



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DEC - 9 2003

DOCKETED BY [nr]

IN THE MATTER OF:

FRED SHOOK,

Complainant,

vs.

PARK VALLEY WATER COMPANY,

Respondent.

DOCKET NO. W-01653A-03-0243

DECISION NO. 66593

OPINION AND ORDER

DATE OF HEARING: October 1, 2003
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Fred Shook, in propria persona; and
Grant Williams, P.C., by Mr. Kenneth B. Vaughn, on behalf of Respondent, Park Valley Water Company.

BY THE COMMISSION:

On April 18, 2003, Fred Shook ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Complaint against Park Valley Water Company ("PVWC" or "Respondent").

On May 15, 2003, PVWC filed an Answer to the Complaint and a Procedural Order was issued scheduling a pre-hearing conference on June 5, 2003.

On May 29, 2003, Respondent's counsel requested a continuance due to a scheduling conflict. Complainant did not object to the request.

On June 2, 2003, by Procedural Order, the proceeding was continued to June 17, 2003.

On June 4, 2003, the Complainant telephonically requested that the pre-hearing be rescheduled and by Procedural Order, the proceeding was continued to July 10, 2003.

1 On July 10, 2003, pursuant to the Commission's Procedural Order, a pre-hearing conference
2 was held. The Complainant appeared on his own behalf and the Respondent appeared with counsel.
3 The issues raised in the Complaint were reviewed and since a settlement could not be reached, the
4 parties agreed that a hearing be scheduled in approximately 90 days.

5 On July 14, 2003, by Procedural Order, the proceeding was set for hearing on October 1,
6 2003.

7 On October 1, 2003, a full public hearing was convened before a duly authorized
8 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Complainant
9 appeared on his own behalf and PVWC appeared with counsel. At the conclusion of the hearing, the
10 matter was taken under advisement pending submission of a Recommended Opinion and Order to the
11 Commission.

12 * * * * *

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. Pursuant to authority granted by the Commission, PVWC provides public water utility
17 service to approximately 700 customers in a portion of Show Low, Arizona.

18 2. On April 18, 2003, Mr. Shook, a customer of PVWC, filed a Complaint against the
19 Respondent alleging that he had entered into a main extension agreement ("Agreement") which was
20 dated May 1, 1995 with PVWC. Mr. Shook alleged that the Agreement had neither been filed or
21 approved by the Commission, and was in violation of A.A.C. R14-2-406(M) ("Rule"). He requested
22 a full refund of that portion of the refundable advance as set forth by the Rule. Mr. Shook further
23 alleged that he was entitled to \$400 in damages for unnecessary expenses which he had incurred due
24 to the mislocation of his water meter when his meter and his service line were first installed.

25 3. The Commission's Rule at Section M provides as follows:

26 All agreements under this rule shall be filed with and approved by the
27 Utilities Division of the Commission. No agreement shall be approved
28 unless accompanied by a Certificate of Approval to Construct as issued by
the Arizona Department of Health Services. Where agreements for main
extensions are not filed and approved by the Utilities Division, the

1 refundable advance shall be immediately due and payable to the person
2 making the advance.

3 4. Mr. Shook entered into the Agreement with PVWC in 1995 in order to secure water
4 service to his property located on what was then a dirt road at 2001 West McNeil where it meets 20th
5 Avenue in Show Low, Arizona. His lot was in a wooded area which had not been heavily developed
6 at the time. The Agreement provided for the construction on West McNeil of a 650 foot main
7 extension by the Respondent to Mr. Shook's property for a cost \$4,875 for labor and materials, \$200
8 for meter installation and \$100 for the new meter for a total sum of \$5,175.¹

9 5. Under the terms of the Agreement on its first page, Mr. Shook was required to make
10 an initial payment of \$2,587 to PVWC, which was paid at or about the date of the execution of the
11 Agreement, with the remaining balance, \$2,587, to be paid within 60 days of the completion of the
12 project.

13 6. While the Agreement contains a space to indicate the amount of the refundable
14 advance in aid of construction, the typewritten sum of \$2,587 was crossed out and a handwritten sum
15 of \$4,875, which appears below the typewritten sum, was also crossed out. This left a third blank
16 line which was filled in with a second handwritten sum of \$4,647 denoted as a non-refundable
17 contribution for construction.

18 7. Also appearing, on the first page of the Agreement, are the handwritten initials of Mr.
19 Shook, which appear once to the left of the \$4,875 handwritten sum and the initials of Mr. Jim
20 McCarty, Respondent's president, which appear twice, once to the right of the \$4,875 handwritten
21 sum and a second time to the right of the \$4,647 handwritten sum.

22 8. Mr. Shook insists that the handwritten sum, \$4,647, represents what was to be his
23 refundable advance.²

24 9. Pursuant to the terms of the Agreement, Mr. Shook was to receive ten percent of the
25 total gross annual revenues for any service line directly connected to the main for a period of ten

26 ¹ According to the Agreement, these amounts were based on a cost estimate dated April 11, 1995.

27 ² Mr. Shook's version is supported in part by Exhibit C-2, a document captioned "Shook Water Extension,
28 05/11/95-completed" which has a column marked "Estimate" and reflects a sum of \$4,875 as "Water Ext. Refund" and
another column marked "Actual Costs" which reflects a sum of \$4,647 opposite "Water Ext. Refund." The document
further related the third party contractor, Floyd Gilmore, who had installed the main extension, did not require as much
labor and materials. Although Exhibit C-2 appears to have been a PVWC worksheet, Mr. Shook was unaware who had
prepared the document.

1 years. Any balance remaining at the end of the ten year period would become non-refundable.

2 10. Mr. Shook has received refunds of approximately \$20 per year pursuant to the terms
3 of the Agreement for the past eight years, and he does not dispute the amount that he was refunded by
4 the Respondent during this period of time.

5 11. Mr. Shook further alleged that PVWC should pay him \$400 as damages resulting from
6 the improper placement of his water meter at the time of its initial installation. The meter was placed
7 in front of a split rail fence because of the mutual belief of Mr. Shook and Respondent that the fence
8 ran across his front property line.

9 12. Mr. Shook testified that because of the misplacement of his meter, he had to pay a
10 third party \$200 for hand digging a trench for his service line through the trees on his property
11 approximately 30 feet further than it needed to be. He valued his own labor at \$100 and added the
12 estimated value of the pipe (\$100) later removed by a private contractor when his meter had to be
13 relocated in 2000 due to a city road paving project.

14 13. At the time Mr. Shook's water meter was originally installed, both he and Respondent
15 had been unaware that the public easement extended 50 feet onto his property.

16 14. To support his claim with respect to the movement of his meter, Mr. Shook offered
17 into evidence a copy of a plumbing invoice from Church Plumbing Service dated September 14,
18 1995, which totaled \$2,771 and includes the cost to rough in plumbing for his residence on West
19 McNeil. The invoice did not break out the cost of the installation of his service line with specificity.

20 15. Subsequently, Mr. Shook revealed that he had initially contacted the Commission's
21 Utilities Division ("Staff") in early 2003 because he had become "upset" when the Respondent
22 connected his pressurized main extension to a six inch gravity fed main on 20th Avenue across the
23 street from his residence to loop its system. The other main was utilized to serve other customers
24 whose service lines were connected to it and Mr. Shook believed that he should receive a percentage
25 of their revenues, pursuant to the terms of his Agreement.³

26 16. An incidental issue raised during Mr. Shook's closing argument concerned whether
27

28 ³ Pursuant to A.A.C. R14-2-406(D), Mr. Shook is not entitled to any portion of the revenues from these customers.

1 the main extension which is the subject of the Agreement herein was necessary at all. It appears that
2 in 1995 the six-inch gravity fed main which is directly across 20th Avenue from Mr. Shook's property
3 was connected to a 24-foot tall storage tank, but the Respondent had refused to connect a service line
4 for Mr. Shook allegedly because of insufficient pressure in the line to provide him with water service.
5 While the denial of this service connection caused Mr. Shook to bear his main extension expenses,
6 Mr. Shook did not complain to the Commission of this issue with the Respondent in 1995.⁴

7 17. Mr. Michael Mack, PVWC's present certified operator, testified that Respondent does
8 not place water meters inside of a property owner's fence because they become inaccessible to the
9 Company's meter readers.

10 18. With respect to Mr. Shook's claim for the value of the copper piping which had been
11 removed when his meter had to be relocated because of a road paving project, PVWC's operator
12 testified that the value of the pipe was approximately \$20 and that Respondent would be happy to
13 replace the approximately 25 to 30 feet of copper tubing for Mr. Shook. He further added that the
14 relocation was done at PVWC's expense.

15 19. PVWC's vice-president of operations, Ms. Victoria McCarty, who became employed
16 by PVWC in 1998, testified for Respondent stating that she is involved in its day-to-day operations.

17 20. She testified that since Respondent's inception, it had a policy of requesting
18 Commission approval for any main extension agreements. She acknowledged that normally the
19 Commission would acknowledge receipt of the agreement and its approval by letter. With the
20 exception of Mr. Shook's Agreement, Respondent presently has three other main extension
21 agreements which have been filed with, and approved by the Commission.

22 21. Ms. McCarty indicated that Respondent's files do not contain an approval of the
23 Agreement in question from the Commission and she has no way of knowing whether a copy of Mr.
24 Shook's Agreement was sent to the Commission for its approval because she was not employed by
25 the Company at the time.

26 22. According to Ms. McCarty, the total cost actually paid by Mr. Shook for the main
27

28 ⁴ When Mr. Shook's main extension was recently connected to this gravity fed main to loop Respondent's system, PVWC connected his meter to the gravity fed main.

1 extension was \$4,647 and that this sum constitutes a non-refundable contribution in aid of
2 construction under the Agreement.

3 23. Respondent's position is that Mr. Shook was only entitled to a refund not to exceed
4 the sum of \$528, the difference between the original agreement price of \$5,175 and the \$4,647 which
5 appears as a non-refundable contribution on the Agreement. PVWC maintains that the only sum that
6 is owed to Mr. Shook is the \$528 less what has already been paid to him in his annual refunds
7 (approximately \$200), leaving a balance of \$325 depending on revenues from his main extension
8 over the next two years.

9 24. Respondent argues that since Mr. Shook's main extension would produce little
10 revenue, that the amount refunded should not exceed approximately \$500 over the life of the
11 Agreement.

12 25. We find Respondent entered into a main extension agreement that was not filed and
13 approved by the Commission.

14 26. The Commission's Rule provides that all main extension agreements are required to
15 be filed with the Commission's Staff for its approval. In the event a main extension agreement is not
16 filed for Staff's approval, the refundable advance is immediately due and payable to the person who
17 paid the advance.

18 27. Pursuant to the Rule, the refundable advance of \$4,647 is immediately due and
19 payable to Mr. Shook. The sum due should be reduced by any payments previously made as refunds.
20 The Commission's Rule was adopted to protect individuals such as Mr. Shook from being
21 overcharged or being taken advantage of by a water utility.

22 28. While the Agreement on its face is inconclusive, Respondent's argument that Mr.
23 Shook is entitled to only \$528 less payments previously paid as refunds is unacceptable since there is
24 no evidence that Respondent complied with the Commission's Rule. Additionally, PVWC's position
25 would violate Commission policy that all monies paid for a main extension are subject to refund as
26 advances in aid of construction unless approved otherwise.

27 29. The issue with respect to whether Mr. Shook's main extension was actually necessary
28 to service his property is rendered moot by the fact that the Respondent did not file the Agreement for

1 approval by the Commission's Staff, rendering the entire sum which should have been refundable
2 under the terms of the Agreement due to Mr. Shook.

3 30. With respect to that portion of Mr. Shook's Complaint for the sum of \$400 to
4 compensate him for the misplacement of his meter initially, there is insufficient evidence to establish
5 any liability on the part of the Respondent.

6 **CONCLUSIONS OF LAW**

7 1. PVWC is a public service corporation within the meaning of Article XV of the
8 Constitution and A.R.S. § 40-246.

9 2. Pursuant to A.A.C. R14-2-406, the Commission has jurisdiction over PVWC and the
10 Complaint herein.

11 3. PVWC should refund to the Complainant herein the sum of \$4,647 less any sums
12 previously paid as refunds pursuant to the terms of the Agreement pursuant to A.A.C. R14-2-406(M).

13 **ORDER**

14 IT IS THEREFORE ORDERED that Park Valley Water Company shall refund to Mr. Fred
15 Shook the difference between the sum of \$4,647 less any amounts previously paid as refunds under
16 the terms of the Agreement herein.

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

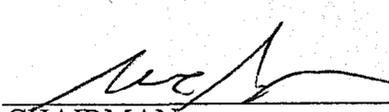
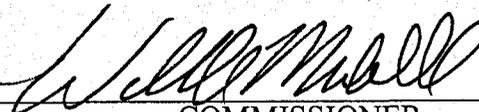
27 ...

28 ...

1 IT IS FURTHER ORDERED that Park Valley Water Company shall make this payment
2 within 60 days of the effective date of this Decision and file certification with the Commission's
3 Docket Control that payment has been paid to Mr. Shook in conformity with this Decision.

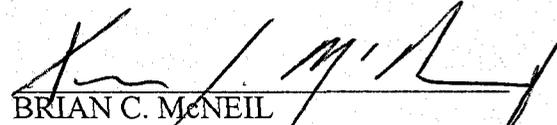
4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7   
8 CHAIRMAN COMMISSIONER COMMISSIONER

9
10  
11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 9th day of December, 2003.

17 
18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

20 DISSENT _____

21 DISSENT _____
22 MES:mlj

23
24
25
26
27
28

1 SERVICE LIST FOR: W-01653A-03-0243
2 DOCKET NO.: PARK VALLEY WATER COMPANY

3
4 Fred Shook
5 2001 W. McNeil
6 Show Low, AZ 85901

7 Merwin D. Grant
8 Kenneth B. Vaughn
9 GRANT WILLIAMS, P.C.
10 3200 North Central Avenue, Ste. 2400
11 Phoenix, AZ 85012
12 Attorney for Respondent

13 Christopher Kempley, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

18 Ernest Johnson, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, AZ 85007

23
24
25
26
27
28

