

**ORIGINAL**

Decision No. 61521

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
motion into the practices, operations, )  
contracts, rules, facilities and serv- )  
ice of the HESPERIA WATER COMPANY, a )  
corporation, and KAYEM INVESTMENT COR- )  
PORATION, a corporation. )

Case No. 6159

Glickfield & Goldstein, by Hyman L. Goldstein,  
for claimants.  
Kaplan, Livingston, Goodwin & Berkowitz, by  
Frank Mankiewicz, and N. K. Mendelsohn,  
for respondents Hesperia Water Company and  
Kayem Investment Corporation.  
Hugh N. Orr, for the Commission staff.

SECOND INTERIM OPINION

Clyde A. Krasne and Joe A. Krasne, by claim dated February 15, 1960 made against the respondents Hesperia Water Company and Kayem Investment Corporation, pursuant to Section 736 of the California Public Utilities Commission Code, allege that respondents improperly exacted from them payment in the sum of \$10,000 and that such payment was not in accord with tariffs and main extension rules of the respondent Hesperia Water Company, on file with this Commission.

The claim was associated with the above-entitled matter pursuant to the provisions of Decision No. 59281 dated November 17, 1959, in said matter. Said decision stated that further proceedings would be had for the purpose, among others, of determining to what extent respondents or their predecessors in interest have violated their tariff rules by making charges against customers contrary to

said rules and to order respondents to make lawful restitution to customers whenever unlawful charges are found to have been made.

Public hearings were held on a consolidated record with Application No. 40862 of Hesperia Water Company for authority to increase rates for water service and with Case No. 6622, a complaint of Timothy Stallman and Andrew N. Philipenko versus the respondents herein seeking an order of the Commission directing the defendants in said case to refund the sum of \$4,000 as an overcharge by the defendants in violation of their tariffs, rules and regulations approved by the Commission. Such hearings were held before Examiner Stewart C. Warner on September 20 and 21 and November 16, 17 and 18, 1960, at Hesperia, and on December 20 and 21 at Los Angeles. The instant claim was heard specifically on December 21, 1960.

Basis of Claim

Claimants based their claim on their allegation that on or about February 19, 1957, they were required by Hesperia Water Company to pay \$10,000 to said company as a condition for its agreement to supply water to a portion of the southeast quarter of Section 1, Township 4 North, Range 5 West, of tentative approved Tract No. 5497, except certain lots.

Claimants further alleged that they had, as of February 19, 1957, entered into a contract with Ray S. Ward and Vera Ward, husband and wife, to purchase the property to which water service was

to be furnished; that thereafter the purchase was consummated and the property subdivided.

Claimants further alleged that the payment of \$10,000 was improperly exacted by the Hesperia Water Company and that the payment was not in accord with said company's tariffs and main extension rules.

Evidence

The record shows that based on information furnished to him by the owner of Tract No. 5497, the claimant Clyde A. Krasne delivered a check, Exhibit No. 19, in the amount of \$10,000 to a representative of Hesperia Water Company on February 19, 1957; that such payment to the water company was required so that the water company would direct a letter to the Real Estate Commissioner, containing a statement that the water company would furnish water service to Tract No. 5497; that claimants caused a water system to be installed within Tract No. 5497 at their expense; that the \$10,000 payment to the water company was for water service only; that said water service had been effected and was in effect as of the date of the hearing; that the respondent, Hesperia Water Company, 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 \$10,000 required to be paid for water service; that, as shown on the map Exhibit No. 17, the claimants' subdivided properties lay outside of, but contiguous to, the respondents' dedicated service area; and that respondents' 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 respondent Hesperia Water Company decided, personally, to require the payment of \$100 per acre for the extension of water service to claimants' subdivision lying outside the respondents' 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 claimants' subdivision; that he did not know that the respondents' 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 respondent Hesperia Water Company for water service to a subdivision in which he was interested located outside the respondents' service area; that the monies so accumulated totaling 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, respondent 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 the Hesperia Water Company, a corporation, on February 19, 1957, held itself out to furnish water service to Tract No. 5497, 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 on February 19, 1957, Hesperia Water Company required Clyde A. Krasne and Joe A. Krasne, claimants herein, to pay \$10,000 on the basis of approximately \$100 per acre for the furnishing of water service to Tract No. 5497.

4. That the claimants herein caused to be installed at the said claimants' expense a water system in Tract No. 5497.

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 water service has been and is being furnished to Tract No. 5497 by Hesperia Water Company.

7. That Hesperia Water Company has unlawfully demanded and received from Clyde A. Krasne and Joe A. Krasne the sum of \$10,000 as a condition to extending its water service to Tract No. 5497,

and that Hesperia Water Company should be ordered to refund said sum of \$10,000 with interest at the rate of 6 per cent per annum to Clyde A. Krasne and Joe A. Krasne.

8. That Hesperia Water Company should be directed to refrain from demanding or receiving from claimants, as a condition to the furnishing of water service to Tract No. 5497, any sum of money not authorized by its filed rules and regulations, unless first authorized so to do by the Commission.

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

SECOND INTERIM ORDER

Claim of Clyde A. Krasne and Joe A. Krasne having been made against respondents herein, public hearing having been held, and based on the findings and conclusions hereinbefore made,

IT IS HEREBY ORDERED as follows:

1. That Hesperia Water Company, a corporation, shall refund the sum of \$10,000 with interest at the rate of 6 per cent per annum from February 19, 1957 to Clyde A. Krasne and Joe A. Krasne and shall refrain from demanding or receiving from them, as a condition to the furnishing of water service to Tract No. 5497, 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 claimants Clyde A. Krasne and

Joe A. Krasne 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. 5497. 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 the respondent.

Dated at San Francisco, California, this 14<sup>th</sup> day of February, 1961.

[Signature]  
President  
[Signature]  
[Signature]

[Signature]  
Commissioners

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