

ORIGINAL

Decision No. 52530

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Carl A. Plunkett, and Harold A. Diemert,)
Complainants,)

vs.)

Case No. 5587

Park Water Company, Incorporated,)
Defendant.)

Gibson, Dunn and Crutcher, attorneys, by Richard L. Wells, and William S. Cook, manager, for defendant.

Everett L. Hodges and Milton D. Munkeby, in propria personae, interested parties.

J. T. Phelps and Charles W. Drake for the Commission staff.

O P I N I O N

This complaint was filed October 26, 1954, by Carl A. Plunkett and Harold A. Diemert, complainants and water service customers of Park Water Company, defendant. A public hearing was held before Examiner Stewart C. Warner on November 9, 1955, at Los Angeles.

Allegations

Complainants alleged that defendant illegally charged for water service to Plunkett's service station properties under lease at 16516 South Pioneer Boulevard, Norwalk, and to Diemert's property at 16102 Pioneer Boulevard, Norwalk. They alleged that they were required to pay \$148.94 in the first instance and \$75.00 in the second instance for water main extensions; that a water main of defendant was existing in Pioneer Boulevard at the time service was applied for; and that the charges were not covered by defendant's rules and regulations on file with the Commission.

Relief Sought

Complainants seek an order of the Commission that defendant refund the money illegally charged, plus stenographer fees in the amount of \$16.00.

Answer of Defendant

Defendant's answer admitted the charges levied but alleged that water service to complainants was furnished in a noncertificated area of defendant and that, therefore, defendant's rules and regulations on file with the Commission were not applicable.

Defendant further alleged that Plunkett had agreed to bear a proportionate cost of the water service extension to his property at the rate of \$1.00 per front foot and to donate such cost to defendant in return for such water service extension. Plunkett granted defendant an easement.

With respect to the Diemert property, defendant alleged that said property was and is located in a noncertificated area of defendant and that in this instance also, as alleged in the Plunkett case, defendant's rules and regulations on file with the Commission did not apply.

Evidence

Exhibits Nos. 1 and 3 are cancelled checks payable to Park Water Company by complainants for the water service extensions dated July 7, 1954, in the amount of \$75.00 by Diemert, and dated August 27, 1954, in the amount of \$148.94 by Plunkett.

Exhibit No. 2 is a map submitted by a Commission staff engineering witness showing the location of complainants' properties, the sizes and location of defendant's distribution mains, and in a buff color defendant's certificated area (per Decision No. 35908 dated October 27, 1942 in Application No. 25136), and in a blue color the area served by defendant in this vicinity.

Exhibit No. 4 is an agreement dated August 22, 1949, granting to defendant by Plunkett a right of way for defendant's water lines and containing a provision that the charge for connecting defendant's water lines to Plunkett's property should be \$1.00 per front foot.

Exhibit No. 5 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 September 15, 1951 until canceled and superseded November 21, 1954. Section A covers general or ordinary extensions and Section B covers extensions to serve subdivisions, tracts, or organized service districts.

Exhibits Nos. 6 and 7 are, on the one hand, a letter to the Commission, dated October 20, 1947, by defendant, requesting an informal ruling on deviations from defendant's filed water main extension rules to areas outside its certificated area, and, on the other hand, the Commission's reply, dated October 23, 1947.

Exhibits Nos. 8, 9 and 10 are photostatic copies of Advice Letter No. 10, dated June 12, 1953, defendant's Rule and Regulation No. 15A, Main Extensions, filed September 11, 1951 by Advice No. 6 and in effect August 8, 1951, and Rule and Regulation No. 15B, Main Extensions, filed June 17, 1953 by Advice No. 10 and in effect July 1, 1953. These rules provide for deviations from defendant's regularly filed Rule and Regulation No. 15, Main Extensions, but are applicable to certain subdivision tracts not included in or covered by the area of the instant complaint. They were introduced by Commission's staff counsel to show that defendant has applied for and has been granted permission in certain instances to deviate from its filed rules upon the showing of good cause.

Exhibit No. 11 is a photostatic copy of defendant's Advice Letter No. 11, dated April 2, 1954, covering certain deviations from defendant's Rule 15. This Advice was proposed to be

applicable to the area along Pioneer Boulevard south of Alondra to 170th Street, the area covered by complainants. This Advice was rejected by the Commission April 5, 1954.

By reference, Exhibit No. 37, in Application No. 34699, Park Water Company, for authority to increase rates for water service was received as Item I in this proceeding, together with certain testimony regarding said exhibit given at the hearings on said application in Line 16 of Page 807 through Line 4, Page 808 of the transcript of said hearings. This exhibit is a large service area map furnished by defendant to the Commission's staff. It shows the service area of Park Water Company as of the approximate date of December, 1953. It shows the area covered in this complaint as part of Park's service area as of that date.

Review of Evidence and Conclusions

It is evident from the record, and the Commission so finds, that the area of complainants' properties is outside defendant's certificated area. However, it is clear that defendant has held itself out to serve the general area shown in blue on Exhibit No. 2 filed at the hearing, and has been and is furnishing water service throughout a substantial part of that area. The 8-inch distribution pipe line south of Alondra Boulevard on Pioneer Boulevard was constructed in April, 1954 to serve an area south of 170th Street where Starterhouse Corporation is purchasing water from defendant through three master meters to serve some 148 residents. The record shows that defendant is furnishing water service to some 40 consumers in the area north of 170th Street to Alondra Boulevard west of Elaine Avenue from its Pioneer Boulevard pipe line. Among these 40 consumers are complainants. The record shows that complainants' properties are less than 100 feet east of Pioneer Boulevard, and that complainants were entitled to receive a water service connection

at no cost under defendant's Rule No. 15 (Exhibit No. 5).

The evidence adduced by defendant regarding the necessity for signing contracts in 1949 to obtain easements in the area and levying charges for water service in conjunction therewith is immaterial and irrelevant.

While defendant may have relied erroneously on the informal statements of the Commission's staff as expressed in the Commission letter, Exhibit No. 7, said exhibit in no way constituted authority for defendant to deviate from its rules and regulations without seeking a formal order of the Commission so to do, and in no sense applied to complainants' request for a water service connection.

Defendant has held itself out to serve and is serving this area as a public utility without having applied for or having obtained a certificate of public convenience and necessity. Defendant's witness, its president, testified that he had planned to instruct his attorneys to file an application for a certificate covering this area after the settlement of defendant's rate case, Application No. 34699.

Defendant's claim that it is not subject to the Commission's jurisdiction outside its certificated area is fallacious.

The Commission finds that the charges assessed against complainants by defendant for water main extensions to their properties in August and April or May, 1954, were wrongfully and illegally assessed and in violation of defendant's filed rules and regulations.

There being no statutory provision therefor, complainants' prayer for the refund of stenographer fees of \$16.00 cannot be granted.

O R D E R

Complaint as above entitled having been filed, a public hearing having been held, the matter having been submitted and now being ready for decision, and based on the evidence of record and the findings,

IT IS HEREBY ORDERED as follows:

(1) (a) That defendant Park Water Company, a corporation, shall refund to complainant Carl A. Plunkett, 16518 Pioneer Boulevard, Norwalk, California, the amount of \$148.94 for extending water service to said Plunkett, and the amount of \$75.00 to complainant Harold A. Diemert, 16102 Pioneer Boulevard, Norwalk, California, for water service connections and the installation of water service to the property of said Diemert.

(b) That complainants' request that defendant be required to refund stenographer fees in connection with the filing of this complaint of \$16.00 be and it is denied.

(c) That the refunds ordered hereinabove shall be made within five days after the effective date of this order, and defendant shall report within five days thereafter in writing to the Commission that such refunds have been made.

(2) That defendant Park Water Company be, and it hereby is, declared to be a public utility water corporation, as that term is defined in Section 241 of the Public Utilities Code, in the area shaded blue on Exhibit 2 in this proceeding; except that area lying to the East of the East line of Norwalk Boulevard and South of the Easterly prolongation of the South line of 163rd Street, the public utility status of said excepted area not having been determined as a result of this proceeding. As a public utility water corporation it shall furnish water service in the above described area according

to its rates and rules in effect and on file with the Commission.

(3) That defendant shall, within thirty days after the effective date of this order, amend its presently filed tariff schedules, including a tariff service area map replacing Revised P.U.C. Sheet No. 80-W, in conformity with General Order No. 96, to provide for the inclusion of the additional area as defined in paragraph (2) of this order. Such rates, rules and tariff area map shall become effective upon five days' notice to the Commission and to the public after filing as hereinabove provided.

(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 Los Angeles, California, this 31st day of January, 1956.

[Signature]
President

[Signature]

[Signature]

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Commissioners