

ORIGINAL

Decision No. 59318

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM J. WILSON and  
AGNES H. WILSON,  
Complainants,

vs.

Case No. 6306

CALIFORNIA-PACIFIC UTILITIES  
COMPANY, a corporation,  
Defendant.

GLEN E. MITCHELL and  
RUTH M. MITCHELL,  
Complainants,

vs.

Case No. 6324

CALIFORNIA-PACIFIC UTILITIES  
COMPANY, a corporation,  
Defendant.

Edward J. Regan for complainants.  
Orrick, Dahlquist, Harrington & Sutcliffe by  
Warren A. Palmer for defendant.  
Parke L. Boneysteele for the Commission staff.

O P I N I O N

A consolidated public hearing in these matters was held before Examiner James F. Haley in Weaverville on September 29, 1959. The cases were submitted subject to the receipt of late-filed exhibits. These exhibits have been received by the Commission and the matters are now ready for decision.

Nature of the Complaints

The two complaints are similar in nature. In each instance, complainants, William J. and Agnes H. Wilson in Case No. 6306, and Glen E. and Ruth M. Mitchell in Case No. 6324, are Weaverville real estate subdividers who seek an order directing defendant, California-Pacific

Utilities Company, to apply the proportionate cost method of refunding rather than the percentage of revenue method to the advances for the water main extensions constructed to serve their respective subdivisions.

Defendant's Answers

In each of its answers, defendant generally denies the allegations of the complainants. It contends that the percentage of revenue method should apply in each case and requests that the complaints be dismissed.

Water Main Extension Rule

Section C, paragraph 2 of defendant's filed Rule and Regulation No. 19, entitled "Main Extensions", states the terms under which the defendant refunds advances for main extensions to serve subdivisions. It provides that refunds may be made under either of the following methods at the option of the utility:

a. Proportionate Cost Method

For each service connection directly connected to the extension, exclusive of that of any customer formerly served at the same location, the utility will refund within 180 days after the date of first service to a bona fide customer that portion of the total amount of the advance which is determined from the ratio of 65 feet of main to the total footage of main in the extension for which the cost was advanced. No refunds will be made after a period of 10 years from the date of completion of the main extension.

b. Percentage of Revenue Method

The utility will refund 22% of the estimated annual revenue from each bona fide customer, exclusive of any customer formerly served at the same location, connected directly to the extension for which the cost was advanced. The refunds will, at the election of the utility, be made in annual, semiannual or quarterly payments and for a period of 20 years.

The proportionate cost method is generally more favorable to the subdivider. In most cases it results in either an equal or a larger amount being refunded over a shorter period of time. The

percentage of revenue method is usually more favorable to the utility, since an equal or a smaller amount is refunded over a longer period. Neither method provides for interest payments on the amount advanced, and neither permits the total amount refunded to exceed the amount advanced.

Complainants' Testimony

Complainants in each case made separate oral application during the early part of 1958 to defendant utility for a water main extension to serve their respective subdivisions. In each instance, complainants regarded the amount of money required by defendant as an advance to be excessive and, as a result, undertook construction of the main extension themselves. Complainants testified, in each complaint, that they performed the work and supplied the materials for the main extension, relying at all times upon an oral understanding and agreement with defendant's local manager that refund would be made under the proportionate cost method. Complainants contend that it was a matter of months following completion of the extensions before they were advised by the local manager that defendant intended to make refunds on the basis of the percentage of revenue method. Mr. Wilson testified that at no time did defendant tender a form of main extension contract for his signature. Mr. Mitchell testified that it was some months following completion of the extension to the Mitchell subdivision before he was approached by defendant's local manager soliciting his signature for a written agreement covering the line extension. He stated that he refused to sign because the form of contract, as proffered, called for refunding on the percentage of revenue method and that this was his first knowledge that the utility intended to refund on such method rather than the proportionate cost method.

Defendant's Testimony

An engineer employed in the general offices of the defendant utility testified that its consistent policy throughout all of its water districts is to elect the option of refunding subdivision main extension advances under the percentage of revenue method. This witness also testified that it is the utility's usual practice to enter into written contracts with subdividers before construction of main extensions, the only two exceptions to this practice being the two extensions in controversy herein.

The local manager of defendant utility stated that he at no time advised complainants that refund would be made under the proportionate cost method.

Analysis of Record

It is quite clear from the record that defendant's general management has promulgated a company-wide policy of refunding subdividers' advances under the percentage of revenue method. It is not clear, however, as to whether defendant's local management was aware of this policy. The record shows that a thorough misunderstanding arose between complainants and the local management of the utility, wherein the complainants were given to understand that refund would be made under the proportionate cost method. It is significant that defendant's local management had previously never experienced an instance where a main extension was made to a subdivision. All prior extensions in Weaverville had been made to individual properties, under which circumstances Rule and Regulation No. 19 provides, without option to the utility, that refund shall be made on a basis equivalent to the proportionate cost method. It is of further significance that contrary to the utility's company-wide policy, the local management did not tender forms of contract to be signed prior to completion of construction. In this connection, the record shows that

defendant does not have on file as part of its effective tariff schedules a copy of its general form of main extension contract as required by the Commission's General Order No. 96; nor, in the absence of such a form of contract in its tariffs, has it made a practice of seeking Commission approval of such main extension contracts as required by said general order.

Findings and Conclusions

The Commission has carefully considered the record in this matter and finds and concludes that in each of the above-entitled cases complainants installed a water main extension, having been given to understand and led to believe by defendant's agent that refunds would be made under the proportionate cost method. We further find and conclude the complainants, in each case, relied upon such understanding and belief and were justified in so doing. The order herein will provide that the amounts of advance stipulated to in each case by both parties, \$16,179.82 for the Wilson extension and \$4,043.33 for the Mitchell extension, shall be subject to refund under the proportionate cost method.

The manner in which the defendant conducted the transactions relating to these main extensions was regrettably informal. Defendant should regularize its main extension procedures. Therefore, the Commission hereby places defendant on notice that it has no alternative, in the absence of a form of main extension contract filed as a part of its effective tariff schedules, but to obtain Commission authorization for each and every main extension contract to which the defendant is now or will become a party.

O R D E R

Public hearing having been held, the matters having been submitted and now being ready for decision,

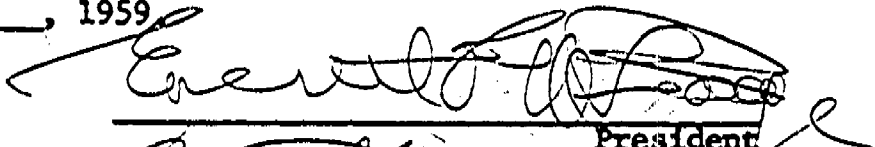
IT IS HEREBY ORDERED as follows:

1. California-Pacific Utilities Company shall use the proportionate cost method, as described in its filed tariff schedules under Rule and Regulation No. 19, Section C, paragraph 2.a., for the purpose of refunding the amounts now due and to become due William J. and Agnes H. Wilson by reason of their advance of \$16,179.82 for the construction of a water main extension to serve the subdivision described in paragraph II of their complaint.

2. California-Pacific Utilities Company shall use said proportionate cost method for the purpose of refunding the amounts now due and to become due Glen E. and Ruth M. Mitchell by reason of their advance of \$4,043.33 for the construction of a water main extension to serve the subdivision described in paragraph II of their complaint.

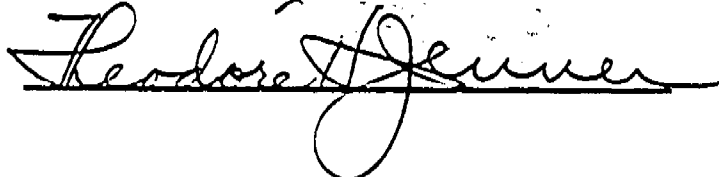
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 1st day of December, 1959

  
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President

  
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Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.