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Happy Acres Road off the junction of Wooded View Drive and Shannon Road is a 20-foot wide macadam street that extends approximately 1,250 feet up a canyon to terminate in the driveway of the Kottmeier's residence at 165 Happy Acres Road. A 6-inch asphalt concrete main in the road terminates at the Kottmeier driveway entry. A standard fire hydrant is sited in the public right of way area on the north side of the road adjacent to its terminal point. Substantial homes on acre-plus lots are located on the steep slopes on both sides of Happy Acres Road.

Since 1988, complainant Galbreath has resided in one of these homes on the north side of the street adjacent to the entry to the Kottmeier driveway. The Galbreath property rises from 540 feet elevation at the street level to 675 feet at the rear, partway up the steep hillside. His home is protected by a Code 13-D residential sprinkler system. (See Appendix A map.)

Earlier in the 1980's, a Mr. Felice owned a home on a large parcel of land which accessed Happy Acres Road by a private driveway. The Felice home is identified as 333 Happy Acres Road. Felice applied for water from SJWC. His property being inside SJWC's service area and contiguous to the terminal point of SJWC's main in Happy Acres Road so that there was no need for a main extension, a meter was installed on the south side of the road and service was provided to Felice.

Subsequently Felice divided his large parcel, selling part to a Mr. Wooly. While as yet there was no residence on the Wooly property, reportedly Wooly wanted water service for a Christmas tree farm he contemplated planting, and accordingly applied to SJWC for service. Again, SJWC being in the business of selling water, and the property being within SJWC's service area and contiguous to the terminal point of SJWC's Happy Acres Road main (with Happy Acres Road unlikely to be extended further), another meter was installed on the south side of the road and service identified as 165 Happy Acres Road was provided. The

Christmas tree farm did not materialize and the lot was thereafter sold to the Kottmeiers who today have a substantial residence on a portion of the 165 Happy Acres Road property.

Slightly less than a half-mile eastward on Shannon Road from where Happy Acres Road intersects, Suiview Drive begins and winds its dead-ended path up onto the high ridge which extends southward far above and overlooking the terminal point of Happy Acres Road. Suiview Drive appears to be part of a stalled real estate development, and was intended to loop southwestward to connect with Happy Acres Road, using what today is the Kottmeier's private driveway and driveway to be served by a public utility.

To extend SJWC service along Shannon Drive and thence up Suiview Drive would require a very substantial system addition involving special facilities including a new reservoir tank and well pumping facilities. Whether served from SJWC's Wooded View Drive or its Santa Rosa Drive facilities, the cost of such a service extension to serve the ridge would be in excess of a million dollars. With only four homes on the half-mile improved part of Suiview Drive, it is not realistic to expect that such an extension will be built. The Suiview Drive ridge is not within SJWC's dedicated service territory.

Of the present four homes on Suiview Drive, two are on the adjacent midway down the ridge, and overlook the Kottmeier and Galbreath homes far below on Happy Acres Road. Lacking public utility water service, both depended upon private wells for their water supply. The first home at 15251 Suiview Drive was built by David Smith pursuant to a Santa Clara County building permit and received final approval although it appears no certificate of occupancy was ever issued to Smith as Smith subsequently ran into financial problems and sold to the present owner, Bob McAdams. The adjacent home at 15286 Suiview Drive is owned by Jed Keller.

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As a consequence of the prolonged drought of recent years leading up to 1993, the then Smith and Keller wells went dry in late early 1993. Smith sought relief from SJWC. In view of the cost and impediments to any main extension up Suiview Drive, Smith asked SJWC if he could take service via a meter within SJWC's service territory at the end of Happy Acres Drive, and then, with the acquiescence of a neighbor, run his pipe from that meter across the neighbor's property uphill to Smith's point of consumption on Suiview Drive. SJWC being in the business of selling water wherever it can, it being in the best interest of all its customers to serve all properties capable of being served from existing mains, and since the proposed service would meet all General Order (GO) 103 requirements including sufficient pressure and local fire flow needs, SJWC agreed to provide service if access to service unit locations could be provided within SJWC's service territory.

In June of 1993, SJWC installed a meter for Smith, including a one-way check valve on the customer side to prevent any possible backflow contamination. A condition of service also was that Smith had to include an air gap backflow prevention element at the water storage tank on his property. The meter was installed in the utility public right of way on the north side of Happy Acres Road adjacent to SJWC's hydrant and across that street from the existing Kottmeier and Felice meters.

Smith took service at the new meter and ran a 2-inch Schedule 40 polyvinyl chloride (PVC) pipe underground to the Kottmeier-Galbreath property line at the end of Happy Acres Road. From that point, Smith ran his pipe above ground up the hillside on the Kottmeier side of the property line to the rear of the Kottmeier property, thence across the Bauer property to Suiview Drive and his home property. Smith had obtained an easement from Kottmeier and subsequently from Bauer who owned the intervening hillside.

Galbreath, concerned that these services added after his could impact on the adequacy of supply for his sprinkler system, was also worried that the exposed pipe on Kottmeier's property, if broken or frozen, could flow water onto his adjacent property. Galbreath asked Smith to bury the pipe but Smith was losing his 15284 Suiview home to a foreclosure. Galbreath on February 26, 1994, complained to SJWC and the Town of Los Gatos that the Smith installation had been made without his knowledge or consent, did not comply with the plumbing code, was not buried pipe and had no backflow prevention, and that if frozen or broken, his home could be damaged. On March 1, 1994, Galbreath also complained to the local Central Fire District, alleging installation of meters of "doubtful legitimacy," concern, whether his sprinklers could perform after addition of additional services to neighbors, and distrust of SJWC.

On March 4, 1994, after verifying that a check valve and backflow protection existed on the 15284 Suiview Drive meter, SJWC's attorney responded to Galbreath, denying that the meters were of "doubtful legitimacy," and stated that the services complained of met all existing standards. The attorney pointed out that after water leaves the meter, its use is the responsibility of the customer, not SJWC's.

The Town of Los Gatos Building and Engineering Services on March 2, 1994 wrote Galbreath in reply to his complaint stating that it had no objection to unburied PVC pipe as long as it was not connected to the house and continually pressurized.

The ALJ deferred setting for hearing until Galbreath's scheduled appearance on November 19, 1994.

1. Smith did close the home by foreclosure. Subsequently Bob S. McAdams, the present owner, acquired the property. Sometime before July of 1994, the pipe was relocated within the Kottmeier and Bauer properties and buried.

On March 17, 1994, Galbreath filed an informal complaint with the Commission's Consumer Affairs Branch. After review of the facts, the Branch advised Galbreath that it concurred with SJWC and that the utility did not violate GO 103 or its Rule 16, and that the pipe involved is not within the jurisdiction of the utility, it being beyond the utility's meter.

On July 14, 1994, Galbreath filed the present complaint alleging SJWC furnishes water service to customers outside the utility's service area to users with unsafe apparatus to the detriment of customers. He asks the Commission to order water utilities not to provide service in the event of unsafe apparatus or possible damage to customers arising out of such service. SJWC filed a timely answer, admitting that it sells water from within its service area boundary to customers who take it beyond; this being done on a limited basis where it serves the public good. The utility stated it consistently meets or exceeds GO 103 standards and meets and cooperates with the fire district in upholding the fire codes and standards, but that it does not enforce building or plumbing codes. It has noticed no obvious unsafe apparatus where service is detrimental to customers or to SJWC facilities, and since July 22, 1994 has noted that the pipes are buried. SJWC asks that the complaint be dismissed, and that it be permitted to continue service connections properly constructed within GO 103 guidelines. Before hearing was set, Administrative Law Judge (ALJ) John Weiss was informed in September that Galbreath would be out of the country from mid-November until mid-January 1995. Scheduled for surgery, the ALJ deferred setting for hearing until Galbreath's

2 However, at the hearing, confronted with the two neighbors involved from outside the service area, Galbreath stated that it is not my objective to interfere with the water service of my neighbors. I don't want anyone's water cut off.

On March 17, 1994, Galbreath filed an informal complaint with the Commission's Consumer Affairs Branch. After review of the facts, the Branch advised Galbreath that it concurred with SJWC and that the utility did not violate GO 103 or its Rule 167 and that the pipe involved is not within the jurisdiction of the utility (it being beyond the utility's meter).

On July 14, 1994, Galbreath filed the present complaint alleging SJWC furnishes water service to customers outside the utility's service area to users with unsafe apparatus to the detriment of customers.² He asks the Commission to order all such utilities not to provide service in the event of unsafe apparatus or possible damage to customers arising out of such service. SJWC filed a timely answer, admitting that it sells water from within its service area boundary to customers who take it to be beyond; this being done on a limited basis where it serves the public good. The utility stated it consistently meets or exceeds GO 103 standards and meets and cooperates with the fire district in upholding the fire codes and standards, but that it does not enforce building or plumbing codes. It has noticed no obvious unsafe apparatus where service is detrimental to customers or to SJWC facilities, and since July 22, 1994 has noted that the pipes are buried. SJWC asks that the complaint be dismissed, and that it be permitted to continue service connections properly constructed within GO 103 guidelines. Before hearing was set, Administrative Law Judge (ALJ) John Weiss was informed in September that Galbreath would be out of the country from mid-November until mid-January 1995. Scheduled for surgery, the ALJ deferred setting for hearing until Galbreath's

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return. On February 18, 1995, Galbreath complained of delay to Senator Campbell, who referred the complaint to Commission President Pessler. A duly noticed public hearing was held Monday, March 13, 1995 in Los Gatos before ALJ Weiss. Galbreath and SJWC appeared and provided evidence. At conclusion of the hearing, the matter was submitted.

Discussion It is a basic rule of public utility that a utility must serve all customers within its filed service territory to the reasonable limit of its facilities. Normally, a water utility being in the business of selling water, will desire to serve all customers within its capacity, to service them having due regard for adequacy of its water supply, pressure and fireflow capability at the prospective points of service. In establishing boundaries for its service territory and in making extensions, a water utility must utilize logical natural boundaries, avoiding creating small unserved enclaves or peninsulas as would gerrymander out would be or potential customers (Radisavljevic-Bakum (1979) 1 CPUC 2d 311) or beyond the boundaries of its filed service territory, a utility has not dedicated itself to serve (the dedication concept still being a vital concept in California public utility law. (Cal. Community Television Assoc. v. Gen. Tel. Co. (1970) 71 CPUC 123) and cannot be compelled to render service (Cal. Water & Tel. Co. v. PUC (1959) 51 C 2d 489).

While the Commission must authorize extensions of service to noncontiguous areas, a utility does not require authorization to extend into unserved contiguous areas (2nd para. Public Utilities (PU) § 1001). But there are instances in which, while having capacity and capability, a water utility may not want to expand its service area into a contiguous but sparsely developed area, such as when it is not financially practical for construction of a main extension to that area. And should, as here, a few property owners

in that area become deprived of what had been their alternative water supply; and seek to come and take available water at a metered delivery point within the utility's service area, and also themselves carry it to a destination outside of the utility's service area boundary, nothing prevents the utility, should it choose to be a good Samaritan, from granting the service and such service to continue so long as the utility has adequate supplies to serve its in-boundary customers first. Indeed, it is in the overall public interest that it do so, while assuring protection to the utility system consistent with the requirements of GO 103, Paragraph IV 2 (a) (3); of this GO contemplates such services.³

Its water utility's responsibility ends at the discharge point of the utility's meter. In the present case SJC, pursuant to the requirements of GO 103, met its responsibilities to protect the facilities of its water system and its customers from possible contamination arising from a failure on the customer's side of the meter by installing a check valve backflow protection device. Beyond the meter it is the customer's responsibility and obligation to provide, lay, and connect the piping required to connect to his home or tank and to keep that piping in good condition. Beyond the jurisdiction over the customer's piping rests with the local governmental entity, not the Commission. While the Commission and the utility prefer that such piping be buried,⁴ such a

requirement to be buried to render service (C) Water & Tel. Co. v. PUC (1989) 21 C 24 (89).

3 Where service is rendered at or near the service area boundary for use beyond the service area the customer will be required to install, operate and maintain the facilities necessary to provide service. But there are instances in which, while the Commission may authorize extension of service to noncontiguous areas, the customer will be required to extend into such areas the facilities necessary to provide service. (PU) § 1001.

4 Our GO 103 Paragraph 111 5(a) permits the use of metallic and nonmetallic materials separately and in combination for piping service. However, except in unusual conditions, GO 103 Paragraph IV 4 (b) requires all utility's service pipes be laid at a depth of not less than 18 inches except at the meter. And should there be an extension to that area.

requirement rests with the Town of Los Gatos. As Galbreath had already ascertained, the Town does not object to unburied pipe, or including PVC pipe, as long as the customer's piping is not pressurized and connected to a house. Here the connection is to a large water storage tank. The Commission has no jurisdiction to enforce either building or plumbing codes. The issue of burying the pipes has also become moot since the pipes have been buried long ago. As to Galbreath's questions concerning SJWC's earlier provision of water service to the Kottmeier, Felice, and Hackett properties, these properties are all within SJWC's filed service area, and therefore entitled to service on an equal basis with any other legally established parcel within the service territory, including Galbreath's. As long as SJWC had capacity to furnish such services within the GO 103 requirements, it was required to do so. (Brockmann v. Smithson Springs Water Co. (1957) 56 CPUC 28) and it cannot make or grant any preference or advantage to anyone (Public Code § 1493).

Finally, complainant would raise an issue regarding whether or not at the time SJWC provided Smith a water connection, Smith had recorded easements from both of the landowners whose properties he crossed to lay his piping to carry the water from the meter to his property. Complainant made no showing that such piping had been laid without authorization from the intervening property owners; he merely argued that one of the easements Smith obtained, the Bauer easement, had not been recorded until well after SJWC connected the service. We find it difficult to credit the notion that anyone would lay pipe across another's property without the property owner's acquiescence, risking costs of removal and damages. However, the question of accommodation in allowing such an intrusion, whether by easement, grant of a right of way, or otherwise, is one between the customer and his accommodating or intervening landowners, and should any dispute arise between such parties it is necessarily a real estate matter for the courts, not

this Commission; to decide. It is not incumbent on this Commission to require or pass on whether Smith owned an easement to the already intervening area as long as the easement is for a public utility. By providing meter service connections so that homeowners, outside the utility's service area in a noncontiguous area where the cost of a main extension to serve would be prohibitive could take delivery of available utility water at the metered delivery points within the utility's service area and carry it in their own piping to destinations outside the utility's service area, SJWC has not violated any provision of law or any Commission order and has acted in compliance with its tariff.

Code § 1702 provides that a complaint may be made setting forth any act or thing done or omitted to be done by a utility in violation or claimed to be in violation of any provision of law or any Commission order. The present complaint, after hearing, fails to show any such violation. Rather, the evidence obtained shows that SJWC has acted reasonably and within the scope of Commission orders, and the law. Accordingly, the complaint should be dismissed.

Findings of Fact

SJWC is a water public utility within the jurisdiction of this Commission.

In the area at issue in this proceeding the terrain is characterized by steep hillsides, wooded in places, pierced by a number of canyons, and crowned by very high ridges overlooking the canyons below.

In this area, SJWC's service territory tends to follow the canyons, mostly serving elevations below 800 feet, but not the much higher ridges.

Happy Acres Road in one such canyon for its entire length is served by a 6-inch SJWC main with a standard fire hydrant close to the end of the road.

5. Complainant's home at 155 Happy Acres Road is adjacent to the end of the street, (situated on a steep hillside) and is served by the SJWC main in the street. Beyond the end of Happy Acres Road, SJWC's service areas includes properties contiguous to the street and with a driveway debouching onto the street; these properties include 165 (Kottmeier) and 233 (Felice) Happy Acres Road.

6. Beyond the end of Happy Acres Road, SJWC's service areas includes properties contiguous to the street and with a driveway debouching onto the street; these properties include 165 (Kottmeier) and 233 (Felice) Happy Acres Road.

7. In the past, the owners of 165 and 233 Happy Acres Road requested and received water service from SJWC, taking such service from meters placed at the end of Happy Acres Road. A major canyon road in this area, runs parallel to Happy Acres Road, but across a very high intervening ridge not within SJWC's service territory.

8. Suiview Drive, accessed from Shannon Road, leads up to a very high ridge that extends southward from Shannon Road and at its midpoint is perpendicular to and high above Happy Acres Road.

9. Suiview Drive, because of its elevation, length, sparse build-up, and the very large cost required to extend (main, pumping, and tank facilities), is not served by SJWC and is not within the utility's service territory.

10. Near the approximate midpoint of Suiview Drive at a point overlooking the end of Happy Acres Road far below, two homes, 15284 and 15286 Suiview Drive were built, both served by private wells which went dry in early 1993.

11. Smith, then owner of 15284, in early 1993 approached SJWC seeking water service which he proposed to take from a meter located in the public right of way within SJWC's service area at the end of Happy Acres Road, with delivery across the intervening properties of Kottmeier, Bauer, and Suiview Drive to a tank on his property outside SJWC's service territory. This arrangement is detrimental or damaging to the utility or its customers.

13. With adequate supplies available in its Happy Acres Road main, sufficient fire flow and pressure, SJWC accepted Smith's request and in June of 1993 installed meters equipped with appropriate backflow prevention devices and provided service.

14. At different times easements from Kottmeier and Bauer were recorded for the piping across their intervening lands.

15. Initially the PVC pipe used was not buried but (sometimes) before July of 1994, the piping was relocated, in the same intervening properties and buried.

16. Concerned that provision of any water service to non-residents outside SJWC's service area could impair the water supply available to his sprinkler system in an emergency, and that the unburied pipe in the adjacent property could break or freeze with resultant flow downhill onto his adjoining property, Galbreath sought termination of such services by the Town of Los Gatos, the Central Fire District, and the Commission's Consumer Affairs Branch.

17. With jurisdiction over the properties involved and the local building and plumbing codes, the Town of Los Gatos found no violations in the use of unburied PVC piping for privately owned gravity water supply tanks.

18. The use of nonmetallic materials such as PVC piping is accepted by the Commission (GO 103) and by the Town of Los Gatos plumbing code.

19. While the Commission, except in unusual conditions, prefers buried service piping beyond a water utility's meter, the Town of Los Gatos having concluded that unburied PVC piping does not violate its plumbing code, so long as appropriate backflow devices are in place it cannot be found in this instance that any unsafe or hazardous condition exists or that the use is no detrimental or damaging to the utility or its customers.

20. After Consumer Affairs Branch's review led it to concur with SJWC's position in this neighborhood dispute, Galbreath filed the present formal complaint with the Commission.

21. SJWC, at the terminal location of the water main in Happy Acres Road, had adequate supply of water, pressure and fire flow capacity, to provide additional service at the times applicable in here.

22. As the Kottmeier and Felice properties were within SJWC's filed service area, and the utility had adequate water supplies, pressure, and fire flow capacity at the adjacent main, as a matter of law the utility was required to provide service upon demand to their properties.

23. Under the circumstances set forth in Finding of Fact 19, provision of additional services beyond the utility's filed service area boundary, so long as the meter box point of delivery was within the utility's service territory, was volitional with SJWC.

24. Issues involving piping laid over a neighbor's property, whatever the nature or form of authorization, are matters left to local jurisdictions and the courts, being beyond the jurisdiction of this Commission.

25. SJWC's extension of water service to 15248 and 15286 Suiview Drive met the requirements of GO 103.

Conclusions of Law

1. PU Code § 1702 provides that complaint may be made by setting forth any act or thing done or omitted to be done by a utility, in violation or claimed to be in violation, of any provision of law or any Commission order. While the present complaint suggests or infers such violations, the evidence adduced at hearing shows that SJWC has acted in compliance with local laws and Commission GO 103 as it is required to do, and has committed no violations.

20. After Commission proceedings, the complaint should be dismissed. The complaint filed with SUDC in this neighborhood dispute, dated 1994, is dismissed. The present formal complaint is dismissed.

21. SUDC, at the original location of the water main in Happy Hill, is ordered that Complaint 94-07-019 is dismissed for failure to support a cause of action. SUDC is ordered to provide additional capacity to provide service upon demand to their properties.

This order is effective today.

Dated July 19, 1995, at San Francisco, California.

22. SUDC had adequate water supplies, and the utility had adequate water supplies, and fire flow capacity at the adjacent main, as a matter of law the utility was required to provide service upon demand to their properties.

23. The findings set forth in Finding of Fact 19, are affirmed. DANIEL W. FESSLER, President

24. Issues involving piping laid over a neighbor's property, within the utility's service territory, was voluntary with SUDC. JESSIE J. KNIGHT, JUDGE HENRY M. DUQUE, COMMISSIONERS

25. I CERTIFY THAT THIS DECISION IS THE DECISION OF THE COMMISSIONERS AND THE COURSE OF THE PROCEEDINGS WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Wesley Franklin
Acting Executive Director

26. SUDC's extension of the water main to the driveway set the requirements of law.

27. The Code of Ordinances provides that complaint may be made by setting forth any act or thing done or omitted to be done by a utility, in violation or claimed to be in violation, of any provision of law or any Commission order. While the present complaint suggests or infers such violations, the evidence adduced at hearing shows that SUDC has acted in compliance with local laws and Commission 00 103 as it is required to do, and has committed no violations.

CASE 94-07-019
GAIBREATH VS SAN JOSE WTR. CO.

APPENDIX A MAP

