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Decision No. 40462

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

WILLIAM A. NEWSOM and T. R. BECHTEL, copartners doing business under the firm name of NEWSOM AND BECHTEL,
Complainants,
vs.
SANTA ROSA WATER WORKS, a Corporation,
Defendant.

Case No. 4837
AS AMENDED

Malone & Sullivan by W. J. Dowling, Jr., for Complainants.
Peter Nenzel, and Bacigalupi, Elkus & Salinger, by Tadini Bacigalupi, for Defendants.

O P I N I O N

William A. Newsom and T. R. Bechtel, copartners, operating under the fictitious firm name and style of Newsom and Bechtel, are general contractors engaged among other things in the construction of approximately 120 dwelling units in two subdivisions in and in the vicinity of the City of Santa Rosa in Sonoma County, ask the Commission in this amended complaint to make its Order that Rule 19-2 of Santa Rosa Water Works, a corporation, covering "Extensions to serve Tracts or Subdivisions" is not applicable to the service requested for the above two subdivisions and that the Commission require the company to refund immediately the sums advanced by them for said extensions. As an alternative Complainants ask that said rule be amended to require the company to install the extensions at its own costs and thereupon refund at once the sums advanced by them for the installation of the extensions serving said two tracts, or that the company be required to make immediate pro rata reimbursement of moneys advanced upon the commencement of bona fide consumer service to each house.

Complainants allege that thoy entered into two agreements with the Company providing for the advance of a total sum of $9,806, for the installation of mains into the two tracts, and in accordance with the Company's Rule No. 19-2 said sum is subject to refund over a ten-year period on the basis of all revenues collected from bona fide customers taking service from the extensions, and that said advance is further subject to the decision of this Commission in this proceeding. Complainants further allege the said Rule 19-2 was designed to protect the company against speculative real estate ventures and was not intended to apply to extension of mains into tracts where dwellings are constructed and occupied immediately. Complainants claim that said Rule 19-2 is unfair in that it requires the developer of a real estate tract to make a capital investment for the profit and benefit of the utility company but makes no provision for the developer to obtain refund of the sum advanced with interest.

In its answer the company denies generally the allegations of the Complainant and alleges that said Rule 19-2 is particularly designed and intended to apply to the service conditions described on Complainants tracts that it had no assurance that the dwellings to be constructed would be occupied immediately or that the occupation would be continuous or that the houses will be occupied in the future. Defendants further allege that the Complainants' capital investment is a part of the development of the subdivision for their own gain and benefit, but that it will be returned to them fully under the provisions of Rule 19-2 provided the facilities are used as expected.

For a further separate and second defense defendants allege that Rule 19-2 was filed January 9, 1939, and that it is fair and just, and has been uniformly applied to all subdivisions since the date of filing. Defendants claim that a failure to apply this rule to Complainants' subdivision would be a discrimination against all other subdividers who uniformly have been required to observe this rule. Defendants ask that said Rule 19-2 be found just, fair and reasonable.

A public hearing in this proceeding was held in San Francisco before Examiner Stava.

At the hearing it was stipulated that the name Newsom and Bechtel, Inc., a corporation, be substituted for Newsom and Bechtel, copartners, as Complainants. Accordingly, said Newsom and Bechtel, Inc. is hereby substituted as party complainant herein, and the caption of this proceeding is amended to reflect such substitution.

The records show that Complainants subdivided two tracts of land in and in the vicinity of the City of Santa Rosa. One of these subdivisions called Louisa Tract, is now located within the incorporated limits of the City of Santa Rosa and consists of 68 lots. Complainants have erected 50 houses thereon. The houses were sold and occupied practically as soon as completed. The other housing development called the Corby Tract, is located outside the city limits, consists of 70 lots, each with a home constructed thereon. These houses also were sold and occupied immediately upon completion. All houses in both tracts were constructed under the Veterans' Housing Program. The erection sheets showed that the estimated net cost of a house and lot was $5,700 of which $700 was allocated to the cost of the lot. No allowance was included for the installation of water facilities although $5.00 was assessed to cover the use of water and electricity during construction. No allowance was included in the estimate for cost of administration, selling, title cost, insurance and interest. The sale price of the completed house and lot was $7,750. Sales were handled through a local bank which required a deposit of $175 which covered processing of the sale in accordance with the Act of Congress. The evidence shows that there were 30 more applicants than houses in the Louisa Tract and 60 more for homes in the Corby Tract.

The estimated cost of piping the Louisa Tract was $3,684 and its construction was covered by an extension agreement under Rule 19-2 dated August 16, 1946. The installation consisted of 630 feet of six-inch and 1514 feet of four-inch main. The construction of the Corby Tract extension was estimated to cost $6,122 and was covered by an agreement also dated August 16, 1946. This tract required the installation of 1362 feet of six-inch and 2245 feet of four-inch

mains. Complainants deposited with the water company the total estimated cost of these two extensions amounting to $9,806.

Witness for defendant testified that $8,325 was expended for the installation of an eight-inch approach main to replace small sized pipes in order to provide proper service to the Louisa Tract. Likewise it was necessary for the company to spend $6,430 for a similar installation to back up the service for the Corby Tract. A further expenditure of approximately $10,000 was made in enlarging other mains in the vicinity of the Corby Tract, which latter improvement was largely a general system betterment of approach mains, not solely benefiting the two subdivisions. This witness further testified that practically all other public utility water system extension rules uniformly provided for refund percentages of gross revenues varying from 25% to 50%, while defendants' rule provided for a full 100% refund. The company's witness also stated that upon the basis of full occupancy as claimed by complainants and a conservative average water bill per consumer year of $24.00, the entire sum advanced would be returned within a period of three years plus an extra month or two. The evidence presented indicates that defendant has uniformly applied this extension rule since filing and that approximately 30 subdivisions had been piped in accordance therewith. Some of these projects were completely built up in the same manner as complainants', while others have not been completely developed, or fully and completely occupied even to date of hearing.

Santa Rosa Water Works had a fixed capital investment as of December 31, 1946, amounting to $448,735. Its operating revenues for the year were $65,692 and expenses for the same period, $45,087, resulting in a net revenue of $20,605. The new capital installed during the year totaled $118,000 and covered the construction of new mains for subdivisions and enlargement of small sized pipe lines. At the end of the year 1,900 customers were being served, 500 having been added during the year. The company was holding $93,009 on December 31, 1946, in advances for construction of which $80,686 had been deposited during the year.

Complainants contend that as both of their real estate developments have been completed and all houses therein are now occupied by owners, or tenants, all presently receiving water, and therefore regular consumers of the company, the extensions are both compensatory and no longer in a speculative stage. Under such circumstances and conditions complainants claim any rule which prevents immediate reimbursement of deposits paid is unfair, unreasonable and discriminatory and should be disregarded and the moneys ordered returned at once to complainants.

Although the circumstances and facts vary somewhat practically all of the same fundamental principles involved herein were in direct issue in two recent cases before this Commission, Shore View Realty Co. Inc., v. California Water Service Company, 44 C.R.C. 68 and Bayshore Park Inc., v. California Water Service Company, 44 C.R.C. 74.

In general terms it may be observed that in the Bayshore Park Inc. case the Commission stated that as a matter of law a public utility is not obligated to make every kind of service extension demanded, and further, that when a filed tariff rule (such as Rule 19-2 involved herein) is not in violation of an express provision of law or outstanding order of the Commission, the rule itself becomes the law observable, by utility and patron alike until legally changed.

This defendant company's extension rule has been properly and duly filed and thereafter has been and now is legally in effect. The rule has uniformly and without discrimination been invoked and followed in connection with all other real estate subdivision extensions made by this utility.

This company in 1946 expended $118,000 in new distribution system facilities, practically 25% of its entire capital investment of $448,735 at the end of that year. This $118,000 was expended almost entirely for extensions of mains to serve new real estate developments and to enlarge feeder and distribution mains to provide properly for the new consumer demand.

Rule 19-2 of this utility, and similar extension rules of others, are designed as a protection against the hazards incident to the investment of too

great a portion of capital in new service extensions. The Commission cannot waive the application of such a rule in a particular instance.

No unfair burden has been placed upon complainants in this instance; as a matter of fact the amount of money deposited in this specific instance will be returned in approximately one-third of the time required by the rules of a majority of water utilities where the standard subdivision rule is in effect providing for refunding upon the basis of 35% of revenue, rather than the full 100% as in this instance.

It appears proper, therefore, that this complaint be dismissed.

O R D E R

Complaint as entitled above having been filed with the Public Utilities Commission, a public hearing having been held thereon, the matter having been duly submitted, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the above entitled proceeding be and it hereby is dismissed.

The effective date of this Order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 28th day of June, 1947.

Harold P. Huls

Justus F. Craemer

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Kenneth Potter

Commissioners