

Decision No. 60064**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

L. M. and H. L. ROSENBERG, dba  
PHOENIX CONSTRUCTION CO., Complainant

vs.

Case No. 6375

SUBURBAN WATER SYSTEMS, Defendant

L. M. and H. L. ROSENBERG, dba  
PHOENIX CONSTRUCTION CO., Complainant

vs.

Case No. 6386

SUBURBAN WATER SYSTEMS, Defendant

H. L. Rosenberg for complainant.  
Arthur D. Guy, Jr., and John C. Luthin for  
defendant.  
Robert H. Nicholson, Jr., for San Gabriel  
Valley Water Company, interested party.  
L. L. Thormod and C. O. Newman for the  
Commission staff.

O P I N I O N

A public hearing was held on February 18, 1960, before Examiner Grant E. Syphers in Los Angeles, at which time evidence was adduced and the matter submitted.

The complainant is a subdivider who installed three subdivisions, and who has filed complaints in each of the respective actions hereinabove set forth. In the course of these installations he advanced to the defendant water company

the following sums for installation of water systems in the indicated tracts:

<u>Tract Number</u>	<u>Amount</u>
18812	\$19,097
18910	5,950
14446	32,783

The foregoing moneys were advanced under refund agreements according to the terms of which 35 per cent of the revenue derived from water service at each subdivision was to be paid annually to the subdivider for a period of ten years or until the initial advance had been refunded, whichever event came first.

In these complaints it is alleged that the defendant is delinquent in making these refund payments. There was no dispute as to this fact and the defendant admitted at the hearing that as of February 1, 1960, the following payments were due and payable:

<u>Tract Number</u>	<u>Amount</u>
18812	\$2,229.50
18910	703.15
14446	4,417.65

The position of the company was that it does not dispute the foregoing amounts are due but it contends that it does not have the money to make these payments. The

company contended that it has had such a rapid growth that all of the money necessary to pay its refunds cannot come out of the earnings but must come out of additional financing. It further contended that it is attempting to obtain additional financing.

Exhibit 4 contains a balance sheet of the defendant company as of December 31, 1959, and a statement of income and operating revenues for the calendar year ending December 31, 1959. An analysis of this statement shows that the company during this period had a net income of \$264,313. Furthermore, during this same period it appropriated the following amounts for dividends on stock:

Class A Preferred	\$ 72,693
Class B Preferred	<u>56,709</u>
Total	\$129,402

Suburban Water Systems, in compliance with the directory language contained in the Opinion of this Commission in Case No. 5501 (Water Main Extension Rules Decision), did file with the Commission on October 8, 1954 its revised Rule and Regulation No. 19 pertaining to Water Main Extensions. This rule and regulation is effective, and constitutes a part of the tariff of Suburban Water Systems on file with this Commission. A tariff is no more than the entire body of rates, tolls, rentals, charges and classifications, rules and regulations, collectively, as enforced by a public utility. Suburban must conduct itself in its operations as a public

utility in compliance with those tariff provisions on file with this Commission.

The pertinent portion of Suburban's Water Main Extension Rule states:

"Refunds shall be made upon the basis of 35% of the gross revenue received from service through pipe lines installed under the deposit, provided that no refunds shall be made after a period of 10 years from the date of the completion of installation, and provided further that in no case shall the refunds exceed the amount of the original deposit.

"Refunds shall be payable on the first day of February following the close of the preceding calendar year's business . . . "

The contracts which give rise to the respective causes of action here were entered into in conformity with the filed Water Main Extension Rule of Suburban Water Systems. There is no dispute to the fact that these advances in question were received from the subdivider pursuant to contracts drawn in compliance with the company's Water Main Extension Rule. Suburban Water Systems has obligated itself by contract to repay such advances; and further, by its Rule and Regulation No. 19 on file with this Commission, Suburban has also represented and obligated itself to make refunds, as the quoted portion of its Water Main Extension Rule states. It is the opinion of this Commission that Suburban Water Systems is obligated by provisions of its tariff as filed and by contract obligation to make refund to the complainant herein of the sum of \$7,350.30 on duly executed refund contracts.

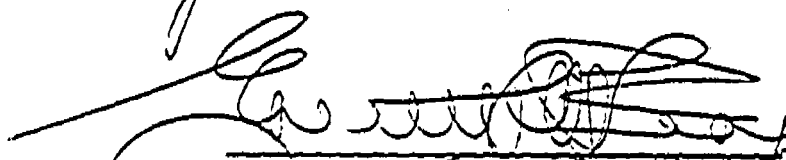

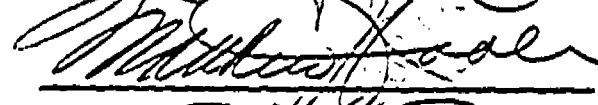
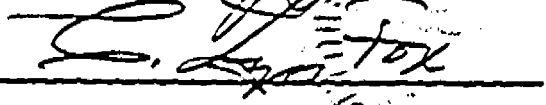

O R D E R

Complaints as above entitled having been filed, and answers thereto having been filed, public hearing having been held thereon and the Commission being fully advised in the premises and having made the foregoing findings,

NOW, THEREFORE, IT IS HEREBY ORDERED that Suburban Water Systems, a California corporation, be and it is hereby directed to comply with its Water Main Extension Rule and Regulation No. 19 and its contract obligations and to make refunds to the complainant L. M. and H. L. Rosenberg, doing business as Phoenix Construction Company, in the amount of \$7,350.30.

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

Dated at San Francisco, California, this  
9th day of May, 1960.

  
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President  
  
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Commissioners