

Decision No. 36506

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of Emergency Rules and
Regulations and Practices of Gas,
Electric, Telephone and Water Utilities
in the furtherance of National Defense.

Case No. 4619

J. J. Deuel, for California Farm Bureau Federation

James G. Marshall and Pillsbury Madison & Sutro, for The Pacific Telephone and Telegraph Company and Southern California Telephone Company

John J. O'Toole, City Attorney, Dion R. Holm, Assistant City Attorney, and Paul R. Beck, Chief Valuation and Rate Engineer, for the City and County of San Francisco

R. W. DuVal, for Pacific Gas and Electric Company

Bacigalupi Elkus and Selinger by Herbert H. Salinger, and David H. Fiscus and McIntyre Faries, for California Water and Telephone Company

Carl F. Mau, for California Water Service Company and San Jose Water Works

C. E. Houston and E. F. Woodard, for Southern California Edison Company, Ltd.

Russell Scott, for Adcock Water Company

O. C. Sattinger, for Southern Counties Gas Company and Southern California Gas Company

F. V. Rhodes, for California Independent Telephone Association

Paul Overton, for San Gabriel Valley Water Service, Park Water Company, and Los Nietos Water Company

J. T. Naylor and Marshall K. Taylor, for Associated Telephone Company, Ltd., and San Joaquin Associated Telephone Company

Harrison R. Baker and Irving S. Metzler, for Realty Board

Earl M. Tandberg, Chief of Utility Section, Los Angeles, and Robert M. Lano, Chief of Special Contract Division for the War Department

C. E. Emley, for Sunland-Tujunga Telephone Company

H. V. Anderson, for Southern California Water Company

G. C. Delvaille, and Leon S. Hoesman, for California Electric Power Company

E. E. Holloway and H. R. Dillon, for San Diego Gas and Electric Company

A. F. Hicks and John P. Holditch, for Palm Springs Water Company

P. H. Lester and E. E. Parker, for Public Utilities Investigation Committee of the California Progressives; Citizens of Highland Park; Highland Park Democratic Progressive Club

Harold M. Stern, for Jacob Stern & Sons

A. G. Walker for Huntington Land & Improvement Company, and
Huntington Redondo Company

Gilmore Tillman, Assistant City Attorney, and Carl Dunlap, Jr.,
Assistant Chief Engineer of the Board of Public Utilities and
Transportation, of the City of Los Angeles, for the City of
Los Angeles

Ben Haggett, for Palos Verdes Water Company

Earl C. Craig, in propria persona

H. A. Frederick, in propria persona

BY THE COMMISSION:

OPINION ON FOURTH SUPPLEMENTAL ORDER

By Second Supplemental Order, the Commission served on all electric, gas, telephone and water companies, having extension rules on file with this Commission, notice of hearing on adoption of proposal of the Commission staff to extend refund period of extension contracts, said rule to be adopted as Emergency Rule and Regulation A-2, as follows:

"Recognizing that war-imposed limitations due to material shortages have greatly hampered both the construction of new residences and the extension of lines, mains and services, and that these conditions have prevented and will probably continue to prevent the connection of new consumers to line, main and service extensions upon which advance deposits have been made, it is deemed necessary, in the interest of equity, to extend the term of such deposit contracts. Accordingly, the terms of all advance deposit contracts covering lines, mains and services, except those where the refund period terminated prior to December 7, 1941, are hereby lengthened by a period equal to the duration of the war, and for six months thereafter, provided that such extension of term shall not exceed five years, and provided further that if it becomes necessary to replace in excess of 50 per cent of a line or main covered by any particular contract at any time subsequent to the original expiration date thereof then such contract will immediately terminate."

A public hearing was held at San Francisco before Examiner Cassidy on April 12 and at Los Angeles before Examiner Wehe on April 21, 1943. The matter was submitted for decision at the latter hearing.

The proposal is made by reason of the impact of war conditions, and the fact that materials are no longer generally available for the construction

of new homes, and for extensions of lines, mains and services. Because of these conditions, refunds of many advances which have been made on lines heretofore erected or mains laid with partial or no services attached may be foreclosed unless the time within which refunds may be made is extended. The record developed that other situations, such as curtailment of gold mining by order of the Federal government, have created similar problems.

There are numerous contracts now effective governing extensions of utility service, which cover deposits refundable in whole or in part over varying time periods, under varying circumstances and in varying methods. The Commission, in giving consideration to the record developed at the public hearings, finds the utilities generally agreeable to an extension of the time periods for making refunds, in view of the unusual conditions brought about by war. Because of the large number of contracts and varying conditions thereof, the Commission believes it desirable to set forth certain basic principles of the purposes sought to be accomplished, to the end that the emergency rule prescribed herein may be administered in harmony therewith in respect to the many varying individual contract conditions. The rule prescribed is based on these principles:

1. That the rule may not be so construed that, in application, it will operate so to modify any given contract as to render it less favorable to the customer or depositor than if the rule had not been adopted.
2. That the rule is not to be construed as requiring the utility to repay more than the total of the advance, unless so provided in the contract prior to the adoption of the rule.
3. That since the 7th day of December, 1941, may be deemed to mark the entry of this nation into a concentrated war effort, that date has been adopted for the purposes of this rule.
4. That extension contracts in which the refund period expired prior to December 7, 1941, do not come within the purview of the rule.
5. That the total period of the time extension must of necessity remain indefinite at this time, subject to the further order of the Commission. Unless conditions at that time should warrant a different conclusion, it is intended that the time extension should terminate six months after actual hostilities have ceased with all the three major axis powers, unless war should continue with

one or more of such powers for a period of four and one-half years from December 7, 1941, in which event the total period of the time extension is not to exceed five years, unless otherwise hereafter ordered.

6. That extension contracts signed prior to December 7, 1941, in which the refund period expired during or after the time extension period will have refund periods extended for the total period of the moratorium as defined in Item 5 hereof.
7. That extension contracts entered into since December 7, 1941, will be extended by the amount of the elapsed time between the date of signing of the contract and six months following the termination of war.
8. That certain contracts are refundable on the basis of new customers or new customers' appliances attached. The time extension will apply to all such refund provisions.
9. That certain contracts are refundable when gross revenues, during any one year, exceed a specified percentage of the amount of the deposit. The time extension will apply to all such refund provisions.
10. That certain contracts are refundable on the basis of a specified percentage of the gross revenues, in lieu of new customers or new customers' appliances, or on a combination of these bases. The time extension will apply to all such refund provisions based on new customers or new customers' appliances, but not to gross revenues received from original applicants. When the refund is based entirely on a percentage of gross revenue, the time period will be extended, with a maximum as described below.
11. That if the contract applies to service for gold mining or similar operations curtailed by the Federal government, the time extension shall be the period of the effectiveness of the curtailment of operations under such order.

As to Item 10 above, several companies questioned the propriety of extending the time limit for refunds of deposits where refunds are based on gross revenue from existing or new customers. Some companies have a combination refund rule, with refunds based on both new load attached and a percentage of the gross revenue derived from original applicants. Several companies refund a percentage of total gross revenues. There is considerable merit to the views expressed. In the case of refunds based solely on gross revenue, however, it appears to the Commission that this provision should be construed as in lieu of the refund based on customer or customers' load attached. Accordingly, the Commission believes the time extension should apply when refunds are made solely on a gross revenue basis, except that the total refund, including the extended period,

should not exceed the refund which would have accrued from the total revenues over the entire period, less the revenues accrued during the war moratorium period specified herein. The refund period will not be extended for refunds on the gross revenue basis where refunds are made on a combination of new load attached and a percentage of gross revenue from the original applicants.

Some ancillary matters presented at the hearing require consideration. It should be noted that utilities should review their contracts and refund such amounts retroactively to December 7, 1941, as may be required under the rule adopted herein. In order to make such refunds, certain utilities may, prior to repaying the depositor, require the approval of the Commissions having accounting jurisdiction. Such authority will undoubtedly be forthcoming upon proper request and showing by the utility.

The situation, with respect to real estate subdivision rules for telephone utilities, is unique, as developed in the record, in that the Bell Company rules, generally speaking, provide for no advance whatsoever by the subdivider, whereas the independent companies require an advance, which is refundable on a basis of new subscribers attached over a period of five years, and in some cases only three years. The electric, gas and water utilities' rules generally require construction advances, but they are refundable over a ten-year period. The representative of the California Independent Telephone Association requested that the proposed time extension, if made, be made only for one year at a time. The Commission believes, however, in the interest of uniformity, that the same time extension rule should apply uniformly to the several classes of utilities.

The Independent Telephone Association also raised the question of modifying the real estate subdivision extension rule of electric utilities, so as to provide for jointly serving such subdivisions through one distribution system on jointly owned poles. While such proposal undoubtedly has merit, the Commission believes it to be outside the scope of this proceeding.

Utilities not having extension contracts effective during any part of the time from December 7, 1941, to date, inclusive, will not be required to file the emergency rule.

The representatives of the War Department asked that the proposed rule be not construed as applying to the standard contract form N.E.S.C. No. 1. This seems proper, and it is not to be expected that this order will have application to contracts for military or war industry services. Similarly, one utility very properly raised a question as to the application of the rule to temporary housing projects, where the construction is of a type to definitely class it as temporary construction for the duration of the war only.

The Commission, from the record, concludes that the utilities generally are in harmony with the fundamentals proposed to be accomplished. In this connection the Commission notes the expression of appreciation of the Real Estate Board of Southern California as to the procedures proposed, looking toward the accomplishment of the objective. The following Order is designed to accomplish the purposes set forth in this Opinion. Provisions of the Emergency Rule, including paragraphs (a), (b), (c), and (d), should be filed by all utilities having contracts affected by the order herein, and these paragraphs should be supplemented by additional paragraphs shown on Exhibit No. 1 when applicable to existing contracts of a particular utility.

FOURTH SUPPLEMENTAL ORDER

Public hearings having been held and the matter being under submission, therefore,

IT IS HEREBY ORDERED that:

- I All gas, electric, telephone and water utilities having advance deposit contracts covering ordinary line or main extensions or extensions to real estate subdivisions, where refund provisions of said contracts had not expired prior to December 7, 1941, shall file, to become effective on or before August 1, 1943, an Emergency Rule and Regulation No. A-2 as set forth on Exhibit No. 1 attached to this Order. Said filing shall be by advice letter as provided by General Order No. 96.
- II On or before October 1, 1943, each utility shall notify the other party or parties to the contract of the provisions of the rule, and shall make such additional refunds as may have accrued under the rule since December 7, 1941.
- III In all other respects the presently filed extension rules and contracts thereunder remain in full force and effect.

IV All utilities not having contracts which will be affected thereby, and therefore not required to file Emergency Rule and Regulation No. A-2, as ordered in Part I hereof, shall so advise the Commission by letter on or before August 1, 1943.

For all other purposes, the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 27th day of July 1943.

Francis D. Howen

J. J. Baker

Richard K. Ketchum

Commissioners

EXHIBIT NO. 1

Emergency Rule and Regulation A-2

TIME EXTENSION FOR REFUNDS OF ADVANCE DEPOSIT CONTRACTS

Recognizing that war-imposed limitations due to materials shortages have greatly hampered both the construction of new residences, and the extensions of lines, mains and services, and that these conditions have prevented, and will probably continue to prevent, the connection of new customers to line, main and service extensions upon which advance deposits have been made, it is deemed necessary, in the interest of equity, to extend the term of such deposit contracts. Accordingly, the time limits of refund provisions of all advance deposits covering lines, mains and services, made by contract under extension rules applicable to ordinary extensions and extensions to real estate subdivisions, are hereby extended as follows:

(a) Contracts entered into prior to December 7, 1941, where the refund time limits had not expired prior to December 7, 1941, are modified to provide an extension of the time limit for refund of unrefunded advance deposits by a time period equal to the time interval between December 7, 1941 and a period of six months following cessation of hostilities in the present armed conflict with Germany, Italy and Japan, provided such extension of time shall not exceed five years.

(b) Contracts entered into subsequent to December 7, 1941, but before the cessation of hostilities will have refund provisions extended in the same manner as (a), except the term of extension will be measured from the date of the contract, instead of from December 7, 1941.

(c) Contracts where the refund period terminated prior to December 7, 1941 are not modified in any manner by this rule.

(d) Should it become necessary to replace in excess of 50% of a line or main covered by a particular contract at any time subsequent to the original time limit for refunds thereunder, the time extension provided otherwise by this rule shall be terminated as of the date the said replacements became necessary.

(Note: Utility shall also include one or more of the following conditions if applicable to its contracts.)

() Provisions of this rule will not apply to contracts entered into for service to military establishments or war industries, nor to defense housing projects, where such projects are of temporary construction, subject to removal at the termination of the war.

() Provisions of this rule will also apply to contracts for service extensions to temporary or speculative projects, such as gold mines, when activities have been curtailed because of governmental orders. The time limit for refunds will be extended by the time of such curtailment.

() Time limits for refund based on a combination of a percentage of gross revenue and new customers or customers' load attached will not be extended in so far as based on a percentage applicable to gross revenue derived from the original applicants.

() Where contract provisions for refunds are based on a percentage of gross revenue, the time limit for refunds will be extended, as set forth hereinbefore, provided that the total refund will not exceed the refund which would have accrued from the total revenues including the extended period less the revenues accrued during the war moratorium period hereinbefore specified, but in no case less than the refund provisions of the original contract. The refund payments will be made as provided by the terms of the original contract, and the additional refunds, if any, may be made progressively or in one lump sum payment at the expiration of the extended time limit as provided herein.