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AUG 18 1981

ORIGINAL

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARY E. SHORT,

Complainant,

vs.

FRANCIS FERRARO,

Defendant.

Case 10927
(Filed November 26, 1980)

ROBERT T. DABNEY,

Complainant,

vs.

FRANCIS H. FERRARO dba
MADERA RANCHOS WATER COMPANY,

Defendant.

Case 10956
(Filed February 17, 1981)

LLOYD BUSH,

Complainant,

vs.

FRANCIS H. FERRARO dba
MADERA RANCHOS WATER COMPANY,

Defendant.

Case 10975
(Filed April 3, 1981)

CHARLENE L. CARPENTER

Complainant,

vs.

FRANCIS H. FERRARO dba
MADERA RANCHOS WATER COMPANY,

Defendant.

Case 10990
(Filed May 29, 1981)

Application of FRANCIS H. FERRARO)
for a Certificate of Public)
Convenience and Necessity and to)
Establish Rates for Service.)

Application 58607
(Filed January 17, 1979)

Mary E. Short, for herself, complainant
in C.10927.

Robert T. Dabney, for himself, complainant
in C.10956.

Lloyd Bush, for himself, complainant
in C.10975.

Palmer & Willoughby, by Warren A. Palmer,
Attorney at Law, for Francis Ferraro,
defendant in C.10927, C.10956, and
C.10975; applicant in A.58607.

Richard M. Kerper and Frank R. Rose, for
themselves, protestants in A.58607.

William J. Jennings, Attorney at Law, and
and Herbert R. McDonald, for the Commission
staff.

O P I N I O N

On August 27, 1980, Richard Kerper, Frank Rose, Robert Hess, George Galvan, Stephen Stonacek, and Gerald Neighbors filed a petition seeking clarification and modification of Decision (D.)91425 issued in Application (A.)58607. Specifically, petitioners request that Francis H. Ferraro (Ferraro), dba Madera Ranchos Water Company, be directed to refund connection charges of \$300 to each of the petitioners in cash, as opposed to a credit against their respective water bills.

On November 26, 1980 Mary Short filed a complaint against Ferraro. Short seeks an order directing Ferraro to refund in a lump sum \$3,500 charged by Ferraro for extension of water service.

On February 17, 1981, C.10956 was filed against Ferraro, by Robert Dabney. Dabney requests a refund of allegedly excess charges collected by defendant.

C.10975 was filed April 3, 1981. This matter names Madera Ranchos Water Company as defendant and also involves allegations of improper connection fees charged by defendant.

Given the similarity of the claims filed against a common defendant, the above-referenced four matters were consolidated and set for public hearing. The hearing was held May 27, 1981 in Madera at which time all complainants, the defendant, and the staff presented testimony and arguments.

Subsequent to the hearing, C.10990 was filed by Charlene Carpenter against Ferraro. The matter at issue is identical to the claim raised by the petition for modification and C.10975. Therefore, C.10990 will be consolidated with this proceeding. Our decision today will collaterally resolve the claim raised in C.10990 and render the complaint moot.

1. Petition for Clarification of D.91425

D.91425 dated March 18, 1980 and issued in A.58607 declared defendant a public utility and, among other things, directed defendant to refund all connection or tap charges improperly collected from customers on or after January 1, 1977. In attempted compliance with the Commission directive, defendant submitted a list of 315 lots for which connection charges were paid. Defendant has managed to contact 16 current customers from whom it has collected a \$300 connection charge. Defendant, in alleged compliance with D.91425, has credited the water bills of these 16 customers with the amount of the connection charge.

Six of these customers petitioned the Commission on August 27, 1980 to clarify D.91425 to direct defendant to make the refunds in cash. The complainants in C.10975 and C.10990 seek similar relief.

2. C.10927

D.91425 directed defendant to enter into a main extension agreement with complainant Shell and the contractors who installed the Shell extension. Short testified that at the time she purchased her home, Lot #280 in the Madera Ranchos Subdivision #6, Track 83, in February 1978, \$3,500 was held in escrow for the water hookup. Short contends that she has contributed \$3,500 to the cost of the Shell extension. Since she allegedly contributed to the cost of the Shell extension, Short argues that she, and not her contractor Cletus Sloan, is entitled to a refund.

Short seeks a lump sum payment of \$3,500 from defendant plus the interest accrued since February 1978. She objects to the standard provisions of main extension contracts which allow the utility to make refunds of advances over a twenty-year period and based upon a percentage of revenues from water service to premises covered by the main extension agreements. Given such requirement, Short maintains that she "could die before she even would see a penny of that refund."

3. C.10956

Dabney applied for water service from Ferraro on November 15, 1977. Dabney was charged a flat rate of \$9.00 per month for subsequent service. When defendant was declared a public utility in D.91425 dated March 18, 1980, the \$9.00 per month rate was reduced to \$7.25 per month. Dabney contends that the difference in the two rates from November 1977 to March 1980 should be refunded to him in cash as overcharges.

Dabney computes the alleged excess charges as follows:

November 15 to December 31, 1977	\$ 2.18
1978 (12 x \$1.75)	21.00
1979	21.00
January to April 1980	<u>7.00</u>
Total	\$51.18

4. C.10975

Lloyd Bush paid \$1,700 in connection fees. He paid \$300 each for Lots 117-2, 248-6, and 277-6. Bush paid \$800 on June 20, 1978 by check #299 as a settlement for the remaining connection charges after the costs of the services installed by Bush were deducted. The lot numbers involved were: Lots 1, 9, 10, 11, and 73 in Subdivision 2.

Bush also claims to have paid \$580 for six service connections. At the hearing, Bush supplied receipts showing \$85.00 for the water tap for Lot 10 in Subdivision 2 and \$150 for bringing the water line under the road for Lot 248 in Subdivision 6. In addition, Bush claims to have paid \$85.00 each for Lots 1, 9, and 11 in Subidivision 2 and \$90 for Lot 73 in Subdivision 2.

The total of Bush's payments allegedly exacted for connection fees and facilities by defendant was \$2,280 (\$1,700 + \$580). Bush reduced his claim by \$180 to account for construction water service provided to him. Bush indicated in his filing that he would settle his dispute in exchange for a cash payment of \$1,545 from defendant.

5. C.10990

Although the complaint was filed after the public hearing on these consolidated matters, Robert Carpenter was present during the proceeding and testified concerning the claims raised by C.10990.

Carpenter testified that he has paid defendant approximately \$900 in connection charges for water service to three lots: #87 Madera Ranchos #5, #217 Madera Ranchos #5, #172 Madera Ranchos #3. He stated that defendant offered to enter into a main extension contract and refund the advance over a number of years. Carpenter refused the offer, stating that the agreement which called for payments by defendant of \$9.03 per year would require over 100 years to fully amortize the amount owed to him. Carpenter seeks clarification of D.91425 to require defendant to refund the outstanding amount of \$900 in cash.

6. Staff's Position

The Commission staff appeared at the public hearing and actively participated. A witness from the Hydraulic Branch testified and sponsored two reports.

In C.10975, staff concluded that defendant had improperly collected \$2,280 from Bush for connection charges and service facilities. Further, staff stated that it was inappropriate to enter main extension contracts to cover refund of these alleged advances. Staff noted that the connection charges cover services and not mains and, therefore, should not be included in main extension contracts. Service connections are specifically designated to be the utility's responsibility in General Order 103, Section V 2a(2). Staff concluded that defendant should pay Bush, in cash, \$2,280, less any adjustment for water used during construction.

Staff also sponsored a comprehensive report examining defendant's compliance with the 15 ordering paragraphs contained in D.91425. Staff concluded that Ferraro has substantially not complied with the orders contained in D.91425. Defendant's noncompliance is especially apparent with respect to those ordering paragraphs which

require the defendant to pay out money. Because of its analysis of defendant's compliance with D.91425, staff made 14 recommendations - all of which are intended in some way or another, to compel defendant's compliance with the directives of D.91425.

7. Defendant's Position

In response to the petitioners who request cash refunds of their connection charges under D.91425, defendant replies that there are 17 water service customers who have been identified as having made advances for service. Defendant states that all have received a full credit to their bill. In defense of its decision to refund through credits as opposed to cash payment, defendant cites its poor cash flow and unsatisfactory financial condition. As precedent for its determination to credit customer bills with the respective refund amounts, defendant cites the Ridgecrest decision, D.89661, dated November 28, 1978, as well as previously authorized refund practices for electric, gas, and telephone utilities.

In response to C.10927 defendant answers that it has never had any connection with Short regarding the construction of a home on Lot #280 in the Madera Ranchos Subdivision #6, Tract 83. Whatever arrangements Short had with her contractor regarding purchase of her home do not involve the defendant. Defendant maintains that Short's problem is not a subject that involves a utility.

In answer to C.10956 defendant contends that the subject matter of Dabney's complaint was thoroughly discussed in C.10682. No relief was granted in D.91425 which issued in that proceeding. Further, the relief requested by Dabney would constitute retroactive ratemaking and is precluded by law.

With respect to C.10975 defendant acknowledges that Bush paid the utility \$1,545 for tap charges and \$155 for construction water. Defendant contends that Bush is a builder and not a customer within the intendment of General Order 103, Section V 2a(i). Rule 15 of the utility's tariff sheets (34-W, Section 3A) states that a builder during the development period is not a bona fide customer. General Order 103 refers to customers and not tap charges for construction water.

In an effort to comply with Conclusion 6 of D.91425, the utility offered main extension contracts totaling \$1,545 for lots which Bush was developing. The defendant considered the moneys paid as an advance in aid of construction rather than a connection charge. This interpretation is consistent with the intendment of Rule 15, C.l.a., requiring builders to advance the cost of installation of service stubs, service pipes, fittings, gates, and housing. Meters and meter boxes are not included since the utility maintains a flat rate system.

Finally, defendant challenges staff's report of its alleged non-compliance with the ordering paragraphs in D.91425. Defendant presented a point-by-point rebuttal of the staff report through a late-filed exhibit. More importantly, however, defendant objects to the admission of the staff report in these consolidated proceedings. The report was distributed on the day of hearing and was the first indication that matters beyond the scope of the consolidated complaint cases were the subject of the hearing. Defendant had no notice that his compliance with D.91425 would be an issue properly addressed at the public hearing. Counsel for defendant strenuously objected to the admission of the staff report on grounds that it was clearly beyond the scope of the noticed proceedings. Defendant contended that its

admission in the absence of notice and time to prepare rebuttal cross-examination would seriously compromise defendant's rights to due process. The administrative law judge reserved ruling on defendant's motion to exclude the staff report.

Discussion

With respect to the issue regarding the proper form of refunds, we find that D.91425 is quite clear. It ordered defendant to refund the improperly collected connection fees. If a credit against outstanding water bills were appropriate, we would have so ordered. We did not. Defendant should refund the connection fees by direct cash payment to affected customers. The connection charges were improperly collected in violation of General Order 103. Defendant cannot use his alleged poor financial condition to shield him from the effects of his improper acts. Any other course on our part would allow defendant to benefit from his own improper acts.

To the extent that defendant has previously applied the improperly collected connection charges as a credit against outstanding water bills, he should deduct the credits given from the unauthorized connection charges and remit the remainders to the customers. We will not order the refund to bear interest.

C.10927 poses a difficult evidentiary problem. From the record evidence, it is unclear whether Short or the contractor who built her house is entitled to refund of advances made to defendant in aid of construction. It appears that Short had contracted to have her home built for \$56,000. It further appears that Short was then required to advance an additional \$3,500 in order to have water service provided to her home.

Although her contractor installed the extension, Short effectively contributed the capital to build it. Consistent with our determination in D.91425 that complainant Shell was entitled to a refund for advances made to defendant in aid of construction, we find that Short is also entitled to a refund. However, there is no basis in law for ordering a lump sum payment of \$3,500 to Short. As with Shell, Short is entitled to enter into a main extension contract with defendant.

Accordingly, defendant shall enter into a main extension agreement with Short that will provide that Short will receive a refund of 22% of revenue from water service to her residence for a period of twenty years.

Though Short may deem such relief inadequate, there is no ground for any other remedy. Her \$3,500 payment was not an improperly collected connection charge, but rather it was an advance to defendant in aid of construction, a necessary prerequisite to her receipt of water service. The advance is appropriately treated under our rules governing main extensions.

With respect to C.10975, we agree with staff that connection charges were improperly collected from Bush. The amounts advanced by Bush covered service connections and not mains and are not covered by the main extension rules. Service connections are specifically designated as the utility's responsibility by General Order 103, Section V 2a(2). Irrespective of whether Bush is or ever was a customer of defendant's utility, Bush should not have been assessed a connection charge. Defendant cannot cite such a distinction as grounds to allow it to benefit by its improper actions. The moneys were improperly collected and must be refunded. As requested by Bush, defendant will be directed to pay \$1,545, in cash, to Bush.

The same principles apply to the claim raised by Carpenter in C.10990. Therefore, defendant will be directed to pay \$900 to Carpenter in settlement of connection charges improperly collected.

Finally, we agree with defendant that the staff report on compliance with D.91425 is beyond the scope of the instant proceedings. If staff wishes to examine defendant's alleged noncompliance with D.91425, it should be done during a properly noticed enforcement proceeding (e.g., an OII or an Order to Show Cause for Contempt), with ample opportunity provided defendant to challenge the staff conclusions. This opportunity was not available to defendant during the May 27 hearing. Therefore, the staff report will be excluded from consideration in this proceeding.

During the hearing, several members of the public raised a collateral issue respecting the sufficiency of defendant's current water supply. To ensure adequate supplies of water in the future, defendant is encouraged to actively seek a Safe Drinking Water Bond Act loan from the California Department of Water Resources for purposes of enlarging its existing water supply.

Findings of Fact

1. By his interpretation of D.91425, defendant has credited the water bills of 16 customers in the amount of \$300 as a refund of improperly collected connection charges.
2. Six petitioners and complainants Bush and Carpenter in C.10975 and C.10990 requested Commission clarification of D.91425 to direct defendant to make the appropriate refunds in cash.
3. Short (C.10927) effectively advanced \$3,500 to defendant toward construction of a main extension (Shell extension) to provide water service to Lot #280 in the Madera Ranchos Subdivision #b, Tract 83.

4. Dabney (C.10956) appeared and participated in the proceedings conducted in C.10682 and A.58607.

5. D.91425, issued in C.10682 and A.58607, failed to grant the relief now requested by Dabney in his current filing.

6. Bush (C.10975) tendered \$1,700 to defendant in payment of connection charges covering 5 lots.

7. Carpenter (C.10990) tendered \$900 to defendant in payment of connection charges covering 3 lots.

8. Service connections are specifically designated to be the utility's responsibility under General Order 103, Section V 2a(2).

Conclusions of Law

1. Crediting improperly collected connection charges against outstanding water bills does not comply with the Commission's directive in D.91425 to refund the unauthorized charges.

2. D.91425 intended to order refund of the connection fees in cash by direct payment to affected customers.

3. Defendant should enter into a main extension contract with Short that will provide for a refund of 22% of gross revenues from her residence for a period of twenty years.

4. Recalculation of Dabney's bill from November 1977 to March 1980 would constitute retroactive ratemaking and is precluded by law.

5. Connection charges were improperly collected in violation of General Order 103.

6. Defendant should immediately refund the sum of \$1,545 offered by Bush in total satisfaction of his claims.

7. Defendant should immediately refund the sum of \$900 to Carpenter.

O R D E R

IT IS ORDERED that:

1. Francis H. Ferraro shall refund improperly collected connection fees by direct cash payment to affected customers.
2. Defendant shall enter into a main extension agreement with Mary E. Short that provides that Short will receive a refund of 22% of revenues from water service to her residence for a period of twenty years.
3. Defendant shall refund \$1,545 in cash to Lloyd Bush for improperly collected connection charges.
4. Defendant shall refund \$900 in cash to Charlene L. Carpenter for improperly collected connection charges.
5. C.10956 is denied.
6. To the extent that relief is not granted by this decision, C.10927, C.10975, and C.10990 are denied.

This order becomes effective 30 days from today.

Dated AUG 18 1981, at San Francisco, California.

John E. Byrne
President
Richard W. ...
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Commissioners