

ORIGINAL

Decision No. 60577

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

M & H ENTERPRISES, a California Corporation,

Complainant,

vs.

Case No. 6424

PACIFIC WATER COMPANY, a California Corporation,

Defendant.

Gilligan & Pratt, attorneys, by George H. Pratt, and Charles C. Smith, president, for complainant.
Moss, Lyon & Dunn, attorneys, by George C. Lyon, for defendant.
C. O. Newman and Robert M. Mann, engineers, for the Commission staff.

O P I N I O N

M & H Enterprises, a corporation, filed the above-entitled complaint against Pacific Water Co., a public utility water corporation, on February 23, 1960, and defendant answered the complaint on March 17, 1960. The complaint alleged overcharges for water system installations in Tracts Nos. 5523, 5524 and 6008 in Apple Valley which is located in unincorporated territory of San Bernardino County.

Public hearings were held before Examiner Stewart C. Warner on June 10 and June 27, 1960, at Los Angeles. The matter was submitted subject to the receipt on or before July 5, 1960, of late-filed Exhibit No. 11. Said exhibit has been received, and the matter is now ready for decision.

Allegations

Complainant alleged that in October, 1956, it was subdividing Tract No. 5523, Apple Valley, San Bernardino County, consisting of 36 lots of approximately 20 acres, and that on or about March 15, 1959, it was subdividing Tract No. 5524 of 60 lots on approximately 30 acres and Tract No. 6008 of 54 lots on approximately 30 acres at Apple Valley, San Bernardino County. As shown on the map, Exhibit No. 2, all of said tracts are adjacent to each other.

Complainant further alleged that it had negotiated with defendant for the purpose of securing water service to said tracts and that defendant had required the installation of 8-inch pipe lines in Tonikan and Sioux Roads; a 6-inch pipe line easterly from Tonikan Road in Sioux Road; a 4-inch pipe line on the north side of Sioux Road westerly from Tonikan Road; gate valves, and road crossings of excess capacities; and that defendant had billed complainant for \$810.15 on September 5, 1957, for engineering services and general overhead, all to the total damage in the sum of \$10,027.93.

Evidence Adduced

Exhibit No. 1 is a tentative map of Tract No. 5524 (later re-subdivided as Tracts Nos. 5524 and 6008). Said map also shows the relative location of Tracts Nos. 5214, 5215, 4615, 4412, 5523, and 3459, together with proposed pipe line installations. The water system design and layout as shown on this map were approved thereon both by complainant and defendant on January 8, 1957.

Exhibit No. 2 shows the actual water system installations in Tracts Nos. 5523, 5524 and 6008 including 8-inch pipe lines in green, 6-inch in blue, 4-inch in red, and service lines in yellow, together with gate valve locations by sizes and the locations of fire hydrants.

Exhibit No. 3 is a copy of defendant's standard water main extension agreement entered into between complainant and defendant in November, 1956, providing for the advance, subject to refund, by the complainant of a total of \$7500 for the water system installation in Tract No. 5523, the details of which are shown on the map attached to the agreement.

Exhibit No. 4 consists of copies of checks received by complainant covering consumers' advance refunds for the years 1957 and 1958 in the amounts of \$6.87 and \$55.02, respectively.

Exhibit No. 5 is a copy of defendant's standard water main extension agreement between Dalton Pipe Company and defendant, entered into on January 7, 1959, providing for the advance, subject to refund, by Dalton of \$19,410.59 for the water system installation in Tracts Nos. 5524 and 6008, as detailed on the map attached to the agreement.

Exhibit No. 6 is a copy of an invoice by defendant to complainant, dated September 5, 1957, in the amount of \$810.15 for engineering and general overhead.

Exhibits Nos. 7, 7A, 7B, 7C, and 7D, consist of a letter, dated January 28, 1956, from defendant's consulting engineer to defendant together with maps and a chart outlining water system design requirements to serve Tracts Nos. 5214, 5215, 4412, 4643 and 3459 which on said date comprised defendant's

certificated and service areas in its Victorville No. 4 system in Sections 34, 25, 26, 35, and possibly 27 and 36 of Township 5 North, Range 3 West, S.B.B. & M. Tracts Nos. 5214 and 5215 are immediately north of the tracts involved in the instant complaint, and Tract No. 3459 is immediately southwest thereof.

Exhibit No. 8 is a letter, dated November 26, 1956, from defendant to complainant relating to the contract, Exhibit No. 3, and pointing out that the map and bids as submitted by complainant's engineering and construction company were not satisfactory and did not correspond with the overall development plan and specification for material as laid out by defendant's engineer.

Exhibit No. 9 is a copy of a letter, dated June 1, 1959, from D. A. Gannon to defendant regarding Tract No. 6042. The record shows that said Tract is south of the M & H Enterprises' properties but has never been developed. Said Exhibit purports to show that Gannon had an agreement with complainant to share installation costs on the 8-inch main on Sioux Road, but complainant denied this.

Exhibit No. 10 is a detailed statement, dated June 8, 1959, by Dalton Pipe Company, Inc., to defendant of the pipe line installations covered by the contract Exhibit No. 5.

Exhibit No. 11 is a statement by defendant of the disposition of and accounting for the \$810.15 charged by defendant to complainant covered by Exhibit No. 6. The record shows that said charge was reduced to \$20.43, and complainant was credited with that amount by offsetting a portion of the 1958 refund due under the main extension agreement.

Exhibit No. 12 is a master plan map used in the negotiations which resulted in the contract Exhibit No. 3.

Although complainant alleged engineering design over-calculations by defendant of the water system installation in Tracts Nos. 5523, 5524 and 6008, it produced no expert testimony to support such allegations. Defendant's consulting engineer testified that the water system design was in accordance with the water system requirements for areas of the size contained in Tracts Nos. 5523, 5524 and 6008, and that the pipe line diameters and fire hydrants were also required by San Bernardino County Health Department and Fire Protection District standards.

Findings and Conclusions

From a careful review of the record the Commission finds as a fact and concludes that the water system design for Tracts Nos. 5523, 5524 and 6008 is in accordance with acceptable and standard engineering practices; that the complainant has failed to prove a cause of action; and that the complaint should be dismissed. The order which follows will so provide.

The record discloses a careless practice by defendant in not having fully advised the complainant of the water supply, health, and fire protection requirements which necessitated the changing of the design plans, and for that practice defendant is censured.

O R D E R

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

IT IS ORDERED that the complaint of M & H Enterprises, a corporation, versus Pacific Water Co., a public utility water corporation, 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 16th day of August, 1960.

[Signature]
President

[Signature]

[Signature]

Theodore J. Jones

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.