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Decision No. 52533

ORIGINAL

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.	))))))	First Supplemental Application No. 36954

O P I N I O N

California Water & Telephone Company, by its first supplemental application, filed November 9, 1955, seeks authority, pursuant to General Order No. 96 and the terms of paragraph 8 of an agreement, dated April 25, 1955, to install water mains and render service in Unit No. 2 of Toyon Heights Subdivision, in the City of Monterey. The estimated cost of the installation is about $7,100.

The Commission, by Decision No. 52026, rendered October 4, 1955, after hearing, authorized the company, the Monterey City School District and McGah & Cramer, Inc., the subdivider, to proceed with a master plan for enlargement of transmission mains and installation of storage and distribution facilities to serve both the Walter Colton Junior High School, comprising 21 acres of land adjacent to Unit No. 1 of Toyon Heights and the initial unit of the tract itself. The estimated cost of the master plan facilities approximated $106,000, of which the company undertook to advance $35,000 as the cost of the connecting mains and the subdivider the balance of about $70,800, without refund, less $28,000 to be paid by the district, also without refund. All facilities, when constructed, were to become the sole property of the company.

The parties had originally contemplated provision of separate facilities to serve the subdivision and the school, with

the subdivider advancing the total sum, subject to refund, however, under the provisions of the company's main extension rule. The school district's contribution, under the original plan, was to be about $30,000 for construction of on-site facilities, including provision for fire protection.

The subdivider was unwilling to make the advance, so the parties finally developed the master plan incorporated in their agreement of April 25, 1955. That agreement, constituting a deviation from the company's main extension rule, was submitted for the Commission's approval pursuant to the provisions of Chapter X of General Order No. 96, which states, in part, as follows:

> ". . . no utility of a class specified herein shall hereafter make effective any contract or arrangement for the furnishing of any public utility service at rates or under conditions other than the rates and conditions contained in its tariff schedules on file and in effect at the time, unless it first obtain the authorization of the Commission to carry out the terms of such contract or arrangement".

Paragraph 8 of the contract, as to which the Commission gave only conditional approval in its order, provides, in substance, that when and as the subdivider develops and subdivides additional parcels of land in the Toyon Heights tract,

> ". . . Subdivider will at its sole cost and expense, construct and install within such additional subdivision or subdivisions 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 subdivider will transfer and convey all of such facilities to Company by way of donation and without refund as the sole property of Company, . . ."

The Commission, by its order in Decision No. 52026, authorized the company to carry out the terms and conditions of the tripartite agreement, but provided, with respect to paragraph 8, that the conditions under which construction and installation of

facilities for water service in additional parcels were to be made, if not made pursuant to the company's main extension rule, should be submitted to the Commission and its authorization obtained prior to construction.

The company now seeks unconditional approval of paragraph 8 with regard not only to the water main installations in Toyon Heights Unit No. 2 (which will have about 31 service connections), but also as to all construction, including additional pumping and storage facilities, required for ultimate development of the remaining 130 or more acres of land in the tract. The company alleges that, should the Commission refuse to approve paragraph 8 of the contract, applicant would be deprived of a substantial part of the consideration for its agreement to advance and assume the cost of the connecting mains; that, in effect, the Commission would be creating a contract between applicant and the subdivider radically different from the one they intended and entered into. Moreover, it is alleged, since applicant, under the contract, is obligated to pay, without advance from the subdivider, the cost of the connecting mains which were designed and are partially required to serve Unit No. 2 and any further subdivisions in Toyon Heights, applicant cannot require subdivider to advance any of the cost thereof, as it would be entitled to do if service were provided under its main extension rule. The result of the Commission's conditional approval of paragraph 8, it is alleged, is not only prejudicial to the interests of applicant and its consumers, but also imposes on applicant a forced deviation from its extension rule that was never intended by the utility or the subdivider.

We are of the opinion that in making the assertions it does applicant has misconceived the effect of the Commission's order in Decision No. 52026. The master plan, incorporated in the

agreement of April 25, 1955, provides mainly for construction of facilities to serve both the school and Unit No. 1 of Toyon Heights, the latter comprising about 20 acres out of a total of 154 acres of land in the vicinity then owned by or under option to the subdivider. The company's obligation here is to construct the connecting mains at an estimated cost of $35,000, while the district and subdivider agree that all other facilities installed pursuant to the master plan are to become the sole property of the company. As stated above, the estimated cost of facilities, in addition to connecting mains, amounts to about $70,800, of which the school district is responsible for $28,000.

The Commission, by requiring prior authorization for future installations in the tract, has not necessarily inhibited the acquisition of such facilities by the company as contemplated in paragraph 8 of the agreement. What the Commission has done is no more than to say to the company, in view of the substantial developments which may yet take place in the tract, that the nature and scope of such installations shall receive prior scrutiny and be subject to further authorization as may be appropriate.

We are of the opinion, and conclude, that while authorization to construct the facilities in Toyon Heights Unit No. 2 should be granted, the Commission's order in Decision No. 52026, requiring prior authorization for installations made from time to time in additional parcels of the tract, should not now be disturbed.

A public hearing is not deemed necessary.

O R D E R

The first supplemental application of California Water & Telephone Company herein having been filed and considered, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that California Water & Telephone Company be and it hereby is authorized to carry out the terms of paragraph 8 of its agreement, dated April 25, 1955, with McGah & Cramer, Inc., in connection with extension of water service to Toyon Heights Unit No. 2, situated in the City of Monterey, California.

Except as specifically herein granted, said first supplemental application is hereby denied.

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.

President

Commissioners