

ORIGINAL

Decision No. 58148

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of FONTANA RANCHOS WATER COMPANY,)
 a California corporation, for)
 approval of certain main extension)
 contracts.)

Application No. 40698

OPINION AND ORDER

Fontana Ranchos Water Company,^{1/} a corporation, by this application filed December 22, 1958, seeks an ex parte order approving a group of seven main extension contracts, each of which deviates in one or more respects from the applicable tariff schedules on file when each contract was entered into.

The application states that, after Fontana had recently undergone a change of stock ownership and management, the deviation of each of these contracts from filed tariff schedules was discovered.

Of the seven subject contracts, five are written and are signed by both parties, while two are oral contracts, as evidenced by copies of letters addressed by the utility to the parties affected. A copy of each contract or evidentiary letter is attached to the application as an exhibit, such exhibits being designated "A" to "G", inclusive.

An outline of the seven contracts and the nature of the deviation involved in each is presented in the following summary:

(1) Exhibit "A", written contract with I. L. McClure, dated July 30, 1955, provides for an advance of \$1,644.50, to be refunded on the basis of 35% of total revenues derived from the extension for

^{1/} Sometimes herein called Fontana.

a period not to exceed ten years. The contract, evidently intended to apply to service to a small subdivision, deviates from the then effective main extension rule as filed February 15, 1949, by including in the advance the cost of service connections and meters.

The unauthorized items included in the advance amount to \$73.00 for services and \$140.00 for meters. As of the date of this application, no refunds had been made.

(2) Exhibit "B", written contract with Tri-City Rock Company, dated July 19, 1956, provides for an advance of \$4,000.00 to be refunded on the basis of 35% of total revenues derived from the extension for a period of not more than ten years. The contract, evidently applicable to service to an industrial development, deviates from the applicable main extension rule, effective as of April 17, 1956, by providing for refunds to be made as herein stated instead of on the basis of 22% of total revenues for a period of 20 years and by requiring the customer to advance the cost of any meter larger than two inches in size that might be installed. As of the date of the application, the unrefunded balance was \$3,981.00.

The application also states that a six-inch main was installed, instead of a required two-inch size, and the difference in cost, amounting to \$17,870.07, was donated to applicant, but apparently not by the Tri-City Rock Company.

(3) Exhibit "C", written contract with I. L. McClure, dated March 23, 1949, provides for an advance of \$500.00, subsequently adjusted to an actual cost of \$380.09, to be refunded on the basis of 25% of total revenues from the extension for a period not to exceed ten years. The contract, evidently intended to apply to service to an individual customer, deviates from Fontana's Rule and Regulation No. 12^{2/} and the then effective main extension rule as filed February

^{2/} Rule and Regulation No. 12, Meters and Appliances, states, in part, that "No rent or other charge whatsoever shall be made **** by the Company against the consumer for placing or maintaining said meters and appliances upon the consumer's premises" and "All meters shall be installed by the Company".

15, 1949, by requiring that the cost of any meters installed on this line in the future would also be advanced and by providing for refunds to be made on a percentage of revenue method, instead of the proportionate cost method. As of the date of this application, the unrefunded balance was \$191.51.

(4) Exhibit "D", written contract with I. L. McClure, dated March 10, 1949, provides for an advance of \$100.00, subsequently adjusted to an actual cost of \$77.72, to be refunded on the basis of 25% of the total revenues from the extension for a period of not more than ten years. The contract, evidently intended to apply to service to an individual customer, deviates from Rule and Regulation No. 12 and from the then effective main extension rule as filed February 15, 1949, by requiring the advance of the cost of a meter for future service from this line and for refunds to be made on a percentage of revenue basis, instead of by the proportionate cost method. As of the date of the application, no refunds had been made.

(5) Exhibit "E", written contract with Signal Pyrotechnic Co., dated July 9, 1953, provides for an advance of \$160.00, to be refunded on the basis of 25% of total revenues from the extension for a period not to exceed ten years. The contract provides for adjustment of the advance to actual installed cost of the extension but there is no indication that any such adjustment was actually made. In addition to the advance of \$160.00, the contract provides that the customer pay to the utility the sum of \$75.00 as consideration for the extension by the utility of its service area to include certain described property. The contract, evidently applicable to service to an industrial development, deviates from the effective main extension rule as filed February 15, 1949, by providing for refunds to be made on a percentage of revenue method as herein stated, instead of on the

basis of 35% of gross revenues or, possibly, on the basis of the proportionate cost method. In addition, notwithstanding the provisions of Section 532 of the Public Utilities Code, the contract provides for a charge not authorized by its filed tariffs. As of the date of the application, the unrefunded balance of the advance was \$96.89.

(6) Exhibit "F", a letter to an Emil Aznar, dated September 2, 1953, purportedly evidencing an oral contract, provides for an advance of \$96.00, to be refunded on the basis of 35% of the total revenues derived from the extension for a period not to exceed ten years. The application indicates that the advance was adjusted to an amount of \$99.50. The contract, evidently applicable to service to an industrial development, may deviate in at least one respect from the then effective rule as filed February 15, 1949, by providing for refunds to be made on a percentage of revenue method as herein stated, instead of, possibly, on the basis of the proportionate cost method. As of the date of the application, the unrefunded balance of the advance was \$59.02.

(7) Exhibit "G", a letter to an Ernis Poole, dated August 9, 1955, purportedly evidencing an oral contract, at least provides for a contribution of \$118.22 as the cost of extending a two-inch main and furnishing and installing a meter. There is no indication as to the actual cost of the extension and no provision for any refund. The contract, evidently applicable to service to an individual customer, deviates from the then effective rule as filed February 15, 1949, by including the cost of a meter in the amount of the advance, by making no provision for extending the first 100 feet of main at the expense of the utility, and by making no provision for refund.

The application states that in addition to the seven aforementioned contracts, Fontana's books indicate that, at some time prior to the assumption of control by the present management, the

sum of \$7,760.00 was apparently received from West Coast Loading for the cost of installation of a water main. Fontana has no record of the existence of any contract or of any refunding agreement relating to these funds. There is no indication that these funds were paid to Fontana pursuant to its filed tariffs.

Authorization of the deviation contracts, two of which will expire by their own terms in March of 1959, has not heretofore been requested of this Commission, despite the clear requirements of Section 489 of the Public Utilities Code, which section requires the filing with the Commission of all rates, charges, rules or contracts which are collected or enforced by each public utility.

Five of the subject contracts, as evidenced by Exhibits "A", "B", "C", "D" and possibly "F", deviate from the applicable main extension rule only in the method of refund or by requiring the advance of the cost of plant items other than those allowed by the utility's filed tariffs, or both. While no analysis has been made to determine the probable net effect of applying the rule in each case, it appears obvious that the effect of including the cost of unauthorized plant items in the advance, as in the contracts evidenced by Exhibits "A", "B", "C", "D", "E" and "G", resulted in higher charges to the customer than would have resulted from the application of the utility's filed tariffs. The inclusion of these items results in misapplications of the utility's filed tariffs, rather than mere deviations from the main extension rule, and those portions of the subject contracts requiring the advance of the cost of such items will not be authorized. Applicant will be expected to immediately refund any such unlawfully collected charges.

The contract evidenced by Exhibit "E" will be authorized only in so far as it applies to the actual installed cost of the main extension, excluding the cost of the meter. This Commission will not

countenance the extraction of gratuities as a requisite to the rendering of public utility service. The Commission has repeatedly stated that when a water utility undertakes to extend service outside its certificated or other acknowledged service areas, such extension will be regarded by this Commission as that of a public utility, subject to the utility's applicable tariff rates and rules and subject to the further requirement that prior authority be secured by the utility, pursuant to General Order No. 96, for rates or service arrangements which deviate from the utility's filed tariff schedules. (Anderson v. Yucca Water Company, Ltd., 54 Cal. P.U.C. 525; Di Liberto v. Park Water Company, 54 Cal. P.U.C. 639; Plunkett et al, v. Park Water Company, 54 Cal. P.U.C. 644; Sawyer v. California Water and Telephone Company, 55 Cal. P.U.C. 173.)

The terms of the contract evidenced by Exhibit "C" depart from the applicable main extension rule to such an extent that there is little, if any, resemblance between this contract and the rule. In the absence of a showing supporting the reasonableness of this contract, Fontana will not be authorized to make the subject contract effective.

Notwithstanding Fontana's statement that the contracts considered herein were all entered into by the previous management, Fontana is placed on notice that it has no alternative to applying its tariff schedules then in effect, including its filed main extension rule. In the future, should it believe that any exceptional circumstance renders the rule impracticable or unjust, the presently effective rule itself suggests that such matters may be referred to the Commission.

Neither the application nor the contracts indicate whether the service under the subject contracts is furnished within or outside of the utility's dedicated area of service. In authorizing the

utility to carry out various terms and conditions of the subject contracts, it is understood that the Commission is not granting any privileges to Fontana to extend its service, other than those privileges that may be provided for by Section 1001 of the Public Utilities Code.

The Commission having considered the request of Fontana, and being of the opinion that the application should be granted in part and denied in part, and that a public hearing is not necessary; therefore,

IT IS HEREBY ORDERED that:

1. Fontana Ranchos Water Company be and it is authorized to carry out the terms and conditions of the following contracts, except as they relate to advances of the cost of service pipes or connections and meters, entered into between it and:

- a. I. L. McClure, dated July 30, 1955, as evidenced by Exhibit "A" attached to the application.
- b. Tri-City Rock Company, dated July 19, 1956, as evidenced by Exhibit "B" attached to the application.
- c. I. L. McClure, dated March 23, 1949, as evidenced by Exhibit "C" attached to the application.
- d. I. L. McClure, dated March 10, 1949, as evidenced by Exhibit "D" attached to the application.
- e. Emil Aznar, dated September 2, 1953, as evidenced by Exhibit "F" attached to the application.

2. Fontana Ranchos Water Company be and it is authorized to carry out those terms and conditions of the contract entered into between it and Signal Pyrotechnic Co., dated July 9, 1953, as evidenced by Exhibit "E" attached to the application, which relate to the amounts advanced for main extension only, exclusive of the cost of a meter.

3. Authorization to carry out the provisions of the contract between Fontana Ranchos Water Company and Ennis Poole, dated August 9, 1955, as evidenced by Exhibit "G" attached to the application, be and it is hereby denied.

4. Fontana Ranchos Water Company shall file with this Commission, within twenty days after the effective date of this order, two copies of each of the written contracts, or letters stating the terms of oral contracts, evidenced by Exhibits "A", "B", "C", "D", "E" and "F", together with a certified statement attached to each copy thereof stating what action has been taken by applicant to refund any amounts collected or received under the terms of such contracts in excess of the amounts authorized herein or by applicant's tariff schedules in effect when each of said contracts was executed.

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

Dated at San Francisco, California, this 24th day of March, 1959.

E. Lynn Fox
President
W. E. [unclear]
William D. [unclear]
Richard [unclear]
Ernest [unclear]
Commissioners