

ORIGINAL

Decision No. 64131

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROY J. WATTENBARGER,
Complainant,

vs.

CREST WATER COMPANY, a
California corporation,
Defendant.

Case No. 7348

O P I N I O N

Roy J. Wattenbarger, by a complaint filed May 11, 1962, seeks an order directing defendant water utility to repay to complainant the sum of \$29,670, alleged to have been illegally exacted by defendant, in violation of its tariff rules and without Commission authorization, as a condition to providing facilities and rendering water service to complainant's subdivision, Tract 2155, located within defendant's certificated service area near Bakersfield.

Complainant alleges that although he advanced to defendant the sum of \$16,143 for certain installations, subject to refund under an agreement executed in accordance with defendant's Rule 15-C, Main Extensions, defendant, contemporaneously and as a condition to extending its facilities and supplying water to the tract, demanded the additional amount of \$29,670, which defendant paid.

The complaint does not specify the date of the alleged transaction, nor does it describe the facilities for which the sums were paid. From other allegations, however, aided by admissions and averments in the answer, it appears that on or about August 19, 1958, complainant and defendant executed two agreements for construction or installation of facilities to supply water to Tract 2155, comprising

29.67 acres of land in Section 15, Township 29 South, Range 28 East, M.D.B. & M., within the utility's certificated service area in Kern County. One of the contracts provided for installation of certain facilities within the tract at a cost of \$16,143, to be advanced by complainant subject to refund at the rate of 22 percent of the revenue derived from consumers attached to the facilities, as provided by the utility's main extension rule. No complaint is made of that agreement.

The other document, bearing the same date as the refund contract, refers to provision by defendant of certain off-site water supply, storage and transmission facilities to supply water to Tract 2155, for which complainant agreed to pay the sum of \$29,670, without refund. Defendant, in that instrument, further agreed to have water at the tract boundary within 65 days of the date of the agreement. Defendant admits that complainant paid the \$29,670 on or about August 19, 1958.

Complainant further alleges, and defendant denies, that at the time complainant paid the \$29,670, and at various times thereafter, defendant agreed to refund the \$29,670 if other developers in defendant's service area were refunded similar payments made by them for off-site or out-of-tract improvements; that thereafter certain other developers did receive such refunds but that defendant has

refused to refund the sum of \$29,670, or any part thereof, to complainant.¹

Defendant has interposed two defenses to the complaint. The first is that the Commission, by Resolution No. W-621 (adopted March 2, 1959), authorized the parties to carry out both agreements, and also ordered that such authorization be effective as of the date of execution of the contracts, August 19, 1958. We take official notice of the adoption of that resolution. The second defense is that the cause of action is barred by various statutes of limitation (Public Utilities Code, Sections 735, 736; Code of Civ. Proc., Sec. 339, Subd. 1).

We find that:

1. The contract, dated August 19, 1958 between complainant and defendant under which complainant agreed to and did pay to defendant the sum of \$29,670, was authorized, effective as of the date of execution of said contract, by Resolution No. W-621, duly adopted by this Commission on March 2, 1959, and that said resolution has not since been rescinded or modified.

2. Complainant's cause of action herein is barred by the provisions of Section 736 of the Public Utilities Code of the State of California.

¹ The instant case is the most recent in a series of proceedings before the Commission involving provision of water facilities for various subdivisions in the utility's service area under arrangements deviating from the company's main extension rule. The Wattenbarger transaction concerning Tract 2155 antedates certain "master plan" arrangements, concluded late in 1959, in which Wattenbarger and others agreed to contribute, pro rata, the cost of certain off-site production, storage and transmission facilities for other tracts. The Commission, after hearing, denied authority to carry out the contracts involved in those arrangements, including a contract with Wattenbarger (Tract 2290), and later authorized the utility to issue stock to be used, in part, for settlement of another subdivider's claim arising under the "master plan" arrangements. (See: Decision No. 60943, Application No. 41991; Decision No. 62771, Case No. 7053; Decision No. 63198, Application No. 44105; Decision No. 63293, Cases Nos. 7116, 7177.)

We conclude, therefore, that the complaint herein should be dismissed. A public hearing is not necessary.

ORDER

The Commission having considered the pleadings herein, and basing its order upon the findings set forth in the foregoing opinion,

IT IS ORDERED that the complaint herein is hereby dismissed.

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

Dated at San Francisco, California, this 21st day of AUGUST, 1962.

George G. Grover
President

[Signature]

[Signature]

[Signature]

Frederick B. Hallock
Commissioners