

ORIGINAL

63142

Decision No. \_\_\_\_\_

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on  
 the Commission's own motion into the  
 operations, practices, rules, contracts,  
 tariffs, accounts, and securities issues  
 of SUBURBAN WATER SYSTEMS, a corporation.

Case No. 6569

Arthur D. Guy, Jr., for Suburban Water  
 Systems.

Everett B. Clary, for Garnier Construction  
 Company and San Jose Ranch Company.

William W. Leavitt, in propria persona.

Hugh N. Orr, for the Commission staff.

O P I N I O NNature of Proceeding

This is an investigation, initiated by the Commission on June 28, 1960, heard on July 6, 7 and 17, 1961 at Los Angeles before Examiner John M. Gregory and submitted for decision on the latter date, into water main extension practices and related financial trans-  
 (1)  
 actions of Suburban Water Systems. The utility serves consumers in a number of districts, including the Glendora, Covina Knolls and San Jose Hills systems and the Central Basin area, which area includes territory southeast of Whittier, portions of the cities of Santa Fe Springs, Pico-Rivera and adjacent unincorporated territory.

The Issue

The investigatory order states, in general terms, that the purpose of the proceeding is to determine whether the utility has engaged in practices in violation of its main extension rule or

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(1) A similar investigation proceeding (Case No. 6541, consolidated with an application to issue stock-Appl. No. 42217) concerning Southwest Water Company, a utility under the same operating and financial management as Suburban but with a different group of investors and supplying water to consumers in the La Sierra, Etiwanda and La Mirada areas was heard and submitted at the same time and is the subject of a separate decision concurrently issued.

Commission orders.

Following a prehearing conference, early in 1961, counsel for the utility and the Commission staff, after numerous consultations, agreed upon a stipulation of facts concerning eight examples of main extension installations and related financial transactions by the utility generally during the period 1954-1960, for the purpose of presenting what appears to be the basic issue involved. That issue is whether the utility's water main extension rule, promulgated by the Commission in 1954 for all privately owned water companies subject to its jurisdiction (except those supplying water primarily for irrigation uses) and in effect for this utility since October 8, 1954, prohibits the utility from financing the initial cost of construction or installation of the water mains and other facilities described in paragraph C.1. of said rule, for new subdivisions or tracts, with funds other than those derived from a refundable cash advance from the applicant for such extension. (See Water Main Extension Rule, 53 Cal. P.U.C. 490, pars. C.1., C.2. a., b.; Pub. Util. C. Sec. 532; General Order No. 96, Sec. X.)

A related question - whether unrefunded balances due under outstanding main extension contracts may be converted to stock - is not before us in this proceeding.

#### The Evidence

The stipulated facts (Exhibit 1) reveal that tract distribution facilities were installed by the utility with funds obtained in some cases initially by cash deposits but eventually by sales of its Class "A" preferred stock to the developer or his successors, without execution of a refundable main extension rule contract, as follows:

Tract No.	Developer	Estimated Cost	Initial Source of Funds	Recorded in Acct.No. (a)	Later Financial Transactions
(16093	Ed Krist	\$133,000	\$33,000 cash	241	\$2000 refunded to Krist Estate;
(22332	Ed Krist	(actual cost \$147,627.42)	65,000 cash	242	2660 sh. Class "A" pfd. stk., p.v. \$133,000, issued to assignee or nominees for \$37,000 cash; some shares later transferred to respondent's officers or to subdividers supplied by respondent.
22724	Al Lieva (Hacienda Plaza Ltd.)	Not indicated (Actual cost \$25,418.99)	580 sh. Class "A" pfd. stk \$29,000	201	Not indicated
21755	Walker Built Homes	\$21,217.68 (Actual cost, \$21,795.27)	350 sh. Class "A" pfd. stk. for \$17,500; actual cost included oversized mains		Not indicated
(14068	R.H. Glick and	\$30,950 \$ 9,300	805 sh. Class "A" pfd. stk., p.v.		Not indicated
(22015	Queenside Lumber Co., Inc.	(Actual cost, \$40,706.46)	\$40,250, purchased by Glick		

(a)

Account Nos. indicated are: 241 - Advances for Construction; 242 - Other Deferred Credits; 201 - Preferred Capital Stock

The three remaining examples used in the agreed statement of facts refer to tract installations in which the subdividers advanced the estimated costs of construction under main extension rule refund contracts which were later converted into purchases of Class "B" preferred stock pursuant to Commission authorization. The refund contracts made no provision for adjustment of estimated to actual costs.

<u>Tract No.</u>	<u>Developer</u>	<u>Estimated Cost Advanced</u>	<u>Actual Cost</u>	<u>Stock Issued to Convert</u>	<u>Authority</u>
18749	Krist Happy Homes	\$25,550	\$37,138.74	510 sh. Class "B" pfd. stk to subdivider for \$25,500	Dec. 48977, Appl. 34581
(16996 21004	Sunnywood, Inc.	\$26,500	\$19,419.65	530 sh. Class "B" pfd. stk. to subdivider	Dec. 51400, Appl. 36879
15895	Sun Gold	\$17,920	\$42,672.81 (partly due to over- sized mains)	358 1/5 sh. Class "B" pfd. stk. (\$17,910) to Calfin Co.	Dec. 51400, Appl. 36879

#### Summary, Findings and Conclusions

Counsel for the company contends, as he also argued in the consolidated Southwest case, that the main extension rule, by not expressly forbidding construction of the tract facilities specified in the rule with funds derived from the sale to subdividers of stock issued pursuant to Commission authorization under provisions of the Public Utilities Code (Sec. 816-830), has thereby impliedly countenanced such stock sales as a permissible method, discretionary with the utility, for obtaining funds to construct or install such facilities.

Counsel for the Commission staff asserts, as he did in the Southwest case, that in the absence of deviation authority, the refundable advance provided by the rule constitutes the only permissible method for financing the cost of such installations.

What we said on the identical issue in disposing of the consolidated Southwest case applies here. In consequence, we see no merit in the position assumed by the utility in this case.

We find, on this record, that Suburban Water Systems, a corporation, between the years 1954 and 1960, at the times and under circumstances related in the "agreed statement of facts", Exhibit 1 herein (examples 1 through 5), in violation of the provisions of paragraph C.1. and C.2. of its rule governing water main extensions on

file with the Commission and in effect during all of said times, has constructed or installed extensions of water facilities to serve new tracts or subdivisions, other than improvements or replacements of its existing system made in the ordinary course of operations, without requiring from each applicant for such main extension a refundable cash advance, before commencement of construction, of the estimated reasonable cost of installation of the distribution facilities required for such extension as specified in paragraph C.1. of said rule.

We conclude that respondent should be directed to cease and desist from constructing such main extensions otherwise than by requiring a refundable cash advance from the applicant therefor as provided by its main extension rule.

The disposition here made of the issue concerning violation of respondent's main extension rule renders unnecessary, in our opinion, the consideration or determination of whatever other issues may be presented by the investigatory order herein.

#### O R D E R

A public hearing having been held herein, evidence and argument having been received and considered, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion; therefore,

IT IS HEREBY ORDERED that:

1. Suburban Water Systems, a corporation, shall cease and desist and hereafter refrain from construction or installation of main extensions to serve subdivisions, tracts or other developments specified in paragraph C.1. of its currently effective water main extension rule unless and until it shall have received from the applicant for any such extension of facilities or service, prior to

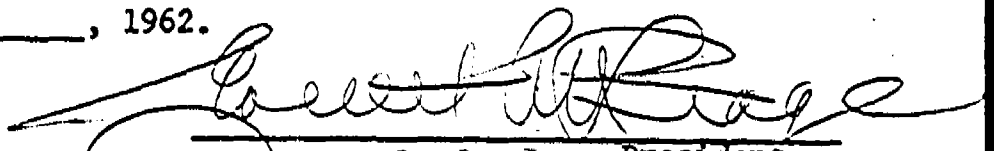
commencement of construction, a refundable cash advance in the amount of the estimated reasonable cost of installation of the mains and other required facilities as specifically described in said paragraph C.1. of said rule, or unless and until the company shall have sought and secured from the Commission, prior to such construction, appropriate authority to deviate from the provisions of said rule with respect to any such main extension, including the method of providing funds for the cost thereof.

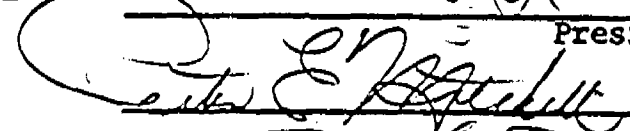
2. The Secretary shall forthwith cause personal service of a certified copy of this decision and order to be made upon Suburban Water Systems, a corporation.


3. Suburban Water Systems shall file, within 120 days after the effective date of this order, a list of each and every main extension which has been installed by or for it since October 8, 1954, under terms or conditions which deviate in any way from the provisions of its filed main extension rule, together with a description of, and explanation for, each deviation involved.

4. This order shall become effective immediately upon personal service thereof on said corporation.

Dated at San Francisco, California, this 23<sup>rd</sup> day of JANUARY, 1962.

  
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President

  
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E. J. Ragsdale

  
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E. J. Ragsdale

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Commissioners

Commissioner Frederick B. Holcomb being necessarily absent, did not participate in the disposition of this proceeding.