

ORIGINAL

Decision No. 58144

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of DOMINGUEZ WATER CORPORATION, a
California corporation.
In re water main extensions.

Application No. 37685
(As Amended)

In the Matter of the Investigation
on the Commission's own motion into
property, operations, contracts,
service, tariff rules and regula-
tions and main extension rules of
DOMINGUEZ WATER CORPORATION.

Case No. 5919

Cosgrove, Cramer, Diether & Rindge by Leonard
Diether; for applicant.
James M. Hall, City Attorney of Torrance, and
E. L. Searle; Newlin, Tackabury & Johnston,
by George W. Tackabury and Hudson B. Cox,
for the City of Torrance; Ray L. McCoy,
for Southern California Water Company;
interested parties.
Thomas C. Webster, for Don Wilson, et al.; and
Clement H. Jacomini, for Title Insurance &
Trust Company, and Thomas C. Webster, as
co-executors of the estate of Milton
Kauffman, deceased, et al.; interveners.
Verner R. Muth, for the Commission staff.

O P I N I O N

The applicant, Dominguez Water Corporation, is a public utility water corporation conducting operations in an area of approximately twenty-six square miles located partly within the Cities of Torrance, Los Angeles and Long Beach, and unincorporated territory in the County of Los Angeles.

Torrance, a chartered city, owns and operates the Torrance Municipal Water District which furnishes water to a described area within the city limits, and also to several small areas outside of this described area.

The interveners are successors in interest and representatives of subdividers who from 1954 to 1956, inclusive, subdivided and paid the cost of installing water distribution facilities in nine tracts, all located within the city limits of Torrance but outside of the described area served by the Torrance Municipal Water District.

Proceedings

In the original application filed January 20, 1956, the Dominguez Water Corporation requested a determination by this Commission as to whether or not the public interest justified the approval of an agreement between the Dominguez Water Corporation and the City of Torrance dated November 10, 1953, and relating to the supplying of water and the ownership of the water distribution facilities in the nine tracts hereinbefore mentioned. A reply filed May 11, 1956, by the City of Torrance requested approval of the contract.

In substance this contract ⁽¹⁾ provides that Dominguez will furnish water to the nine tracts for a period of ten years, during which time it shall maintain the water distribution facilities and retain title thereto. At the conclusion of the ten-year period Dominguez shall convey the facilities to the City

(1) A copy of the contract is attached to the original application as Exhibit B.

without charge and thereafter the City shall have the right to serve water to the nine tracts. The contract concludes with this sentence: "This agreement is subject to the approval of the Public Utilities Commission of the State of California."

Public hearings were held in Los Angeles before Examiner Stewart C. Warner on March 14, and on June 6, 7 and 8, 1956. The only appearances in those hearings were the Dominguez Water Corporation, the City of Torrance, and the Commission staff. The matter was submitted and thereafter the parties filed briefs. However, no decision was issued thereon, and instead, on March 26, 1957, this Commission signed an order setting aside the submission and reopening the matter for further hearing. On this same day the Commission also issued its Order of Investigation relative to the Dominguez Water Corporation to determine:

"(a) Whether said respondent has undertaken to dispose of any of its operative public utility property contrary to law, and whether the disposition of such property would result in an unlawful abandonment of service to the public by respondent.

"(b) Whether respondent has violated any of its tariff rules and regulations including its main extension rules; and

"(c) Whether this Commission should take appropriate remedial action in the premises."

Thereafter petitions in intervention were filed and subsequently granted, a substitution of attorneys for the City of Torrance was made, and the Dominguez Water Corporation filed

amendments to its application. The last of such filings was made on July 21, 1958.

Further public hearings were held before Examiner Grant E. Syphers on July 21, 23, 24 and 30, 1958. During these dates evidence was adduced and on the last-named date the matter was submitted subject to the filing of briefs. The last of these briefs was filed on December 29, 1958 and the matter now is ready for decision. It should be noted that the application, number 37685, and the case, number 5919, were heard on a consolidated record.

Facts

The essential facts herein are not in dispute. The Dominguez Water Corporation has a certificate of public convenience and necessity⁽²⁾ from this Commission authorizing it to "construct, maintain and operate a water system ..." in an area which includes the nine tracts herein concerned. The land comprising these nine tracts consists of approximately 457 acres, all within the corporate boundaries of the City of Torrance.⁽³⁾ This land was owned by the Dominguez Estate Company, a corporation, which owns all of the stock of the Dominguez Water Corporation, and the ownership was subject to an easement in favor of the latter corporation to lay and maintain in said land additions to the water company's distribution system.

(2) Decision No. 32739, dated January 16, 1940, in Application No. 22763; 42 CRC 506.

(3) This land is bounded on the north by 190th Street, on the east by Hawthorne Boulevard, on the south by Del Amo Boulevard, and on the west by a line which begins at the intersection of the City of Torrance and 190th Street and runs south 9° 28' 26" east therefrom.

In 1953 the Dominguez Estate Company sold the land to the Milton Kauffman Construction Corporation, the seller reserving certain oil leases and oil drilling rights and additionally imposing the condition:

"That full consideration be given to existing farm operations to the end that the tenants suffer a minimum loss."

Likewise the purchaser was to secure:

"An agreement with authorities of the City of Torrance in form satisfactory to us, that Dominguez Water Corporation will be permitted to serve the subdivided property with water."

It should be noted that prior to the above-mentioned sale, the Dominguez Water Corporation was providing service to about forty domestic users in the area which was sold, in connection with its distribution of agricultural water.

The purchaser, and its associates, then filed subdivision maps with the City of Torrance and met with that City's insistence that, as a condition to the approval of the tract maps, the city water system supply water to the tracts. Various negotiations were conducted and various meetings held concerning the matter, and as a result on November 10, 1953, the contract previously mentioned herein and which is the subject of these proceedings was executed by applicant, and on January 25, 1954, was executed by the City, as of November 10, 1953.

The subdividers completed the nine tracts and in each case paid for the cost of installing the water distribution systems.

In order to identify the interests of the interveners, certain facts concerning the subdividers are now noted. The Milton Kauffman Construction Company was a corporation, the capital stock of which was owned one-half by Milton Kauffman and one-half by Don Wilson. In addition, Milton Kauffman owned all of the capital stock of eleven different corporations⁽⁴⁾ and Don Wilson⁽⁵⁾ owned all of the capital stock of eleven other corporations. On or about January 6, 1956, the Milton Kauffman Construction Corporation was dissolved and its assets distributed one-half to Milton Kauffman and one-half to Don Wilson. Milton Kauffman died on November 4, 1956, and the duly appointed, qualified and acting executors of his estate are Title Insurance and Trust Company and Thomas C. Webster. These two executors and the eleven corporations which Kauffman owned constitute one set of interveners herein. Don Wilson and his eleven corporations constitute the other.

The Milton Kauffman Construction Corporation was the subdivider of eight of the nine tracts, while the eleven corporations owned by Kauffman and the eleven corporations owned by Wilson were the subdividers of the ninth tract.

The actual installation of the water distribution systems in these nine tracts was done by the Dominguez Water Corporation

(4) Bala Homes, Inc., Coventry Homes, Inc., Derby Homes, Inc., Gala Homes, Inc., Nappa Homes, Inc., Plume Homes, Inc., Seville Homes, Inc., Bala Two Homes, Inc., Coventry Two Homes, Inc., Derby Two Homes, Inc., and Valentine Homes, Inc.

(5) Altena Homes, Inc., Echo Homes, Inc., Farmhill Homes, Inc., Hilgay Homes, Inc., Quarry Homes, Inc., Ramsey Homes, Inc., Triad Homes, Inc., Uphill Homes, Inc., Wixford Homes, Inc., Zebar Homes, Inc., and Altena Two Homes, Inc.

which corporation was reimbursed for this work by the subdividers.
 For the water distribution systems in eight tracts ⁽⁶⁾ the Milton
 Kauffman Construction Corporation paid to Dominguez the sum
 of \$286,668.41. The subdividers of the ninth tract ⁽⁷⁾ paid
 \$77,107.02.

The foregoing constitute the principal facts which
 are deemed relevant for a determination of this proceeding.
 However, our determination of this matter is based upon all of
 the facts of record whether they be detailed herein or not.

⁽⁶⁾ Tract No.	<u>Mains</u>	<u>Services</u>	<u>Meters</u>	<u>Fire Hydrants</u>	<u>Total</u>
19101)					
19102)					
20010)	\$58,480.47	\$17,452.55	\$ 9,287.93	\$4,153.78	\$ 89,374.73
20011)					
19103	51,526.24	17,120.71	10,418.09	3,621.19	82,686.23
17390)	75,877.20	17,857.39	12,079.85	3,534.85	109,349.29
20009)					
21189	3,514.78	868.19	677.51	217.68	5,278.16
			Grand Total		\$286,668.41

⁽⁷⁾ 21725	\$51,626.89	\$11,684.95	\$ 9,653.21	\$4,141.97	\$ 77,107.02
----------------------	-------------	-------------	-------------	------------	--------------

This total was paid by the following corporations in
 the following amounts:

Altena Homes, Inc., \$3,440.48; Echo Homes, Inc., \$3,642.85; Farmhill
 Homes, Inc., \$3,440.47; Hilgay Homes, Inc., \$3,440.47; Quarry
 Homes, Inc., \$3,642.85; Ramsey Homes, Inc., \$3,440.47; Triad
 Homes, Inc., \$3,642.85; Uphill Homes, Inc., \$3,642.85; Wixford
 Homes, Inc., \$3,440.47; Zebar Homes, Inc., \$3,440.47; Altena
 Two Homes, Inc., \$3,440.47; Bala Homes, Inc., \$3,440.48; Coventry
 Homes, Inc., \$3,642.85; Derby Homes, Inc., \$3,440.48; Gala
 Homes, Inc., \$3,440.47; Nappa Homes, Inc., \$3,440.47; Plume
 Homes, Inc., \$3,440.47; Seville Homes, Inc., \$3,642.85; Bala Two
 Homes, Inc., \$3,440.47; Coventry Two Homes, Inc., \$3,440.47;
 Derby Two Homes, Inc., \$3,440.47; Valentine Homes, Inc., \$3,440.47.

Position of the Parties

The applicant Dominguez Water Corporation herein requests this Commission (1) to disapprove its contract with the City of Torrance, (2) to find its presently filed tariff to be applicable to the nine tracts, and (3) to retain jurisdiction of this matter until applicant can secure determination by a court of competent jurisdiction as to ownership of the water distribution system in the nine tracts.

The interveners request that the contract be disapproved and that the Dominguez Water Corporation be ordered to enter into contracts with the interveners for the repayment of the moneys advanced.

The City of Torrance requests that the contract be approved.

In support of its position the water company cites the Constitution of California and the statutory law to the effect that this Commission can supervise and regulate public utilities and that a public utility may not dispose of or sell property used and useful in its operations without consent of the Commission, nor can a public utility withdraw from public service without Commission approval. While it does not deny that it entered into this contract freely and voluntarily and with the advice of counsel, it does contend that the contract is not effective until it is approved by this Commission. Furthermore it takes the position that the contract is contrary to the public interest in that it signed the document because

of misrepresentation by the city as to that body's power and authority. It further points out that this contract provides that the utility will serve the nine tracts for a ten-year period only instead of indefinitely, and that since it was serving the area prior to the subdivision it should have dealt with the subdividers under its main extension rule. It now contends that the agreement with the subdividers was contrary to the provisions of its tariff; that the city has no ordinance requiring the subdividers to donate the water system to the city, either presently or in the future, and that there is some question as to whether the city will be able to serve water in that area. Finally it contends that the water system now has been dedicated to the public use. However, it should be noted that this applicant takes the position that a court of law must determine the ownership of the water distribution system.

In support of the subdividers' request they contend that the interveners were not aware of the water company's tariffs and generally agree with the position of the water company. The contract, it is alleged, is void for want of consideration since the city had no right to require the subdividers to convey the water system to a city as a condition precedent to the approval of the subdivision. Legally they contend that the Subdivision Map Act of the State of California (Business and Professions Code, Sections 11500 to 11628) has occupied the field and therefore they question the city's actions in this regard. Therefore, because of lack of prior approval

by the Public Utilities Commission, they take the position that the contract is not valid and is not in the public interest. In this situation they conclude that they are entitled to receive a refund contract from the utility so that they might be reimbursed for the amounts they spent in installing the water system.

In support of its position the City of Torrance so far as the interveners are concerned contends that they have no standing before this Commission. They cannot now belatedly claim the right to a refund for a water distribution system which they have dedicated to the public. The dedication has a dual aspect in that the utility is given the right to use the system and realize any profits therefrom for ten years, and thereafter the system is to go to the city. The city relies strongly upon the proposition that the function of this Commission in considering this contract is to determine whether or not it be in the public interest. Questions relating to mistakes of fact or deprivation of the subdividers' property without just compensation, and other ancillary questions, must be determined by a court of law. The city, it is alleged, was acting within its power in requiring a dedication of the water system as a condition to approving the subdivision tract maps, and the parties entered into this agreement voluntarily. While the nine tracts in question are located within the certificated area of the Dominguez Water Corporation, the city, under the proper exercise of its authority, also has a right to serve the subdivisions. Likewise it is contended the city has

physical capacity both in equipment and water supply to serve these tracts, and, therefore, the transfer of the water distribution system to the City of Torrance at the end of the ten-year period in 1963 will not be adverse to the public interest. The city also points out that when the contract in question was made the Dominguez Water Corporation did not own the water distribution system and hence it was not disposing of any public utility property.

Conclusions

After a careful review and consideration of all of the evidence in this matter we now find that it is not within the province of this Commission to construe the actions or the legal authority of the City of Torrance. Whether or not the city council acted properly in this matter, and whether or not the Subdivision Map Act has occupied the field are questions which, if they must be resolved, must be answered in another forum.

One of the facts before us, however, is that the City of Torrance and the Dominguez Water Corporation on November 10, 1953 entered into the contract here in question. The evidence clearly establishes that both parties and the subdividers were well represented and there is no evidence in this record to justify any finding of fraud or misrepresentation. If it be true, as they allege, that the subdividers were not familiar with the tariffs of the water company, we can only observe that such ignorance of the tariff provisions is no excuse. The law

is quite clear that all parties are presumed to be aware of these provisions. Their tariffs were duly published and posted and available to all who desired to inspect them. Therefore, in considering this matter, we will take the contract upon its face, having no reason to attempt to alter its terms.

We agree with all parties that this Commission is empowered to supervise and regulate public utilities. This is both a constitutional and statutory delegation of power. (Article 12, Section 23, Constitution of the State of California; Section 701, Public Utilities Code). We are aware of the law which prohibits a utility from selling or disposing of any of its "property necessary or useful in the performance of its duties to the public" without the authority of this Commission (Section 851, Public Utilities Code).

While it is true that the interveners herein were not a party to the contract, the record is clear that this contract between the water company and the city was entered into subsequent to negotiations with the interveners and an agreement by them to convey the water distribution system, first to the water company for ten years and thereafter to the City of Torrance. Whether or not these interveners received a satisfactory consideration for this dedication is not an issue which should be determined here. The fact is that they did make the dedication and that the water company and the city did enter into a contract as a result thereof.

Therefore, the issue we have before us is whether or not this contract is binding upon the utility. There was considerable testimony relative to the ability of the parties to provide service, and, as a matter of fact, there was testimony from public witnesses as to the water service they now receive from the Dominguez Water Corporation. This testimony went to complaints relative to the bad odor of the water, excessive sediment, and lack of pressure. However, the record indicates that these complaints, while they should be corrected by the water company, do not show any lack of ability to provide service. The water company has sufficient water and sufficient capacity to adequately serve these nine tracts. It also is true, and we now find from this record, that the City of Torrance has sufficient water and sufficient capacity to provide water service to these nine tracts.

Thus we are faced with a problem wherein a subdivider, after having installed a water system, donated this system to a public utility water company for a period of ten years, and thereafter to the City of Torrance. Both of these donees are willing and able to provide water service to the area. The subdividers and the water company might have entered into a refund agreement, but the fact is they did not, and the further fact is that a third party, the city, was also concerned in the negotiations and changed its position as a result thereof. Whether or not the city's consideration was adequate is not a question to be determined here. Relative to the claim of the subdividers that they are now entitled to a refund contract with the utility, the evidence does not disclose that such a contract could have been obtained at any time. The subdivisions might not have been completed at all were it not for the approval of the city.

While it is true that the water company did provide service to about forty domestic users in connection with the distribution of agricultural water in the area, these prior services have been discontinued. The entire area was purchased by the subdividers and a distribution system installed by them to serve all of the property in the nine tracts. The new service through the new facilities is entirely different than any prior agricultural service by the water company.

The applicable tariff provisions published by the water company and in effect during the period herein concerned are found in Rule and Regulation No. 15 of the Dominguez Water Corporation Tariff, Cal. P.U.C. Sheet No. 42W. This rule and regulation became effective on May 15, 1953, and continued in effect until replaced on October 24, 1954, by Rule and Regulation No. 20, Cal. P.U.C. Sheet No. 54W. Although this rule covers the terms and conditions under which main extensions are to be installed, it does not preclude a subdivider from donating a water distribution system to the utility with the approval of this Commission and, as we have heretofore noted, this transfer was to a utility for a term of ten years, and thereafter to the city. There may be some question as to the wisdom of such an arrangement; however, we are faced with an executed contract which has been partly performed and upon which the parties have relied, albeit such contract has no lawful operative effect until authorized by this Commission, so far as the Dominguez Water Corporation may be concerned.

Therefore, we conclude that the interveners are not now entitled to a refund contract with the water company under the peculiar circumstances herein disclosed. It should be noted in

passing that the record discloses that the subdividers made a profit on the over-all transaction. While this may not be a complete basis for determining whether or not they are entitled to any refund of the moneys expended for the water distribution system, yet it is an equitable consideration. The cost of any refunds paid by the utility would ultimately be borne by the users of the service. In this case neither law nor equity require such refunds to be made.

In regard to the order of investigation in Case No. 5919, we now find that the Dominguez Water Corporation entered into the arrangements herein before it had title to the water distribution system and, as of now, it has not established title to such system. In the light of our previous finding to the effect that the City of Torrance is willing and able to provide water to this area, there is no need to pursue the investigation any further. We also find that the action taken by said corporation in purporting to enter into said contract was without authority of law because not authorized by this Commission.

O R D E R

Application as amended, as above entitled, having been filed, an order of investigation as above entitled having been issued, public hearings having been held thereon, the Commission being fully advised in the premises and having made the foregoing findings,

IT IS ORDERED:

(1) That the request of the Dominguez Water Corporation that this Commission disapprove the contract, dated November 10, 1953, between the Dominguez Water Corporation and the City of Torrance be and it hereby is denied for the reason that the utility is not

lawfully bound by such contract and there is nothing to disapprove. Should the utility desire to seek authority to enter into such contract, it may file a supplemental application to that end.

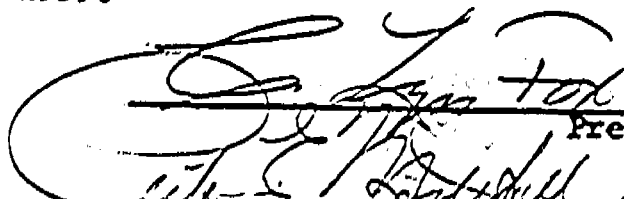
(2) That the presently filed tariffs of the Dominguez Water Corporation are hereby declared to be applicable to service provided in the nine tracts herein concerned so long as the Dominguez Water Corporation renders service therein, unless changed by subsequent order of this Commission.

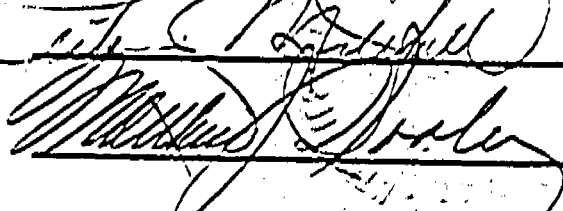
(3) That the investigation in Case No. 5919 be and it hereby is discontinued.

This order is without prejudice to the rights of the parties to seek further relief from this Commission in case such action becomes necessary due to a determination by a court of law of title to the water distribution facilities in the nine tracts concerned, or otherwise.

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

Dated at San Francisco, California, this 17th day of March, 1959.



President


Commissioners

Theodore H. Jenner
Commissioner. S. Everett C. McKeage, being
necessarily absent, did not participate
in the disposition of this proceeding.