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Decision No. 66432

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and practices of SOUTHERN CALIFORNIA WATER COMPANY relating to the latter's main extension rule.	Case No. 7325 (Rehearing)
In the matter of the application of SOUTHERN CALIFORNIA WATER COMPANY for an order granting a deviation from applicant's filed main extension rule.	Application No. 44631 (Rehearing)

O'Melveny & Myers, by Donn B. Miller, for respondent and applicant.
Ball, Hunt & Hart, by Harman M. Hitt, for Excelsior Park, Inc., Regiment Corp., Daisy Corp., and Upton Corp., interested party.
Lawrence Q. Garcia and C. O. Newman, for Commission staff.

OPINION ON REHEARING

Rehearing of Decision No. 64909, issued on February 5, 1963, in the above-referenced matters, was held and submitted before Examiner Patterson in Los Angeles on July 9, 1963.

Basically, it is the position of Southern California Water Company (hereinafter referred to as the respondent) that it could not reasonably comply with Decision No. 64909, for compliance required either (1) the assent of the subdivider of Tract 25764 to one of the two alternative proposals for settlement propounded by the decision or (2) successful litigation requiring the subdivider to accept one of the proposals. Respondent contends that the subdivider will not voluntarily accept either of the settlement

proposals, and that litigation would not only be costly, but there is no guarantee it would be successful.

Statements of counsel and evidence presented at the rehearing brought into focus the following points. The contract dated September 15, 1961, which has been described as a refund agreement between respondent and the S & S Construction Company, was actually entered into with Excelsior Park, Inc., Regiment Corp., Daisy Corp., and Upton Corp., all affiliates of the S & S Construction Company. In none of the discussions between representatives of the subdivider and the respondent, was it considered that the approach line costing $16,563, should be included under the refund agreement, and thus the subdivider was unaware of any violation of the extension rule.

The contract provided for an advance for the in-tract facilities of $23,257 which was subsequently adjusted to the actual cost of $23,010.31. An annual refund payment of $950.40 was made in May 1963, thereby reducing the balance refundable to $22,059.91.

As a possible solution to this matter, it has been suggested that the subdivider could advance the additional $16,563 for the approach line, making his total outstanding advance about $39,000, and then refunds could be computed on the proportionate cost option under the old extension rule. It is alleged that this would result in an immediate refund of the entire $39,000 including the $22,000 which is now outstanding. Needless to say, the immediate refund would constitute a windfall to the subdivider not contemplated by the present contract and, moreover, would result in an immediate increase in respondent's rate base. These two features are sufficient to cause us to reject this proposal without further consideration.

In an endeavor to present a solution to this problem and comply with the policy expressed by Decision No. 64909, counsel for respondent presented "Proposed Findings of Fact, Conclusions of Law and Order" (Item A). This proposal contains suggested findings and conclusions of law leading to a proposed order which, in effect, would modify the existing agreement between respondent and the subdivider so as to require the subdivider to advance the additional $16,563, but said advance, rather than being made on a cash basis, would be accumulated by withholding from the subdivider the refunds normally and regularly due under the refund provisions of the agreement. The proposed order would further modify the agreement so that any sums advanced by the subdivider not refunded at the end of 20 years, would then become refundable without interest in 5 equal annual installments. The proposed order further provided that it would not become effective for 60 days so as to afford the subdivider an oppportunity to be heard in the event he wished to protest the order.

Respondent's proposal would result in an amended agreement between respondent and the subdivider which would combine elements of the old extension rule and the present rule. Whereas a blending of the old and the new rule might be considered desirable if it were to result in a more equitable solution to all the parties and to the customers, it does not in the present instance appear to afford such a result.

Under the contract as it now stands, the subdivider will receive annual refunds in the range of $1,200 to $1,500 per year, and the balance of the advance now outstanding should be fully

refunded in from 15 to 18 years. Under respondent's proposal the subdivider would receive no refunds for about 12 years, but would be assured of having the entire amount refunded 25 years from the date of the contract.

It would appear that the subdivider would resist this proposal just as he has resisted either of the alternatives offered by Decision No. 64909. This is especially true in view of the unequivocal testimony of respondent's vice-president that there was never any intention that the approach line was to be included in the refund contract. The proposal has the further defect that it does not correct the inequity now existing wherein respondent has $16,563 of plant in its rate base which should be offset by an advance for construction. Under our rate-making policies, failure to consider this amount as a proper deduction from rate base casts a burden on the utility's ratepayers.

Respondent has admitted it violated its extension rule in not securing an advance of $16,563 from the subdivider for the approach line. Under the circumstances, we believe that it would not be equitable nor practicable to expect or require the subdivider to now advance this amount. The cost of this line, which was financed out of treasury funds, would be included in applicant's rate base unless otherwise adjusted for rate-making purposes. Since the failure to follow the extension rule was a management decision, it is only fair and equitable that the cost, to the extent it is not refundable, be borne by applicant by excluding such amount from applicant's rate base. Accordingly, the order herein will require the establishment of a memorandum account in the amount of $16,563 which balance shall be reduced annually in an amount equal to the refunds which would have been made on the basis of revenue from customers served directly from the approach line, exclusive of those in Tract 25764.

Based on the record we find that:

1. Southern California Water Company has not complied with the provisions of its tariffs in extending service to Tract 25764 in that it did not secure an advance from the subdivider of $16,563 for the approach line.

2. Failure of respondent to follow its extension rule was entirely its responsibility.

3. The fact that an advance of $16,563 was not secured, and consequently there is no deferred credit in this amount on respondent's balance sheet, casts a burden on respondent's ratepayers.

The unextinguished balance of the amount hereinafter ordered to be established in a memorandum account will be deducted from rate base in any future determination of just and reasonable rates.

Based on the foregoing findings we conclude it would be in the public interest to:

1. Vacate the order in Decision No. 64909.

2. Require respondent to account for its failure to require an advance for construction by establishing a memorandum account with an initial balance of $16,563, said balance being subject to amortization as provided in the following order.

3. Grant Application No. 44631 to the extent of authorizing the contract of September 15, 1961, between respondent and the subdivider.

ORDER ON REHEARING

IT IS ORDERED as follows:

1. Decision No. 64909 is vacated.

2. Within thirty days from the effective date of this order Southern California Water Company shall establish a memorandum account with an opening credit balance of $16,563.

3. For a period of twenty years from September 15, 1961, the amount of $16,563 established in a memorandum account may be extinguished in annual amounts equal to 22 percent of the annual revenue from each bona fide customer connected directly to the eight-inch approach line on Pioneer Boulevard, exclusive of those in Tract 25764.

4. Application No. 44631 is granted to the extent that the contract dated September 15, 1961, between Southern California Water Company and Excelsior Park, Inc., Regiment Corp., Daisy Corp., and Upton Corp., for providing water service to Tract 25764 in the City of Artesia, is authorized.

5. In all other respects, Application No. 44631 is denied.

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

Dated at San Francisco, California, this 10th day of DECEMBER, 1963.

William M. Bennett
President
[signature]
Everett C. McKeage
George G. Grover
Frederick B. Holoboff
Commissioners