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Decision No. 91916 June 17, 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LATTANZIO ENTERPRISES, a  
partnership,  
  
Complainants,  
  
vs.  
  
PPD Corporation, dba NORTHEAST  
GARDENS WATER COMPANY,  
  
Defendant.

Case No. 10166  
(Filed August 31, 1976)  
(Petition for Order to Show  
Cause filed May 10, 1979)

(See Decision No. 89056 for Appearances.)

Additional Appearances

Michael E. Moss, Attorney at Law, for  
complainant.  
Brobeck, Phleger & Harrison, by Robert N.  
Lowry, Attorney at Law, for defendant.  
Eugene M. Lill, for the Commission staff.

INTERIM OPINION

On May 10, 1979 Southwest Enterprises (complainant), a general partnership consisting of Robert Lattanzio, Nick Lattanzio, and Bruno Lattanzio, successor in interest to Lattanzio Enterprises, a partnership, requested the Commission to issue an order to show cause why PPD Corporation (defendant) and Francis Ferraro, its president, should not be held in contempt for failure to make refunds to Lattanzio Enterprises as ordered by Decision No. 89056 dated July 11, 1978.

Defendant opposed the request for the order to show cause and requested that Case No. 10166 be reopened for the purpose of modifying Decision No. 89056 to reflect complainant's alleged inability to convey to defendant the pipeline easements or right-of-way and title to the pump station site necessary for defendant to enter into a main extension contract. ✓

By Decision No. 90476 dated June 19, 1979, we denied defendant's request to reopen Case No. 10166 and ordered defendant to appear and show cause why it should not be adjudged in contempt of the Commission for failure to comply with Decision No. 89056.

Hearing was held September 18, 1979 at San Francisco before Administrative Law Judge Banks at which time the matter was submitted subject to the filing of briefs 30 days after receipt of the transcript.

In Decision No. 89056 we admonished both defendant and complainant, stating:

"This formal complaint with its inherent complexities is a direct result of a reprehensible disregard for defendant's Tariff Rule No. 15, Main Extensions, especially its prerequisites to be met before an extension is made. Defendant is placed on notice that any repetition of such conduct may lead to sanctions pursuant to Sections 2107 et seq. of the Public Utilities Code.

"Obviously, complainant is not blameless in this matter. One of its principal partners had reason to know, as early as April 1972 by virtue of the contents of Exhibit 10, that a comprehensive main extension contract was required. Complainant's failure to insist on obtaining such a written contract upon making the \$53,634.75 advance to defendant is at least a serious breach of proper business practice." (Emphasis added.)

Notwithstanding the conduct of the parties, for purposes of resolving the complaint, we determined in that decision that the parties should be treated as if they did in fact comply with the law and that an appropriate main extension contract substantially as prescribed by the decision ensued. ✓

Complainant states that at the time the extension and the water pump facility were installed in 1973, Lattanzio Enterprises held title to the development and at that time was ready, willing, and able to grant the easements or right-of-way, as well as title to the pump facility. Complainant contends, however, that because of defendant's failure to submit a main extension contract for execution, no easements or title to the pump facility were granted. Further, complainant states that except for one apartment complex, all of Lattanzio Enterprises' interests in the development have been conveyed to third parties and complainant is unable to comply with defendant's demand.

Apparently complainant's position is that if defendant feels that the easements or right-of-way and title to the pump facility are necessary, defendant is obligated to take the necessary steps to obtain such interests from the present holders of record.

Defendant states that in order to make the refunds ordered by Decision No. 89056 the parties must execute a main extension contract and that a main extension contract requires easements or right-of-way to enable the utility to perform its public utility obligation. Defendant states it must have the following from the current owners of record: ✓

1. An easement for water pipeline over and across a parcel of land 12 feet in width, the centerline of which is described as follows: Beginning at a point 388.20 feet west of the east line and 205 feet south of the north line of Lot 63 of Scandinavian Colony according to the map thereof recorded in Book 2, Page 3, of Plats in the office of the county.

Recorder of Fresno County, thence west and parallel with the north line of said lot 47 feet, and thence south and parallel to the east line of said lot

130 feet, thence west and parallel to the north line of said lot 257.65 feet, thence south and parallel to the east line of said lot 160.50 feet.

2. An easement for a water pipeline over and across the north ten feet of Parcel 1 as shown on Parcel Map No. 1701, in the County of Fresno, recorded in Book 9, Page 3, of Parcel Maps, Fresno County Records.
3. An easement for a water pipeline over and across the north ten feet of Parcel 2 as shown on Parcel Map No. 1701, in the County of Fresno, recorded in Book 9, Page 3, of Parcel Maps, Fresno County Records.
4. An easement for a water pipeline over and across the north ten feet of Parcel 3 as shown on Parcel Map No. 1701, in the County of Fresno, recorded in Book 9, Page 3, of Parcel Maps, Fresno County Records.
5. An easement for a water pipeline over and across the north ten feet of Parcel 4 as shown on Parcel Map No. 1701, in the County of Fresno, recorded in Book 9, Page 3, of Parcel Maps, Fresno County Records.
6. An easement for a water pipeline over and across the north ten feet of Parcel 5 as shown on Parcel Map No. 1701, in the County of Fresno, recorded in Book 9, Page 3, of Parcel Maps, Fresno County Records.
7. An easement for a water pipeline over and across the north ten feet of Parcel 6 as shown on Parcel Map No. 1701, in the County of Fresno, recorded in Book 9, Page 3, of Parcel Maps, Fresno County Records.

8. An easement for a water pipeline over and across the north ten feet of Parcel 7 as shown on Parcel Map No. 1701, in the County of Fresno, recorded in Book 9, Page 3, of Parcel Maps, Fresno County Records.
9. A grant in fee simple of a parcel of land located in the southeast corner of the east 303 feet of the west half of Lot 63 of Scandinavian Colony according to the map thereof recorded in Book 2, Page 3, of Plats, Fresno County Records, excepting therefrom the south 140 feet thereof, Section 25, Township 13 South, Range 20 East, M. D. B. & M., and more particularly described as follows: Beginning at the southeast corner of the above-described parcel, thence due north 35 feet, thence west 30 feet, thence north five feet, thence west 21 feet, thence south 31 feet, thence east 76 feet to the point of beginning.

Defendant's president, Mr. Ferraro, testified that in an attempt to comply with Decision No. 89056, on August 29, 1978 defendant's counsel wrote complainant's counsel and requested the above easements plus title to the land where the pump station is located. Mr. Ferraro stated that when no response to this communication was forthcoming, on September 11, 1978 he personally delivered a main extension contract containing the necessary easements with title to the pump station to complainant's counsel. He stated that on September 12, 1978 complainant's counsel advised defendant's counsel by telephone that the easements would be difficult to obtain since the partnership had conveyed interest in all but one apartment complex. On January 12, 1979 complainant's counsel submitted to defendant's counsel a main extension contract signed by complainant but minus the pipeline easements and title to

the pump station land. Mr. Ferraro stated that this was unacceptable to defendant because if executed without the easement, the contract would not comply with Decision No. 89056. Mr. Ferraro stated that nothing further was heard from complainant until the request for the order to show cause was filed.

As noted above, in Decision No. 89056 we reproached defendant for its reprehensible disregard of filed Tariff Rule No. 15, Main Extension, especially the prerequisites to be met before an extension is made. That decision also recognized that complainant was aware of the need for a main extension contract prior to receiving service and admonished complainant for not insisting on same. That decision also contained the following pertinent findings:

- "2. Defendant did not seek the necessary authority to make the extensions to serve complainant's developments. It nevertheless made the extensions and did so, without preparing and the parties' executing an appropriate main extension contract.
- "3. For purposes of resolving this complaint, the parties should be treated as if they did, in fact, comply with the law and an appropriate main extension contract substantially as prescribed by this decision ensued (i.e., a nunc pro tunc compliance)."

\* \* \*

- "7.a. Refunds become due and payable on April 1 of each year.
- "7.b. Refunds attributable to revenues produced in 1973 and payable in 1974 are barred by the two-year statute of limitations of Public Utilities Code Section 735. The amount thus barred is \$978.73.

"7.c. Refunds attributable to revenues produced in 1974, 1975, and 1976 are \$1,654.67, \$1,772.27, and \$1,766.56 respectively."

Decision No. 89056 then ordered that within 30 days after the effective date of the decision defendant and complainant should execute a main extension contract in conformity with the main extension rule, circa 1973, and that within 90 days defendant refund those monies found due and payable in Findings 3, 5, and 7.a.

Based on the findings and ordering paragraphs contained in Decision No. 89056, it is clear that before any refunds were to be made a main extension contract was to be executed. The fact that a main extension contract was to be executed under the circumstances outlined in Decision No. 89056 presupposes that the parties would cooperate with one another in resolving any problems then existing. Had the parties cooperated as anticipated, the issue would have been resolved to everyone's satisfaction.

Fundamental to the execution of a main extension contract is that easements or right-of-way within the utility service area be granted the serving utility. Such are necessary to enable it to carry out its public utility obligation. The record herein is clear that both complainant and defendant recognize the need for easements or right-of-way. Each, however, refuses to assist the other in resolving the controversy. Because the parties are aware of the need for such easements, it appears that the parties, themselves, have the key to the resolution of their differences. The fact that complainant has conveyed all interest in the development is not a sufficient reason for refusing to aid and assist defendant to obtain the requested easements. Neither is it satisfactory for defendant to give up and plead inability to perform.

Since neither party in this matter has acted responsibly, it appears that the only way to resolve the impasse is to impose a requirement that will establish an incentive to cooperate.

We will therefore require defendant to deposit the monies ordered refunded by Decision No. 89056, plus interest of 7 percent from August 10, 1978, in an escrow account approved by this Commission within 30 days from the effective date of this order. The monies deposited in escrow will be disbursed to complainant upon the execution and approval by this Commission of the main extension contract as ordered in Decision No. 89056.

Because holding defendant in contempt would do little in the way of resolving this complaint, we will defer a decision on the contempt request to allow the parties a reasonable time to execute the main extension contract and make the ordered refunds. Defendant should keep the Commission advised as to the progress in its negotiations.

#### Findings of Fact

1. Defendant is a public utility providing water service to 170 acres one mile east of the city of Fresno in Fresno County.

2. Complainant, a general partnership of Robert, Nick, and Bruno Lattanzio, successor in interest to Lattanzio Enterprises, a partnership, is a real estate developer in Fresno County.

3. Decision No. 89056 admonished defendant for its utter disregard of its filed Tariff Rule No. 15 in providing water service to complainant without obtaining the required main extension contract.

4. Decision No. 89056 recognized that complainant's predecessor partnership was aware of the need for a main extension contract prior to advancing any funds for construction of a water system and admonished complainant for failure to insist on a written main extension contract.



5. Decision No. 89056 ordered defendant and complainant's predecessor to:

"1. Within thirty days after the effective date of this order defendant and complainant shall execute a main extension contract consistent with above Findings 3, 5 and 7a and substantially as prescribed on page 19 of this decision but otherwise in conformity with the main extension rule, circa 1973.

"2. Within ninety days after the effective date of this order defendant shall make refunds to complainant consistent with Finding 7 and Conclusion 2 above."

6. Defendant refuses to make the ordered refunds without benefit of a main extension contract.

7. Defendant refuses to enter into a main extension contract without easements to the property.

8. Subsequent to water service being provided by defendant, complainant's predecessor in interest conveyed interest in all parcels of complainant's development except one apartment complex and is unable to provide the easements defendant requests.

9. Fundamental to the execution of a main extension contract is that easements or right-of-way are necessary to enable the utility to carry out its public utility obligation.

10. The parties to this dispute each allege they are unable to comply with the Commission order to enter into a main extension contract and that the other party is uncooperative.

11. Though differences between the parties herein exist, the parties themselves hold the key to resolving their differences. Complainant should make every effort to aid defendant to obtain the requested easements. Defendant should make every effort to obtain the requested easements and execute the main extension contract.

12. Neither complainant nor defendant has acted responsibly in this matter.

13. A reasonable solution under the circumstances is for defendant to deposit all monies ordered refunded by Decision No. 89056 in an escrow account until such time as a main extension contract is executed and approved by this Commission after which such monies can be disbursed to complainant.

14. The parties should be given a reasonable time to obtain the necessary easements and enter into the main extension contract.

Conclusions of Law

1. Main extension contracts require easements or right-of-way to enable a utility to perform its public utility obligations.

2. Neither of the parties to this controversy has made a good faith attempt to execute a main extension contract as ordered by Decision No. 89056.

3. The parties should be given a reasonable time in which to obtain the necessary easements and grant deed and execute the main extension contract as ordered in Decision No. 89056.

4. A reasonable solution to this complaint is for defendant to deposit in an escrow account those monies ordered refunded by Decision No. 89056 plus interest of 7 percent from August 10, 1978 pending execution of a main extension contract.

INTERIM ORDER

IT IS ORDERED that:

1. Within ninety days after the effective date of this order defendant PPD Corporation and complainant Southwest Enterprises shall execute the main extension contract as ordered in Decision No. 89056.

2. Within thirty days after the effective date of this order defendant shall deposit into an escrow account with a recognized bank those monies ordered refunded by Decision No. 89056 plus interest of 7 percent from August 10, 1978, said funds to be released upon further order of this Commission.

3. Ruling on the Petition for an Order to Show Cause why defendant should not be held in contempt will be deferred for one hundred twenty days.

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

Dated JUN 17 1980, at San Francisco, California.

John E. Gipe  
President

Richard T. Gravelle  
Stanley J. Givens  
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.