

ORIGINAL

Decision No. 61520

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TIMOTHY STALLMAN and
ANDREW N. PHILIPENKO,

Complainants,

vs.

Case No. 6622

HESPERIA WATER COMPANY, a
corporation, and KAYEM INVESTMENT
CORPORATION, a corporation,

Defendants.

Irmas & Rutter, by Sidney M. Irmas, Jr., for
complainants.
Kaplan, Livingston, Goodwin & Berkowitz,
by Frank Mankiewicz, for defendants.
Hugh N. Orr, for the Commission staff.

O P I N I O N

The above-entitled complaint of Timothy Stallman and Andrew N. Philipenko was filed July 12, 1960, and answered by the defendants August 3, 1960.

The matter was consolidated for hearings on September 20 and 21 and November 16, 17, and 18, 1960, at Hesperia and on December 20 and 21, 1960, at Los Angeles before Examiner Stewart C. Warner with Application No. 40862 of Hesperia Water Company for authority to increase its rates for water service and with Case No. 6159, an investigation on the Commission's own motion into the practices, operation, contracts, rules, facilities, and service of the defendants. The instant complaint was heard, specifically, on

December 21, 1960, and the matter was submitted for decision on that date.

By stipulation the issues of the complaint are contained in Paragraphs Nos. 6 and 8 thereof.

Allegations

Complainants alleged that in or about the month of May, 1959, they paid Hesperia Water Company the sum of \$4,000 for water service to their subdivision comprising 40 acres of land known as Tract No. 6082 of San Bernardino County in Hesperia Township and further known as Maple Village located on Vine Street, Hercules Street and other streets west of Maple Road as shown on the map Exhibit No. 17 of the consolidated proceedings; that said payment was not in accordance with the defendants' filed tariffs; that all costs of the installation of the water mains to their subdivision, including necessary service stubs and pipe lines, fittings and fixtures, were paid for and installed entirely by them without any charge or expense to defendants; that on or about June 6, 1960, they made demand upon the defendants for refund of said sum of \$4,000, which said demand was rejected by defendants.

Based on their allegations, the complainants seek an order of this Commission directing defendants to refund the sum of \$4,000 as an overcharge in violation of their tariffs, rules and regulations.

Answers and Affirmative Defenses

Paragraph 6 was answered and denied generally and specifically by the defendants, and they answered Paragraph 8 by denying that complainants, or either of them, had incurred any expenses or paid any sum of money whatsoever on account of the installation of water mains or for the extension of water service to the complainants' subdivision. The defendants pleaded four affirmative defenses relating primarily to the status of Kayem as a proper defendant; whether the defendants were required to extend water service to the complainants' subdivision; whether the complainants' subdivision investment was considerably enhanced by the extension of water service thereto by the defendants; and whether a cause of action had been stated.

Evidence

The record shows that the complainants owned the properties subdivided as Tract No. 6082; that about two months prior to June 1, 1959, they applied to the defendant, Hesperia Water Company, for water service; that such application was made verbally; that they were told by Hesperia's president that water service would be furnished upon the payment of an amount equal to \$100 per acre, a sum of \$4,000; that they would be required to install the water system in their subdivision at their own expense, and to construct at their own expense approximately 1,200 feet of pipe line to a connection with the defendants' 6-inch pipe line on Riverside Street; that such water system installation and such water service connection were effected, and are in effect; that on June 1, 1959, said sum of \$4,000 was paid by complainants to the defendant.

Hesperia Water Company; that the said defendant neither offered to refund, nor made any agreement for the refunding of any portion of the cost of the water system installation, or of the cost of the water service pipeline connection, or of the \$4,000 required to be paid for water service; that the complainants' subdivided properties lay outside of, but contiguous to, the defendant's dedicated service area; and that defendant's Rule and Regulation No. 19, Main Extensions, Section C, Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments or Organized Service Districts, provided as follows:

C. Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments or Organized Service Districts

1. An applicant for a main extension to serve a new subdivision, tract, housing project, industrial development or organized service district shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of the mains, from the nearest existing main at least equal in size to the main required to serve such development, including necessary service stubs or service pipelines, fittings, gates and housings therefor, and including fire hydrants when requested by the applicant or required by public authority, exclusive of meters. If additional facilities are required specifically to provide pressure or storage exclusively for the service requested, the cost of such facilities may be included in the advance upon approval by the Commission.
2. The money so advanced will be subject to refund by the utility without interest to the party or parties entitled thereto. The total amount so refunded shall not exceed the amount advanced. Refunds may be made under either of the following methods at the option of the utility:

a. Proportionate Cost Method

For each service connection directly connected to the extension, exclusive of that of any customer formerly served at the same location, the utility will refund within 180 days after the date of first service to a bona fide customer that portion of the

total amount of the advance which is determined from the ratio of 65 feet of main to the total footage of main in the extension for which the cost was advanced. No refunds will be made after a period of 10 years from the date of completion of the main extension.

b. Percentage of Revenue Method

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 record further shows that the president of defendant Hesperia Water Company decided, personally, to require the payment of \$100 per acre for the extension of water service to complainants' subdivision lying outside the defendant's dedicated service area; that the amount was a guess of said president as to the cost of providing additional facilities for guaranteeing adequate water supply and maintaining adequate pressures in the complainants' subdivision; that he did not know that the defendant's filed tariffs and main extension rule were applicable herein; that other extensions were made on the same basis, including one to himself as an individual, which involved the payment of \$111,000 by him to the defendant Hesperia Water Company for water service to a subdivision in which he was interested, located outside the defendant's service area; that the monies so accumulated totalling approximately \$158,000 had been placed in a so-called fund or reserve for the general financing of capital additions and operating expenses of Hesperia Water Company.

By Decision No. 59281, dated November 17, 1959, in Case No. 6159, the defendant Hesperia Water Company was found by this

Commission to have unlawfully demanded and received from Certified Land and Development Company the sum of \$17,000 as a condition to extending its water service to Tract No. 5375, and was ordered to refund said sum with interest at the rate of 6 per cent per annum to said company, and to refrain from demanding or receiving as a condition to such extensions of service any sum of money not authorized by its filed rules and regulations, unless authorized so to do by the Commission.

Findings and Conclusions

Based on the record before us the following findings and conclusions are made:

1. That Hesperia Water Company, a corporation, in or about the month of May, 1959, held itself out to furnish water service to Tract No. 6082, San Bernardino County, which said tract was located outside of but contiguous to said company's dedicated service area.
2. That Hesperia Water Company was not obligated to furnish water service to said tract prior to its holding itself out to furnish water service thereto, but, that having so held itself out to serve, it was bound by its rules and regulations on file with this Commission in the furnishing of such service.
3. That in or about May, 1959, Hesperia Water Company required Timothy Stallman and Andrew N. Philipenko, complainants herein, to pay \$4,000, on the basis of \$100 per acre, for the furnishing of water service to Tract No. 6082.
4. That the complainants herein caused to be installed at the said complainants' expense a water system in Tract No. 6082, and also to be installed at their expense approximately

1,200 feet of pipe line to connect their said water system installation to a 6-inch water service pipe line of Hesperia Water Company on Riverside Street.

5. That the extension of a water utility's mains in preparation for the actual delivery of water is no less a public utility service than the water deliveries themselves.

6. That Hesperia Water Company has unlawfully demanded and received from Timothy Stallman and Andrew N. Philipenko, complainants, the sum of \$4,000 as a condition to extending its water service to Tract No. 6082, and that Hesperia Water Company should be ordered to refund said sum of \$4,000 with interest at the rate of 6 per cent per annum to Timothy Stallman and Andrew N. Philipenko.

7. That Hesperia Water Company should be directed to refrain from demanding or receiving from complainants, as a condition to the furnishing of water service to Tract No. 6082, any sum of money not authorized by its filed rules and regulations, unless first authorized so to do by the Commission.

8. That no order should be issued herein with respect to the defendant Kayem Investment Corporation at this time.

O R D E R

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

IT IS HEREBY ORDERED as follows:

1. That Hesperia Water Company, a corporation, shall refund the sum of \$4,000, with interest at the rate of 6 per cent per annum from June 1, 1959, to Timothy Stallman and Andrew N. Philipenko,

and shall refrain from demanding or receiving from them, as a condition to the furnishing of water service to Tract No. 6082, any sum of money not authorized by its filed rules and regulations, unless first authorized so to do by the Commission.

2. That Hesperia Water Company shall make the refund ordered herein within thirty days after the effective date of this order, and shall report to the Commission in writing within ten days thereafter of its compliance herewith.

3. That Hesperia Water Company shall, within thirty days after the effective date of this order, reduce to writing the terms of a main extension agreement with complainants made in conformity with Rule No. 19 of its tariff schedules currently on file and in effect and providing for the extension of mains to Tract No. 6082. Hesperia Water Company shall use for this purpose its agreement form, "Form No. 4 - Main Extension Contract Form (Cal. P.U.C. Sheet No. 10-W)", in said filed tariff schedules and shall file with this Commission, within ten days after execution thereof as herein provided, two conformed copies of such written agreement.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Hesperia Water Company and this order shall be effective twenty days after the completion of such service upon such defendant.

Dated at San Francisco, California, this 15th day of FEBRUARY, 1961.

[Signature]
President
[Signature]
[Signature]

Commissioner George G. Grover did not participate in the disposition of this proceeding.

[Signature]
Commissioners