

ORIGINAL

Decision No. 57467

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

J. F. PAULSON,

Complainant,

vs.

Case No. 6163

AZUSA VALLEY WATER COMPANY,
a corporation,

Defendant.

J. F. Paulson, certified public accountant, in propria
persona, as complainant.
Gibson, Dunn & Crutcher, attorney, by Richard L. Wells,
for defendant.
Richard R. Entwistle and James G. Shields, for the
Commission staff.

O P I N I O N

The above-entitled complaint of J. F. Paulson, an individual, was filed on July 31, 1958, versus Azusa Valley Water Company, a public utility water corporation. Defendant answered the complaint on August 18, 1958.

A public hearing was held before Examiner Stewart C. Warner on September 11, 1958, at Los Angeles.

The complainant is a certified public accountant and has been a builder and subdivider for the past eight years. His first contact with the defendant was in June, 1954, when he commenced negotiations with the defendant for the installation of a water system in Tract No. 12817, Los Angeles County, which he was

subdividing into 35 lots and developing by the construction and sale of 35 homes thereon. He received a preliminary estimate from defendant's secretary-manager of a cost of \$150 per unit as the maximum amount of the water system installation. On August 23, 1954, the agreement, Exhibit No. 1, between the complainant and defendant was executed. Said agreement provided for the advance by the complainant to the defendant of \$6,500 as the cost of the water system installation. Accompanying the acceptance and signing of said agreement was a letter dated August 25, 1954, Exhibit No. 2, from complainant to defendant, stating that said agreement was signed and the deposit of \$6,500 was made with the understanding that upon completion of the job, the defendant would furnish the complainant with a cost breakdown, and that, if the actual cost were less than the deposit, the difference would be refunded to the complainant. The record shows that defendant's Rule and Regulation No. 15, main extensions to subdivisions, was on file with the Commission at that time. Said rule and regulation provided that advances by subdivider would be refunded to a subdivider by the utility out of 35 percent of the gross revenues resulting from the sales of water in the subdivision over a period of not more than 10 years, or until the advance had been completely refunded.

On June 2, 1955, the complainant wrote to the defendant requesting a statement of the cost of the water system installation. Copy of this letter was received as Exhibit No. 3. Item No. 1 by reference is a copy of a letter attached to the complaint, dated June 6, 1955, from the defendant to the complainant in reply to the letter, Exhibit No. 3. Said item indicated that the cost of the

water system installation was \$6,292.60 and a check in the amount of \$207.40 representing the difference between the said amount and the original advance of \$6,500 was enclosed. Attached was a schedule showing the derivation of the total water installation cost in the amount of \$6,292.60.

In March, 1957, an agent for the defendant called on the complainant and offered the latter \$1,217.76 of additional refund if complainant would accept 3% preferred stock for the remainder of the advance. At that time the complainant had received the aforementioned refund of \$207.40 plus cash refund, out of the year 1955 water sales, of \$271.05. A refund of \$588.34 was due out of water sales for the year 1956, leaving a balance due at the end of the year 1956, after deducting a water bill of \$82, of \$5,351.21. This amount, less the afore-mentioned \$1,217.76, left an amount of \$4,133.45 for which complainant was urged to accept stock in the amount of \$4,100 plus \$33.45 cash.

The complainant wrote to the Commission under date of March 20, 1957, requesting a clarification of the cash plus stock offer. Said request became a part of the Commission's informal complaint file No. 31855-W and a copy of this letter was received as Exhibit No. 4. The Commission replied by its letter dated June 6, 1957, Exhibit No. 5, and set forth the results of its informal investigation. Said exhibit shows that the defendant had revised its cost to \$5,932.62, which was \$359.98 less than the amount stated by the defendant in its letter of June 6, 1955, Item No. 1 supra.

The complainant alleges that there was no basis for the company labor, insurance, tool and equipment expenses on the mains,

services, and fire hydrants, totaling \$588.50, nor was there any basis for the overhead and engineering expenses in the amount of \$539.33 included in Exhibit No. 5. Together with the difference of \$359.98, heretofore noted, complainant claimed a total of \$1,487.81 due him, representing the difference between the estimated and actual cost of the water system installation after allowing for the \$207.40 already refunded to and received by him as shown in Exhibit No. 2 supra.

Item No. 2 by reference is Decision No. 53970, dated October 23, 1956, in Application No. 37474, in which the defendant, in ordering paragraph 1. thereof, was authorized to issue not to exceed \$1 million par value of its Class B 3% preferred stock, on or before June 30, 1957, in exchange for presently unrefunded amounts of subdivider advance contracts as listed in Exhibits Nos. 7 and 10 of the proceeding on said application, after first adjusting said contract amounts to the actual cost basis in harmony with the terms of the applicable main extension rule. The record shows that the contract, Exhibit No. 1, was subject to this provision of said decision but that no stock under such provision has been issued to the complainant.

Defendant's counsel moved that the complaint, herein, be dismissed on the grounds that the statute of limitations set forth in Sections 735 and 736 of the Public Utilities Code had run.

Defendant's secretary-manager testified that the amount of \$6,292.60, shown in Item No. 1, supra, the letter of June 6, 1955, had been developed for him by an office clerk who had used a flat, per lineal-foot charge from an inventory list and had applied such

charge to the pipe-line footages contained in said secretary-manager's original 1954 estimate which had made up the total of \$6,500; that an outside bookkeeper had been employed by defendant in the latter part of 1956 to attempt to develop the actual cost, not only of this job but of all other water system installation jobs of the defendant for the years 1954, 1955, and 1956; that, due to the defendant's rapid growth, which was reflected by the addition of 1,822 customers in 1954, 3,396 customers in 1955, and 1,472 customers in 1956, at the end of last year the defendant had 11,084 active service connections plus 952 fire hydrants; and that defendant had not kept timecard payroll records and its books of accounts did not show the labor or overhead costs associated with any particular job performed for or by defendant during such years.

Exhibit No. 6 is a copy of defendant's reconstructed work orders Nos. 204, 205, and 206, which represent the bookkeeper's attempt to allocate labor, materials, and overhead to the complainant's job in Tract No. 12317. The labor costs were determined by an estimate in 1956-57 of one of defendant's foremen on the job in 1954 and were based on his recollection of the number of men and the hours spent on said job. Each labor estimate included the addition of 10 percent for insurance, tool and equipment expense. An amount of 10 percent of the total job for overhead and engineering was added. The record shows that the additive percentages were adopted by the defendant from an appraisal of Azusa Valley Irrigation Company made by a consulting engineer in 1951 for the use by defendant when it became a public utility pursuant to Decision No. 47713, dated September 16, 1952, in Application No. 33275.

Defendant's secretary-manager testified that he, himself, had drawn the plans for the water system installation in Tract No. 12817; that defendant had no engineering plans submitted by the complainant in its files; that the defendant had determined where to locate the mains and how to tie them into the existing water system, and had contacted the City of West Covina regarding the number and location of fire hydrants; that all materials had been purchased by the defendant; that the defendant's labor had been used to tie the water system into existing mains, to flush the mains, to open and close valves for such flushing, and to chlorinate the water system.

This witness of defendant further testified that the amount of \$1,217.76 offered to complainant by defendant's agent, as heretofore referred to by complainant, was incorrect. He did not know, however, what the correct amount was.

A Commission staff accounting witness testified that the water system fixed capital amounts associated with Tract No. 12817 which were recorded on the defendant's books, as of December 31, 1954, were \$3,775.67 for mains, \$324.62 for hydrants, and \$701.75 for services, for a total amount of \$4,802.04. This witness testified that said total amount included the contractor's cost; that company materials and company labor may or may not have been included; that later, in 1957, an inventory adjustment had been made to the defendant's books for all materials and labor; and that no allocation of said adjustment had been made to individual jobs.

Findings and Conclusions

After a careful review of the record herein, it is clear that the complainant has diligently pursued the matter of a proper adjustment of the estimated cost of the water system installation in

his Tract No. 12817 to the actual costs; that the statute of limitations has not run; that he is entitled to an adjustment under the provisions of Decision No. 53970; that the defendant recognized such entitlement when it authorized its agent to make a cash settlement of such difference if the complainant would accept stock for the balance; that this is not a matter of reparations; that defendant's Rule and Regulation No. 15 was applicable to the contract, Exhibit No. 1; and that the defendant should refund to the complainant the difference between the estimated cost of the water system installation of \$6,500 advanced by the complainant to the defendant and the reasonable actual cost of such water system installation.

It is evident that the defendant has not kept its books of accounts properly and that, therefore, it is not possible to make a precise determination of the actual cost of the water system installation in Tract No. 12817.

Based upon the record herein, it is estimated that the actual cost to defendant of the water system installation in Tract No. 12817 in the year 1954 was more than the amount of \$4,802.04 recorded on the defendant's books but substantially less than the amount of \$5,932.62 shown in Exhibit No. 5. Such reasonable actual cost is estimated to be \$5,300. Such estimated actual cost is found to be reasonable.

The order which follows will provide that the motion to dismiss the complaint be denied, and the defendant will be ordered to refund to the complainant the difference between the original deposit of \$6,500 and the estimated reasonable actual cost of \$5,300, less the amount heretofore refunded of \$207.40, or \$992.60.

It is apparent that the defendant has not proceeded in accordance with this Commission's Decision No. 53970 in properly adjusting contract amounts to actual cost. Defendant is under the continuing obligation to make such adjustments and the determination

herein is not to be construed as relief from said obligation nor are the amounts or methods adopted herein necessarily to be applied by the defendant to its other outstanding contracts.

O R D E R

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

IT IS HEREBY ORDERED as follows:

1. That the motion to dismiss the complaint entered at the hearing of September 11, 1958, be, and it is, denied.
2. That defendant shall, within ten days after the effective date hereof, refund to complainant the amount of \$992.60, and shall within fifteen days after the effective date hereof, report to the Commission in writing its compliance herewith.
3. That in all other respects the complaint be, and it is, dismissed.

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

Dated at San Francisco, California, this 15th day of October, 1958.

S. Lynn Fox
 President

W. S. Hill

Royce V. Johnson

Walter J. ...

Theodore Jenner
 Commissioners