

ORIGINAL

Decision No. 54247

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT E. ROWLEY and BEVERLEY U. ROWLEY, his wife,
Complainants,

vs.

Case No. 5646

PATTERSON CITY WATER COMPANY,
a Corporation,
Defendant.

Logan & Densmore, by William Logan, for complainants.
Taylor, Taylor, & Taylor, by Edward T. Taylor, for
defendant.
George F. Tinkler, for the Commission Staff.

O P I N I O N

Complainants, subdivision developers, seek an order from the Commission directing defendant, a public utility water company, to apply the refund provisions of its subdivision water main extension rule (Rule 19, paragraph B) in effect prior to November 16, 1954, rather than those of its current rule (Rule 19, paragraph C), to complainants' application for construction of a water main extension to serve the Rowley Addition, a subdivision in the City of Patterson, Stanislaus County. Defendant, by its answer, avers in substance that it is not obligated to apply the refund provisions of its former Rule 19 and asks that the complaint be dismissed.

The case was submitted November 15, 1955, following receipt of evidence at a public hearing held at Patterson before Examiner John M. Gregory.

The evidence discloses that defendant constructed certain water main extensions into complainants' subdivision. On January 31, 1955, complainants deposited with defendant the sum of \$3,553.57

to cover the costs of constructing these extensions. The method by which this deposit is to be refunded to complainants is the question the Commission is called upon to decide.

Prior to September 28, 1954, defendant had its Rule 19 on file with the Commission. Paragraph B of this rule set forth the deposit and refund provisions relative to the financing of water main extensions to serve tracts or subdivisions.¹ On September 28, 1954, the Commission issued Decision No. 50580 setting forth new rules governing such deposits and refunds.² (Water Main Extension Rules, Decision No. 50580, September 28, 1954, Case No. 5501, 53 Cal. P.U.C. 490). By its decision the Commission directed public utility water companies to file copies of the new rules with the Commission within forty days after the effective date of the decision. The new rules would become effective as to any particular utility upon five days' notice to the Commission and to the public after such filing. Defendant filed the new rules with the Commission on November 12, 1954.

Decision No. 50580 in addition to promulgating the new rules, provided that in effecting transition from the then existing

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Briefly this rule provided that applicants for extensions to supply real estate tracts or subdivisions were required to deposit with the water company the estimated reasonable cost for such extension prior to the commencement of construction. Refunds were then made to the applicants for each bona fide consumer within the subdivision upon the basis that the cost of each 150 feet of main within the subdivision bears to the total amount of the original deposit. No refunds were to be made after a period of ten years from the date of completion of the installation.

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The new rules provide that applicants for extensions to supply real estate tracts or subdivisions shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of the mains. Refunds are made under one of two methods at the option of the utility. Under one method (Proportionate Cost), for each service connection the utility will refund within 180 days the portion of the total amount of the advance which is determined from the ratio of 65 feet of main to the total footage of main in the extension for which the cost was advanced. Under this method no refunds are made after a period of ten years from the date of completion of the main extension. Under the second method (Percentage of Revenue) the utility refunds 22% of the estimated annual revenue from each bona fide customer connected directly to the extension. Under this method the refund is made for a period of twenty years. The total amount of the refund under either method is not to exceed the amount advanced.

rules to the new rules, public utility water companies "should apply the provisions of their present rules for main extensions to those prospective customers who have signed applications for service or those who have actively negotiated in good faith for service during the six month period prior to the date of issuance of this decision." Complainants in their pleadings allege in substance that they had actively negotiated with defendant in good faith for service during the six-month period prior to September 28, 1954 (the issuance date of Decision No. 50580), and for this reason they claim the refund provisions of defendant's prior rule apply to them. Defendant denies this allegation.

The testimony of complainant R. E. Rowley discloses that on various occasions during the period from April 19, 1954, to September 28, 1954, the witness engaged in discussions and conversations with representatives of defendant concerning water service to complainants' contemplated subdivision. It must be decided whether these discussions and conversations were of such a nature as to have constituted active negotiations in good faith for service.

The witness testified that the first such conversation was with Albert Kaas, defendant's general manager, that it took place just after April 19, 1954, at the witness' furniture store, and that it consisted of the witness telling Kaas that he was considering the purchase of certain property for subdivision purposes and that if he did make the purchase, he would contact Kaas relative to the costs of supplying water to the property.

According to the witness' testimony, the next conversation took place either on April 23, 1954, or April 24, 1954, at defendant's office. The witness testified that he had not reached a decision relative to buying the subdivision property at the time of this discussion but that he was contacting the various utilities

for the purpose of ascertaining what the costs of supplying service to the subdivision would be if he did purchase the property. According to the witness, it was during this conversation that defendant's then existing rule governing the financing of water main extensions was discussed. The witness stated that during this discussion he showed Kaas a preliminary map of the contemplated subdivision and various routes for piping water to the subdivision were discussed as were the approximate costs involved.

The witness testified that the next conversation occurred when he went to defendant's office for the purpose of requesting defendant to send a letter to the California Division of Real Estate relative to the defendant supplying water to the contemplated subdivision. This request was made about one week before May 26, 1954. The witness stated that he did not make any request or formal application for water or for the extension of mains during this conversation. There is a conflict in the testimony as to whether or not the witness informed defendant's representatives at this time that he had decided to purchase the property. The evidence shows that defendant sent a letter dated May 26, ¹⁹⁵⁴~~1956~~, to the Division of Real Estate wherein CPH defendant stated that it would construct water mains for the proposed subdivision "according to Rule No. 19 as filed with the Public Utilities Commission."

The witness testified to an informal conversation between himself and Kaas sometime between the first and middle of August, 1954. The witness couldn't remember where the conversation took place nor could he remember just when it took place. He stated that he told Kaas he had purchased the property and that he would be ready for water "before too long". The witness' testimony indicated that another informal conversation took place between himself and Kaas around September 15, 1954. The witness stated that he told Kaas he would be ready for water "sometime probably in November". The witness

also testified that he talked with Kaas on other occasions regarding water but that he couldn't remember the gist of any of those particular conversations. Kaas testified that he couldn't remember having any conversations with complainant R. E. Rowley during the period between June 1, 1954, and September 28, 1954, relative to water service to the subdivision. Kaas also testified that it was his understanding that his conversations with Rowley prior to September 28, 1954, were solely for the purpose of giving Rowley information.

The evidence also shows that an oral application for water for the subdivision was made by complainants' representative sometime around the first of November, 1954, and that on November 16, 1954, complainants made a request for a statement of the actual cost of running the water main into the subdivision. This statement was sent to complainants on January 19, 1955. A portion of the subdivision began receiving water from defendant about the first part of March, 1955.

It is the Commission's opinion and it so finds that the discussions and conversations occurring prior to September 28, 1954, as shown by the testimony hereinabove referred to do not establish that complainants had actively negotiated in good faith for service during the six-month period prior to the date of issuance of Decision No. 50580.

The term "negotiate" means to hold intercourse or treat with in order to come to terms upon some matter, as a purchase or sale or to conduct communications or conferences as a basis of agreement. (Websters New International Dictionary, Second Edition, unabridged; Mason vs. Mazel, 82 CA 2d 769).

This definition indicates that the word "negotiate" refers to that activity which is entered into for the purpose of reaching an agreement or of consummating a contract. The first and second conversations referred to above were not entered into for that purpose;

rather, they were entered into for the purpose of information to assist complainants in deciding whether or not to purchase the subdivision property. The third conversation was entered into for the purpose of obtaining a letter from defendant. It was not to consummate an agreement relative to water service. The remaining conversations held prior to September 28, 1954, were of such a character as to preclude them from being classed as active negotiations for water service as such negotiations were contemplated in Decision No. 50580.

The Commission finds, therefore, that complainants had not actively negotiated with defendant in good faith for service to the subdivision in question prior to September 28, 1954, the issuance date of Decision No. 50580. The Commission further finds that the refund provisions of paragraph "C" of defendant's Rule 19 as filed with the Commission on November 12, 1954, govern the refund of complainants' deposit hereinabove referred to. It appears, therefore, that this complaint should be dismissed.

O R D E R

Complaint as above entitled having been filed with this Commission, a public hearing having been held thereon, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED that the above-entitled complaint be and it is dismissed.

Dated at San Francisco, California, this 11th day of DECEMBER, 1956.

[Signature]
President
[Signature]
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Commissioners