

ORIGINAL

Decision No. 13305

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
 FONTANA DOMESTIC WATER COMPANY, a
 corporation, for a hearing upon its
 interpretation and enforcement of
 rules and regulations and investiga-
 tion of complaints.

Application No. 13508.

Leonard, Surr and Hellyer,
 by G.W. Hellyer and F.A. Leonard, Jr.,
 for Applicant.

Emory B. Taylor,
 for certain Complainants.

BY THE COMMISSION:

O P I N I O N

Fontana Domestic Water Company, a corporation, applicant in the above entitled proceeding, is engaged in the public utility business of supplying water for domestic and other purposes to consumers in and in the vicinity of the Town of Fontana, San Bernardino County, California. The application alleges in effect that the territory which applicant has endeavored to serve is a rural community which, within more recent years, has greatly developed and increased in population; that applicant has from time to time been extending its distribution system to supply water to new consumers and that in making the necessary extensions to its distribution system various problems have arisen as to the proper method of charging certain consumers for portions of the cost thereof not clearly provided for in its rules and regulations

governing such extensions. It is further alleged that several complaints have been made by consumers and applicants for water service as to the interpretation placed by the company upon its rules and regulations in connection with the charges for extensions of service; wherefore, it is requested that the Commission investigate the conditions existing on the system and the complaints made by consumers and any persons whomsoever regarding the service of applicant and its interpretation and enforcement of its rules and regulations.

A public hearing in this matter was held at Fontana after due notice thereof had been given so that all interested parties might appear and be heard.

The Fontana Domestic Water Company, a corporation, was organized on or about the eighth day of March, 1923, by the Fontana Farms Company, a corporation engaged in the business of developing and selling for farming and residential purposes small parcels of land, in a total holding of about 17,000 acres which it owned or controlled. With the exception of qualifying shares for Directors, the entire capital stock of the water company is owned by the Fontana Farms Company. The Fontana Domestic Water Company was organized primarily to deliver water for domestic and, to a limited extent, also for irrigation purposes to the residents of the unincorporated Town of Fontana and to the purchasers of property from the Fontana Farms Company. Prior to the organization of this water company, the district was served with water by a distributing system owned by Fontana Farms Company and operated under lease by the Rialto Domestic Water Company. The lease expired in 1923 after which the properties reverted to the

Fontana Farms Company which continued to supply water through the system without charge until a certificate of public convenience and necessity was granted to the Fontana Domestic Water Company by this Commission in its Decision No. 13268, dated March 14, 1924. Subsequent thereto, the company submitted to the Railroad Commission rates and also rules and regulations governing the relations of the utility with its consumers, which were accepted for filing on the twenty-sixth day of April, 1924. These rules so filed contained the following rule governing main extensions, which rule was in effect until amended in 1926.

"No. 20 - WATER MAIN EXTENSIONS

The Company will extend its water distribution main to new consumers at its own expense when the total length of main required is not in excess of 150 feet per consumer.

If the total length of main required is in excess of 150 feet per consumer, the consumer or consumers to be served will be required to advance that portion of the cost of such extension over and above the cost of the equivalent of 150 feet of main per consumer, and the money so advanced will be refunded in amounts equal to the cost of a 150 foot extension such as would normally be made free for each additional consumer whose service shall be taken off the first extension within a period of ten years for bona fide applicants from the making of the first extension, but in no case shall the refund exceed the original deposit.

Water main extensions may be made by special arrangement under the guarantee of definite minimum payments and upon private property under good and sufficient rights of way subject to the general rules and regulations of the Railroad Commission of the State of California in the territory where that Commission has jurisdiction."

An amendment to the rules and regulations was accepted for filing on April 15, 1926, wherein the above Rule No. 20 was amended and modified as follows:

No. 20 - WATER MAIN EXTENSIONS

(A) To Individual Consumers.

FIRST: The Company will extend its water distribution mains to new consumers at its own expense when the total length of main required to connect to the nearest existing main of adequate capacity is not in excess of one hundred fifty (150) feet per consumer.

SECOND: If the total length of main required is in excess of one hundred fifty (150) feet per consumer, the consumers to be served will each be required to advance his pro rata share of the cost of such extension less the cost of the equivalent of one hundred fifty (150) feet of main for each such pro rata share, and the money so advanced will be refunded to them out of similar advances to be paid by future consumers connected to such extension, provided that no refunds shall be made to consumers already served after ten years from the date of the completion of any such extension.

(B) To Subdivisions.

The regulations given under Section A of this paragraph No. 20 shall govern in the case of extensions to subdivisions as well as to individual consumers, with the following exceptions:

FIRST: All extensions within the limits of the subdivision itself shall be paid for by the promoter or subdivider thereof, the actual work of laying such extensions to be done by the Company or by a contractor acceptable to it and the size and quality of the pipe used to be acceptable to the Company, and the money so paid to be refunded by the payment by the Company of the equivalent of the cost of one hundred and fifty (150) feet of main for each bona fide consumer connected thereto within ten years from the date of completion of such extension.

SECOND: For such extensions as may be necessary to connect the nearest existing main carrying an adequate supply of water to the nearest point of a subdivision, the promoter or subdivider shall be required to advance the total cost of same and the money so paid shall be refunded to the subdivider out of payments to be made by future consumers connected to such main in the same manner as provided for individual consumers under subhead "A" above."

From the evidence, it appears that the area which the Fontana Domestic Water Company now serves and has undertaken to serve covers several square miles and is only sparsely settled.

Most of the consumers reside on lots or parcels of land containing originally five, ten or twenty acres. Many of these tracts have since been cut up by the owners into smaller holdings. The result has been that the utility has been forced to install long sections of mains to serve a comparatively few consumers. In order to provide domestic water service to purchasers of its lots, the Fontana Farms Company, through a so-called "gentlemen's agreement" only, agreed to provide domestic service to any purchasers in the first section marketed for the payment of \$150. without refund privileges. However, in the subsequent marketing of other sections, the Fontana Farms Company made no such representations as to additional costs to be incurred by the purchaser for the extension of domestic water service. As explained by the company's officials, the reason for this difference was that in marketing the original section no part of the water development and installation costs was charged up against the land, so that, in order to provide a water system to serve the widely scattered purchasers, it was considered necessary that the Fontana Farms Company receive some reimbursement for the cost incurred therefor but, however, in the case of more recent sections, the difficulties encountered through the charge of \$150. for water service were eliminated by absorbing the water development costs in the purchase price of the land.

By reason of the fact that the officials of the Fontana Farms Company and the Fontana Domestic Water Company to all practical purposes are identical and that the offices of the two companies are in the same building, confusion and misunderstanding naturally and inevitably have resulted when prospective consumers have applied for water service. A great majority of the applicants for water service have been told that, before service

would be rendered, it would be necessary to pay the sum of \$150. Other consumers, served by the same system and residing in the tracts where no charge was required by the Fontana Farms Company for water main extensions, have been supplied without the payment of any amounts to either the Fontana Farms Company or the water company. In other instances, charges have been required ranging from a few dollars to over a hundred dollars. Naturally, this discrimination has created a great amount of dissatisfaction among the water users who in the past have been, and the applicants who even now are, required to pay the sum of \$150., or some other amount, for service. The entire difficulty has been caused by the improper and unnecessary intermingling of the real estate operations of the Fontana Farms Company with the business of the public utility water system, resulting in the inability of the public utility patrons to learn of their full rights to water under the utility. In so far as this Commission is concerned, any arrangements entered into by and between purchasers of property and the Fontana Farms Company, placing restrictions or conditions on the right to receive public utility water service from the Fontana Domestic Water Company other than such requirements as provided in the company's rules and regulations, are in no manner whatsoever binding upon the utility, nor would such arrangements preclude any of its patrons from receiving service under its effective rules.

This Commission requires all public utility water systems to make extensions of service to each and every bona fide applicant therefor within their dedicated areas, upon compliance by such applicant with the terms and conditions of reasonable rules and regulations which have been accepted for filing or established heretofore by this Commission. These rules now on file, as well as the rules heretofore in effect, contain no reference whatsoever to the requirement of the payment of \$150. without refund

privileges, or any other sum, as a condition to the rendering of service but do specifically require the Fontana Domestic Water Company to extend its mains 150 feet at its own expense to serve each bona fide applicant, the cost of any extension in excess thereof to be paid by the applicant subject to refund as provided in said rules. All charges, if any, other than the above, made by this water company as a condition precedent to the extensions of water service since the granting to this company of its certificate of public convenience and necessity, to wit, March 14, 1924, are irregular and improper and should be returned.

Attention is called to the fact that the original Extension Rule No. 20 did not give this utility the right to charge a new consumer for any part of the costs of a main extension then installed and for which the cost thereof had already been deposited by some other consumer or consumers. Such right did not become effective until the modified rule was filed on April 15, 1926. It follows therefore that any charges made against consumers prior to April 15, 1926, for main extensions already in place and for which deposit had already been made are illegal and should be refunded. This utility has fallen into the error of designating as an extension practically every distribution main relocation and replacement and also has so classified transmission mains installed to supply old territory, in whole or in part. Applicants for service from such mains are not chargeable for any part of the installation costs thereof under the guise of an extension. Obviously, transmission lines laid for the purpose of supplying subdivisions are not properly considered as extensions

in so far as individual application for service therefrom is concerned. The absurdity of a contrary conclusion is well illustrated in this instance where the company, in classifying as an extension the so-called Base Line Transmission Main laid at a cost of several thousand dollars to serve a newly subdivided tract owned by the Fontana Farms Company, could, under such interpretation, charge a single applicant for service from this line one-half of the entire cost thereof.

While the officials of the Fontana Farms Company have alleged that the charge of \$150., as collected from certain consumers for the extension of domestic water service, has been made by the Fontana Farms Company itself and was not made by, or in any way connected with the utility, nevertheless, the community of interests between the water company and the Fontana Farms Company has been, and now is, such as to place applicants for water service in a position where they have been, and now are, unable to find out just what their legal rights to public utility water service are, or to take advantage of them. However, the evidence conclusively shows that no efforts whatsoever were made by any of the officials or representatives of either the Fontana Farms Company or the utility to explain to the applicants for water service their rights under the utility's rules and regulations, which information such applicants in all fairness were entitled to in a situation so clouded by the unnecessary intermingling of divergent interests. As a matter of fact, the offer of the Fontana Farms Company to pay for the extension of water service to any purchaser of property within certain of its tracts for an expenditure of \$150. has

enabled a great number of consumers to obtain domestic water service which under existing rules of the public utility would be wholly unremunerative to the utility and economically impossible for the consumers by reason of excessive cost.

In all cases in connection with the extension of water service by the utility to tracts of land to be subdivided and placed upon the market by the Fontana Farms Company or any other concern, the subdivider should be required to pay for the full initial costs of the piping of the subdivision, as provided in Section (B) of Rule No. 20. Under this rule, the subdivider is substituted for the individual consumer and upon the piping of the tract no charge thereafter may be assessed against any of the consumers in the subdivision for any part of the costs properly chargeable to the subdivider. From the evidence, it appears that in piping new projects of the Fontana Farms Company this concern has not been required to pay for the installation costs as would be required from any outside operator, firm or individual, but, in certain cases, these subdivisions have been treated in the same manner as a regular main extension wherein the consumers themselves are required to pay the costs or portions thereof. The piping of subdivisions is an entirely different matter from the extension of mains for individual consumers and failure of a utility to recognize this fundamental distinction is bound to result in confusion.

Paragraph (A)--SECOND--of Rule No. 20, "WATER MAIN EXTENSIONS", providing for the refunding to the original depositor or depositors from moneys to be obtained through similar deposits to be charged against future consumers connected to the same extension has in this case, as in most others in the past, resulted in great confusion and in a multiplicity of charges

and accounts made necessary to handle such a transaction. Although this rule is unquestionably fair to all parties concerned and is primarily intended to eliminate the disadvantage resulting from the practice of requiring one consumer to stand the entire cost of an extension while permitting subsequent consumers to obtain service from the same line without paying any part of the cost thereof, yet, so great are the complications which have resulted in the application of this rule in the present instance, that we believe it should be modified and amended so that subsequent consumers coming on a main extension, the initial cost of which has already been advanced by one consumer, or by two or more consumers where joint application has been made, may not be required to make any deposit for service and the original depositor or depositors may receive reimbursement upon the basis of the cost of 150 feet of such original main extension for each new consumer connected thereto. This will eliminate the serious difficulties now experienced from charging new consumers with varying portions of the costs of main extensions heretofore made. In this connection, we wish to recommend to this company that, in view of the past misunderstandings, the company place in effect at once the new extension rule as set out in the following order as to those extensions made under the modified rule of April 15, 1926. The company can well afford to stand the small expense involved in return for the restoration of harmony and better public relationship which will result, together with the benefits accruing from the immediate simplifying of the entire extension difficulties.

In connection with those consumers who, subsequent to March 14, 1924, have been required to pay the sum of \$150., or any other amounts, to the Fontana Farms Company, we suggest and

Recommend to this company that it return all such amounts to the depositors. The Commission is furthermore of the opinion that any deposits of \$150., or any amounts other than such as are provided for in the rules and regulations of this utility as then in effect, which have been made by consumers to the Fontana Domestic Water Company subsequent to the granting of its certificate of public convenience and necessity, to wit, March 14, 1924, are illegal and should be refunded by the water company to the consumers either in cash or by way of credit on the monthly bills of such consumers to the extent of 50% of said bills until satisfied, it being understood that the present Rule No. 20, entitled WATER MAIN EXTENSIONS, did not become effective until the fifteenth day of April, 1926. Hereafter, this utility shall extend service to all bona fide applicants strictly in conformance with its rules and regulations on file with this Commission and as modified by the order herein, irrespective of any contracts or agreements containing provisions contrary to said rules and regulations which may, or are alleged to have been entered into between the applicant for such service and any person, firm or corporation other than this utility. It is further recommended that this utility either arrange to move its office to some new location not occupied by any department of the Fontana Farms Company, or to identify the water company's office by conspicuous signs or otherwise in order to make it apparent to all having dealings with the utility that such dealings are not being transacted with the Fontana Farms Company. Immediate steps should be taken also by the utility to print and distribute to all its consumers a complete and accurate copy of its rules and regulations as amended herein, and hereafter a copy of said rules should be presented to each

applicant for water service at the time application is made.

In fairness to the Fontana Domestic Water Company and the Fontana Farms Company, it should be stated that this application was filed with this Commission by the water company for the purpose of enabling the utility to interpret properly its rules and regulations and to remove any cause for complaint which certain of the consumers may now have, or have had in the past, over its requirements for the rendering of service. For obvious reasons, neither the Fontana Farms Company nor the Fontana Domestic Water Company will be specifically directed in this proceeding to make the refunds recommended herein; however, in the event that such refunds should not be so made within a reasonable time, this Commission, in order to protect the rights of the consumers, will take the necessary measures to insure full compliance therewith.

O R D E R

Fontana Domestic Water Company, a corporation, having made application to this Commission for interpretation of its rules and regulations and for an investigation into conditions existing on the system resulting from certain practices heretofore indulged in concerning charges for the extension of water mains to new consumers, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that Rule No. 20, WATER MAIN EXTENSIONS, be and it is hereby cancelled and rescinded and, in place thereof, Fontana Domestic Water Company, a corporation, be and it is hereby directed to file with this Commis-

sion within thirty (30) days from the date of this order the following rule and regulation covering water main extensions, effective as of the date of this order.

RULE NO. 20 - WATER MAIN EXTENSIONS

1. General Extensions:

The company will extend its water distribution facilities to new consumers at its own expense when the total length of main extension from the existing facilities required is not in excess of 150 feet per consumer. If the total length of main extension required is in excess of 150 feet per consumer, the consumer or consumers applying for such service will be required to advance that portion of the reasonable estimated cost of such extension over and above the estimated cost of the said 150 feet of main per consumer, provided, however, that in no case shall the above estimate be based upon a main in excess of four (4) inches in diameter and the money so advanced will be refunded upon the basis of the cost of 150 feet of main for each additional consumer served from the extension for which deposit has been made within a period of ten years, but in no case shall the refund exceed the original deposit. Adjustment of any substantial differences between the estimated and the reasonable actual cost shall be made after completion of the installation. No deposit shall be required from an applicant requesting service from a main extension already in place.

2. Extensions to Serve Tracts or Subdivisions:

Applicants for extensions to supply real estate tracts or subdivisions will be required to deposit with the company the estimated reasonable cost of the necessary facilities, exclusive of service connections and meters, before construction is commenced. The size, type and quality of the materials and location of lines shall be specified by the company and the actual construction will be done by the company or by a contractor acceptable to it. Adjustment of any substantial differences between the estimated and the reasonable actual cost shall be made after completion of the installation. Refunds shall be made for each bona fide consumer within the subdivision upon the basis that the cost of each 150 feet of main within the subdivision bears to the total amount of the original deposit, provided no refunds shall be made after a period

of ten years from the date of completion of the installation. In case of disagreement over size, type and/or location of the pipe lines, the matter may be referred to the Railroad Commission for adjustment.

IT IS HEREBY FURTHER ORDERED that Fontana Domestic Water Company, a corporation, file with this Commission, within thirty (30) days from the date of this order, a statement showing the name of each consumer required to make a deposit with either the Fontana Farms Company or the Fontana Domestic Water Company, together with the address of each such consumer, the amount deposited and the date thereof; said statement shall also show for each such consumer the total amount of refunds due under the rules and regulations in effect at the time of making the deposit, the dates and amounts of refunds, if any, made and the basis of such refunds; thereafter and until directed otherwise by this Commission, a monthly statement shall be filed by said Fontana Domestic Water Company, setting forth, in addition to the data required above, the amounts, if any, refunded to consumers as set forth in the Opinion which precedes this Order.

For all other purposes the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 6th day of February, 1928.

Leon Whitney
Chas. J. ...
Ernest ...
Thos. J. ...

Commissioners.