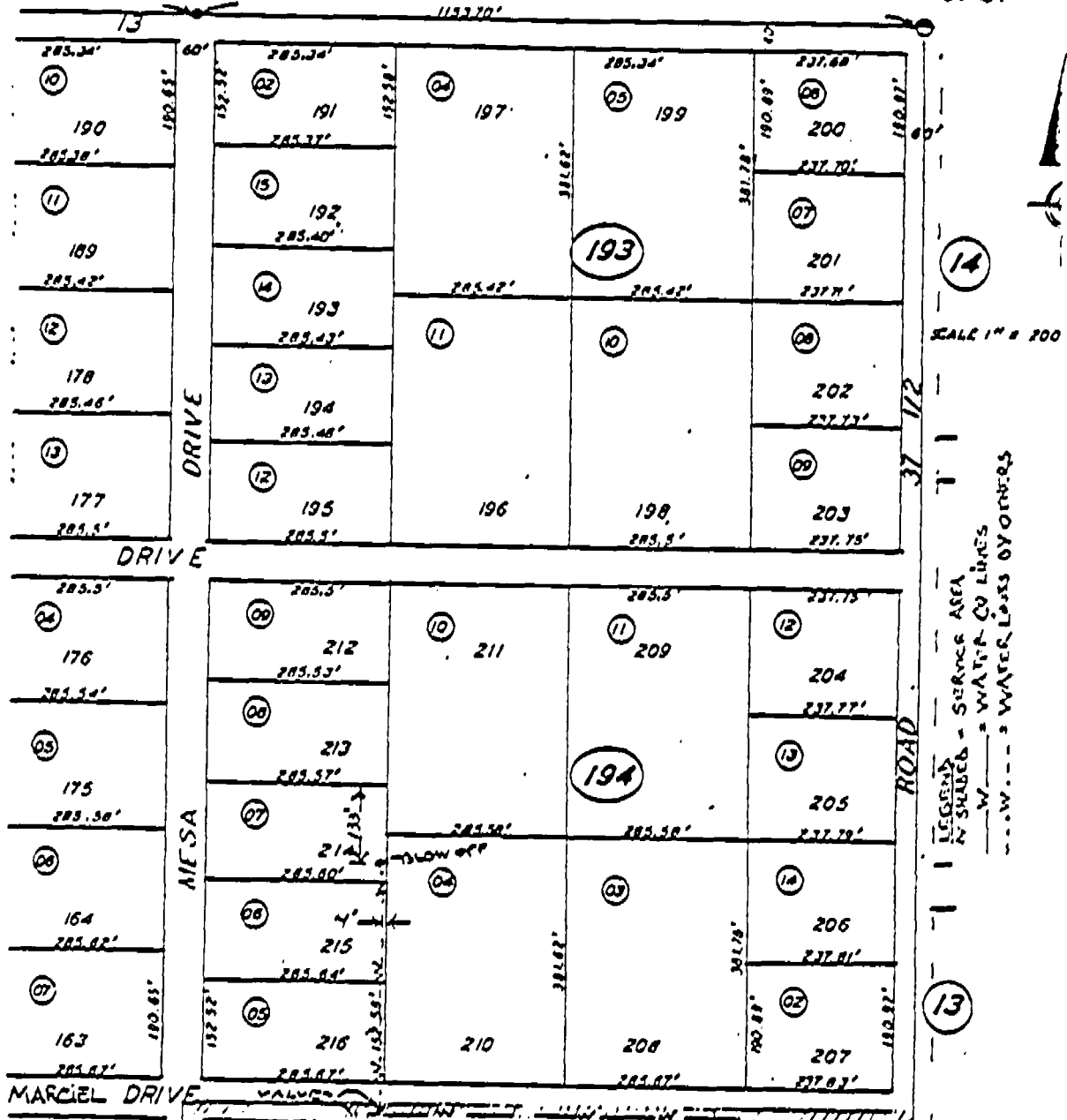
APPENDIX A

RANCHOS SUB. NO. 2

M.B. VOL. 7 PGS. 145 THRU 148

49-19

Tax Area No. 61 51



MARCEL DRIVE

Assessor's Map No. 49-19
 Webster
 County of Modera, Calif. 1960

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RULE 15

MAIN EXTENSIONS

"A. General Provisions and Definitions

"1. Applicability

- "a. All extensions of distribution mains, from the utility's basic production and transmission system or existing distribution system, to serve new customers, except for those specifically excluded below, shall be made under the provisions of this rule unless specific authority is first obtained from the Commission to deviate therefrom. A main extension contract shall be executed by the utility and the applicant or applicants for the main extension before the utility commences construction work on said extensions or, if constructed by applicant or applicants, before the facilities comprising the main extension are transferred to the utility."

* * *

"3. Definitions

- "a. A "bona fide customer", for the purposes of this rule, shall be a customer (excluding any customer formerly served at the same location) who has given satisfactory evidence that service will be reasonably permanent to the property which has been improved with a building of a permanent nature, and to which service has commenced. The provision of service to a real estate developer or builder, during the construction or development period, shall not establish him as a bona fide customer.
- "b. 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."

* * *

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"4. Ownership, Design and Construction of Facilities

- "a. Any facilities installed hereunder shall be the sole property of the utility. In those instances in which title to certain portions of the installation, such as fire hydrants, will be held by a political subdivision, such facilities shall not be included as a part of the main extension under this rule.
- "b. The size, type, quality of materials, and their location shall be specified by the utility; and the actual construction shall be done by the utility or by a constructing agency acceptable to it."

* * *

"8. Interpretations and Deviations

"In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears unreasonable to either party the utility, applicant or applicants may refer the matter to the Commission for determination."

* * *

"B. Extensions to Serve Individuals

"1. Free-Footage Allowance

"The utility shall extend its water distribution mains to serve new bona fide customers at its own expense, other than to serve subdivisions, tracts, housing projects, industrial developments or organized commercial districts, when required total length of main extensions from the nearest existing utility facility is not in excess of fifty feet per service connection.

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"2. Advances

"If the total length of main extension is in excess of 50 feet per service connection applied for, the applicant or applicants for such service shall be required to advance to the utility, before construction is commenced, that portion of the estimated reasonable cost of such extension which exceeds the estimated reasonable cost of 50 feet of the main extension per service connection, exclusive of the cost of service pipes, meter boxes and meters. Such estimated reasonable cost shall be based upon the cost of a main not in excess of 6 inches in diameter except where a larger main is required by the special needs of the applicant or applicants. The amount of the advance is subject to adjustment in accordance with the provisions of Section A.6.e. of this rule."

* * *

"C. Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments or Organized Commercial Districts

"1.c. In lieu of providing the advances in accordance with Sections C.1.a. and C.1.b., the applicant for a main extension shall be permitted, if qualified himself, or arrange for their installation pursuant to competitive bidding procedures initiated by him and limited to qualified bidders. The cost, including the cost of inspection and supervision by the utility, shall be paid directly by applicant. The applicant shall provide the utility with a statement of actual construction cost in reasonable detail. The amount to be treated as an advance subject to refund shall be the lesser of (1) the actual cost or (2) the price quoted in the utility's detailed cost estimate. The installation shall be in accordance with the plans and specifications submitted by the utility pursuant to Section A.5.b."