

of refunds rather than the method provided in the emergency rule authorized by the Commission. It is further alleged that the Company had notified petitioners in writing prior to the date of filing of the original emergency rules, that it would proceed with the extension to serve petitioners' subdivision under a rule then in effect, if and when it obtained permission from the War Production Board and the Railroad Commission. The Commission is asked to grant a rehearing in the matter and to order the Company to refund the sum advanced by petitioners in accordance with the rule governing extensions that was in effect prior to the authorized war emergency rule.

The Commission after considering petitioners' request, issued its Order reopening the proceeding for the purpose of determining whether its Decision No. 35495 should be rescinded, or altered or amended in any particular.

A public hearing was held in the matter in San Francisco.

The proceeding involving the emergency rule was initiated by the Commission after the California Water and Telephone Company and the California Water Service Company had filed on April 13 and April 14, 1942, respectively, amendments to their existing rules and regulations governing water main extensions serving subdivisions in Defense Housing Areas, said rules to be effective during the war emergency period or during such time as governmental restrictions upon the purchase and use of materials are in effect. On April 21, 1942, the Commission issued its Order suspending the operation of the said emergency rules and instituted an investigation into their reasonableness and propriety. After a public hearing the Commission issued its Decision No. 35495, dated June 16, 1942, wherein both Companies were authorized to file the aforementioned rule, effective during the existing war emergency period, which, among other things, provided for refunding sums advanced for construction of extensions to serve war housing projects or war industrial developments, on the basis of 35% of the annual gross revenues obtained from water sales in the tract or area for which the extension was made. The Company thereafter on June 27, 1942, filed the rule with the Commission which, according to the Order, became effective July 2, 1942.

As the proceeding had been brought by the Commission on its own motion, neither of the two companies involved had been directed to notify any possible interested party. Therefore, petitioners had not received any notice of the hearing and had no opportunity to appear and be heard in this particular matter.

The evidence shows that Messrs. Taylor and Wheeler are engaged in the business of building-contracting and subdividing land. During the month of January, 1942, they acquired a tract of land adjoining the City of Concord, Contra Costa County, consisting of approximately 26 acres. The tract was subdivided into 155 lots, and was called Concord Terrace Unit No. 1. The tract was outside the city limits of Concord when acquired, but it was incorporated into the town on September 28, 1942.

Before starting construction of dwellings, California Water Service Company, which furnishes water for domestic purposes in this territory, was asked to extend its mains into the tract. Petitioners were informed by letter, dated February 17, 1942, that the Company would make the extension in accordance with its General Extension Rule No. 19-1. This rule provides that the Company will extend 150 feet of main for each new consumer. If the extension exceeds 150 feet per consumer, the consumer or consumers involved are required to advance the total cost of the extension and the money advanced will be refunded upon the basis of the cost of 150 feet of main for each new consumer served from the extension.

Owing to various delays brought about through the necessity of obtaining priorities from War Production Board for materials to install Petitioners' extensions on this system, a final contract was not signed until July 29, 1942. This contract was based on the emergency rule authorized by the Commission in its Decision No. 35495. Petitioners objected to the refund portion of the agreement in writing, but had to sign it in order to obtain water service in their tract. They advanced the sum of \$8,818 which was the estimated cost, and the extension was duly installed by the Company. The

actual cost of the installation was \$5,925.24 and the difference of \$2,262.26 was refunded to Petitioners. On December 31, 1942, the sum of \$124.77 had been refunded as Petitioners' portion of the revenues obtained from the sale of water in the tract during 1942, leaving a net balance due them of \$5,800.97.

The record shows that Petitioners are not attacking the emergency rule or seeking to have it amended or modified, but they do contend that it is not applicable to their extension on the grounds that they had applied for the service, and had been informed by the Company of the terms on which the installation would be made, prior to April 14, 1942, the date of the filing of the original emergency extension rule.

The Company takes the position that Petitioners' contract is in a class by itself, and that there are no other subdividers having agreements that were made under the same conditions. It admits that its local manager informed Petitioners in writing that the so-called 150-foot rule applied to their subdivision, but contends that this advice was in error. It is conceded that Petitioners had no opportunity to be heard on the question of applicability of the emergency rule.

By reason of the above admissions the Company has agreed to apply Real Estate Subdivision Rule No. 19-2, eliminating the new emergency rule, which results in the present deposit now in the hands of the utility becoming refundable immediately to Petitioners. In order that there be no question of unfair discrimination in the settlement of this matter, the Company also agreed to apply said Rule No. 19-2 to any other of its extension contracts containing the emergency rule that come within the principles of this case.

This settlement being mutually agreeable and acceptable, and it appearing to be reasonable, the following Order will authorize the parties to modify the extension contract as hereinbefore discussed.

O R D E R

A petition having been filed asking for a rehearing of the above entitled proceeding, and a reconsideration of the Commission's Decision No. 35495, dated June 16, 1942, the matter having been reopened for the taking of further evidence, a public hearing having been held thereon and the Commission being now fully advised in the premises;

IT IS HEREBY ORDERED that O. R. Taylor and Dennis B. Wheeler, first party, and California Water Service Company, a corporation, second party, be and they are hereby authorized to modify and amend that portion of the contract entered into by and between the said parties, dated July 27, 1942, and relating to Rule No. 19-3, Extensions during Special Periods, as set forth on page one (1) of Exhibit No. 6, as filed herein, and reading as follows:

NO. 19-3 - WATER MAIN EXTENSIONS

EXTENSIONS DURING SPECIAL PERIODS

During the existing war emergency period or until otherwise ordered by the Commission, applicants for main extensions to serve subdivisions, tracts, housing projects, and war industrial developments and enjoying special procurement privileges under provisions and orders issued by the War Production Board, shall be required to deposit with the Company before construction is commenced the estimated reasonable costs of the necessary facilities exclusive of service connections and meters. The size, type, and quality of materials and location of the lines shall be specified by the Company and the actual construction will be done by the Company or by a contractor acceptable to it. In case of disagreement over size, type, and location of the pipe lines and the constructing medium, the matter may be referred to the Railroad Commission for settlement. Adjustment of any substantial differences between the estimated and reasonable actual cost thereof shall be made after the completion of the installation, subject to review by the Commission.

For a period not exceeding ten years from the date of completion of the main extension, the Company will refund to the depositor, or other party entitled thereto, annually, 35% of the gross revenues collected from consumer or consumers occupying the property to which the said extension has been made; provided, however, that the total payments thus made by the Company shall not exceed the amount of the original deposit without interest.

by the substitution therefor of the following Rule No. 19-2 from the said Company's Rules and Regulations.

NO. 19-2 - EXTENSIONS TO SERVE TRACTS OR SUBDIVISIONS WITHIN INCORPORATED TERRITORY

Applicants for extensions to supply real estate tracts or subdivisions will be required to deposit with the Company the estimated reasonable cost of the necessary facilities, exclusive of service connections and meters, before construction is commenced. The size, type and quality of the materials and location of lines shall be specified by the Company and the actual construction will be done by the Company or by a contractor acceptable to it. Adjustment of any substantial differences between the estimated and the reasonable actual cost shall be made after completion of the installation. Refunds shall be made for each bona fide consumer within the subdivision upon the basis that the cost of each 150 feet of main within the subdivision bears to the total amount of the original deposit, provided no refunds shall be made after a period of ten years from the date of completion of the installation. In case of disagreement over size, type and/or location of the pipe lines, the matter may be referred to the Railroad Commission for adjustment.

IT IS HEREBY FURTHER ORDERED that Decision No. 35495, dated June 16, 1942, remain in full force and effect, and that the petition requesting its reconsideration be and it is hereby dismissed.

The effective date of this Order shall be the date hereof.

Dated at San Francisco, California, this 4th day of February, 1944.

Richard L. Kachse
Spencer W. Dean
Justin F. Garner
Francis L. Havens

Commissioners.