

Decision No. 67215

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEFFINGWELL LAND CO.,
 Complainant,
 vs.
 SOUTHWEST WATER COMPANY,
 Defendant.

Case No. 7113
 (Filed May 9, 1961;
 Answered June 5, 1961)

William W. Leavitt, for complainant.
Arthur D. Guy, Jr., and Walker Hannon,
 for defendant.
Richard R. Entwistle and Jerry J. Levander,
 for the Commission staff.

O P I N I O N

Leffingwell Land Co., a partnership and owner of commercial Lot 85 of Tract No. 21413, Los Angeles County, alleges that a water distribution system installed, as shown in Exhibit No. 10-A, by Southwest Water Co., a public utility water corporation, to furnish domestic and fire protection water service to a Safeway store (Safeway) located on the northwest corner of said lot, and domestic water service to a Texaco service station (Texaco) located on the southeast corner of said lot, each on complainant's property, was in excess of a system adequate to supply the needs of said consumers. An order that defendant refund to complainant the excess cost of said installation is sought.

Public hearings were held before Examiner Warner on November 28 and 29 and December 27, 1961, February 1, 1962, and August 21, 22, and 23, 1963, in Los Angeles. The matter was argued by briefs, finally received on December 31, 1963, and is now ready for decision.

The property in question is bounded on the north by Hutchins Drive at Gerber Avenue, on the east by Luitwieler Avenue, on the south by Imperial Highway, and on the southwest by Telegraph Road, and comprises a total of 7.37 acres.

Late in the year 1959, complainant requested domestic and fire protection service for Safeway and domestic service for Texaco, each proposed to be constructed; its engineers forwarded defendant a plot and parking plan (Exhibit No. 11) on which defendant marked out its proposed water system installation; and complainant verbally and in writing (Exhibits Nos. 1A, 2, 3, 5, and 6) protested the proposal on the grounds that looping of the property with 8-inch mains was not required by the requested services. Defendant verbally and in writing (Exhibits Nos. 1, 4, 7, 8, 9, and 10) insisted to the contrary, and further insisted that, since complainant intended to require water service for the entire lot including, at one time, 22 additional services, Paragraph C.1 of defendant's Rule No. 15, Main Extensions, was applicable. Said Rule, then in effect, provided, among other things, that the developer or subdivider of an organized service district would be required to advance the cost of the main extension, subject to refund. Complainant contended that it was a bona fide customer as defined by Paragraph A.1 of Rule No. 15, and that under Paragraph B.1 of Rule No. 15 it was entitled to 65 feet of free main extension for each location.

Complainant, on March 2, 1960, deposited with defendant the sum of \$1,700 and on June 28, 1960, the sum of \$12,023.74 and on September 19, 1960, J. H. Welsh & Sons deposited the sum of \$860 as a donation in aid, a total of \$14,583.74, to cover the cost of the main extension, but complainant refused to sign a main extension agreement.

Defendant's Rule No. 15, in effect during the years 1959 and 1960, provided in Paragraph A.5 that any dispute over the reasonableness of a main extension agreement could be referred to this Commission for settlement. Defendant's motion to dismiss the complaint on the grounds of lack of jurisdiction by the Commission is denied.

Testimony was elicited by complainant from defendant's officers and agents showing that, whereas complainant may have originally indicated an intention to develop Lot 85 beyond the leasing of a portion of the property to Safeway and Texaco, such plans were not firm although defendant interpreted the plan, Exhibit No. 11, firmly, and constructed the water system accordingly.

Complainant's consulting engineering witness submitted, as Exhibit No. 18, his estimate of the facilities required to serve Safeway and Texaco and his estimate of the costs of such facilities. The total charge to the developer under Paragraph B.1 of Rule No. 15 for the 8-inch main to Safeway is shown in said Exhibit as \$747.46; for the 2-inch main to Texaco, \$719.38; and for the 8-inch fire service to Safeway, \$1,957.76; a total of \$3,424.60. This witness testified that, at 25 pounds residual pressure, the water requirement for Safeway's fire sprinkler service was approximately 750 gallons

per minute, and the additional water demand for Lot 85, that is to say, for Safeway's domestic service and Texaco, was 100 gpm. The record shows that the flow at the fire hydrant at Gerber Avenue and Hutchins Drive was 750 gpm at 42 pounds residual pressure, which amounted to 1200 gpm at 25 pounds residual pressure. Also, the flow available in the main at Luitwieler Avenue and Imperial Highway was estimated to be 1000 gpm at 35 pounds residual pressure.

Based upon a review of the record the Commission finds that:

1.a. Complainant requested domestic and fire protection water service to Safeway and domestic water service to Texaco.

b. Complainant when making its requests was a bona fide customer as such term was defined in defendant's Rule B.1 of its Rule No. 15, Main Extensions.

c. Defendant misinterpreted complainant's requests for water service and Rule No. 15 applicable thereto.

2.a. Flows available for domestic and fire protection water service to Safeway and for domestic water service to Texaco were adequate when such services were requested.

b. Defendant's water system installation and main extensions to furnish water service to Safeway and Texaco were excessive and resulted in excessive charges to complainant.

3. Complainant's estimates of the facilities required to serve Safeway and Texaco, and its estimate of the costs of such facilities totaling \$3,424.60, as shown in Exhibit No. 18, are reasonable.

4. The deposit required by defendant of complainant in the amount of \$14,583.74, is unreasonable.

Based upon the foregoing findings the Commission concludes that defendant should be ordered to return to complainant the amount of \$11,159.14, plus interest at 6 percent per annum from June 28, 1960.

O R D E R

IT IS ORDERED that:

1. Southwest Water Co. shall, within five days after the effective date hereof, refund to Leffingwell Land Co. the amount of \$11,159.14 plus interest thereon at 6 percent per annum from June 28, 1960 to date of refund, and shall, within three days thereafter, report to this Commission in writing its compliance herewith.

2. In all other respects the complaint is dismissed.

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

Dated at San Francisco, California, this 19th day of May, 1964.

William G. Beards
President

Robert H. Smith

Wendell W. Page

George H. Grover

Friedrich B. Holoboff
Commissioners