

Decision 82 11 012 NOV 3 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

J. ROBERT GRIMSON and RALPH C. BOHN
for owners cooperating on Robin Anne
Ln. Water Project,

Complainants,

vs

SAN JOSE WATER WORKS,

Defendant.

ORIGINAL

Case 82-04-07
(Filed April 22, 1982)

Ralph C. Bohn and J. Robert Grimson,
for Robin Anne Lane owners on water
project, complainants.

B. G. Spencer and Burl Huffman, for
San Jose Water Works, defendant.

O P I N I O N

Statement of Facts

In 1977 five property owners in the City of Monte Sereno (City) determined they wished to have water service from San Jose Water Works (SJWW), the public water utility serving the area, extended to their properties on Robin Anne Lane. The proposed main extension came to include service to one existing and four future homes, the addition of one fire hydrant, and the termination of an existing service. Accordingly, negotiations were undertaken with SJWW to obtain service.

Early in these negotiations SJWW indicated to the property owners that it would deal and contract only with one individual. Therefore, Dr. J. Robert Grimson was designated to be the contracting party by the property owners, although throughout the negotiations he

was closely assisted by his friend Robert C. Bohn, one of the property owners. George Spitz, new business supervisor for SJWW, since deceased, and a friend of Bohn's, handled the negotiations for the utility.

Robin Anne Lane was a semipaved private road. Originally it had been contemplated that the water facilities would be sited on the side of the road, involving little or no consideration of paving. The property owners initially planned to install the facilities using their own plumbing contractor, but after consultations preliminary to getting a bid, they decided to have the work performed by SJWW. On November 3, 1978 a main extension contract (applicable to subdivisions, tracts, housing projects, industrial developments, or organized districts where distribution plant only, no special facilities are involved, with fire flow to meet General Order (GO) 103) drawn up by SJWW was signed by Grimson and the utility with the total installed cost set forth at an estimated \$7,060. To this was added the cost of a service to an existing home and termination of another service, thereby bringing the estimated cost to \$7,770. Subsequently a 1-inch line (with a meter on one side of the street and the house across the street) was accidentally cut, adding another \$650 to the estimated cost, and bringing the total accepted by Grimson to \$8,420. The property owners through Grimson deposited this \$8,420 with SJWW.

After the main extension contract was signed, City decided that Robin Anne Lane would have to be brought up to the City's standards if any future building permits were to be expected. Early in 1979, before any work began on the water facilities, the property owners engaged a licensed civil engineer to lay out the street to meet city standards, and then contracted with Cushman Construction Company (Cushman) to put in a new street, including paving.

Through its construction supervisor Dave Boyarsky, SJWW informed Grimson that the new street should be cut to subgrade and concrete gutters installed before SJWW's trenching for the main would begin. Grimson told Boyarsky to work directly with Cushman to coordinate matters. On July 2, 1979 Boyarsky was replaced as SJWW's construction supervisor by Burl Huffman. In turn Huffman was told by Grimson to work directly with Cushman.

By July 20, 1979 most of the gutter was in but additional grading was needed. Anticipating readiness for trenching, Huffman arranged with Fairley Constructors (Fairley), SJWW's permanent contractor, tentatively for work to begin July 30, 1979. But then a sand haulers' strike intervened. At the end of that strike early in August, Huffman called a site meeting with Cushman. Upon arrival at the site on or about August 8, 1979, Huffman ascertained that the street had been partially base-rocked, although not to grade. This meant that in trenching, the dirt displaced would contaminate the in-place base rock alongside the trench, necessitating its replacement after the trench was backfilled. Here the controversy begins.

Huffman insists that Cushman had compacted the street, base-rocked it, and had it approved by City's inspector so that paving could proceed. He asserts that Cushman that day told him Cushman would be responsible for placing and rolling in base rock over SJWW's trench after the main was laid and the trench backfilled.

Thereafter Fairley trenched and bedded the main, backfilling the trench with native soil as required by City, only to have the trench repeatedly fail compaction tests. Huffman asserts that the trench backfill had been lightly jettted at the instruction of B. L. Olmstead, public works engineer for City, who wanted minimum wetting so that paving could follow quickly. This light jetting had resulted in less than normal compaction. Since Cushman had gone on to another job, SJWW had Fairley place base rock over the trench, then mechanically tamp it. The trench had to be mechanically tamped twice before it passed the compaction test.

In rebuttal to Huffman's version, Bohn testified that he talked to Olmstead who could not be at the hearing; that Olmstead gave Bohn his notes on the job and told Bohn that the base rock initially placed had not been placed to grade; and that it was merely a layer put down as a result of neighbors' complaints about dust. Olmstead told Bohn that it is the normal responsibility of the trenching contractor, not the road contractor, to bring trench compaction to a level which can finally be raised to 95% with base rock compaction, and that trench sign-off by City does not occur until an appropriate compaction is attained. Olmstead told Bohn that Huffman's assertion that he, Olmstead, had authorized sealing the contaminated rock with two coats of oil instead of replacing it does not make any sense: that base rock would have to be added to bring the level up to grade.

Subsequently Cushman brought in additional base rock and brought the street level up to grade before paving it.

After completion of the project, SJWW's controller, G. W. Clements, on January 4, 1980, wrote Grimson that the actual cost of the main extension project had been \$13,983.71. Noting that the property owners had already deposited \$8,420, Clements asked that the balance of \$5,563.71 now be remitted. On January 22, 1980, in response to an inquiry by one of the property owners, Clements told her that the major reason for the overrun in costs was that while SJWW's had contemplated using native soil as backfill for the trench, City had required that sand and base rock be hauled in to backfill the trenches. This, he stated, ran the costs \$3,049 over estimate. In addition, \$1,000 had been spent on mechanical tamping. The balance of \$1,337.45 making up the overrun total was due to price increases incurred from the date of the contract estimate and completion.

When Grimson protested the supplemental billing, a meeting was arranged. At that meeting the utility allegedly placed most of

the blame for the cost overrun on Cushman, but offered to reduce the cost of the overrun by one-fifth of \$5,563.71, or \$1,112.74. The property owners would not accept this, and on September 11, 1980 referred the dispute to the Commission's Consumer Affairs Branch (Consumer Affairs). Consumer Affairs asked SJWW for its version which SJWW furnished on March 11, 1981.

On May 28, 1981 Consumer Affairs wrote Grimson stating that it had completed its investigation and had concluded that SJWW had acted in accordance with its filed tariff rule and main extension contract and that the property owners owed SJWW the \$5,563.71 in issue.

Shortly after this, during the summer of 1981, another meeting was held at the offices of City. It was attended by representatives of City, property owners, Cushman, SJWW, and Fairley. SJWW stated that base rock should not have been placed prior to trenching, and that had it known when it made the original estimate of the time schedule on the project it would have included costs for sand fill and for mechanical tamping of the trench. As a compromise SJWW suggested that Cushman and the utility should split \$2,855 of the overrun costs, with SJWW absorbing \$750 and Fairley absorbing \$714, and the owners pay the \$966 compacting cost. Cushman, however, would pay only \$600 which he concluded was the cost of the base rock SJWW added to the road. Meanwhile the property owners' coalition had split up and Fairley canceled its offer when it was not accepted before December 31, 1981. In January 1982 Grimson and Bohn again wrote Consumer Affairs, bringing that branch up to date on developments and asking again for their assistance. On March 1, 1982 Consumer Affairs advised that a formal complaint was the only recourse left. Grimson and Bohn on April 22, 1982 filed

this complaint asking that this Commission limit the overrun charge liability of the property owners to the \$966 tamping charge and the \$600 that Cushman has agreed to pay, and order SJWW to drop the balance of the \$5,563.71.

Administrative Law Judge (ALJ) John B. Weiss, assigned to the case by the Commission, attempted to clarify the issues and to attain some compromise. With the consent of the complainants he contacted SJWW to obtain an explanation of the exact costs involved in the project. B. G. Spencer, assistant chief engineer for SJWW, on August 19, 1982 furnished the ALJ with the following itemization: (The ALJ supplied complainants with a copy.)

The main extension contracted for	\$ 7,060.00	
Contract cost escalation over fiscal year .	139.00	✓
Costs of materials increases - field		
changes inflation	359.08	
Addition of an air valve, extra sand	364.72	
In-tract job charge over subgrade estimate .	393.00	
9,528 sq. ft. base rock @ \$0.25 per sq. ft.	2,382.00	
Mechanical compaction of trench	966.00	
Overhead @ 17% on \$5,386.45 overrun	<u>782.65</u>	
Final Cost of the Project		\$12,446.45

When it had become apparent that the parties were too far apart to offer any realistic opportunity to work out a compromise, the ALJ set the matter for hearing. Accordingly, on August 25, 1982 a duly noticed public hearing on the complaint was conducted before ALJ Weiss in San Francisco. Both parties appeared, presenting witnesses and exhibits which set forth the foregoing facts. At conclusion of the hearing the matter was submitted for decision.

Discussion

Where owners of contiguous undeveloped lots or parcels of land join for the purpose of contracting with a water utility to cause installation of a main extension to bring water service to

those properties to enhance present use or potential development of those properties, the group of owners will be considered for that purpose to be a "subdivider," whether or not they are actually dividing a parcel of land or they meet the requirements contained in Government Code § 66410 et seq. (the Subdivision Map Act). Thus, for purposes of this main extension project, Grimson and Bohn and their fellow property owners cooperating in the Robin Anne Lane project were considered to be subdividers.

In its relations with a subdivider desiring extension of water service to his land, SJWW is bound by the provisions of Rule 15, a standard main extension rule promulgated by this Commission for regulated water utilities. In paragraph C.1.a. the rule contains the following language:

- "a. Unless the procedure in Section C.1.c. is followed, an applicant for a main extension to serve a new subdivision, tract, housing project, industrial development or organized commercial district shall be required to advance to the utility, before construction is commenced, the estimated reasonable cost of the extension to be actually installed, from the nearest utility facility at least equal in size or capacity to the main required to serve both the new customers and a reasonable estimate of the potential customers who might be served directly from the main extension without additional extension. The costs of the extension shall include necessary service stubs or service pipes, fittings, gates and housing therefor, and meter boxes, but shall not include meters. To this shall be added the cost of fire hydrants when requested by the applicant for the main extension as required by public authority, whenever such hydrants are to become the property of the utility."

¹ Paragraph C.1.c. of Rule 15 pertains to applicants who construct and install the facilities for an extension themselves.

In this project the final costs substantially exceeded the original contract estimate. But it is axiomatic that the full costs of bringing water to undeveloped lots must be borne by the subdivider (Thury v Lucerne Water Co. (1964) 62 CPUC 525; Fontana Domestic Water Co. (1928) 31 CRC 117). Furthermore, it does not matter that the full extent of such costs are ascertained only after the construction is completed (W. Art Sutter v Citizens Util. Co. of Calif. (1980) 3 CPUC 2d 93). The effect otherwise would be to shift to the utility, and ultimately to the ratepayers of the utility, the cost of bringing water to lots being developed, which cost should properly be borne by the developer or land speculator.

However, this does not extend to a utility a carte blanche to load a job or unilaterally make add-ons. A public utility is created for public purposes and performs a function of the State. In doing so it acquires the status of a quasi-trustee (Smyth v Ames (1898) 169 US 466, 544; Western Canal Co. v R.R. Comm. (1932) 216 C 639, 647, cert. denied (1933) 280 US 742) with regard to funds advanced by its customers as deposits. Similarly, its charges to main extension project accounts of subdividers must reflect only costs incurred, and these charges must not be excessive, unreasonable, or discriminatory. While the Commission does not have power to regulate contracts by which a utility secures labor, materials, and services for the conduct of its business, it does have jurisdiction in proper cases to alter or modify the charges which a public utility makes for services which it has contracted to furnish its customers.

After a project is completed, paragraphs A.6.c, d, and e of Rule 15 provide that a subdivider is to be provided with a statement in reasonable detail of the actual construction costs incurred, and

that an adjustment is then in timely fashion to be made between the parties to account for any difference between the amount advanced by the subdivider in his deposit and the final actual cost of the project.² Here that does not appear to have been done. There was no evidence presented at the hearing that Grimson and Bohn were ever presented with a full accounting until ALJ Weiss on August 26, 1982 sent them a copy of Spencer's August 19, 1982 letter to the ALJ. At the hearing Grimson and Bohn asserted that the property owners had not received or seen such a report.

We adopt Spencer's August 19, 1982 letter (Exhibit 11 in this proceeding) as the definitive statement of costs applicable to this project. It indicates that the contract was for \$7,060 while the final costs incurred were \$12,446.45, leaving an overrun above the contract of \$5,386.45. Of the \$12,446.45, Grimson's group have previously advanced \$8,420. In addition, they must be credited with \$92.97 as follows under the refund provisions of the 1978 contract:

Refund 78-CC-1562A	Oct. 1980	\$20.50
Refund 78-CC-1562A	Oct. 1981	\$72.47

After applying the \$8,420 deposit and the \$92.97 credit, a balance of \$3,933.48 remains. Reviewing the items constituting the overrun we note the following:

Contract Cost Escalation - \$139: It frequently is the practice of large water utilities not to do their own main installation work, but rather to employ on a yearly contract basis the services of an outside pipeline construction firm to perform the actual construction. SJWW follows this practice, using Fairley, whose personnel work under the overall direction of SJWW's construction supervisor. This practice allows the utility to have at hand and in advance fixed unit prices applicable to different classes of work. It enables the utility to anticipate most costs involved during a construction year ahead, enabling the utility to render reasonably firm estimates. SJWW's contract estimate with Grimson's group reflected

² See Appendix A.

fixed unit charges as set forth in SJWW's July 1, 1978 contract with Fairley. But through no one's fault, this project ran late and overlapped into the July 1, 1979 contract year, and additional costs were thereby incurred from the Fairley contract.

Inflated Cost of Materials from SJWW - \$359.08:
Similarly in this item, the lapse of time from the date of contract to the time of performance inflated the cost of the materials furnished by SJWW for the project.

An Additional Air Valve and Sand - \$364.72:
Once underway it developed that an additional air valve was required as well as extra sand.

Non-"In-Tract" Installation - \$393: Initially the project had been proposed and estimated on the basis that the installation would be in an unimproved lane with the main to be placed substantially adjacent to existing pavement with no need to conform to street grade levels, etc., and that no further improvements and pavement cuts need be made. Accordingly the estimate was made on an "in-tract" basis. But then City as a condition for future building permits required that Robin Anne Lane be brought up to city street standards, involving different, more exacting requirements. Under the terms of the Fairley contract a higher cost was provided for.

Mechanical Compaction of the Trench - \$966:
Although Bohn argues that SJWW does many projects in City and therefore should have been aware of the City's compaction requirements, the fact remains that except for the need to meet the schedule of Grimson's paving contractor, SJWW's jetting practice for compaction probably would have been adequate. Olmstead insisted upon the mechanical compaction to get the street finished, and would not allow full jetting. Furthermore, Grimson's contractor Cushman caused some of the problem by placing a base rock layer on the subgrade before the trenching. This was done without notice to SJWW.

For the reasons stated, we find the above five items in the overrun of costs not to be excessive or unreasonable. Accordingly, they were properly charged to the project. We next turn to the final two items:

Additional Base Rock - \$2,382: This item is to cover the cost of the base rock that SJWW added to the street on top of the trench. We note that during the meeting in the summer of 1981, as part of an unsuccessful compromise effort, Cushman offered to pay \$600, which he estimated to be the value of the base rock that SJWW added to the road. The testimony at the hearing was that Cushman hauled in other loads to finish the road to grade before paving. During the August 25, 1982 hearing Cushman testified that the \$2,382 charged by SJWW was actually over triple the cost of the base rock supplied. Witness Spencer admitted that the cost was too high, explaining that it represented a charge based on small volume purchases rather than a more appropriate bulk purchase charge. We also observe that SJWW is not free of fault in the matter of the base rock. When the trench was backfilled it could have sought out Grimson or Bohn when it was unable to contact Cushman. Instead it hauled in base rock itself. For these reasons and under these circumstances we are constrained to find that the \$2,382 charge was excessive and unreasonable. Accordingly we will charge Grimson's group with \$600 and delete \$1,782, as reallocation of costs to the utility against the \$3,933.48 balance, reducing that balance to \$2,151.48. We do this with full cognizance of the fact that Cushman will reimburse Grimson the \$600 representing the value of the base rock furnished by SJWW, thus serving to further reduce the actual cost to the Grimson group.

Overhead, 17% of \$4,603.80 - \$782.65: Having deleted \$1,782 from the overrun charges, we will be remiss were we not also to delete the 17% overhead included and based upon this item. Seventeen percent of \$1,782 is \$302.94. Therefore \$302.94 will be added to the reallocation to adjust for excessive overhead charges.

Adjusting the \$2,151.48 balance by \$302.94 to delete the excessive overhead charged, we conclude that Grimson owes SJWW a balance of \$1,848.54 on the main extension project, this amount being exclusive of any contract refunds which may have accrued since October 1981 or which may accrue hereafter.

Findings of Fact

1. SJWW is, and was at all the times mentioned, a public water utility subject to the jurisdiction of this Commission.

2. SJWW provides public utility water service within City.

3. Grimson, Bohn, and three others with property located on Robin Anne Lane in City cooperated in a main extension project to bring SJWW water service to their properties on Robin Anne Lane.

4. SJWW insisted on contracting with but one individual on this project: accordingly, Grimson was designated by the property owners to contract on behalf of the group.

5. On November 3, 1978 Grimson and SJWW executed a main extension agreement relative to the Robin Anne Lane project.

6. As set forth in the main extension contract, the initial estimate of the cost of the project was \$7,060.

7. After the contract was signed, the scope of the main extension project was expanded and complicated when City decided to require that Robin Anne Lane be concurrently improved to city standards.

8. Grimson deposited a total of \$8,420 against project costs.

9. The project was delayed by a sand haulers' strike and by complications encountered when Grimson's paving contractor placed a layer of base rock on the subgrade to cut dust before SJWW's pipeline contractor trenched.

10. Further complications were encountered when City refused to permit SJWW to jet the trench backfill adequately; consequently SJWW had to resort to expensive mechanical tamping to obtain the requisite compaction within the time constraints.

11. There were communication failures on the part of all participants.

12. Costs on the project substantially overran the estimate.

13. After completion of the project, SJWW provided Grimson with various supplemental billing statements which provided differing itemizations and differing explanations for the components.

14. Grimson disputed the supplemental charges but was unable to reach agreement with SJWW despite several conferences.

15. Meanwhile, SJWW credited several refunds to the account under the main extension agreement.

16. When Grimson resorted to Consumer Affairs for assistance, that bureau concluded that Grimson owed SJWW the \$5,563.71 SJWW alleged was due.

17. On April 22, 1982 Grimson and Bohn filed this formal complaint.

18. A definitive statement, setting the final cost for the project at \$12,446.45 and listing and explaining the component costs, was provided on August 19, 1982 by SJWW in response to our ALJ's request. A copy was forwarded to Grimson.

19. With the exception of the charges stated for base rock and overhead, the component charges listed in SJWW's August 19, 1982 statement were just and reasonable, and no reparation is due from SJWW as to these charges.

20. The charge for base rock in the amount of \$2,382 and the charge for overhead in the amount of \$782.65 contained in SJWW's August 19, 1982 statement were unreasonable and excessive; and reallocation of costs in the amounts of \$1,782 and \$302.94, respectively, will be made from Grimson to SJWW, reducing the base rock charge to \$600 and the overhead charge to \$471.71.

21. After being credited with \$8,420 deposited earlier, and \$92.97 in refunds attributable to the refund provisions of the 1978 contract, Grimson's remaining balance owed to SJWW on the main extension contract is \$1,848.54.

22. Grimson should look to Cushman for the \$600 Cushman offered to pay.

Conclusions of Law

1. The complaint is not barred by PU Code § 735.

2. As a reallocation of costs for unreasonable and excessive charges ascribed for base rock and overhead on the Grimson-Robin Anne Lane main extension project, SJWW should reduce the balance owed for the project by \$1,782 and \$302.94, respectively, to a balance of \$1,848.54.

3. The amounts subject to possible future refund under the main extension agreement should be amended to conform to this adjustment.

4. In all other respects the complaint should be denied.

O R D E R

IT IS ORDERED that:

1. San Jose Water Works, (SJWW) as reallocation of costs shall reduce the balance owed it from J. Robert Grimson by the sum of \$2,184.94. ✓

2. Grimson within 30 days of the effective date of this order shall pay SJWW the balance remaining of \$1,848.54 on the Robin Anne Lane main extension project.

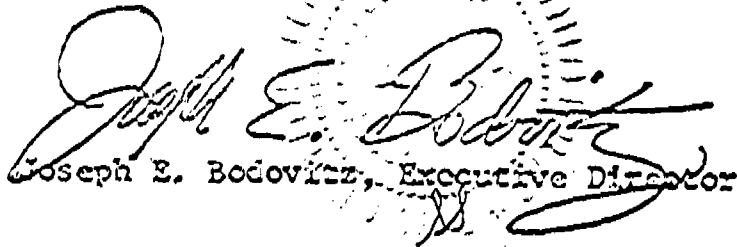
3. In all other respects the complaint is denied.

This order becomes effective 30 days from today.

Dated NOV 3 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

APPENDIX A

Paragraph A.6.c. states:

- "c. An applicant for a main extension who advances funds shall be provided with a statement of actual construction cost and adjusted construction cost showing in reasonable detail the costs incurred for material, labor, any other direct and indirect costs, overheads, and total costs; or unit costs; or contract costs, whichever are appropriate."

Paragraph A.6.d. states:

- "d. Said statement shall be submitted within sixty days after the actual construction costs of the installation have been ascertained by the utility. In the event that the actual construction costs for the entire installation shall not have been determined within 120 days after completion of construction work, a preliminary determination of actual and adjusted construction costs shall be submitted, based upon the best available information at that time."

Paragraph A.6.e. states:

- "e. Any differences between the adjusted construction costs and the amount advanced shall be shown as a revision of the amount of advance and shall be payable within thirty days of date of submission of statement."

(END OF APPENDIX A)

this complaint asking that this Commission limit the overrun charge liability of the property owners to the \$966 tamping charge and the \$600 that Cushman has agreed to pay, and order SJWW to drop the balance of the \$5,563.71.

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