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Decision No. 58780

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLARD FELDSCHER and HELEN L. FELDSCHER,

Complainants,

v.

CALIFORNIA WATER SERVICE COMPANY,

Defendant.

Case No. 6207

Robert E. Lanctot, of Shearer, Thomas & Lanctot, for complainants.
McCutchen, Doyle, Brown & Enersen, by A. Crawford Greene, Jr., for defendant.
Parke L. Boneysteele, for the Commission staff.

OPINION

Complainants allege that defendant's method of computing "estimated annual revenue" as a basis for refund payments under a water main extension contract dated June 16, 1955, made pursuant to defendant's Rule 50 (now Rule 15), Sections A, C-1 and C-2b, providing for facilities and service to Atherton Woods Unit No. 2, in defendant's Bear Gulch District, San Mateo County, is improper, illegal and in derogation of their state and federal constitutional rights. They request an order directing defendant to make refunds "based upon the estimated annual revenue of the subdivision of Atherton Woods Unit No. 2 for the years 1957 and 1958 and during the twenty years following August 10, 1955, or until the sum of $3,576 shall have been recovered by complainants, ...".

Defendant admits the execution of the agreement and receipt of the advance of $3,576. It alleges that, pursuant to the rule and the agreement, pertinent portions of which are pleaded in its answer,

it is obligated to make refunds based upon its company average revenue per residential and business customer and upon revenue actually derived from service other than residential and business service and not, as complainants contend, on the basis of the estimated annual revenue derived only from those customers directly connected to the facilities for which the cost was advanced by complainants.

Defendant requests dismissal of the complaint and so moved at the hearing.

The case was submitted following a public hearing held, after due notice, on March 5, 1959, at San Francisco before Examiner John M. Gregory.

The sole issue concerns the interpretation to be given to those portions of defendant's main extension rule which state the revenue basis for calculating annual refund payments of advances for main extensions, as applied to the facts of this case.

Defendant's Rule 15, promulgated by the Commission for all privately-owned public utility water companies in California (Water Main Extension Rules (1954), 53 Cal. P. U. C. 490, @ p. 497), in effect as part of defendant's filed tariff schedules at the time of negotiation and execution of the agreement between the parties, provides for refund of advances for main extensions pursuant to a "Percentage of Revenue Method" (Rule 15, Sec. C-2b) as follows:

> "The utility will refund 22% of the estimated annual revenue from each bona fide customer, exclusive of any customer formerly served at the same location, connected directly to the extension for which the cost was advanced. The refunds will, at the election of the utility, be made in annual, semiannual or quarterly payments and for a period of 20 years."

The rule, a copy of which is annexed to the agreement as Exhibit B and which forms part of Exhibit 1 of the answer, defines, in Section A-8, the term "estimated annual revenue" as follows:

"8. For the purposes of this rule, the estimated annual revenue for residential and business service will be the utility average annual revenue per residential and business customer for the prior calendar year, such average to effective on April 1st and used until the following April 1st. For other classes of service the utility will estimate the annual revenue to be derived in each case."

The rule also provides (Sec. A-6) for inclusion of fire hydrant service revenue in the calculation of refunds under the percentage-of-revenue method where the cost of hydrants or services for hydrants is included in the amount of the advance. The agreement executed by the parties includes installation of two 6" fire hydrants and their appurtenances.

The evidence shows that prior to June 16, 1955, the date of execution of the contract in question, complainant Willard Feldscher, an executive of an electronics firm, was engaged in developing Atherton Woods Subdivision Unit No. 2, in San Mateo County. Complainant and his wife reside on Lot 9 of the subdivision, which consists of 10 lots of one acre each. Lot 15 is vacant. Lots 7 and 10 are owned as one parcel, with service to Lot 10 from connections off a cul-de-sac, Barry Lane, from the extension for which the advance was made. Lots 11, 12, 13 and 16 are improved with residences. Lots 8 and 14, along Faxon Road, are also improved but are not connected to the extension for which the advance was made. They are not included in revenue computations for refund purposes under the questioned agreement and rule. The tract is extensively landscaped and contains several swimming pools. It is located in defendant's Bear Gulch District, which is one of 20 districts, extending from Chico to Hermosa-Redondo, in which defendant conducts its public utility water operations. The company's general office is in San Jose.

Complainants, prior to execution of the agreement, requested defendant to extend service to their subdivision from the company's existing facilities in the locality. It was their first venture into the field of subdivision development. The company, in accordance with its normal procedures, prepared a preliminary cost estimate of the required installation and mailed it to complainants with a copy of the main extension rule. Complainants testified that the company furnished them with a copy of the rule either prior to or with the contract as it was later presented to them for signature. The record does not disclose whether the parties, before executing the agreement, discussed the rule provisions relating to the basis for calculation of refund payments or any estimate of the proportion of the advance which complainants might expect to have refunded to them over the life of the agreement.

Complainants advanced to defendant the sum of $3,576 as the estimated cost of the extension which was completed on August 10, 1955. The actual cost amounted to $3,484.95. On October 27, 1955, the company paid complainants the difference, $91.05. During the years 1956, 1957 and 1958, defendant refunded a total of $134.32 to complainants, using as bases for calculating refunds, system-wide average revenues per residential and business customer of $50.20 in 1955, $53.58 in 1956, $59.04 in 1957 and $60.96 in 1958. The company's average annual revenue in its Bear Gulch District, from residential service only, was $83 in 1956, $89.77 in 1957, and $94.51 in 1958. During the years 1956, 1957 and 1958, the revenues derived from connections, including fire hydrants, to the extension in Atherton Woods Unit 2 for which complainants advanced the cost, were $344.68 in 1956, $1,018 in 1957 and $1,404.79 in 1958. The first anniversary date of the contract was August 10, 1956, one year after completion of the extension.

Based upon the highest refund paid to date, complainants testified that in the contract period of 20 years they would expect to receive, without interest, less than one-third of the advance, assuming the same rate of refund to continue during the entire period. Revenue from the subdivision, including that from customers on the extension, has increased during the years 1956-58. There is no evidence in the record, however, from which estimates can be made of revenues which might be derived during the remaining years of the agreement. Such estimates, indeed, would seem to be highly speculative. They are not necessary for the determination of the instant case, since the point at issue relates not to the amount of refund but to the method used in its calculation.

Complainants, through a member of the Commission staff engaged in studying water utility extension practices for a pending investigation involving possible revision of the extension rule (Case No. 5501), sought to elicit information concerning refund practices of water utilities having one or more districts, specifically with relation to the size of the revenue-producing unit used in calculating refunds. Although some variations in practice were shown to exist, only 10 of the 25 medium and larger water utilities sampled had submitted data, which was just then in process of evaluation by the staff. The presiding examiner, over objection, allowed this evidence to go in as contributive to a broad evidentiary basis for disposing of defendant's motion to dismiss. It should have been excluded as irrelevant to a proper disposition of the issue concerning the interpretation of the provisions of the rule incorporated in the contract of the parties here.

The evidence adduced on behalf of defendant shows that there are slightly over 110 feet of main per service connected to the

Atherton Woods Unit No. 2 extension and more than 130 feet of main per customer on the basis of the six customers connected to the extension as of the date of hearing. The average density in the company's entire system is 66 feet of main per customer. If the customer density in Atherton Woods Unit No. 2 were approximately equal to the company average, a complete refund of complainants' advance would be likely. The company's average revenue in 1958 amounted to approximately $60 per commercial customer. In its Bear Gulch District, in the same period, the average revenue was about $95 per commercial customer. Another comparison shows that there is a $35 differential in average revenue between defendant's Bakersfield and Bear Gulch Districts and that $32 of the differential represents the difference in cost of purchased water and of power between the two districts on a per-customer basis.

For a given number of feet of extension, the cost of installation in each one of the company's districts is approximately the same. Hence, if the company were to refund on a district rather than a company-wide basis, the total amount of refunds would vary greatly as between districts, depending on revenues from the particular district in which the refund was made.

The provision of the extension rule (Sec. 8, supra) relating to the method of calculating "estimated annual revenue" for refund purposes, accordingly, has been construed by the company in this case to mean, with respect to "utility average annual revenue," that the total revenue derived by the utility from the included classes of service is taken and divided by the average number of customers in those classes. Then, by the "Percentage of Revenue Method" of refund (Sec. C-2b, supra), 22% of such "estimated annual revenue," derived, however, only from "each bona fide customer,

exclusive of any customer formerly served at the same location, connected directly to the extension for which the cost was advanced," is refunded annually, or as otherwise provided by the rule.

A cursory reading of the rule, especially by one not versed in the art of water utility operations related to subdivision development, might very well lead to a different interpretation than that followed by defendant. The fact, of which we take official notice, that the entire rule is currently under re-investigation by the Commission, suggests that its operation over the past few years may have given rise to the need for clarification or amendment in certain particulars, or even entirely. The rule as it now reads, however, makes no provision for calculating average annual revenues for refund purposes in the limited sense for which complainants here contend. Nor does the rule now provide for pre-contractual estimates of the total amount of refunds which might be expected to accrue from a specific advance, especially in a situation like the one here, where the revenue basis for refunds in the case of multi-district systems is not made patently clear.

Reading the pertinent sections of the rule in light of the company's showing underlying the interpretation for which it here contends, we cannot say, on this record, that such interpretation has resulted in the injuries complained of.

Defendant's motion to dismiss the complaint should be granted.

O R D E R

Public hearing having been held herein, evidence and argument having been received and considered, the Commission now being fully advised,

IT IS ORDERED that defendant's motion to dismiss the complaint herein is granted and that said complaint be and it hereby is dismissed.

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

Dated at San Francisco, California, this 21st day of July, 1959.

President

Commissioners

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.