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Decision No. 53661

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CHARLES G. SAWYER, Complainant, vs. CALIFORNIA WATER & TELEPHONE COMPANY, a California corporation, Defendant.	Case No. 5596
Investigation on the Commission's own motion into the main extension practices, operations, contracts, and charges of the Monterey Peninsula Division of California Water & Telephone Company, a public utility water corporation.	Case No. 5606

Claude N. Rosenberg and Tadini Bacigalupi, Jr., of Bacigalupi, Elkus and Salinger, and Hudson, Martin, Ferrante and Street, by Carmel Martin, for California Water & Telephone Company.
Charles G. Sawyer, in propria persona.
Philip F. Walsh, for Southern California Water Company, Wright S. Fisher, for Monterey Peninsula Associates, Edson Abel, for California Farm Bureau Federation, and L. T. Hollopeter, for Lakeside Water and Power Company, interested parties.
Boris H. Lakusta and Cyril M. Saroyan, for the Commission staff.

O P I N I O N

These cases, heard on a consolidated record at Monterey during April and July, 1955, before Examiner John M. Gregory, and finally submitted for decision on April 30, 1956, with the filing of a closing brief by the Commission's staff, concern subdivision water main extension contracts and practices of California Water & Telephone Company, a public utility, in its Monterey Peninsula Division, principally during the eight and one-half year period from January 1,

1947, to about July 1, 1955.[1/]

The Sawyer case involves a contract for extension of service to Yankee Point Acres Subdivision No. 1 and other portions of the Victorine Ranch, south of Carmel Highlands, being developed by Sawyer and others. His complaint charges that in 1948 and 1949 the company, aware of his pressing need for water service, exacted an unlawful and unconscionable agreement, finally executed as of July 8, 1949, calling for extension of an 8-inch pipeline for a distance of about 5,200 feet from the company's 8-inch main in Carmel Highlands, at a cost of $20,000, subject to adjustment to actual cost, to be accumulated and donated by Sawyer to the company. The company, he alleges, could have made a connection of only 560 feet, for a much lesser sum, from the southerly terminus of the 8-inch main (portions of which, however, consisted of 4 and 3-inch pipe) to the northerly terminus of an 8-inch main constructed by him from Yankee Point Acres No. 1 northerly along State Highway No. 1 to the intersection of Sonoma Road, in Carmel Highlands. The Yankee Point Acres No. 1 installations and 8-inch main in State Highway No. 1 were constructed by Sawyer in 1948 at a cost of approximately $15,600.

Sawyer requests that the Commission order the company to account for gross consumer revenues from Yankee Point Acres No. 1 and to refund 35 per cent of such revenues in accordance with its main extension rule, plus interest; to reduce its demand from $20,000 to the reasonable cost of 560 feet of 8-inch pipe; to supply water to the balance of the Victorine Ranch without further delay and to perform the agreement of July 8, 1949.

1/ Also heard on the same record was an application by California Water & Telephone Company for approval of an extension agreement involving the Monterey City School District and a subdivider of land in Toyon Heights, in the City of Monterey. The Commission authorized that agreement by a separate decision (Decision No. 52026, October 4, 1955, Application No. 36954) and it need not be further considered here.

The answer filed by the utility generally and specifically denies the material allegations of Sawyer's complaint and also raises certain jurisdictional issues.

Sawyer also asked the Commission to investigate relationships and contracts between the company and other subdividers in the area. As a result, and also as the result of other inquiries and complaints, the Commission instituted its investigation (Case No. 5606) for the purpose of determining, (1) whether the company had violated, or contemplated violating, its filed tariffs and whether contracts executed or to be executed in violation of such tariffs should be modified; (2) whether the company or its officers had demanded or received unauthorized donations of money; if so, whether appropriate refunds should be ordered; (3) whether the company should be ordered to make refunds of any authorized deposits which it had failed to do; (4) whether the company's demands or cost estimates for extensions of service were unreasonable, discriminatory, or excessive; (5) whether the company had violated Section 489 of the Public Utilities Code, relating to filing and posting of tariff schedules, or General Order No. 96, Chapters IX and X, which relate to the form of written contracts for service where tariffs require execution of a written contract, and to securing prior authorization for service at rates or under conditions which deviate from filed tariffs. An appropriate order in the premises is contemplated.

On May 23, 1956, subsequent to the final submission of the case, Sawyer filed a "request", in which the company did not join, for "approval" of an agreement, executed May 21, 1956, by way of compromise, by Sawyer, Le Forust, Inc. (to whom Sawyer had sold certain undeveloped portions of the Victorine Ranch) and by the company, and which purported to amend the agreement of July 8, 1949. He requested that his complaint be dismissed "with prejudice", contingent, however, upon unconditional approval by the Commission of the compromise agreement.

The record discloses that Sawyer, in 1948, purchased the 1146-acre Victorine Ranch, south of Carmel Highlands, and, upon being informed by the local Monterey manager and head office officials in San Francisco of California Water & Telephone Company that water service would be made available to all portions of the property, he proceeded to develop the initial 20-acre parcel west of State Highway No. 1 known as Yankee Point Acres No. 1. His oral understanding at that time, with the company's local representative, was to the effect that he would install a distribution system in the tract and an 8-inch pipeline in State Highway No. 1 to connect with the southerly terminus of the company's 8-inch main on Lower Walden Road in Carmel Highlands. That main, however, contained "bottlenecks" of smaller size pipe, extending for a distance of approximately 2000 feet between Pine Way Drive and Lower Walden Road, in the Highlands, and between its southern terminus on Lower Walden Road to the intersection of Sonoma Road and State Highway No. 1 where the 8-inch main constructed by Sawyer in 1948 terminates.

Sawyer completed his Yankee Point Acres No. 1 installation in October, 1948, at a cost of about $15,600. When he requested the company's signature on the main extension agreement, the form of which, prepared by the company's Monterey attorneys, had previously been submitted to him by the Monterey manager, he was told by that official that he would have to see the company's general office officials in San Francisco.

The form of contract originally given to Sawyer provided that he would make the installations in Yankee Point Acres No. 1 and along State Highway No. 1, that the company would install service connections and meters when requested by consumers and, upon acceptance by it of the distribution system and 8-inch connection, would refund to Sawyer "the actual cost of said facilities" in accordance with its then effective subdivision main extension rule, Rule and

Regulation 19-B. That rule provided for refunds on the basis of 35 per cent of the gross revenues collected from consumers in this subdivision over a period not to exceed 10 years.

Sawyer, six months later, managed to arrange a conference with the company's San Francisco officials, which was held in the office of his San Francisco attorney on or about May 11, 1949. At that conference, the company's vice-president and general manager disclaimed responsibility for the action of the Monterey attorneys and local company manager in submitting to Sawyer the contract referred to above. The company's general manager, at that conference, stated that while the Victorine Ranch was outside the utility's service area, the company would still be interested in supplying water to the property but in return for something more than its "regular rates". The conference terminated without an understanding having been arrived at for water service to any portion of Sawyer's property, including Yankee Point Acres No. 1, and Sawyer thereupon made informal request for relief to the Commission.

Thereafter, as the result of negotiations between Sawyer, his attorney and the company's general manager in San Francisco, an agreement was reached,which was signed on July 8, 1949, with respect to service to Yankee Point Acres No. 1 and to portions of the Victorine Ranch below the 600-foot contour suitable for residential subdivision development, comprising some 555 acres of land. Service to other portions of the ranch properties, above the 600-foot contour, was to be subject to further negotiation.

That agreement, reluctantly signed by Sawyer, whose attorney advised him that he "didn't have any alternative, that it was a question of getting that water...", provided, in substance, that the company would connect its existing 3-inch main, at a point approximately 400 feet north of the southerly line of Carmel Highlands

(Yankee Point Acres No. 1 lies just south of the southerly line of Carmel Highlands), with Sawyer's 8-inch main leading from the subdivision northerly along State Highway No. 1, and, within 60 days thereafter, would apply to the Commission for a certificate to serve that portion of the Victorine Ranch below the 600-foot contour as a public utility. The company has not made such an application.

The agreement further provided that Sawyer would transfer to the company, free and clear of any and all claims, the distribution system he had installed in Yankee Point Acres No. 1 and the connecting 8-inch pipeline in State Highway No. 1. The contract further provided that Sawyer would accumulate a fund of $20,000, at the rate of $1,500 per lot sold in the subdivision, for the purpose of providing the company with moneys to pay for the cost of installing an 8-inch pipeline a distance of approximately 5,200 feet from the southerly terminus of the company's existing 8-inch main in Carmel Highlands, to the northerly terminus of the 8-inch main already installed by Sawyer. The contract recited that such an installation would be necessary to serve portions of the Victorine Ranch below the 600-foot contour and, with the construction of not less than ten houses in Yankee Point Acres No. 1, to serve that subdivision also. The company agreed, within 30 days after completion of such installation, to submit to Sawyer a statement of the actual cost thereof and, if the actual cost were less than $20,000, to refund the difference to Sawyer, who agreed to pay any excess of cost over $20,000. The installation, from the time of purchase by the company of materials therefor, was to be the sole property of the company, free and clear of any claims by Sawyer or any person. Approximately $17,000 has been accumulated in the fund provided for by the contract.

The contract then goes on to provide for service to other portions of the Victorine Ranch below the 600-foot level, in units

of not less than 5 acres each, in accordance with the company's Rule and Regulation 19-B respecting refunds of advances for construction, subject, however, to the condition that each area so subdivided was to be treated as a separate and distinct transaction as regards the revenues upon which refunds were to be based.

The agreement concludes with the provision, required by Chapter X of General Order No. 96, that it should at all times be subject to such changes or modifications as the Commission might from time to time direct in the exercise of its jurisdiction. The record, however, shows that the company has never sought nor secured authority, pursuant to Chapter X of General Order No. 96, to carry out the terms and conditions of the agreement of July 8, 1949, a copy of which is attached to Sawyer's complaint as Exhibit 10 thereof.

The foregoing facts were brought out at the hearing held in April, 1955. Sawyer maintained that the company took undue advantage of his pressing need for water service to Yankee Point Acres No. 1 and to his proposed development of other portions of his investment, in order to reinforce its transmission facilities in the manner and under the conditions provided for in the agreement.

Sawyer contended that the company could have made the connection, for much less money, to the existing 8-inch main terminating at Lower Walden Road in Carmel Highlands. That 8-inch main was installed by the company in December, 1948. The company contended that a new 8-inch main, extending about 5,000 feet south along State Highway No. 1 from Corona Road, in Carmel Highlands (where the company's present 8-inch main takes off easterly and southerly through the Highlands), was necessary for service to Yankee Point Acres No. 1 and other portions of the ranch.

The company maintained, and has argued on brief, that it is not required to secure authority from the Commission, as contemplated by Chapter X of General Order No. 96, for extension of

facilities to serve areas not included within the boundaries shown by tariff "service area" maps which it has recently filed with the Commission, and which, incidentally, include Yankee Point Acres No. 1. The company contends that the entire Victorine Ranch, excluding Yankee Point Acres No. 1, lies outside those boundaries. Therefore, so the argument goes, the company may make whatever arrangement it sees fit in agreeing to extend facilities beyond such delimited areas, since in so-doing it is not acting in the capacity of a public utility and does not "dedicate" its facilities to public service in such areas until the installations are completed and water is ready to flow through the pipes.

With the foregoing facts and the respective contentions of the parties in mind, we turn now to a consideration of the so-called "compromise" agreement of May 21, 1956, signed by the company, Le Forust, Inc., and Sawyer but filed by Sawyer alone on May 23, 1956, with a request for dismissal of his complaint contingent upon "approval" of the agreement of July 8, 1949, as modified and amended by the compromise agreement.

The compromise agreement recites that Sawyer, since July 8, 1949, has sold pieces of the undeveloped portions of the Victorine Ranch to Le Forust, Inc., a corporation; that he filed a complaint against the company with the Commission(which is Case No. 5596 herein) in November, 1954, concerning the 1949 agreement and service of water to portions of the tract; that the complaint is still pending and that there is "substantial disagreement" between Sawyer and the company, concerning "the rights, duties and obligations of the parties hereto relative to the 1949 agreement, to the construction of a pipe-line and to the service of water on portions of said tract;" that the parties desire "to compromise and make certain the rights, duties and obligations of each of them and to make such compromise final and subject to no further changes without mutual consent;" that Le Forust,

Inc., desires service to portions of the tract owned by it and that it is necessary that there be at least a continuous 8-inch water main leading to the tract in order to provide adequate service to Yankee Point Acres No. 1 or to other portions of the tract lying below the 600-foot contour; that there is on deposit with Bank of America National Trust and Savings Association, pursuant to paragraph (3) of the 1949 agreement, a sum of approximately $17,000; that it is the desire of the parties "to alter the quantity and location of the 8-inch water main to be installed pursuant to paragraph (3) of the 1949 agreement and to apply said sum on deposit. . . against the cost of said water main as altered and to provide for the payment of the balance of the cost of said water main as altered;" finally, that Sawyer and Le Forust, Inc. shall be jointly and severally liable under the agreement.

The agreement then goes on to provide for deletion of paragraph (3) of the 1949 agreement in its entirety and for substitution of a provision to the effect that the subdividers, "immediately upon procuring the approvals and dismissals as herein-below provided", shall pay to the company $24,000, that sum to include transfer to the company of the $17,000, more or less, now on deposit in the bank, plus whatever sum is necessary to make up the difference. The company then agrees to order materials and to install 8-inch pipe in place of the smaller sections now constituting "bottlenecks" in its 8-inch main which, with the smaller sections of pipe, now extends along Cypress Way, in Carmel Highlands, across Wildcat Creek to the vicinity of Peter Pan and Lower Walden Roads, thence along Lower Walden Road to and through the intersection of State Highway No. 1 and Sonoma Road, at which point a connection will be made in Sonoma Road with the 8-inch main installed by Sawyer in 1948. Scaled on a map in evidence (Exhibit 8), the approximate length of the smaller sections to be replaced with 8-inch pipe appears to be around 2000 feet.

The agreement then states that "Said $24,000 shall be a firm amount, without regard to the actual cost of said water mains, and shall not be subject to any adjustment higher or lower." The tract owner agrees that the pipeline and facilities installed in connection therewith shall at all times after the purchase of materials therefor be the sole property of the company "free and clear of any claims, rights of refund or liens of Tract Owner, or any person or persons,..."

The 1949 agreement is further amended by the agreement of May 21, 1956, by deleting the last four lines of provision (1) thereof, which relate to the filing of an application by the company for a certificate of public convenience and necessity to render water service, as a public utility, in that portion of the Victorine Ranch lying below the 600-foot contour.

The compromise agreement confirms the transfer to the company, without right of refund, of the facilities installed by Sawyer in Yankee Point Acres No. 1 in 1948, including the 8-inch pipeline running from his subdivision along State Highway No. 1 to Sonoma Road. Additional water facilities for other portions of the Victorine Ranch below the 600-foot contour, however, are to be installed for units of not less than 5 acres in accordance with the company's main extension rule in effect at the date of commencing such installation or development.

Finally, the agreement contains the following paragraph, which is here quoted in full, since it illustrates the position taken by the utility in this proceeding that it is not subject to the regulatory authority of this Commission when it arranges for extensions of service outside the boundaries of what it has heretofore considered its "dedicated service areas".

"6. Tract Owners agree that they will, at their sole cost and expense, make application to the Public Utilities Commission of the State of California for (1) the dismissal with prejudice of said complaint by Sawyer against Company now pending before Commission; and (2) for the approval by Commission of the 1949 Agreement, as amended hereby. It is mutually agreed by the parties hereto that unless and until the Commission shall have, upon the application of Tract Owners or either of them, dismissed said complaint with prejudice and approved the 1949 Agreement, as amended hereby, all in such manner as to make said dismissal and approvals full, final and unconditional and subject to no further change without the consent of the parties hereto, this Agreement shall be of no force or effect and the rights, duties and obligations of the parties hereto shall remain as they were prior to the execution hereof." (Emphasis supplied.)

"7. Except as herein modified and amended, the 1949 Agreement is ratified and affirmed."

As indicated by the foregoing and other provisions of the agreement, the company is now willing to connect its facilities to those installed by Sawyer in 1948 in exchange for dismissal of his complaint, unconditional approval by the Commission of the agreement of July 8, 1949, as modified by that of May 21, 1956, and a donation by Sawyer to the company of approximately $39,600.

The Sawyer case, while exhibiting certain similarities to the Commission's investigation with respect to the issues involved and the practices of the company in arranging for extensions of service, will be considered separately by this decision, since the record shows and Sawyer's recent request for dismissal indicates that an early termination of this controversy is desirable. Certain issues, however, raised by the Commission's investigatory order, are both novel and complex and their determination will require further study by the Commission. The resolution of all such issues is not necessary, in our opinion, in order to grant to Sawyer now the relief to which we consider him to be entitled on this record and to which we will hereafter confine our remarks.

The basic issue with respect to the 1949 contract and its proposed amendment, aside from the merits of the agreement, lies in the assertion by the company of a right to conclude arrangements for extension of service outside a so-called "dedicated service area", without regard to the utility's effective tariff rules, or, in case of deviation from such rules, without securing prior authorization therefor in the manner provided by General Order No. 96.

The force of the company's contention on this issue, however, is considerably weakened by the fact that on April 15, 1955, less than two weeks before the hearing in this proceeding opened, the company filed with the Commission a tariff service area map which included Yankee Point Acres (originally a part of the Victorine Ranch) as an area in which the company offered to render water service to the general public as a public utility. Moreover, the record shows that the company rendered water service to portions of Yankee Point Acres Subdivision No. 1 prior to filing its tariff map, and also, pursuant to arrangements concluded in 1943, extended domestic water service through its pipelines to two houses owned by Joe Victorine, Jr., located a short distance south of Carmel Highlands on the Victorine Ranch. Correspondence in the record concerning that arrangement indicates that a written agreement between Victorine and the company was contemplated which was to include: (1) terms and conditions for the making of the connection and the serving of water as would prevent that extension of service being interpreted as an extension of the company's service area or the dedication of any of the company's water to the Victorine service or the area in which it was located; (2) that the consent and approval of the Commission, the Carmel Highlands Water Users and Carmel Development Company be secured to the making of the connection; (3) that a clause be inserted in the agreement to the effect that it was to be subject to such changes or modifications that the Commission might direct in the exercise of its jurisdiction. There is nothing in the record to show that a written

agreement was ever concluded between Victorine and the company, or that, if it had been, it was ever submitted to the Commission by the company or by anyone else for approval.

Whether the company by its past actions has held itself out, as a public utility, to serve all portions of the Victorine Ranch, is a question which is squarely presented by this record. Certainly it has engaged to do so with respect to Yankee Point Acres and is actually rendering public utility water service to individual consumers in portions of that development, as well as to certain individuals outside but in the immediate vicinity thereof.

We recognize of course, that in extending service beyond its existing facilities, a water utility is often confronted with substantial economic and engineering problems. Although it has a statutory right, conferred by Section 1001 of the Public Utilities Code, to extend its service without further certification by the Commission to areas contiguous to those being served, it may not be compelled to make such extensions unless the Commission, in an appropriate proceeding, finds that it is reasonable to require the company to do so. (Isenberger v. Pacific G. & E. Co., 50 Cal. P.U.C. 455)

The company, during its negotiations with Sawyer in 1948 and 1949, took the position that its arrangements with him for service to the entire Yankee Point Acres No. 1 tract and, eventually, to the balance of the Victorine Ranch below the 600-foot contour, would require, among other facilities, enlargement of its existing mains, or, as provided in the 1949 agreement with Sawyer, the construction of about a mile of new 8-inch main. It then maintained, as it still does, that since those arrangements contemplated service outside of so-called "dedicated" areas, it was not then and is not now required to secure advance approval of them by the Commission.

There is no merit to the company's contention on this point. With respect to Yankee Point Acres, in which individual consumers have been served at least since July, 1949, and as to which the company has undertaken to provide public utility service as shown by its presently effective tariff schedules, the company is undoubtedly providing and is holding itself out to provide service as a public utility.

The point of the controversy, however, at this date, has to do with the nature and scope of arrangements for serving the balance of Yankee Point Acres No. 1 and other portions of the Victorine Ranch. The record leaves little doubt that the eventual extensions of service below Carmel Highlands contemplated by the agreement will require substantial reinforcement of the company's existing facilities in that area. Sawyer and the company are at loggerheads on the question of who is to pay for the augmented facilities. Sawyer's position as stated heretofore, is that he should only be required to advance the cost of an 8-inch connection to the company's nearest main of that size, which now terminates on Lower Walden Road about 560 feet from the northern terminus of his 8-inch main at Sonoma Road and State Highway No. 1. The company has taken the position, in its amendatory agreement of May 21, 1956, that Sawyer should pay $24,000, plus donation of the Yankee Point installations (costing some $15,000 in 1948), for enlargement not only of the approximately 560 feet of 3-inch main downstream from the 8-inch main in Lower Walden Road, but also for enlargement of the 1500 or so feet of pipe now connecting the 8-inch main sections upstream from Lower Walden Road. The company's claim, as advanced at the hearing and on brief, is substantially to the effect that it may require Sawyer to donate the entire sum of about $39,000, without refund and without adjustment to actual costs of installation of the approximately 2000 feet of 8-inch main, and that it may do this without submitting in any way to the

regulatory authority of this Commission. If that is the company's position we here question it.

The Commission, on three recent occasions, has stated that when a water utility undertakes to extend service outside its certificated or other acknowledged service areas, such extension will be regarded by this Commission as that of a public utility, subject to the company's applicable tariff rates, rules and regulations and to the further requirement that prior authority be secured by the utility, pursuant to General Order No. 96, for rate or service arrangements which deviate from the company's filed tariff schedules. (Anderson v. Yucca Water Co., Ltd., 54 Cal. P.U.C. 525; Di Liberto v. Park Water Co., Inc., 54 Cal. P.U.C. 639; Plunkett et al. v. Park Water Co., Inc., 54 Cal. P.U.C. 644.)

We find that, with respect to Yankee Point Acres No. 1, the defendant company has, since 1949, undertaken to supply water in that subdivision and to other individual consumers now receiving water through existing facilities therein, as a public utility and that, as such, the company is subject to the full regulatory authority of this Commission and to the requirement that it observe its filed tariff rates, rules and regulations as well as all applicable general orders of this Commission respecting such service.

We also find that the company, by execution of the 1949 agreement and the 1956 amendments thereto, has unequivocally indicated its intent to dedicate and has in fact dedicated its service, as set forth in said amended agreement, to the balance of the Victorine Ranch properties. Accordingly, with respect to such service, the company is also subject to our regulatory authority.

We now turn to a consideration of the merits of the 1949 agreement and the amendments of May 21, 1956. That agreement, as has been heretofore noted, provides for service under conditions that deviate from the company's tariffs in effect when it was negotiated

and at the present time. The company has never sought nor secured authority to carry out its provisions, nor can the maneuver by which Sawyer was induced to request its unconditional approval, as amended, be considered by the Commission as compliance by the company with the requirements of Chapter X of General Order No. 96. The contract and its amendments, however, are before the Commission in this proceeding; the contract as an exhibit to Sawyer's complaint and the amendments as part of Sawyer's request for dismissal of the complaint contingent upon unconditional approval of the agreement.

It would serve no useful purpose to direct the company to file the amended agreement and request its approval in view of the stand it has taken that it is not required to do so. Instead, the Commission, here and now, asserts the full scope and extent of its power to make whatever order in this proceeding it may deem appropriate with respect to the facilities and service contemplated by that agreement and by the amendments thereto. Indeed, though the company may have inadvertently overlooked the point, paragraph 9 of the 1949 agreement, confirmed by the 1956 amendments, specifically states that "this agreement shall at all times be subject to such changes or modifications of the Public Utilities Commission of the State of California as said Commission may from time to time direct in the exercise of its jurisdiction." We realize, of course, that the company is of the opinion that the Commission would be acting in excess of its jurisdiction if it were to insist that the company seek and secure prior authorization for that instrument, or if the Commission were to modify its terms. The Commission, however, does not share the company's opinion on that issue.

The company's main extension rule in effect in 1949, when the agreement was first executed, provided, with respect to

extensions to serve tracts or subdivisions, as follows (Rule and Regulation No. 19, par. B.):

> "Applicants for main extensions to serve subdivisions, tracts, and housing projects shall be required to deposit with the company before construction is commenced the estimated reasonable costs of the necessary facilities exclusive of service connections and meters. The size, type, and quality of materials and location of the lines shall be specified by the Company and the actual construction will be done by the Company or by a contractor acceptable to it. In case of disagreement over size, type and location of the pipe lines and the constructing medium the matter may be referred to the Public Utilities Commission for settlement. Adjustment of any substantial differences between the estimated and reasonable actual cost thereof shall be made after completion of the installation, subject to review by the Commission.
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> "For a period not exceeding ten years from the date of completion of the main extension, the Company will refund to the depositor, or other party entitled thereto, annually, 35% of the gross revenues collected from consumer or consumers occupying the property to which the said extension has been made; provided, however, that the total payments thus made by the Company shall not exceed the amount of the original deposit without interest."

On September 28, 1954, just prior to the filing of Sawyer's complaint with the Commission and while he was endeavoring to secure water service to his properties from the company, the Commission, by a decision issued in a statewide investigation proceeding, prescribed a new form of main extension rule to be observed by all water utilities subject to its jurisdiction. (Water Main Extension Rules, 53 Cal. P.U.C. 490.) The rule therein prescribed, which was filed by California Water & Telephone Company on November 3, 1954, as Revised Cal. P.U.C. Sheet No. 17-W of its tariff schedules, provided, with respect to extensions of service to tracts and subdivisions, in part as follows (Rule and Regulation No. 19, par. C):

> "1. An applicant for a main extension to serve a new subdivision, tract, housing project, industrial development or organized service district shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of the mains, from the nearest existing main at least equal in size to the main required to serve such development, including necessary service stubs or service pipelines, fittings, gates and housings therefor, and including fire hydrants when requested by the applicant or required by public authority, exclusive of meters. If additional facilities are required specifically to provide pressure or storage exclusively for the service requested, the cost of such facilities may be included in the advance upon approval by the Commission".

The rule goes on to provide for refund of the advances under alternate methods, one of which provides as follows:

> "b. Percentage of Revenue Method
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> The utility will refund 22% of the estimated annual revenue from each bona fide customer, exclusive of any customer formerly served at the same location, connected directly to the extension for which the cost was advanced. The refunds will, at the election of the utility, be made in annual, semiannual or quarterly payments and for a period of 20 years."

The Commission's decision which prescribed the foregoing rule directed that, in effecting transition from former extension rules, public utility water systems should apply the provisions of their former rules to prospective customers who had signed applications for service or those who had actively negotiated in good faith for service during the six-month period prior to the date of issuance of the Commission's decision, September 28, 1954.

We have no hesitancy in finding as a fact that Sawyer was negotiating actively and in good faith with the company for water service for at least six months prior to promulgation of the new extension rule. We are, accordingly, of the opinion that, with respect to any refunds to which he may become entitled under the terms of the 1949 agreement, as amended, concerning further extensions of service to portions of the Victorine Ranch below the 600-foot contour, that, despite the terms of that agreement, the amount and

duration of such refunds should be calculated on the basis of the company's extension rule in effect on July 8, 1949. With respect to service on the Victorine Ranch properties above the 600-foot contour, although the 1949 agreement provides that such service shall be on terms acceptable to the company, the Commission asserts the power to scrutinize those arrangements also, if and when made, in advance of any construction in connection therewith and, if necessary, to revise or modify any subsequent contract or further amendments to the 1949 agreement which relate to such extensions of service.

Although we have said that the company should apply its main extension rule in effect in 1949 to refunds to which Sawyer may become entitled under the 1949 agreement, as amended, despite the present language contained in the instrument, we recognize that the former extension rule, in effect in 1949 is not clear with regard to the size of the company's main to which the subdivider was required to provide facilities in order to make the connection. In that respect-and we concede that the former rule was deficient on that point-the present rule is more specific and requires that the subdivider advance the "estimated reasonable cost of the mains, from the nearest existing main at least equal in size to the main required to serve such development, . . ."

The company, by its amendments to the 1949 agreement, appears to have conceded that a connection to its 8-inch main in Lower Walden Road, rather than construction of a new 8-inch main 5200 feet in length, would be adequate for service to the balance of Yankee Point Acres No. 1 and would also provide at least a start for facilities that might ultimately be needed to serve other portions of the Victorine Ranch. However, by requiring that the donation from Sawyer also should include the cost of enlarging some 1500 feet of the main further upstream from the section of 8-inch main in Lower Walden Road, the company is attempting to saddle upon

Sawyer its own responsibility, for providing adequate installations for existing and future service in the Carmel Highlands area. As we view the present main extension rule, Sawyer is not obligated to advance the cost of any more pipe than would be necessary to make the connection between the downstream terminus of the existing main in Lower Walden Road and the northern terminus of his 8-inch main at the intersection of State Highway No. 1 and Sonoma Road, a distance of approximately 560 feet.

Since no refunds are contemplated for this phase of the agreement, we see no reason for not applying the terms of the present main extension rule in respect of the length of pipe required to be furnished by Sawyer to meet the company's "nearest existing main at least equal in size to the main required to serve such development." Accordingly, the 1949 agreement, as amended, will be modified to provide that only the reasonable actual costs of installation of approximately 560 feet of 8-inch pipe and related valves and fittings may be included in the donation required of Sawyer for the connection to his existing 8-inch main in State Highway No. 1, in lieu of the provision for a donation of $24,000, not subject to adjustment to actual costs, now contained in the amended agreement. We do not disturb other provisions of the agreement calling for a donation by Sawyer of the Yankee Point Acres No. 1 installations completed by him in 1948.

We are aware of the implications of the action we take here in asserting regulatory power over contracts between utilities and prospective customers or land developers which contemplate extension of utility service outside of areas within which a utility may claim to have circumscribed its service. The parties here, however, have presented to the Commission a contract which contains conflicting provisions on the same subject; namely, the provision in paragraph 9 of the 1949 agreement, which states that the agreement shall "at all times" be subject to modification by the Commission, and the provision

in paragraph 6 of the 1956 amendatory instrument, which states that the amended agreement shall be of no effect unless the Commission's approval thereof is "full, final and unconditional and subject to no further changes without the consent of the parties hereto,. . ."

While the company may, and does, maintain that the Commission has no power at all over the agreement, thus seeming to make surplusage of paragraph 9 of the 1949 instrument, the Commission cannot accept the company's view and must give effect to that paragraph as the only alternative to complete abrogation of the power which we here assert. Any other course would result in making a travesty of the constitutional and statutory scheme of regulation of public utilities in this state.

Counsel for the company, at the opening of the hearing, moved to dismiss the Sawyer complaint. He renewed the motion at the conclusion of that portion of the record which had to do specifically with the Sawyer matter. Both motions were denied by the examiner. We have considered the motions and the showing made in support thereof and find them to be without merit. The examiner's rulings should and will be affirmed.

O R D E R

Public hearing having been held on the complaint of Charles G. Sawyer against California Water & Telephone Company in this consolidated proceeding, evidence and argument having been received and considered, the Commission having determined that it is appropriate to issue a separate and final order herein with respect to the Sawyer matter, Case No. 5596, and now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that:

1. The motions made by California Water & Telephone Company, at the hearing, to dismiss the complaint of Charles G. Sawyer herein are and each of them is denied.

2. The request of Charles G. Sawyer, filed herein on May 23, 1956, for dismissal of his complaint contingent upon unconditional approval by the Commission of the agreement of July 8, 1949, as amended by the agreement of May 21, 1956, is denied.

3. California Water & Telephone Company, defendant herein, is directed to carry out the terms and conditions of its agreement of July 8, 1949, as amended by its agreement of May 21, 1956, with Charles G. Sawyer and Le Forust, Inc., as modified to the extent and in the manner set forth in the preceding opinion with respect to (1) application of its extension rule in effect on July 8, 1949, to the extension of facilities as provided in the agreement of July 8, 1949, as amended, to portions of the Victorine Ranch properties other than Yankee Point Acres No. 1; (2) connection of its 8-inch main in Lower Walden Road with Sawyer's 8-inch main terminating at the intersection of Sonoma Road and State Highway No. 1, and the payment by Sawyer therefor, by way of donation, of no more than the reasonable actual costs of installation of said connection.

4. California Water & Telephone Company is directed to re-execute said agreement of July 8, 1949, as amended by the agreement of May 21, 1956, and as modified by this order, as of a date subsequent to the effective date of this order, and to file with the Commission, within thirty days after the date of issuance of this order, two fully conformed copies of said agreement.

5. Except as granted herein, the relief prayed for by Sawyer in his complaint, other than the institution of an investigation by the Commission into the company's Monterey subdivision main extension contracts and practices, which has been done, is denied.

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

Dated at Los Angeles, California, this 29th day of August, 1956.

President

Commissioners