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Decision 82 02 017 FEB - 4 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PANAMINT CONSTRUCTION COMPANY, INC., a California corporation, Complainant, vs. SOUTHERN CALIFORNIA WATER COMPANY, Defendant.	Case 11000 (Filed June 24, 1981)

E. Gene Crain, Attorney at Law, for complainant.
Richard F. Gruszka, for defendant.

O P I N I O N

Panamint Construction Company, Inc. (Panamint) alleges that it entered into a main extension contract with Southern California Water Company (SCWC) whereby Panamint agreed to advance funds for the construction of a main line extension to serve Panamint's new apartment project in SCWC's Cypress service area, in Orange County. Under the terms of the contract, Panamint agreed to pay a total of $17,975 of which $5,050 was nonrefundable. Panamint alleges the remaining $12,925 was refundable under the contract as additional service connections were made to the main extension, but contends that the contract was incorrectly drawn and does not reflect the true intention of the parties. Panamint contends that the refund provisions were incorrectly designated as being governed by SCWC's filed tariff Rule 15.B., entitled Extensions to Serve Individuals.

Panamint alleges that SCWC was aware at the time the main extension contract was executed that the extension was for an apartment project, having multiple housing units, and that to properly reflect the true intentions of the parties, the contract should have been drawn under Rule 15.C., Extensions to Serve Subdivision Tracts, Housing Projects, Industrial Developments or Organized Commercial Districts.

Panamint seeks an order reforming the main extension contract to reflect the true intentions of the parties by changing the rule governing refunds from Rule 15.B.3. to Rule 15.C.2. and for an order requiring SCWC to pay Panamint the money owing under the reformed contract.

In its answer, SCWC denied that the main extension contract was incorrectly drawn or that it does not reflect the true intentions of the parties. SCWC further denied that the contract should have cited Rule 15.C. instead of Rule 15.B.3. or that the amount of the contract was for $17,975, as alleged by Panamint.

SCWC contends that the total adjusted amount of the contract is $18,806.77 of which $5,569.60 is not refundable and that the executed contract is correctly and properly drawn. SCWC requests an order finding that it has applied its filed tariff Rule 15 properly and impartially.

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Following proper notice, the matter was heard on October 19, 1981 at Los Angeles before Administrative Law Judge William A. Turkish and the matter was submitted upon the receipt of concurrent briefs on November 2, 1981. Testifying on behalf of Panamint were Ralph Wilcox, a former vice president of Panamint, now self-employed, and James Dixon, a former employee of Panamint, now its sole shareholder/owner. Richard F. Gruzka, SCWC's vice president of revenue requirements, testified on behalf of SCWC.

Following is a summary of the testimony presented by witnesses for Panamint:

1. In 1972, during construction of a 132-unit apartment project by Panamint in the City of Cypress, discussions were held with a representative of SCWC regarding a water main extension to serve the project. SCWC's representative tendered a main extension agreement to Panamint and represented to Panamint that $12,925 of the amount advanced to SCWC would be refundable under SCWC's filed tariff Rule 15 within a 10-year period.

2. Along with the main extension agreement, Panamint received a copy of SCWC's Rule 15 and that although Panamint did not agree with the rule cited in the main extension agreement, it signed the agreement because the construction was 90% completed and the water was needed immediately.

3. No discussions took place between Panamint and SCWC with respect to Rule 15.B. and Rule 15.C. Panamint was given reassurances that it would be paid back a portion of the revenues derived from the main extension revenues. No part of the moneys has been refunded to Panamint.

4. Panamint wrote a letter to SCWC on October 9, 1979 requesting information on the status of the refunds it believed due under the main extension agreement. The response from SCWC was a credit of $1,455.72 for three service connections added to the main. Instead of a refund of the $1,455.72, SCWC applied this amount to the adjusted construction costs owing on the two contracts entered into by the parties. 1/

5. The apartment complex is now owned by Diversified Properties, Inc. Panamint's president estimated that the apartment complex has been running close to full occupancy and that for the first eight months of 1981 the water bill totaled $4,137. This amount was averaged out for each month and then extended forward 10, 15, and 20 years to determine the approximate revenues generated from the 132-unit apartment to SCWC. Panamint estimates $62,000 in revenues would be received by SCWC in the first 10 years of the main extension contract, $93,000 in 15 years, and $124,000 in 20 years.

SCWC's witness testified essentially as follows:

1. The records of SCWC reveal only one customer for this project at any given time between September 25, 1972, when Panamint became the first customer, and June 6, 1979 when Diversified Properties, Inc. signed on as customer. In between, there were two other customers at different times for the apartment project. Diversified Properties, Inc. is still shown as customer of the apartment complex.

1/ One contract, which is in issue here, is under the so-called 50-foot rule and required an additional $312.17 to be added to the $12,925 advanced by Panamint. The other contract, not in issue here, designated as Contribution in Aid of Construction (non-refundable), required an additional $519.60 as owing to SCWC by Panamint).

2. The terms "bona fide customer" and "service connection" are deemed synonymous in meaning under Rule 15 A.3.a., B.1., B.2.3., C.2.b. and c., and General Order 103, Section V, Extension of Service. The inference is that each service connection shall have one bona fide customer.

3. If the 132 units of the apartment complex were separately metered, then Rule 15.C. would have applied. However, there is one service connection from the main extension to one meter and thus only one customer. Therefore, the main extension rule for serving individuals is Rule 15.B.

4. The executed main extension contract between the parties reflects the intention of SCWC at the time the contract was executed. A copy of Rule 15 was furnished to Panamint.

5. The adjusted cost of the portion of the contract in issue is $13,237.17 rather than the $12,925 as alleged by Panamint.

6. Rule 15.B. is most often used in providing service to individuals and single-family residences.

Discussion

The issue is straightforwardly simple--whether the main extension contract executed by the parties was properly drawn under the provisions of SCWC's tariff Rule 15, which governs main extensions. We think not.

There are two main provisions under Rule 15 for extending water system mains. The first is covered under Rule 15.B., Extensions to Serve Individuals, commonly called the 50-foot rule. Under this section, the utility pays for the first 50 feet of main extension and the individual customer advances the cost for the balance of the main extension necessary

to serve his property beyond the first 50 feet. The second provision in Rule 15 for main extensions is applicable to developers and builders of subdivisions, tracts, housing projects, industrial developments, or organized commercial districts. This section requires the developer or builder to advance to the utility the total cost of the main extension necessary to serve both new customers and potential customers who might be served directly from the main extension. In lieu of such advance, the developer or builder may construct and install the facilities himself. Under either section the individual or the developer/builder who advances the cost of the main extension to the utility is entitled to a refund, without interest, of the amount advanced to the utility, according to formulae indicated in the rule within a designated period of time.

Rule 15 was developed as a consequence of the population explosion in California since the 1940s which necessitated a construction boom to provide homes for these people and water to serve those homes. The combination of rapid growth and high construction costs forced privately owned water utilities, in extending their facilities to provide water service, to make substantial capital investments considerably above the average investment per existing consumer. This situation placed tremendous financial burdens upon privately owned water utilities, especially the small utilities who had considerable difficulty in financing the construction of new water mains. This eventually led to the current rule requiring advances for the cost of such main extensions by individual applicants and by developers and

builders of large parcels. The objective in requiring advances for the cost of installing main extensions was to relieve the utility from the burden of having to finance many main extension projects at any given time thereby placing them in a financial bind. The rule requiring cost advances relieved the financial burden on the utilities while at the same time providing a means for refund of the moneys advanced by those applying for main extensions if the project generated sufficient revenues.

In Decision 64536 in Case 5501 and Application 40579, we stated that the essential function of the main extension rule is to provide a method by which the necessary facilities may be developed with a minimum financial risk to the utility and consumers from potentially uneconomic or speculative developments. Once the development begins to "pay its way", by producing revenues to cover at least the operating and maintenance costs, depreciation expense, and some return on the investment in water facilities, the uneconomic or speculative aspects of the installation are diminished to a point at which it may be said that the rule has served its primary purpose. In this context we held that an "uneconomic" extension was one where plant investment, etc. required to provide service to a prospective customer might impose an undue burden on the utility's customers and that a "speculative" extension was one where there was no reasonable assurance that sufficient additional customers would be added to justify the capital expenditure.

We believe Section B of Rule 15 contemplates an individual customer or individual family unit residing in a single dwelling unit. Normally, in urban areas, the 50-foot allowance at utility expense is both sufficient to serve the customer with water and economical for the utility because of the revenues it will derive. However, in low density areas, where a main has to be extended beyond 50 feet to provide water to the customer, it becomes uneconomical for the utility to finance the cost of the main extension because if there is little or no future growth which will permit additional connections to the main extension, the extension will not become self-supporting. Of course, if there is growth and additional connections to the main extension bringing in additional revenues, the financial risk to the utility is removed and refund is given to the customer advancing the cost of the extension in relation to the number of service connections to the extension within a 10-year period. The principle is the same for main extension construction costs being advanced by the developer or builder of a subdivision, tract, housing project, etc. These advances provide a method

by which the necessary water facilities are developed with minimum financial risk to the utility and its customers from uneconomical or speculative developments while the refund provisions allow a return of such advances when the development becomes self-supporting from the revenues received from new and future customers using such main extension.

We believe SCWC erred when it designated Section B of Rule 15 as the appropriate rule governing the main extension contract proferred to Panamint. Panamint was the builder of a 132-unit apartment complex which was known by SCWC. Although the project was served by a single meter for which Panamint was the customer of record, we do not believe this is what was intended by Section B. Section B, as stated above, contemplated water service to an individual or family unit and the revenues derived from the water consumption by that individual or family unit. SCWC argues that if Panamint had 132 separate meters to the 132 separate units in the housing project, it would then be governed by Section C of Rule 15.

In the past nine years, there have been only one or two additional service connections to the main extension paid for by Panamint for which SCWC has given Panamint a paper credit of $1,455.72 which has been applied against the adjusted amount owing on the extension contracts signed by Panamint. In the meantime, during those nine years SCWC has been receiving the revenues from Panamint and its successors in interest for the water consumed by the residents of the 132 units in the apartment complex with what amounts to a contribution by Panamint, when that was not the intention. SCWC should not be entitled to such a windfall and Panamint should not be required to lose the moneys advanced by it for the cost of the main extension to the apartment complex merely because Panamint chose to have one meter instead of 132 separate meters installed. The cost of the main extension in issue here has proven to be both economical and nonspeculative, and since those were the risks we wanted to protect the water utilities against, that goal has been accomplished. Fairness alone dictates that Panamint should be entitled to refund of the moneys it advanced to SCWC. However, as we view Rule 15, SCWC should have cited Section C as the governing rule applicable to the main extension contract it executed with Panamint. This would entitle Panamint to refunds as described in Section C.2. of Rule 15 within a maximum 20-year refund period. We will order SCWC and Panamint to revise the main extension contract executed by them to reflect that Section C of Rule 15 governs the application of the contract instead of the incorrectly stated Section B.

Findings of Fact

1. Panamint, builder of a 132-unit apartment complex in the City of Cypress, and SCWC entered into a water main extension contract on August 11, 1972 for the construction of a main extension to serve such complex.

2. Panamint advanced the sum of $12,925 to SCWC for the construction of a main extension to serve the apartment project.

3. The adjusted cost of construction of the main extension to the apartment project is $13,237.17.

4. The advances required by Rule 15 for the construction of main extensions are primarily to protect the water utility against the financial risks of uneconomic or speculative water main extension. Once the extension begins to pay for itself through revenues, that risk is removed and Rule 15 then contemplates refunds be made to the applicant who advanced the funds.

5. Panamint has not actually received any refund of the amounts advanced to SCWC for construction of the main extension.

6. SCWC has incorrectly cited Section B.3. of Rule 15 as the rule governing refunds under its contract with Panamint.

7. SCWC has also incorrectly cited Section B of Rule 15 which provides for a free footage allowance, in extensions serving individuals.

8. Although Panamint was an individual customer of record, it was not an individual as contemplated by Section B of Rule 15.

Conclusions of Law

1. The applicable Section of Rule 15 which should have been cited in the main extension contract between SCWC and Panamint is Section C, Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments, etc.

2. Any refund Panamint may be entitled to receive from SCWC is governed by Section C.2 of Rule 15.

3. Based upon the evidence and the findings above, we conclude that the main extension contract executed by SCWC and Panamint, effective August 11, 1972, under SCWC's filed Rule 15, Main Extensions, should be reformed by deleting reference to Section B and substituting Section C instead.

O R D E R

IT IS ORDERED that:

1. Southern California Water Company (SCWC) shall reform its main extension contract with an effective date of August 11, 1972, with Panamint Construction Company (Panamint) by substituting Section C for Section B, of Rule 15, as the applicable section governing the construction of the main extension referred to in the contract.

2. SCWC shall recompute the adjusted construction cost of the main extension referred to in the main extension contract executed by SCWC and Panamint after deleting any free footage allowance.

3. SCWC shall review the amount of the revenues received from Panamint and its successors in interest since water service began to the apartment complex to determine the refund, if any, that Panamint is entitled to receive in accordance with Section C of Rule 15.

4. SCWC shall pay to Panamint any refunds Panamint may be entitled to as a result of paragraph 3 of this order and may make any necessary adjustment resulting from a recomputation of paragraph 2 of this order.

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. GREW
Commissioners

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

Joseph E. Bodovitz, Executive Director