

Decision No. 54526**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PAUL W. JOHNSON and
PEARL M. JOHNSON,
his wife,

Complainants,

vs.

PATTERSON CITY WATER COMPANY,
a corporation,

Defendant.

Case No. 5652

Logan & Densmore by William Logan for complainants.
Taylor, Taylor, & Taylor by Edward T. Taylor, Jr.,
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 Del Puerto 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 16, 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 April 15, 1955, complainants deposited with defendant the sum of \$984.00 to cover the costs of constructing these extensions. The Commission must now decide whether defendant's former or present rule, concerning the refund of such deposits, is to be applied in the present case.

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

¹ 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.

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 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 of the deposit advanced.

Commission within forty days after the effective date of the decision. The new rules would become effective as to any particular utility on 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 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 pleading 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 the witnesses discloses that on several occasions during the period from approximately April 1, 1954 to September 28, 1954, Complainant Paul Johnson 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.

There is a certain amount of conflict in the testimony as to how many conversations took place between Johnson and defendant's representatives during this period. There is also

conflicting testimony as to who was present during some of these conversations and also as to what was said.

Johnson testified that the first conversation took place between himself and J. D. Patterson, defendant's president. According to complainants' testimony, this conversation took place about April 1, 1954, in the lobby of one of the local banks in the City of Patterson. Johnson testified that at this time he was dealing with a title insurance company relative to having that company prepare the California Division of Real Estate subdivision questionnaire for the property in question. He testified that in the course of these dealings it was called to his attention that he should obtain letters from the various utilities in order to expedite obtaining a clearance for the proposed subdivision from the Division of Real Estate. Johnson testified it was for this purpose that he first contacted Patterson. According to Johnson's testimony, he told Patterson during this first conversation in the bank that he was going to subdivide the property in question, that he had a broker who had an option on the property, and that the broker had a buyer. Johnson further testified that during this conversation, he told Patterson the various parties wanted to know whether there was going to be any charge for installing the water mains inasmuch as such a charge would effect Johnson's sale price for the lots. Johnson further testified that Patterson told him it hadn't been Patterson's custom to charge for main extensions within the City of Patterson and that he would not charge Johnson. Johnson further testified that he told Patterson he wouldn't ask for an extension of the main until he was ready for it. According to the testimony Patterson then told Johnson to indicate when he was ready and defendant would put the mains in. Johnson testified

that he told Patterson of the need for the letter to the Division of Real Estate and Patterson told him that whenever he wanted it to come to Patterson's office and it would be prepared.

Patterson testified that several years before the conversation in the bank, Johnson had spoken to him regarding the development of the property in question. According to Patterson's testimony on this earlier occasion he had spoken to Johnson about defendant's then existing rule regarding main extensions and that at the time of the conversation in the bank, he told Johnson that the main extension rule, previously discussed, was still in effect.

Johnson testified that his next discussion with defendant's representatives occurred about April 7, 1954. Complainant stated that at this time, he went to defendant's office and spoke with one of defendant's women employees. According to Johnson's testimony this conversation consisted of a request by complainants to defendant that it send the letter to the Division of Real Estate relative to water service to the proposed subdivision. Albert Kaas, defendant's general manager during this period, testified that he spoke with Johnson about this time relative to the requested letter and water service to the proposed subdivision. Johnson denies this. The evidence indicates that defendant sent a letter dated April 14, 1954 to the Division of Real Estate, which stated: "The Patterson City Water Company will serve the Del Puerto addition, a subdivision of a portion of lots B and C of the town of Patterson, containing 21 lots with domestic water service."

Johnson testified that he did not have any further formal conversations with defendant's representatives after the time he requested the letter to the Division of Real Estate until about

November 1, 1954. Patterson testified, however, that he had several conversations with complainant Paul Johnson concerning water to the proposed subdivision about the time this letter was sent but that as a result of these conversations it was Patterson's impression that the plans for going ahead with the proposed subdivision were indefinite.

The evidence further shows that Johnson had a number of conversations with both Kaas and Patterson during November, 1954, at which time Johnson asked that main extensions to the proposed subdivision be put in. The evidence also shows that in November, 1954, Kaas informed Johnson of the amount of the deposit necessary to cover the cost of installing the main extensions in question and that in April, 1955, Patterson gave Johnson a different figure as the amount of the necessary deposit. Johnson deposited this latter amount with defendant. The first house in the subdivision was completed in the spring of 1955. A portion of the subdivision began receiving water from defendant about the first part of June, 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 consumating a contract. The conversations referred to above that were held prior to September 28, 1954 were not entered into for that purpose rather they were entered into for the purpose of obtaining information to assist complainant in the further development of the proposed subdivision or for the purpose of obtaining a letter from defendant. These conversations were not entered into for the purpose of consumating an agreement relative to water service.

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 February, 1957.

[Signature]
President
[Signature]
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Commissioners