

Decision 82 02 015

FEB - 4 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAMES FITZPATRICK, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 CITIZENS UTILITIES COMPANY OF )  
 CALIFORNIA, )  
 )  
 Defendant. )

Case 10989  
(Filed May 26, 1981)

James Fitzpatrick, for himself, complainant.  
W. B. Stradley, for Citizens Utilities Company  
of California, defendant.

O P I N I O N

This is a complaint by James Fitzpatrick against Citizens Utilities Company of California (Citizens), Montara District. Fitzpatrick contends that he is a "bona fide" customer and not a "real estate developer" or "builder" and is entitled to a free-footage allowance for a house which he built. He also complains about some of the construction costs and the way in which the job was done.

A duly noticed public hearing was held in this proceeding before Administrative Law Judge Donald B. Jarvis in San Francisco on October 5, 1981. The matter was submitted on that date.

Material Issues

The material issues in this proceeding are: (1) Is Fitzpatrick a bona fide customer or a real estate developer or builder for the purposes of Citizens' water main extension rule? (2) Was the extension to the house Fitzpatrick constructed done appropriately? (3) Were the costs of the extension charged to Fitzpatrick proper?

Discussion

A. Fitzpatrick's Status

Fitzpatrick contends that he is a bona fide customer and not a real estate developer or builder. Citizens contends that he is a developer or builder and refused to give him a free-footage allowance.

Citizens' main extension rule (Rule 15) provides as follows:

"3. Definitions

"a. A 'bona fide customer', for the purposes of this rule, shall be a customer (excluding any customer formerly served at the same location) who has given satisfactory evidence that service will be reasonably permanent to the property which has been improved with a building of a permanent nature, and to which service has commenced. The provision of service to a real estate developer or builder, during the construction or development period, shall not establish him as a bona fide customer.

"b. A 'real estate developer' or 'builder', for the purposes of this rule, shall include any individual, association of individuals, partnership, or corporation that divides a parcel of land into two or more portions."

Fitzpatrick testified that: He is a general contractor. He had built only two houses in four years. The house which is the subject matter of this dispute was not sold until it was half completed. It was not sold at the time he applied for water service. Therefore, he argues, he was a bona fide customer at the time and entitled to the free-footage allowance. On cross-examination Fitzpatrick acknowledged that he owns other lots in the area which he hopes to develop.

In Christin v Citizens Utilities Co., Decision 91069 in Case 10510, entered on November 30, 1979, the Commission found that the definition of developer or builder was applicable under similar circumstances. Under the facts presented, Fitzpatrick is a developer or builder and not entitled to a free-footage allowance under Rule 15.

B. Was the Extension Done Appropriately?

Fitzpatrick contends that a shorter route could have been used for the extension, thereby reducing costs. The evidence indicates that a direct route was taken.

Fitzpatrick also contends that the contractor who worked on the main extension did not properly level the street in which it was placed. As a result, Fitzpatrick spent \$300 to have the street leveled. Citizens introduced evidence that the county does not maintain the streets in the area. None of the streets are at the required grade.

Citizens, operating through its contractor, holds a duty to return the street to the condition it was in prior to construction of the main extension. By constructing a main extension it does not assume the responsibility of bringing a substandard street up to grade. There is no evidence that the street met grade requirements prior to construction of the main extension. Fitzpatrick is entitled to no relief on this point.

Costs of the Extension

Fitzpatrick contends that the costs for the main extension were excessive and he should not be required to pay the full amount. Fitzpatrick advanced \$7,504 to Citizens. Citizens claims he owes \$795 for the actual cost of the extension.

The record indicates that Citizens solicited bids from independent contractors for construction of the main extension. The

contract was awarded to the lowest bidder. The number of feet of pipe required was not accurate in the bid solicitation, but this would not have affected the result. The portion of the water system here involved was constructed by the United States Navy in 1943 and later acquired by Citizens. Diagrams of the system are not necessarily accurate. While the main extension was being constructed, it was discovered that 10-inch rather than 6-inch mains were involved. This generated additional expense. Fitzpatrick, of course, was required to pay for the actual construction costs. (Rule 15A.6.)

At the hearing Citizens stipulated that there was an error of \$396 in the charges billed for the main extension. The cost of \$8,299 should be reduced by \$396.

No other points require discussion.

#### Findings of Fact

1. Citizens is a public utility water corporation subject to the jurisdiction of this Commission.
2. Citizens operates a water system in the vicinity of Montara, San Mateo County, California. The portion of the system here involved was constructed by the United States Navy in 1943. Diagrams of that portion of the system are not always accurate.
3. Fitzpatrick is a licensed general contractor. He has built two houses in four years in the Montara area. He owns other lots in the area which he hopes to develop.
4. On or about February 19, 1980, Fitzpatrick requested that Citizens extend water service to Assessor's Parcel 037-061-050, San Mateo County. At the time service was requested, Fitzpatrick was building a house on the property which had not been sold. The house was sold at a later date.

5. Citizens' Rule 15A.3. provides as follows:

"3. Definitions

- "a. A 'bona fide customer', for the purposes of this rule, shall be a customer (excluding any customer formerly served at the same location) who has given satisfactory evidence that service will be reasonably permanent to the property which has been improved with a building of a permanent nature, and to which service has commenced. The provision of service to a real estate developer or builder, during the construction or development period, shall not establish him as a bona fide customer.
- "b. A 'real estate developer' or 'builder', for the purposes of this rule, shall include any individual, association of individuals, partnership, or corporation that divides a parcel of land into two or more portions."

6. Citizens took the position that Fitzpatrick was a real estate developer or builder and required him to execute a main extension agreement for that category before agreeing to provide service to the property.

7. Citizens solicited bids from independent contractors for constructing the extension. The bid solicitations did not accurately reflect the length of the extension, but this had no effect on the outcome of the bidding. The contract was awarded to the lowest bidder.

8. The extension was constructed directly from Citizens' facilities. There was no shorter route.

9. The county does not maintain the roads in the area. None of the roads in the area are at the required grade. The extension was placed under a dirt road in the area. After the extension was

completed, Fitzpatrick spent \$300 to bring a portion of the road to grade. There is no evidence that the road met grade requirements prior to construction of the extension.

10. Citizens estimated the cost of the extension to be \$7,479. Fitzpatrick advanced the sum of \$7,504. Citizens billed the actual cost of construction as \$8,299. The actual costs of construction were \$7,903. The sum of \$399 is unpaid for the actual costs of construction.

Conclusions of Law

1. Fitzpatrick is a real estate developer or builder within the meaning of Rule 15.

2. Citizens acted properly and in accordance with its tariff in soliciting bids and having the extension constructed.

3. Citizens should be authorized to collect the balance due on the actual cost of construction of \$399 from Fitzpatrick.

4. Except for modification of the amount of actual construction costs, Fitzpatrick should have no other relief in this proceeding.

O R D E R

IT IS ORDERED that:

1. Citizens Utilities Company of California is authorized to collect from James Fitzpatrick the sum of \$399, which is the balance due for actual costs expended for the construction of a main extension to Assessor's Parcel 037-061-050, San Mateo County, California.

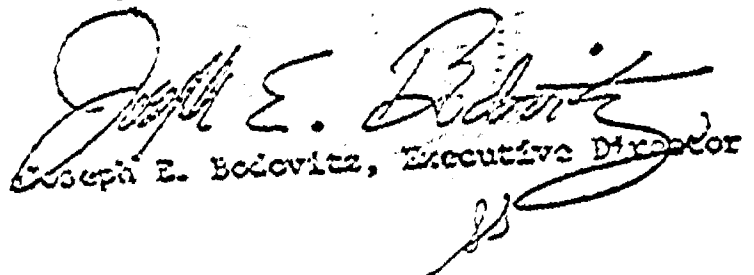
2. Except as provided in Ordering Paragraph 1, the complaint is denied.

This order becomes effective 30 days from today.

Dated FEB - 4 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director