

ORIGINAL

Decision No. 52529

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ernie DiLiberto,)
)
 Complainant,)
 vs.)
 Park Water Company, Incorporated,)
 Defendant.)

Case No. 5607

Gibson, Dunn & Crutcher, attorneys, by
Richard L. Wells, and William S. Cook, manager,
 for defendant.
J. T. Phelps and Charles W. Drake for the
 Commission staff.

O P I N I O N

This complaint was filed January 3, 1955, by Ernie DiLiberto, an applicant for water service from Park Water Company, defendant. A public hearing on this matter was held before Examiner Stewart C. Warner on November 10, 1955, at Los Angeles.

Allegations

Complainant alleged that on October 22, 1953, he paid the sum of \$1,982.07 to Park Water Company for a water main extension to his property at 14928 Shoemaker Avenue, Norwalk, and that on or about December 15, 1953, Mr. Henry H. Wheeler, president of Park Water Company, personally returned complainant's check for said amount with the statement that defendant would not give service unless a new check for the same amount were made out to Los Angeles Decomposed Granite Company.^{1/} Complainant further

^{1/} L. A. Decomposed Granite Company, hereinafter referred to as L.A.D.G.

alleged that Wheeler had agreed verbally that refunds would be made based on other services to be installed on the main extension.

Relief Sought

Complainant requests an order requiring Park Water Company to give service in accord with its filed rules and regulations.

Answer Of Defendant

Defendant answered the complaint on February 4, 1955, alleging that in the latter part of 1953, complainant, acting on behalf of a firm described as DiLiberto and Smith, and also referred to as Cudahy Polishing Company, at 14928 Shoemaker Avenue, Norwalk, contacted Henry H. Wheeler, defendant's president and also president of a subdividing construction company known as L. A. Decomposed Granite Company, relative to the possibility of obtaining an extension of water facilities to complainant's property located approximately 700 feet south of Firestone Boulevard at its intersection with Shoemaker Avenue near Norwalk; that at that time defendant did not have any authorization from the Commission for serving the territory referred to, and its closest service was on the north side of Firestone across the Southern Pacific right of way and across Firestone Boulevard, a limited freeway; that at that time L.A.D.G. was operating as a subdivider in the general area and had as such been engaged in laying some water mains; also that at that time defendant had been advised that if prospective customers wished to have service extended to uncertificated or unassigned territory, as a requirement of such service, a water corporation could require them to establish and pay for the water mains.

Defendant further answered that Wheeler had made an estimate of the general cost of the mains required to bring water

to complainant's property, which estimate was in the vicinity of \$4,000.00. Defendant alleged that complainant was advised that if he wished to pay that cost, defendant would install the necessary main extensions under the refund provisions of its rules and regulations. Upon being advised of the cost, complainant demurred and was unwilling to pay or advance such amount. Defendant, through Wheeler, thereupon advised complainant that L.A.D.G. was engaged in laying some water mains in the area and as a part of the cost of other work it might be possible for them to do this work for a payment of \$1,900.00, plus, if complainant would be willing to pay that sum without refund. Defendant further alleged that complainant considered the matter and eventually mailed in a check for the amount of the estimate for the doing of the work as proposed by L.A.D.G. Said check was made out and delivered to Park Water Company contrary to the estimates and advice given. Wheeler, after eventually contacting complainant, returned the check with the statement that it should either be made out for the amount as noted to L.A.D.G., or else for the full cost of the extension (\$4,000.00) to Park Water Company. Complainant then stated that he was not going to pay any such sum in any event.

Defendant alleged that the matter was fully explained to complainant and that Wheeler was acting properly.

Defendant alleged that relying on complainant's request, rights of way were obtained from the State Highway Division for crossing Firestone Boulevard, and from the Southern Pacific Railroad for crossing its right of way south of said Firestone Boulevard, and portions of the mains were installed.

Evidence

Exhibit No. 1 is a map submitted by a Commission staff engineering witness showing in buff the area certificated to

defendant in this vicinity by Decision No. 44296, dated June 13, 1950, in Application No. 31106. It shows in blue the area served by Park Water Company in the vicinity as of the approximate date of December, 1953. Said blue area was part of defendant's over-all area served as shown on Exhibit No. 37, a map introduced in hearings on Application No. 34699, Park Water Company for an increase in rates, and referred to in the instant proceeding as Item No. 2. The basic information for Exhibit No. 1 was obtained from records of defendant. It shows an 8-inch main extending south on Shoemaker Avenue from the southwest corner of Shoemaker Avenue and Firestone Boulevard and an 8-inch main extending northeast across Firestone Boulevard to connect with defendant's water system installations in its certificated area, and to connect with an 8-inch and a 6-inch main on the north side of Firestone Boulevard running northwest and southeast. This exhibit also shows the installation in 1954 of a 6-inch main on the south side of Firestone Boulevard extending 600 feet northwest, and an 8-inch main also on the south side of Firestone Boulevard, extending 1,000 feet southeast, both connected to defendant's 8-inch main in Shoemaker at Firestone. The map, Exhibit No. 1, shows an extension of the blue shaded area south on Shoemaker from Firestone to complainant's property.

Exhibit No. 2 is a photostatic copy of complainant's check dated October 22, 1953, to Park Water Company in the amount of \$1,982.07. Said check was uncanceled and the signature had been torn off by complainant.

Exhibit No. 3 is a photostatic copy of a right of way granted by Ernest DiLiberto and Edmund F. Smith, dated November, 1953, granting to defendant a right of way for the construction and maintenance of water pipe lines from the center line of the Southern Pacific Railroad south approximately 404 feet to and

including complainant's property.

Exhibit No. 4 is a photograph from California Highways, a State Division of Highways' magazine, the September-October, 1955 issue, showing an aerial view of the exact location of the place where a water pipe installation was first observed by complainant in November, 1953, and the location of complainant's property.

There is no Exhibit No. 5.

Exhibit No. 6 is a schedule of defendant's job No. 53-103 showing the cost of labor, materials, miscellaneous expenses, and overhead in connection with the water system installation south of Firestone Boulevard in Shoemaker Avenue.

Exhibit No. 7 is a photostatic copy of defendant's Rule and Regulation No. 15, Main Extensions, filed September 6, 1951 by Advice No. 5, and in effect from September 15, 1951 until canceled and superseded November 21, 1954.

Exhibits Nos. 8 and 9 are copies of a letter dated October 20, 1947, to the Commission from defendant, and the Commission's answer thereto dated October 23, 1947. Defendant claimed authority under this correspondence to extend its water system outside its certificated area without necessarily being bound by or being required to adhere to its rules and regulations for main extensions on file with the Commission.

Testimony by a Commission staff engineering witness developed the estimated reasonable cost of a 2-inch main to reach complainant's properties under defendant's Rule 15 to be \$960., and the estimated reasonable cost of a 4-inch main to be \$1,320.

Conclusion

It is evident and the Commission so finds that complainant's property is outside defendant's certificated area. However, it is

further evident that defendant held itself out to furnish water service to complainant, and that, by the offering of the contract for a main extension to complainant's property and by installing a water main thereto, it declared itself, in effect, ready, willing, and able to serve complainant outside its certificated area. It is further evident and the Commission so finds that it was defendant's intention to furnish water service outside its certificated area as early as February, 1950, when a segment of an 8-inch main was installed under Firestone Boulevard at Shoemaker Avenue when freeway construction of said boulevard was in progress. Defendant's water service intentions outside its certificated area were further declared by its extension of service to customers on the south side of Firestone Boulevard, both northwest and southeast of Shoemaker Avenue. We further find that having so declared its intentions, defendant dedicated its service to said territory and was and is bound by its rules, regulations and tariffs in serving said territory.

The Commission finds that defendant did not apply its Rule 15 to extend service to complainant. Neither did it apply to the Commission for authority to deviate from said rule.

The record shows that complainant's domestic service requirements for wash rooms and toilets for employees would not require the installation of an 8-inch main for service thereto. The cost of installing the 8-inch main in Shoemaker Avenue, in excess of the cost of installing a 4-inch main, should be borne by defendant, and the order hereinafter will so provide.

The evidence submitted by defendant purporting to show a deficient water supply in this area is inconclusive, and the record clearly shows that there are numerous other sources of water supply available to and owned by defendant which could, and

should if required, be connected to defendant's water system in the area of this complaint.

The Commission finds that defendant should not have required complainant to contract with or pay or make out any check to L.A.D.G. for water service. The water service extension arrangements under defendant's Rule 15 should be made solely between DiLiberto and Park Water Company on the basis of reasonable water main extension costs. It is found that such reasonable costs to complainant should not exceed \$1,320.00.

O R D E R

Complaint having been filed, a public hearing having been held, the matter having been submitted and now being ready for decision, and based upon the evidence of record and findings, therefore,

IT IS HEREBY ORDERED as follows:

(1) That defendant Park Water Company, a corporation, shall extend its water system to the property of Ernie DiLiberto, complainant, at 14928 Shoemaker Avenue, Norwalk, in accordance with its Rule 15 on file with the Commission at the time complainant first made application to defendant for water service.

(2) That the cost to complainant of the water main extension ordered herein shall not exceed the cost of a 4-inch main and shall in no event exceed \$1,320.00.

(3) That defendant, upon receipt of the above-indicated advance, shall provide water service in accordance with complainant's application for service. Defendant shall notify the Commission in writing of the date service is commenced, within five days thereafter.

(4) That in all other respects the complaint be and it is dismissed.

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

Dated at _____, California, this _____ day of _____, 1956.

 President

 Commissioners