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Decision No. 64024

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Robert Carlin, Esther J. Carlin and David Carlin, dba Carlin Construction Company, a partnership, Complainant vs. California Water & Telephone Company, a corporation, Defendant.	Case No. 7246 (Filed December 7, 1961)

Robert Carlin, for complainants.
Bacigalupi, Elkus & Salinger, by Claude N. Rosenberg, for defendant.

O P I N I O N

Carlin Construction Company, the above-named partnership, seeks a refund of $3,657.81 plus interest to date on an advance for construction in Chula Vista, San Diego County, made by the complainants on March 16, 1960. Said advance applied to the installation by the defendant of, among other things, 976 feet of 8-inch water pipe, valves, fittings, and miscellaneous labor, indirect charges, power equipment use, direct purchases, and engineering and general supervision for the installation. The original advance, which amounted to $4,525, was adjusted downward by the defendant in the amount of $867.19, representing the difference between the estimated cost of the construction and its actual cost.

The record shows that defendant on June 8, 1962, refunded to the complainants the amount of $260.99 under defendant's Rule and Regulation No. 19-B, Main Extensions to Serve Individuals, as an allowance under said Rule for 65 feet of free-frontage pipeline

installation for one water service connection as a result of the water main extension. The net amount advanced by complainants is $3,396.82.

The initial water service connection, and the only one yet effected, was for Parcel No. 2, one of four industrial parcels owned by complainants. The location of said parcels is shown on the sketch attached to the complaint as part of Exhibit A. The water service installation for Parcel No. 2 includes a 2-inch domestic service with a 1-1/2-inch meter and a 6-inch private fire protection service connection.

The domestic service connection was installed pursuant to an Agreement for Water Main Extension to Individual, dated March 16, 1960, copy of which is attached to the complaint as part of Exhibit A and is Exhibit No. 1.

The private fire protection service connection was effected pursuant to an executed Application for Service Connection for Automatic Sprinkler System, dated May 10, 1960, a copy of which is also attached to the complaint as part of Exhibit A and is Exhibit No. 2.

Public hearings were held before Commissioner Frederick B. Holoboff and Examiner Stewart C. Warner on May 10 and 11, 1962, at San Diego. The matter is ready for decision.

The record shows that at the time of initial discussions between the parties a 4-inch main of defendant was situated in the street on Industrial Boulevard and up to the southern boundaries of complainants' property. Upon the submission to the defendant of complainants' construction plans, defendant determined that the installation of an 8-inch main would be required to provide adequate fire protection service. Defendant determined, however, that a 4-inch main would be adequate if domestic service only were requested.

The record shows that if the defendant had strictly applied its filed Rule No. 19, it could have required the complainants to advance the total cost of an 8-inch main for fire protection service and that such advance would not have been refundable. Also, defendant could have required an advance by complainants under Rule and Regulation No. 19-C, Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments or Organized Service Districts. Such advance would have been refundable on the basis of 22 per cent of the estimated annual revenue from each customer over a period of twenty years. Under this combination defendant could have required a net advance of $4,216.80 with no free-footage allowance. Instead, in order to make the most economical arrangement from complainants' standpoint, it executed the agreements, Exhibits Nos. 1 and 2, which resulted in the aforesaid advance of $3,657.81, which is subject to additional refund in the amount of $260.99 for each additional customer.

Complainants claimed that the water mains and appurtenances were their property and that they had simply paid for water service; that the defendant's main extension rules were unjust and unreasonable; and that the $20 per month standby charge for the fire protection service was excessive and unreasonable. Complainants also requested information from the defendant with respect to the amounts expended for the water system installation, in addition to the information relating thereto set forth in Exhibit No. 7. Exhibit No. 7 is a statement received by complainants consisting of an accounting work sheet which is columnar in form, the columns of which show work order number, the description column, pipe, valves, fittings and miscellaneous. The record shows that prior to the hearing defendant offered complainants the opportunity to examine the records supporting the information in Exhibit No. 7 at defendant's offices, and renewed the offer at the time of hearing. Complainants did not

avail themselves of the offer. A ruling by the Commission on each of such claims, allegations and request was prayed for and sought verbally by the complainants. Complainants alleged that the defendant's Rule and Regulation No. 19 was unjust and unreasonable in that it required the complainants to advance the total cost of the water main installation and bear the risk of future development of their properties which might or might not "pay out" such advance.

No complaint was made about the reasonableness of the cost of the water system installation.

Defendant stipulated to the deletion of paragraph 5 of the Application for Service Connection for Automatic Sprinkler System (Exhibit No. 2), because said paragraph conflicted with the defendant's Schedule No. 4, Private Fire Protection Service. The deleted paragraph provided that the complainant would be responsible for the further location of fire protection equipment.

Based on the record the following rulings, findings and conclusions are made:

1. As referred to in paragraph 5 of the Agreement, Exhibit No. 1, and as provided in the defendant's filed tariffs, the water system facilities installed by the defendant should at all times be and remain defendant's sole property, and title thereto rests in defendant.

2. The $20 per month standby charge for a 6-inch private fire protection service connection is contained in defendant's authorized tariffs. Any complaint regarding its unreasonableness would, pursuant to the Commission's Rules, require the signature of 25 or more customers, or a municipal official, or president of a civic body, and a re-examination thereof by the Commission in a proceeding other than the instant one.

3. Although defendant did not strictly apply its main extension rule appropriately, the water system was installed under agreements made with the complainants which were economically favorable to the latter and the public interest does not require, therefore, that the defendant be directed to execute new agreements in accordance with Rule No. 19-C.

4. It is reasonable, and main extension rules provide, that individuals, subdividers, or developers applying for water service and requiring a water main extension, bear any risk that the cost of such extension may or may not be refunded. If the cost of speculative or developmental water system extensions were borne by the utility, the customers of such utility would be burdened with water rates related to a rate base which would include the cost of such an extension and this would be unreasonable. Any re-examination of the reasonableness of defendant's authorized main extension rule cannot properly be made in the instant proceeding.

5. The Agreement for Main Extension to Individual, dated March 16, 1960, between California Water & Telephone Company and Carlin Construction Company, copy of which is attached to the complaint as part of Exhibit A, is reasonable.

6. Defendant should submit a new Application for Service Connection for Automatic Sprinkler System form to complainants for execution, deleting paragraph 5 of such executed form, dated May 10, 1960, copy of which is attached to the complaint as part of Exhibit A.

7. In view of defendant's offer to complainants to examine defendant's records supporting the information contained in Exhibit No. 7, complainants' request for further information is unreasonable and should be denied.

8. No cause of action has been proven and the complaint should be dismissed.

O R D E R

Based on the findings and conclusions hereinbefore set forth,

IT IS HEREBY ORDERED:

1. The Agreement for Main Extension to Individual, dated March 16, 1960, between California Water & Telephone Company and Carlin Construction Company, copy of which is attached to the complaint herein as Exhibit A, is authorized.

2. Defendant shall submit a new Application for Service Connection for Automatic Sprinkler System form to complainants for execution, deleting paragraph 5 of such executed Application form, dated May 10, 1960, copy of which is attached to the complaint herein as part of Exhibit A.

3. Complainants' request for information from defendant with respect to the amounts expended for the water system installation in addition to information set forth in Exhibit No. 7 is denied.

4. The complaint of Robert Carlin, Esther J. Carlin, and David Carlin, a partnership, against California Water & Telephone Company, a corporation, is dismissed.

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

Dated at San Francisco, California, this 31st day of JULY, 1962.

George E. Grover
President

Commissioners