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Decision No. 54353

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLYDE R. PICKEREL, Complainant, v. CALIFORNIA WATER SERVICE COMPANY, a corporation, Defendant.	)	Case No. 5647

McCormick, Moock and McCormick by Leroy McCormick for complainant.
McCutchen, Thomas, Matthew, Griffiths & Greene by A. Crawford Greene, Jr. for defendant.
George F. Tinkler for the Commission staff.

O P I N I O N

Complainant, a subdivision developer, seeks an order from the Commission directing defendant, a public utility water company, to apply the refund provisions of its subdivision main extension rule in effect prior to October 12, 1954, rather than those of its current rule to complainant's application for construction of a water main extension to serve Lots 36 to 46, inclusive, of Tract 181, in Visalia, Tulare County. Defendant, by its answer, avers in substance that it is not obligated to apply the refund provisions of its former rule and asks that the complaint be dismissed.

The case was submitted November 29, 1955, following receipt of evidence at a public hearing held at Visalia, before Examiner John M. Gregory.

The evidence discloses that defendant constructed a certain water main extension for the purpose of serving complainant's subdivision. Complainant deposited with defendant approximately $3,500 to cover the cost of constructing this extension. The Commission must now decide whether defendant's former or present

rule, concerning the refund of such deposit, is to be applied in the present case.

Prior to September 28, 1954, defendant had on file with the Commission its rule setting 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

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1 This rule was numbered 15B. Briefly it 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 extensions prior to the commencement of construction. Refunds were then made by one of two methods at the option of the applicants. Under one method (Revenue) the utility refunded to the applicants annually 35 per cent of the gross revenues collected from consumers occupying the property to which the extensions had been made. Under this method the refund was to be made for a period of ten years. Under the second method (Proportional Cost) the utility made a refund to the applicants for each bona fide consumer within the subdivision in an amount equal to the average total installed cost of 75 feet of main within such subdivision. Under either method, the total amount of the refund was not to exceed the original amount advanced.

2 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 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 per cent 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 original amount advanced.

and to the public after such filing. Defendant filed the new rules with the Commission on October 8, 1954.[3]

Decision No. 50580 in addition to promulgating the new rules provided that in effecting transition from the then existing 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." Complainant alleges in his pleading that he had actively negotiated with defendant for service during the six-month period prior to September 28, 1954 (the issuance date of Decision No. 50580), and for this reason he claims that the refund provisions of defendant's prior rule apply to him. Defendant denies this allegation.

Complainant's testimony discloses that he contacted defendant's representatives about July 27, 1954 relative to water service. His testimony indicated that he told defendant's representatives he wanted to have water put into his subdivision and he wanted to know what the cost was going to be. D. A. Hendrix, defendant's Visalia manager, testified that complainant came in and requested a preliminary cost estimate for the installation of mains into the subdivision. The evidence shows that such a preliminary cost estimate was prepared by defendant's engineering department and that this estimate was delivered to complainant on August 16, 1954 together with a letter of transmittal.

The cost estimate contained the statement: "this estimate is subject to acceptance by the applicant within 30 days." The letter of transmittal stated in part: "Should you desire to have these facilities installed (the main extension in question), please notify this office so that a contract providing for said installation can be prepared." The letter, dated August 16, 1954, also stated: "This estimate is based upon the Company's current contract prices for

3 On October 8, 1954, defendant filed its Rule 50 pertaining to main extensions. On October 6, 1955, defendant filed its Rule 15 also pertaining to main extensions, which rule superseded Rule 50. Both rules are identical.

materials and labor and is subject to your acceptance and execution of the agreement within thirty days from this date."

The testimony indicates that when the cost estimate and covering letter were delivered to complainant, he informed defendant's representative that he was not ready to have the extension installed at that time. Complainant's testimony is confusing as to his reason for this. However, the reason apparently was complainant's then poor financial condition.

The testimony also indicates that when the cost estimate was delivered to complainant, he questioned the size of the pipe used by defendant's engineering department in preparing the estimate. There is a conflict in the testimony as to when complainant was notified by defendant that the size of the pipe used in the estimate was correct. Complainant testified that he was notified of this fact within a week or two weeks after his conversation with Hendrix on August 16, 1954. Hendrix testified that defendant did nothing about the pipe size controversy at that time for the reason that complainant had stated he did not want to install the extension at that time.

The evidence shows that complainant did not accept the cost estimate within the 30-day period. According to the testimony, the next time complainant contacted defendant relative to water service was on December 1, 1954. At that time complainant requested that a formal agreement between himself and defendant be prepared relative to the installation of the extension mains. Defendant's representatives then informed complainant that it would be necessary to revise the preliminary cost estimate and get new figures before an agreement could be prepared.

The evidence further shows that new cost figures were prepared by defendant and delivered to complainant and that a contract

was entered into on July 15, 1955 between complainant and defendant for the installation of the extension mains to the subdivision in question.

One of defendant's representatives testified that if a cost estimate prepared by defendant is not accepted within the 30-day period, the defendant considers that the matter has been allowed to lapse and it is cancelled in defendant's files.

The Commission finds from the evidence that complainant did negotiate with defendant for service during the period in question. The Commission further finds that the negotiations held prior to September 28, 1954, culminated in an offer by defendant and that this offer expired prior to the issuance date of Decision No. 50580. The Commission also finds that the negotiations culminating in that offer terminated prior to September 28, 1954.

Based upon these findings, the Commission must decide whether the provisions of the portion of Decision No. 50580 quoted above includes those prospective customers who negotiated for service during the period in question but whose negotiations were terminated prior to the issuance date of Decision No. 50580 without an agreement being reached with the utility.

It might appear from a first reading that the provision in question does apply to any proposed customer who negotiated with a utility during the period in question regardless of whether or not the negotiations were terminated prior to the end of that period without an agreement being reached. Such an interpretation, however, would lead to absurd results. If such an interpretation were to be placed on the decision, a utility's prior rule would apply to a subdivider who had negotiated with the utility during the period in question, notwithstanding that a contract with the utility for main extensions was not actually entered into until years after the rule change.

The Commission inserted the provision in question into Decision No. 50580 for the purpose of preventing unjust results, caused by the rule change, in those cases where negotiations had commenced and were in progress at the time the decision was issued. With respect to the problem sought to be remedied by that provision, the situation where negotiations have terminated prior to the decision's issuance date and are commenced again at some later date after the rule change is no different from the situation where negotiations are commenced for the first time at some date after the rule change. It was not the intent of the Commission to include either situation within the purview of the provision in question.

The Commission finds, therefore, that complainant's activities prior to September 28, 1954, the issuance date of Decision No. 50580, were not such as to bring him within the provision of the quoted portion of that decision. The Commission further finds that the refund provisions of paragraph "C" of defendant's Rule 50 as filed with the Commission on October 8, 1954, govern the refund of complainant's 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,

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

Dated at San Francisco, California, this 8th day of January, 1952.

Peter E. Mitchell
President

Commissioners