NB

ORIGINAL

Decision No. 52026

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA WATER & TELEPHONE COMPANY for approval of deviating Main Extension Contract and for authorization to carry out the terms thereof.	)))))	Application No. 36954

Bacigalupi, Elkus & Salinger, by Claude N. Rosenberg, for California Water & Telephone Company.
F. A. Devlin, for McGah & Cramer, Inc.
Eldon J. Covell, Assistant Superintendent of Schools, for Monterey City School District.
Boris H. Lakusta and Cyril M. Saroyan, for the Commission staff.

O P I N I O N

Nature of Proceeding

By their application herein, filed May 11, 1955, California Water & Telephone Company, a public utility water company, McGah & Cramer, Inc., subdividers of Toyon Heights in Monterey, and the Monterey City School District, a public corporation engaged in construction and operation of the new Walter Colton Junior High School adjacent to Toyon Heights, jointly seek authority to carry out the terms and conditions of a contract, dated April 25, 1955, providing for water service to the subdivider[1] and the district pursuant to a so-called "master plan", set forth in the agreement, a copy of which is annexed to the application as Exhibit "A" thereof.

1 Terms "subdivider", "company" and "district" will be used hereafter to designate the parties to the agreement.

Public Hearing

Because the instant application was considered to bear some relation to a pending consolidated proceeding involving two separate complaints,[2] then in the hearing stage, involving the utility's water main extension practices in the Monterey area, it was consolidated for hearing with the pending cases and was submitted for decision following two days of hearing at Monterey, on July 6 and 7, 1955, before Examiner John M. Gregory.

Applicant's Proposals and Negotiations Leading Thereto

Inasmuch as counsel for the Commission staff conducted a searching examination, through company and other witnesses, of the development of the master plan, in order to lay before the Commission the pertinent facts, it seems appropriate to relate the circumstances in some detail here, chiefly to indicate the complexity of the problem faced by the company and the two applicants for water service. It may be said, in passing, that the result of almost two days' questioning served only to confirm the essential reasonableness and advisability of the plan finally adopted by the parties and incorporated in their agreement, with certain minor exceptions to be noted later. We now turn to the pertinent facts.

In May, 1954, the district requested the company to provide water facilities, including fire protection, to Walter Colton Junior High School, to be constructed on a 21-acre parcel of land in Monterey. The school site is almost entirely surrounded by approximately 154 acres of land owned by, or under option to, the subdivider,

2 The other two cases are Sawyer v. California Water & Telephone Company, Case No. 5596 and Commission Investigation into Main Extension Practices, etc. of California Water & Telephone Company, Case No. 5606. Those cases have been submitted for decision on briefs, not yet due.

McGah & Cramer, Inc. The district's land ranges in elevation from about 275 to 475 feet, while Toyon Heights, Unit No. 1 (the initial unit of subdivider's development), ranges in elevation from about 300 to 500 feet. The company's basic gravity system on the Monterey Peninsula is designed to provide water service to an elevation of 175 feet. Storage and pumping facilities of the company, from which water service is rendered to areas in the vicinity of the lands above-mentioned and which could be used in making water service available to the subdivision and the school, provide service only to an elevation of 415 feet.

At a meeting held July 13, 1954, attended by representatives of the company, the district, the fire department and the city manager's office, a rough estimate of something in excess of $30,000 was discussed as the possible cost of storage and pumping facilities required to be located on the school site to provide proper fire protection. On July 26, 1954, the company, in reply to an inquiry from the district's engineers, estimated the cost of installing off-site storage and pumping facilities at an elevation of 600 feet or more, in order to provide an adequate water supply, including fire protection, for the school, to be about three times the amount mentioned at the July 13 meeting for on-site facilities, or a total cost in excess of $90,000.

While these negotiations were pending, the company, on August 24, 1954, received a proposed layout of Toyon Heights Subdivision from the Monterey City engineer, who asked what would be required for a water supply to serve the subdivision. On August 27, 1954, the district representative, in a letter to the company, noted that plans were proceeding for a subdivision adjoining the school property and urged consideration by the company of the school's need for water service. As a result of that letter, a meeting was held at the office

of the city manager on August 31, 1954, attended by representatives of the district, the subdivider and the company. At that meeting, it was proposed by the city manager and the district representative that the company undertake to work out a master plan that would include service to the subdivision and provide adequate fire protection for the new school.

The company agreed to prepare such a plan and, in a letter to the subdivider, dated October 8, 1954, outlined tentative proposals, including cost estimates, to serve the entire area of approximately 200 acres. Cost of the initial installation, including pipe, two storage tanks, pumps and laterals, plus three fire hydrants, was roughly estimated at $100,500, the sum to be deposited by the subdivider with the company prior to construction and to be refunded in accordance with the company's water main extension rule. At the request of the subdivider, an alternate proposal was included in the letter, under which the company would assume the entire cost of installing a 12-inch main to the subdivision's property line from the company's existing 12-inch main in the vicinity, at an estimated cost of $34,600, leaving a net cost of $65,900 to be advanced by the subdivider under a no-refund agreement. These cost estimates included necessary installations to provide fire protection for the school of 1,200 g.p.m. for a period of two hours, considered as being acceptable by the Board of Fire Underwriters to qualify the installation for the Class 3 level then applicable to the City of Monterey. Mention was also made, in the letter of October 8, of various methods of providing for the school's needs, either by taking water from the facilities installed for the subdivider or through construction of its own facilities to be attached to an extension of the company's main to be constructed to the end of Via Gayuba at the beginning of the school's property. The subdivider, however, was unwilling to

deposit the sum of approximately $100,000, mentioned in the letter of October 8. Negotiations continued, nevertheless, in an effort to work out a suitable plan. In the meanwhile, by letter dated January 7, 1955, the architects for the school advised the company that the school's water requirements for domestic use would necessitate a flow of 220 g.p.m., and for fire protection a flow of 1,250 g.p.m., both flows at a residual pressure of 65 p.s.i. at the end of Via Gayuba. The architects stated in their letter that, in order to meet fire protection requirements of the City of Monterey, a storage tank would have to be constructed, at a high point of the school property, at a cost of about $30,000, or, if an agreement could be reached with the subdivider to have installed a system meeting the requirements of both, the combined system would cost the district about the same amount as would storage tanks on their own property.

Faced with the problem of providing two separate systems, one for the subdivision on a refund basis and the other for the district pursuant to the company's Schedule No. 4 (Private Fire Protection), requiring the district to advance the cost of facilities for fire flows at excess of normal pressures, the company and the respective applicants for service developed the master plan presented to the Commission in the instant application.

Basically, the master plan, which represents a deviation from the company's rules for extending water service to the respective applicants by means of separate facilities, contemplates that the subdivider and the district will provide the cost of a portion of the facilities and the company will assume the obligation to install the balance, the entire system, when completed, to become the property of the company.

The district, pursuant to the plan, agrees to pay the company $28,000 as a charge for construction and installation of

the required facilities, while the subdivider agrees to pay the company, without refund,[3] a sum equivalent to the cost of construction and installation of all facilities required under the master plan, exclusive of the cost of constructing connecting mains from the nearest existing mains at least equal in size to the mains required to serve both the subdivision and the school, less the sum of $28,000 to be paid by the district.

The evidence indicates that, according to preliminary estimates, the total cost of the installations under the master plan will be in the neighborhood of $101,000. Of that sum, $35,000 represents the estimated cost to the company of enlarging and extending its mains to the nearest main of adequate size to serve both the subdivider and the school, and $38,000 represents the amount to be paid by the subdivider. The balance, $28,000, as stated above, represents the amount which the parties have agreed would be paid by the district. In passing, it may be noted that the company's preliminary estimate of the cost of on-site facilities required to serve the school as a separate unit amounted to $37,450.

Summary and Conclusions

Summing up, the parties have represented to the Commission in their application, and the evidence shows, that the facilities to be provided under the master plan will afford more efficient service than those that would be provided for separate service to the subdivider and the school; the district will be relieved of constructing

3 The company's Rule No. 19, filed with the Commission, provides, in the case of extensions of facilities to serve subdivisions, that the estimated cost of the facilities be advanced prior to construction, subject to refund at the rate of 22 per cent of the annual estimated revenues over a period of 20 years.

storage and pumping facilities on school property and of the expense of operating and maintaining such facilities; the subdivider will be obliged to advance less money under the master plan than if the subdivision were served as a separate unit, requiring advancement of the estimated cost of mains; furthermore, under the master plan, the company assumes the obligation of providing the connecting distribution main from its nearest main at least equal in size to the main required to serve the subdivision.

There is one phase of the contract, however, set forth in paragraph 8 of the document, that in our opinion requires special mention. The subdivider, in that paragraph, agrees that when and as additional units of its lands are developed it will, at its sole cost and expense, construct and install within such additional units "all facilities that reasonably may be required for water service thereto, including mains, services, hydrants, fittings, gates and housings therefor, and any additional pumping and/or storage facilities that may be so required", and will convey, unencumbered, all of such facilities to the company, by way of donation and without refund, as the sole property of the company.

Toyon Heights Unit No. 1, the original development, comprises some 20 acres of land. According to recitals in the contract, the subdivider, at the date of its execution, was the owner or optionee of 154 acres of land, including the 20 acres in Unit No. 1. The record shows that, for reasons of its own and in the interest of providing adequate off-site facilities for both the initial and subsequent developments in Toyon Heights, which subdivider was not otherwise obligated to provide, as well as in the interest of working out the master plan, the subdivider agreed to donate its portion of the cost of such facilities not required to be advanced under the company's main extension rule to the extent and under the conditions

set forth in the agreement. This the subdivider and the company were competent to agree upon, subject to approval of their agreement by the Commission. This record, however, does not disclose the nature, extent, or probable cost of the facilities which might be required for future development of Toyon Heights, or whether the construction and installation of all or any part of such facilities, by way of donation from the subdivider rather than pursuant to Rule and Regulation No. 19, would be in the public interest.

In other words, while we are of the opinion that the record here justifies us in authorizing the company to carry out the terms and conditions of its master plan agreement in so far as that plan contemplates service to Toyon Heights Unit No. 1 and the Walter Colton Junior High School, we specifically withhold full approval, for the time being, of that part of the agreement comprising paragraph 8. Such withholding of approval, however, is without prejudice to the right of the company to present to the Commission, by appropriate pleading or advice, a request for authority to carry out plans for future installations in additional units in Toyon Heights, if such plans contemplate deviation from the company's filed rules and regulations, or otherwise require prior Commission approval.

We conclude that the company should be authorized to carry out the terms and conditions of its contract, dated April 25, 1955, subject to the exception, noted above, with respect to paragraph 8 thereof.

O R D E R

Public hearing having been held on the instant application, the matter having been submitted for decision, the Commission now

being fully advised and basing its order on the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that:

1. Applicant, California Water & Telephone Company be, and it is hereby, authorized to carry out the terms and conditions of the written contract, dated April 25, 1955, with McGah & Cramer, Inc., and Monterey City School District, and to render the service described therein under the terms, charges and conditions stated therein; subject to the proviso, however, that with respect to paragraph 8 of said contract, relating to future development of parcels of lands owned and under option to McGah & Cramer, Inc., in addition to Toyon Heights Unit No. 1, which lands are shown on a map, attached to said contract as Exhibit A thereof, the conditions under which construction and installation of facilities for water service in such additional parcels will be made, if not made pursuant to the company's Rule and Regulation No. 19, shall be presented to this Commission, by appropriate pleading, and the Commission's authorization first obtained, to carry out the terms of such contract or agreement prior to commencing such construction or installation.

2. California Water & Telephone Company shall file with the Commission within thirty days after the effective date of this order, two certified copies of the contract as executed, together with a

statement of the date on which the contract is deemed to have become effective.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 4th day of October, 1955.

President

Commissioners