

In the Matter of the Complaint of )

RICH POGUE, )

Complainant )

vs. )

SPRING CREEK SERVICE COMPANY, )

Respondent )

DOCKET NO. 99-2196-01

REPORT AND ORDER

ISSUED: March 22, 1999

SYNOPSIS

Respondent having been found to own in its entirety the service lateral serving Complainant, the Commission concluded responsibility for leak repair lay with Respondent, and ordered Respondent to cease and desist from shutting off service, or threatening shut-off, for failure to repair said leak.

By The Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing the twenty-third day of February, 1999, before A. Robert Thurman, Administrative Law Judge, at the Commission offices, 160 E. 300 South, Salt Lake City, Utah. Evidence was offered and received, and the Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Rich Pogue ("Complainant") is a residential customer of Spring Creek Service Company ("Respondent"), a water corporation certificated by this Commission. Respondent serves a development in Summit County, Utah, known as the Spring Creek Subdivision ("the Subdivision"). In turn, Respondent contracts for system maintenance and operation with Silver Creek Water Company, which serves a nearby development.
2. Sometime in the summer of 1998 (Complainant could not more closely identify the date), a visitor in Complainant's home noticed that his water meter (which is located in Complainant's house) was not registering, and that one could hear water running in Complainant's basement. Early in December, 1998, water started to seep into Complainant's basement.
3. Complainant contacted Respondent, whose employee excavated at the service entrance to Complainant's home in an unsuccessful attempt to locate the leak. The seepage into Complainant's basement, however, did stop.
4. Complainant's home is served via a line approximately 180 feet from a shut-off valve connecting Complainant's service lateral to the main. As noted, the meter, however, is in Complainant's home.
5. The long service line is necessitated by the location of Complainant's home. At the time the Spring Creek Subdivision was platted, Complainant's lot was to be served from a cul-de-sac, and the utilities were stubbed accordingly. However, the original owner of the property decided to front the residence on a through street, Pheasant Way, thus necessitating the long service lateral over what was now the back yard. As a complicating factor, the shut-off valve is not at Complainant's property line - Approximately 110 feet of the lateral are beyond it.

5. The extended lateral, consisting of one-inch copper tubing, is run through a heavy plastic conduit. However, because of the long lateral, the line is not a single run of copper; there is a union joint somewhere in the line.

6. There is a difference of opinion between Complainant's and Respondent's contractors as to the difficulty entailed in locating the leak and the potential costs involved. To eliminate the long lateral run, Respondent has driven a new main along Pheasant Way to which Complainant can connect. This would allow abandonment of the old line and simplify future maintenance. Respondent wishes Complainant, however, to bear the costs of the connection. Complainant is not satisfied with this solution because of cost and damage to his landscaping and sprinkler system.

### CONCLUSIONS OF LAW

The Commission has party and subject-matter jurisdiction. The issue presented is whether Respondent, as a public utility, must bear the full costs of stopping the leak in its system.

In their negotiations on this matter (which, unfortunately, apparently consisted primarily in Respondent issuing edicts), the parties assumed that Respondent's responsibility terminated at Complainant's property line. That would mean that Respondent could have compelled Complainant to explore for the leak on his property before undertaking any repairs on its own.

But in fact there is no common law, of which we are aware, governing ownership of lateral service lines. With ownership, of course, goes responsibility for maintenance and repair. In most water companies of which we are aware, customer ownership begins on the owner's side of the meter, but that is customarily spelled out in the utility's tariff or original service contract. And so it is in this case.

Under paragraph 4, Sheet No. 7, of Respondent's PSCU tariff No. 1, ". . . facilities shall be *owned*, operated, and maintained by the Company, *including and through meters* . . . ." (Emphasis added.) While this provision is contained in Respondent's line extension rules, as opposed to its general operating rules, we can only conclude, nevertheless, that such is the company's policy and its contract with its subscribers.

Such being the case, the leak is Respondent's sole responsibility. Respondent may repair the old line, or connect the new main, as it chooses. But since the water meter is on Complainant's premises, if Respondent decides to serve from the new line, it will also have to bear the costs of restoring damage to Complainant's property.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

SPRING CREEK SERVICE COMPANY cease and desist from shutting off service, or threatening service shut-off, to RICH POGUE for failure to repair a leak in the lateral serving his premises; and that said company also cease and desist from demanding that he pay the costs, or any part thereof, of stopping said leak.

Nothing in this Order shall preclude SPRING CREEK SERVICE COMPANY from relocating its meter at its own expense.

If any party is aggrieved by this Order, said party may file a written petition for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 22nd day of March, 1999.

/s/ A. Robert Thurman  
Administrative Law Judge

Approved and Confirmed this 22nd day of March, 1999, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary