

ems/dz

Decision No. 90779

SEP 12 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

T. HALLETT REBELE',

Complainant,

vs.

YUCCA WATER COMPANY, LTD.,

Defendant.

Case No. 10612
(Filed June 26, 1978)

ORDER OF DISMISSAL

Complainant filed this complaint on June 26, 1978 alleging that he is the owner of a certain parcel of land described as Tract 9118 located in San Bernardino County within the certified water service area of defendant. Complainant alleges that in an exchange of letters beginning on or about April 3, 1975, defendant informed complainant that domestic water service would be supplied to Tract 9118 whenever the proper pipeline system was installed in accordance with Rule No. 15 of defendant's tariff and that water would be supplied from the existing pipeline system. Complainant further alleges that upon said representation and numerous other oral representations, complainant bought the property known as Tract 9118. Complainant alleges that among several oral agreements complainant had with defendant was one whereby defendant agreed to provide water service from existing pipelines. Complainant further alleges that after several years of constant inquiry concerning a written quotation on the necessary construction to provide water service to Tract 9118, defendant agreed to provide an estimate of the

building of a water storage tank and extension of existing pipeline facilities but that, as of the date of the filing of the complaint, no estimate had been provided complainant. Complainant further alleges that at no time during previous discussions had any mention been made by defendant of the necessity to build a water storage tank on said property. Complainant alleges defendant failed to comply with Rule No. 15, paragraph A.5.a., and seeks an order from the Commission requiring defendant to furnish all information required by Rule No. 15.A.5.a. Complainant also asks the Commission to require defendant to provide such information using only existing mains and for an order that said system comply with the San Bernardino Fire Warden's Minimum Standards for Fire Protection Systems, including a fire flow rate of 500 gallons per minute (gpm) for one (sic) hour.

On January 16, 1979, in Decision No. 89854, we issued an interim opinion and order wherein defendant was found to be in violation of Rules No. 13 and 13.1 of the Commission's Rules of Practice and Procedure and ordered defendant to serve on complainant and file with this Commission an answer to the complaint and the estimates of the cost of installation of a main extension to serve Tract 9118 pursuant to defendant's Rule No. 15.A.5.a., Main Extensions.

On March 5, 1979, defendant filed an answer to the complaint. In its answer, defendant refers to and recites the contents of numerous telephonic and written communications with complainant concerning the construction costs of providing water service to Tract 9118 and alleges that the requirement of an adequate storage tank and a proper size pipeline was made known to complainant in the latter part of 1976.

Defendant further alleges that on March 12, 1977, a letter was sent to complainant by the fire chief of the Yucca Valley Fire Department wherein complainant was informed that because of an insufficient water supply in the general area of Tract 9114, additional subdivisions in the general area of Tract 9114 could not be approved. (Tract 9114, also owned by complainant, lies adjacent to Tract 9118.)

In its answer, defendant submitted cost estimates for providing water service to Tract 9118 in accordance with modified General Order No. 103 of this Commission and defendant's Rule No. 15.

Defendant appears to have complied with the basic remedy sought by complainant. Although complainant sought an order compelling defendant to provide cost estimates in accordance with Rule No. 15, he requested that such information use only existing mains (according to alleged agreements) and that it comply with the San Bernardino Fire Warden's Minimum Standards for Fire Protection Water Systems which, according to complainant, calls for a fire flow rate of 500 gpm for one (sic) hour. With respect to this last item, we find this to be an incorrectly stated standard. We take official notice of and direct complainant's attention to General Order No. 103 and the San Bernardino County Fire Warden's Minimum Standards for Fire Protection Water Systems, which both call for a fire flow rate of 500 gpm for two hours in a subdivision. With respect to defendant furnishing cost estimates based on alleged "agreements" to use existing mains in previous discussions between the parties, the Commission is not the proper forum to determine or enforce implied contractual agreements of this nature.

On March 28, 1979, the assigned Administrative Law Judge (ALJ) communicated with complainant's attorney and indicated that in view of defendant's compliance with its Rule No. 15 contained in its answer, there seemed to be no further litigable issue remaining and that a dismissal of the action would be recommended unless the complaint was amended to include litigable issues within the Commission's jurisdiction. On March 30, 1979, complainant's attorney submitted an unverified Supplement to Complaint to the ALJ. This was returned because of procedural defects along with a letter of explanation to complainant's attorney on April 9, 1979. On May 8, 1979, the assigned ALJ notified complainant's attorney by letter that an amended complaint had not as yet been filed and further indicated that if an amended complaint was not filed by May 22, 1979, it would be assumed that complainant no longer desired to proceed by way of formal complaint and that the matter would be dismissed. On May 17, 1979, complainant's attorney communicated with the assigned ALJ seeking clarification and an extension of time to June 1, 1979 for filing an amended complaint. On May 22, 1979, a letter of clarification was mailed to complainant's attorney by the assigned ALJ who granted the requested extension for filing an amended complaint to June 1, 1979. To date, there has been no response or filing by complainant.

Findings of Fact

1. Defendant has satisfied complainant's request and this Commission's order that defendant provide cost estimates of providing water service to Tract 9118.
2. The minimum standards for fire protection systems in low density residential subdivisions as required by General Order No. 103 and the San Bernardino County Fire Warden is a fire flow of 500 gpm for two hours.

3. The Commission is without jurisdiction to determine and adjudicate allegations of breach of contract.

4. Complainant has failed to amend his complaint to include proper litigable issues within the jurisdiction of this Commission in the period of time authorized.

Conclusions of Law

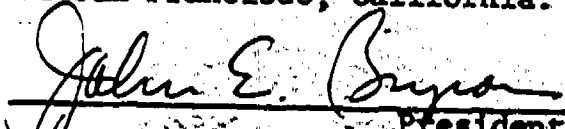
1. Since defendant has complied with its Rule No. 15 and supplied cost estimates for providing water service to complainant's Tract 9118, there are no other litigable issues remaining to be tried in this matter.

2. The complaint should be dismissed.

IT IS ORDERED that Case No. 10612 is dismissed.

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


Dated SEP 12 1979, at San Francisco, California.

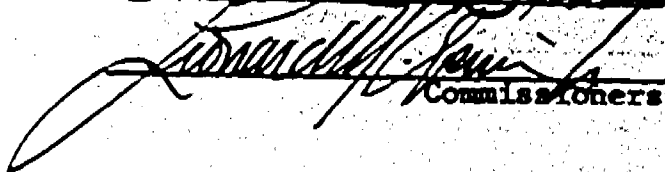


President









Commissioners