

Decision No. ~~35426~~

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SHORE VIEW REALTY CO., INC.,

Complainant,

vs.

Case No. 4359

CALIFORNIA WATER SERVICE COMPANY,
a corporation,

Defendant.

WALLACE WARE, by Steve Maffini,
Louis J. Glicksberg and Stanley Carr,
for complainant.

MCCUTCHEEN, OLNEY, MANNON & GREENE,
by Henry D. Costigan and Sam Gill,
for defendant.

BY THE COMMISSION:

O P I N I O N

The nature of the relief sought by the complainant may best be described by quoting the opening paragraph of its brief, as follows:

"Complainant instituted this proceeding for the purpose of securing an adjudication that the utility rule under which a subdivision extension deposit contract was entered into by the predecessors of the parties hereto is and was unreasonable, and of having a reasonable rule governing the situation promulgated. Neither an order for the refund of any part of the deposit nor for an extension of the term of the contract is sought. Should the relief requested be granted, complainant will file suit in the Superior Court for damages in pursuance of Section 73 of the Public Utilities Act."

The predecessor parties referred to as having entered into an extension deposit contract were the Terminal Properties Co., suc-

ceeded by Shore View Realty Co., the complainant here, and the Pacific Water Company, succeeded by California Water Service Company, the defendant here. The contract referred to was executed in 1928, and related to the construction of a system of water mains within the subdivision of complainant's predecessor. In accordance with the terms of that contract, the subdivider advanced the costs of construction in an amount something in excess of ten thousand dollars. The utility agreed to make refund in accordance with the rule incorporated in its tariff rules and regulations filed with this Commission, a rule which made its refund obligation conditional upon its receiving, within seven years, annual revenues equal to one-fourth the cost of the extension. The defendant utility's rule was to like effect, except that it accorded a ten-year period within which the requisite sales might be developed. Although complainant had not fulfilled that condition, it made demand upon defendant for refund, and its demand was refused.

In another decision being rendered by us this day, in the matter of Bayshore Park, Inc., v. California Water Service Company, the same utility extension rule here challenged is considered at length, the conclusion being reached that the rule could not be found unreasonable or discriminatory from the time it was enforced against that complainant in the year 1929. The reasons stated for the conclusions reached in that decision apply with equal force to the facts and argument here presented.

The complainant in this case says that it seeks "only a decision that the rule under which the contract was made is unreasonable and the promulgation of a reasonable rule is requested." It asserts, however, that the Commission does not possess the power to make a monetary award, and in support of this position cites the

cases of Ashley v. Railroad Commission, 188 Cal. 234, and Blymer v. Sutter Butte Canal Company, 217 Cal. 572. It says in its brief that "even assuming the relief requested by complainant is tantamount to a monetary claim, it is still true that the instant proceeding is not one of reparation."

In view of the position thus taken by the complainant, we are not called upon to consider any question other than that relating to the reasonableness of the utility rule. Upon that question our conclusions reached in the Bayshore Park case must govern our action here. We cannot find that the challenged utility rule has been unreasonable, discriminatory, or otherwise unlawful, and are of the opinion that the complaint should be dismissed.

O R D E R

A public hearing having been had upon the complaint of Shore View Realty Company, Inc., v. California Water Service Company, and the matter fully considered,

IT IS HEREBY ORDERED that the relief sought by said complainant be denied and its complaint dismissed.

Dated, San Francisco, California, this 17th day of

March, 1942.

Justus J. Peeples
Ray L. Pyle
G. G. Baker
Francis D. Havens
Richard R. Riche