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Decision No. 54848

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ZUCKERMAN-MANDEVILLE, INC., a corporation,

Complainant,

vs.

CALIFORNIA WATER SERVICE COMPANY,

Defendant.

Case No. 5845

Stanley M. Arndt, for complainant.
McCutchen, Thomas, Matthew, Griffiths & Greene by Robert Mingo Brown, for defendant.
George F. Tinkler, for the Commission staff.

ORDER DENYING MOTION
TO DISMISS AND
REOPENING FOR FURTHER HEARING

Nature of Complaint

In this complaint, filed November 1, 1956, Zuckerman-Mandeville, Inc., seeks an order of this Commission directing that a contract between it and California Water Service Company, defendant herein, pertaining to the extension of a water main to provide service to a residence constructed for complainant's vice president, shall provide (1) that complainant shall be entitled to a refund, of a sum advanced for construction of the main, to the same extent and under the same circumstances if a main of more than four inches in diameter is installed as if a main of four inches or less is installed, and (2) that complainant shall be entitled to a refund if later users shall require that the main be further extended by a distance of sixty-five feet or more as well as if extended less than sixty-five feet.

Complainant's primary contention is that the application of defendant's water main extension rule to complainant's situation

is discriminatory, unfair, arbitrary, inequitable, illegal and in violation of both the state and federal constitutions.

Defendant's Answer

Fundamentally, defendant's answer is that there is in this matter no grounds for complaint; the main extension rule in effect is that which this Commission ordered applicant to file and apply, defendant has correctly applied the rule and complainant does not allege otherwise, that complainant's general attack upon the reasonableness of the rule is unsupported by any allegations and that, therefore, the complaint should be dismissed without argument and without hearing for failure to state a cause of action.

Hearing

Public hearing in the matter was held before Examiner F. Everett Emerson on January 17, 1957, at Stockton. After complainant's presentation of evidence and cross-examination of complainant's sole witness, defendant moved for dismissal of the complaint and indicated that the defendant would present no evidence. A member of the Commission staff then called as a witness for the staff the vice president of defendant and, after some cross-examination by complainant, complainant reopened its case with the same person being called as an adverse witness. Defendant presented no evidence. After closing statements of counsel, the matter was taken under submission.

Nature of Evidence

Alfred R. and Patricia N. Zuckerman, husband and wife, owned an approximate one-acre parcel of land located at the southeast corner of the intersection of Country Club Boulevard and Virginia Lane, near the Stockton Country Club and a short distance outside of the city limits of Stockton, which they by deed transferred to complainant some time during August 1956. It appears that

the Zuckermans obtained the property during July 1953. Arrangements were made for complainant to build a single-family dwelling on the property and to sell the thus improved property back to the Zuckermans. Complainant, a California corporation, is not in the real-estate business but is primarily engaged in farming operations and the shipping of farm produce. In so far as the applicability of the various portions of defendant's main extension rule is concerned, complainant should be regarded as an individual applicant for water service and not as a real-estate subdivider or developer.

During the summer of 1955, Mr. Zuckerman made inquiry of defendant as to how water service could be obtained for his property. By letter of August 31, 1955, defendant presented Zuckerman with a preliminary cost estimate for the extension of water facilities to the property, the estimate indicating that a deposit of $1,239 would be required and that, although 6-inch and 8-inch pipe was to be installed, such sum represented the total estimated cost of $1,389 for 600 feet of 4-inch main, less an allowance of $150 as representing "free footage". The cost estimate sheet carried a notation that the estimate was subject to acceptance by Zuckerman within a thirty-day period. The letter stated, in part, "You will note that the required deposit is $1,239.00 and is subject to refund at $150.00 per each additional customer attached to the main." Among the attachments to the letter was a printed copy of defendant's main extension rule.

Zuckerman apparently did not understand the provisions or applicability of the main extension rule and therefore made further inquiry of defendant and he and the defendant exchanged two or more letters on the subject. In defendant's letter of December 7, 1955, Zuckerman was again informed that the utility

would actually install 6-inch and 8-inch pipe but that Zuckerman would be asked to advance only the cost of a 4-inch main. Zuckerman was also informed that the time limit of 30 days had expired and that, therefore, it would be necessary to refigure the job at current-day prices.

The testimony does not indicate what, if anything, may have been done in the interim but it appears that on August 13, 1956, Zuckerman informed the utility that he was then ready to proceed and wanted water service extended to the property. On August 29, 1956, defendant informed Zuckerman by letter that the cost of extending facilities was then $1,384 and was refundable at $168 per additional customer attached to the extension. Again, a thirty-day time limit was placed upon the acceptance of such figure. By letter of September 7, 1956, Zuckerman requested defendant to send him the "formal water contract" in duplicate so that a copy could be submitted to Zuckerman's attorney. The letter advised that "the contract should be between yourself (defendant) and Zuckerman-Mandeville, Inc., a corporation, as title to the property is now vested in the corporation".

There followed several letters between complainant's attorney and defendant during September and October 1956, in which both parties asked and answered questions respecting the application of the main extension rule. These letters indicate continued misunderstanding and finally, by letter of October 9, 1956, defendant suggested that complainant take the dispute to this Commission. Complainant wrote the Commission, under date of October 12, 1956, and among other things claimed that defendant contemplated installing a main larger than necessary and that by so doing complainant would be deprived of refunds that otherwise might accrue to complainant's benefit. The Commission's Secretary,

by letter of October 19, 1956, informed complainant that it appeared that defendant was complying with the rule, that the utility could not deviate therefrom without the authority of the Commission and that if it was felt that a great enough hardship would ensue complainant might file a complaint in the matter. The complaint herein was subsequently filed on November 1, 1956. Complainant signed the contract and deposited the sum of $1,384 with defendant under protest on November 29, 1956. The main was thereafter installed and service established.

It appears that defendant's water mains in the general area, prior to the extension to complainant's property, consisted of a 6-inch main along Wisconsin Avenue, between Country Club Boulevard and Michigan Avenue, a 6-inch main along Country Club Boulevard between Wisconsin and Oregon Avenues and a 6-inch main along Michigan Avenue extending from Wisconsin Avenue westerly to its terminal at the intersection of Michigan, Rainier and Modoc Avenues. This latter point being the main closest to complainant's property, the extension was made therefrom by installing 105 feet of 6-inch main westerly in Michigan Avenue, 391 feet of 8-inch main southerly in Rainier Avenue to the intersection of Rainier Avenue, Country Club Boulevard and Virginia Lane, and 104 feet of 8-inch main easterly in Country Club Boulevard. This new terminal would be approximately 1,850 feet distant from the main at the intersection of Wisconsin Avenue and Country Club Boulevard.

To the west of Rainier Avenue and Virginia Lane and extending from the Calaveras River to the Stockton Deep Water Channel lies the Stockton Golf & Country Club. This property is served by its own private water system and is not a customer of defendant. Properties to the north of Country Club Boulevard, opposite complainant's property, are served by defendant from the

main in Michigan Avenue. The first lot to the east of complainant's property has its own private well supply and the remaining property eastward to Wisconsin Avenue is either undeveloped or devoted to farming. Lying to the south of complainant's property, along Virginia Lane, are five residences whose water needs are being supplied from private wells. It seems apparent, therefore, that complainant is the sole customer to be served from the main extension in the foreseeable future. Complainant will also use a private well for garden irrigation and usage of defendant's water service will be limited to household usage.

As to why a combination of 6-inch and 8-inch pipe rather than some lesser size was installed as the main extension to supply complainant, there is little evidence beyond the testimony of defendant's vice president that the main eventually may further be extended to tie in with the main at Wisconsin Avenue and Country Club Boulevard in order to provide defendant with a "loop" for this portion of the water system.

Conclusions

From the evidence we find that complainant is in fact an applicant for individual service and that as such the provisions of Sections A, B-1 and B-3 of the utility's Rule No. 15, "Main Extensions", filed by the utility on October 6, 1955, and effective since November 1, 1955, are properly applicable to complainant's request for utility service. We find that the applicability of the rule and interpretations thereof by both parties led to misunderstandings, disagreement and subsequent dispute between them and that such dispute constituted a cause of action as contemplated by Section A-5 of said Rule No. 15, which section reads as follows:

> "In case of disagreement or dispute regarding the application of any provision of this rule,

> or in the circumstances where the application of this rule appears impracticable or unjust to either party, the utility, applicant or applicants may refer the matter to the Public Utilities Commission for settlement."

Accordingly, defendant's motion to dismiss the complaint herein on the primary grounds of failure to state a cause of action is hereby denied.

Under the agreement of November 29, 1956, which complainant signed under protest, complainant will be entitled to a refund or refunds, in accordance with Section B-1 of Rule No. 15, for each additional service connection made from the 600 feet of main installed to reach complainant's property. Section B-3 of Rule No. 15 provides for additional refunds when an extension or extensions of the specific main covered by the agreement is made, subject to the condition appearing in the last sentence of such section that "Where the utility installs a main larger than that for which the cost was advanced to serve an individual or individuals, and a subsequent extension is supplied from such main, the original individual or individuals will not be entitled to refunds which might otherwise accrue from subsequent extensions." Defendant herein, having determined that it would install a larger main (6 inch and 8 inch) than that (4 inch) for which complainant was asked to make an advance deposit, tendered complainant an agreement used by defendant in those cases where Section B-3 fails of applicability because of the installation of a larger main and the agreement makes no reference to said section. The agreement, in blank, is a standard form contract regularly filed with the Commission as part of defendant's tariffs.

As pointed out by defendant's counsel, this Commission has heretofore found[1] that the now existing rule respecting water

1/ See opinion in Decision No. 50580 issued September 28, 1954 in Case No. 5501 and related application.

main extensions is just, reasonable and sufficient. The Commission in fact ordered every privately owned water utility in this state to adhere to such rule and to no other. Such finding and order, however, should not be so interpreted as to foreclose questioning of the equity and propriety of application of the rule under any and all circumstances. It is in the very nature of this general rule covering many separate systems and widely different geographical areas that particular circumstances will arise wherein some departure from the main extension rule may reasonably be warranted. Authority to depart or deviate from the rule is then sought and if the reasonableness thereof is established the authority is granted. Indeed, defendant herein has itself sought and has been granted such authority. In this light, its contention that complainant herein may not challenge the reasonableness of the application of the rule, under particular circumstances, is without merit. In our opinion the contentions of complainant require complete answers and explanations. The necessity or the reasonableness of installing a larger main than that needed to supply the single dwelling of complainant is unexplained in this record beyond the vague testimony of defendant's vice president that the utility intended to provide a "loop" for the system. The location of the main and the reason for its length is also unexplained.

No attempt to fully inform the Commission was made by defendant. Defendant is long experienced before this Commission and should be aware that the Commission seeks all relevant facts in complaint matters. Under the circumstances it is proper, in our opinion, to reopen this proceeding and require that defendant make a full disclosure in the matter; accordingly,

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IT IS HEREBY ORDERED that submission in the matter of Case No. 5845 is hereby set aside and the matter is reopened for further hearing before Examiner Emerson in the Commission's courtroom in San Francisco at 10:00 a.m. on Tuesday, April 30, 1957.

Dated at San Francisco, California, this 16th day of APRIL, 1957.

President

Commissioners