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Decision 92-06-003 June 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Charles W. Davidson, Complainant, vs. Alisal Water Corporation, Defendant.	Case 92-01-027 (Filed January 14, 1992)

Charles W. Davidson, for himself, complainant.
Robert T. and Patricia Adcock, for Alisal Water Corporation, defendant.

OPINION ON ORDER OF DISMISSAL

Statement of Facts

Alisal Water Corporation (Alisal), a California corporation doing business as Alco Water Service and headquartered in Salinas in Monterey County, provides public utility water service to customers in parts of the City of Salinas and adjacent unincorporated areas, and also operates a number of small water systems accommodating subdivisions in the Salinas Valley. Alisal is owned by Robert T. and Patricia Adcock, husband and wife.

In the mid-1980s, in Salinas, the development firm of Davidson, Kavanagh & Brezzo did a 70-lot residential subdivision, Tract 1037, Parkview Manor Subdivision, on land adjacent to a 50-acre parcel which the city intended to make a park. The subdivision was in Alisal's service territory and Alisal provided the water service extension. On August 19, 1986, the development firm entered into a Main Extension Contract with Alisal to cover the cost of installing distribution facilities. The agreement was made pursuant to provisions of Section C.1.a. of the utility's Rule 15 on file with the Commission. By the agreement, the

developer advanced $166,252 subject to refund over a 40-year period at the rate of 2-1/2% annually beginning the year following execution of the contract.

A Memorandum of Understanding to the Main Extension Contract set forth an understanding that included in the $166,252 the amount of $15,000 for the purpose of financing the acquisition of a suitable well site for the subdivision, it being understood that if the cost of such acquisition turned out to be under $15,000, the balance would be refunded to the developer; if more, the developer would be responsible for the overage. To accommodate this potential variable, the parties agreed that after the ultimate cost was ascertained, they would amend their Main Extension Contract to incorporate any change.

The developer by this Memorandum of Understanding further agreed that he would reserve residential Lot No. 1 in the subdivision as the potential well site until all other suitable residential lots were sold to the public, thereby allowing Alisal time to obtain another lot suitable for a well but less suitable for development, instead of having to purchase the reserved lot for a well site.[1]

In this instance, the subdivision area included 15 acres across a dividing street, land that the city would not permit the developer to develop. Alisal found a suitable well site in these 15 acres, one not suitable for development but by virtue of being closer to the underlying water aquifers in the area, one better suited for a well. The developer agreed that this property would come to the water utility; the utility surveyed it and filed a friendly condemnation suit to acquire it.

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1 For obvious reasons, a utility will not want to reduce the number of developable lots in a new subdivision when it may be able to obtain a suitable well site on a less developable or marginal lot in or adjacent to the subdivision.

But about a week later, the city required the developer to sell that entire 15-acre parcel to the city, paying two or three thousand dollars an acre, planning to add the parcel to its 50 acres for park purposes. By then, the developer had also sold the reserved Lot No. 1, as well. The city then wanted Alisal to pay $40,000 for the 10,0000-square foot area the utility needed for utility purposes. This left Alisal forced into a condemnation action with Salinas over this particular piece of property.

This condemnation action dragged on from 1987 until October 1991 when it was finally settled out of court with Alisal paying $12,400 for an easement (rather than fee title) which permits access, a well site, and room for utility facilities. But during this interval, Alisal assertedly incurred, by its reckoning, another $8,300 in expenses in making the acquisition.

Meanwhile, on December 2, 1988, Davidson, Kavanagh & Brezzo assigned the Main Extension Contract refunds to Charles W. Davidson, Trustee for the Davidson children, and so notified Alisal on December 28, 1988. Pursuant to the Main Extension Contract, refund payments in the amount of $4,156.30 were to be made annually. On December 19, 1988, a payment of $8,312.60 to cover the 1987 and 1988 refunds was made. Thereafter, no refunds were received.

On April 3, 1991, after six unfruitful attempts to get Alisal to return his telephone calls regarding the delinquent 1989 and 1990 refunds, Davidson sent a certified letter addressed to the Adcocks and Alisal, and receiving no response, brought the matter to the Commission's Consumer Affairs Branch on June 4, 1991. When Alisal failed to respond, Davidson went "formal," filing Case (C.) 91-10-031 on October 15, 1991. Again Alisal failed to answer. But before hearing could be set, Alisal sent Davidson a check for $8,312.60 representing the delinquent 1989 and 1990 refunds. At Davidson's written request, by Decision 91-12-025, C.91-10-031 was dismissed with prejudice.

However, Alisal then missed the 1991 payment time, and on January 14, 1992, Davidson filed C.92-01-027. Again Alisal failed to answer. A duly noticed public hearing was thereupon held in Los Gatos on March 16, 1992 before Administrative Law Judge (ALJ) John B. Weiss, and the evidence set forth herein was developed from testimony by Mr. and Mrs. Robert T. Adcock and Mr. Davidson at that hearing.

It was Alisal's position that since the costs associated with the condemnation action to acquire an alternative well site were running up and would probably exceed the $15,000 advanced by the developer, the Main Extension Contract would have to be adjusted, and then payments would be made based on the adjusted contract. Thus, Alisal had delayed payments on the 1989 and 1990 refunds. Mrs. Adcock testified that a "little speed letter note" had been sent along with the October 1991 payment of the 1989 and 1990 refunds. This note read:

> "At long last we have settled this case with the City of Salinas. Our costs have exceeded the $15,000 advanced. We will audit our costs and contact you regarding adjustment to contract."

Davidson admitted receiving the check which his secretary handled, filing a copy of the check for his records, but stated there was no copy of this speed letter, that he never saw it.

ALJ Weiss pointed out that with the initial face obligation of the refund amount being $166,252, obviously quite a few annual payments of the originally scheduled $4,156.30 annual refund due could be made without any jeopardy to the utility's position on the $8,000 plus overrun pending an eventual adjustment of the original refund contract after all costs were identified and accumulated subject to a final audit.

Adcock acknowledged that logic, and he and Davidson agreed that Adcock would within 10 days make the 1991 payment of $4,156.30, and that the two would meet and work out a mutually acceptable resolution of the overage issue, and amend the

Main Extension Contract to reflect that resolution - all before the end of 1992 so that Davidson would not have to resort to further complaint filings to receive his refund payments. In turn, Davidson agreed to request dismissal of his current complaint subject to possible refiling should agreement fail and future payments be withheld.

As promised, Adcock made the 1991 payment, and Davidson wrote on March 26, 1992 to terminate C.92-01-027.

ORDER OF DISMISSAL

Charles W. Davidson, having advised the Commission in writing of a satisfactory resolution of his present dispute over a past refund due under a Main Extension Contract, has requested that his present complaint in Case (C.) 92-01-027 be dismissed.

Therefore, IT IS ORDERED that C.92-01-027 is dismissed with prejudice.

This order is effective today.

Dated June 3, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY

NEAL J. SHULMAN, Executive Director