

Decision 09-01-014 January 29, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Eric and Sarah Kubly,

Complainants,

vs.

William Lawrence Ostrom aka Larry Ostrom,
Ostrom Family Trust, dba R.R. Lewis Small
Water Company (U83W),

Defendant.

(ECP)
Case 08-08-018
(Filed August 25, 2008)

Eric Kubly and Sarah Kubly, complainants,
Larry Ostrom and Pamela Ostrom, Trustees
of the Ostrom Family Trust, doing business
as R.R. Lewis Small Water Company, defendant.

DECISION GRANTING REFUND OF CONNECTION FEE

Introduction

Administrative Law Judge (ALJ) Victor Ryerson heard this matter in San Francisco on November 24, 2008. The hearing concluded, and the matter was submitted, on that date.

Complainants Eric and Sandra Kubly seek the refund of a \$2,500 connection fee they paid defendant R.R. Lewis Small Water Company (Company), which serves territory encompassing the complainants' parcel in Sierra County. Although the service connection was established for a brief period of time, we conclude that the complainants, who built a well and pump

on their property at their own expense after the Company notified them that it was withdrawing its service, received no material benefit from the service connection. The Company is ordered to refund the full amount of the fee to the complainants within thirty (30) days of the effective date of this order.

Background

The complainants own APN 008-161-026 in Sierra County, a 0.64 acre parcel adjacent to the North Yuba River. Their parcel is a “flag” lot that is accessed by a driveway crossing other parcels from a road known as Forty Niner Drive. The complainants’ parcel is part of what was once a 91.3 acre parcel that was subdivided after 1956. The Company serves the entire area that comprised the original parcel, and new service connections are established by the Company as they are requested by individual lot owners.

Complainants intended to construct a house on their lot, and on November 15, 2006, they paid the Company a \$2,500 connection fee, pursuant to Rule 16(B.), Cal. P.U.C. Sheet No 167W (effective May 24, 1991), to provide water service to their lot. The Company furnished a Will Serve Letter to Sierra County Building Department on November 16, 2006, as notification of the Company’s intent to provide water service to the complainants’ parcel.

During the course of construction of the complainants’ house, one of complainants’ contractors unearthed a shallowly buried 2-inch water pipe under the driveway accessing the complainants’ lot from Forty Niner Drive. A dispute arose between the complainants and the Company, eventually involving the owners of a neighboring lot as well, about the respective rights and responsibilities relating to the disturbance of the pipe (which did not serve the complainants’ lot) and the removal of some concrete blocks used for protection

of the complainants' meter box. Litigation ensued, and the matter is now in State court.

By letter dated January 18, 2008, the Company notified the defendants that it intended to remove their water service if three conditions were not met by February 19, 2008. These conditions included the correction of a map filed with the Building Department that showed an improper connection to a new building to be constructed on a neighboring parcel; restoration of the two-inch service line, which the complainants had capped at the edge of the driveway and removed in the belief that the line was abandoned; and restoration of the concrete blocks around the complainants' meter.

The complainants rectified the first problem, but they claim that they were unwilling or unable to comply with the remaining two conditions, owing to the pendency of the litigation regarding the two-inch pipe and related matters. On February 27, 2008, the Company notified the Sierra County Building Department that its November 16, 2006 Will Serve Letter was withdrawn as of that date, and that water service would be removed from the property. This letter also advised that the complainants could pursue other sources for water service, and stated that the Company understood the complainants had water rights to the North Yuba River.

In response to the February 27 letter, the complainants arranged for the construction of a well and pump to replace the Company's water service. They paid \$1,000 to Sierra County for a variance, \$12,035 for the well drilling and related work, and \$5,841.43 for a pump, or a total of \$18,876.43 to replace their lost water service. There is no evidence disputing the reasonableness of these expenses.

Discussion

The complainants acted reasonably when they constructed the well and pump to replace the service withdrawn by the Company. The Company's February 27 withdrawal of service letter was unequivocal, and even gave permission for the complainants to pursue other sources using its riparian water rights.

The only question remaining is whether the Company should refund the connection fee paid by the complainants, which is the only relief requested here. We conclude that it should. The Company simply reversed its original commitment to provide water service. The complainants received no material benefit from the service for the relatively brief period before it was withdrawn, and they should not be required to pay a contribution for the system cost, because they are bypassed by the system. They are now providing their own water service at their own expense, with the full knowledge and consent of the Company.

Any dispute about legal rights or responsibilities for disturbance of the Company's two-inch line across the driveway or the removal of the concrete blocks is immaterial to the connection fee issue, and will be resolved in the pending lawsuit. The Commission can order restitution of tariff charges, but it has no jurisdiction to award damages for property loss or adjudicate property rights such as easements, and those issues are properly before the court.

Assignment of Proceeding

John A. Bohn is the assigned Commissioner, and Victor D. Ryerson is the assigned ALJ in this proceeding.

O R D E R

IT IS ORDERED that:

1. The relief requested by complainants Eric Kubly and Sarah Kubly is granted.
2. The defendant, William Lawrence Ostrom aka Larry Ostrom, Ostrom Family Trust, dba R.R. Lewis Small Water Company (U83W), is ordered to refund the full amount of the connection fee, \$2,500 to the complainants within thirty (30) days of the effective date of this order.
3. Case 08-08-018 is closed.

This order is effective today.

Dated January 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners