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ORIGINAL

Decision No. 68198

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Rosa Water Company, a corpora-)
tion, for authority to deviate)
from Applicant's presently exist-)
ing rules governing the refund)
and termination of Main Extension)
Contracts.)

Application No. 46673
(Filed May 28, 1964)

Gibson, Dunn & Crutcher, by Raymond L. Curran, for Rosa Water Company, applicant.
Charles Stuart, for Southern California Water Company, interested party.
Raymond E. Heytens and Robert C. Durkin, for the Commission staff.

O P I N I O N

Applicant, Rosa Water Company, seeks authority to deviate from its filed water main extension rule in regard to extensions made to serve certain tracts.

A public hearing on this application was held before Examiner Catey in Los Angeles on September 17, 1964. Notice of hearing had been published by applicant in accordance with this Commission's rules of procedure. The matter was submitted at the conclusion of the hearing.

At the hearing, testimony on behalf of applicant was presented by its President and General Manager. A representative of the developers of most of the tracts involved in the requested deviation presented testimony in support of that deviation. One of the appearances for the Commission staff stated that the Hydraulic Branch of the Utilities Division was opposed to the granting of the application. The other staff appearance stated

that the Finance and Accounts Division objections relate only to the increase in dividend rate from the present three percent to the proposed five percent on the preferred stock to be used by applicant in lieu of cash for refund of subdividers' advances.

Applicant's Operations

Applicant is a public utility serving water in portions of the Simi Valley, Ventura County. Tract No. 1041, the initial development served by applicant, was certificated to it by Decision No. 59030, dated September 22, 1959, in Application No. 40685. Additional areas were certificated to applicant from time to time. Among those are Tracts Nos. 1410, 1420,^{1/} 1425, 1436, 1454, and 1483,^{2/} which were certificated to applicant by Decision No. 65121, dated March 19, 1963, in Application No. 44721. Applicant now serves approximately 2,800 customers throughout all of its certificated areas.

Main Extension Provisions

At the time applicant commenced operating in the Simi Valley, its filed main extension rule permitted refunds of subdividers' advances on either a proportionate cost or a percentage-of-revenue basis.^{3/}

1/ Later subdivided further into Tracts Nos. 1420-1, 1420-2, and 1420-3.

2/ Later designated as Tract No. 1483-1.

3/ As used herein, "proportionate cost" refers to a refunding method whereby the total cost of an extension is divided by the total length of mains therein to derive an average cost per foot of extension; this average cost per foot, multiplied by a stated fixed footage allowance per customer, determines the refund to be made to the subdivider for each bona fide new customer served directly by the extension. Under the "percentage-of-revenue" refund method, the subdivider receives a stated fixed percentage of the revenue derived from customers served directly from the extension.

By Decision No. 64536, dated November 8, 1962, in reopened Case No. 5501, this Commission revised the uniform main extension rule applicable to all water utilities under its jurisdiction. The revised rule no longer permits the two alternative refunding methods which had widely divergent economic impacts on subdividers, utilities and utility customers. Instead, the percentage-of-revenue method of the former rule, with certain modifications, is now prescribed for subdivision main extensions, thus fixing the relative responsibilities appropriate for subdividers and utilities.

In Application No. 44721, the certificate proceeding involving the tracts for which a deviation is now sought, applicant requested authority to deviate from its main extension rule by refunding the subdividers' advances on a 65-foot, proportionate cost basis, using three percent preferred stock in lieu of cash refunds. That deviation was not allowed. Decision No. 65121, however, stated that future provision of funds by stockholders would be limited and that Exhibit No. 11 in that proceeding showed that cash refunds of advances on either a proportionate cost or percentage-of-revenue basis would unduly drain applicant's cash resources. The decision granted applicant authority to substitute its three percent preferred stock for cash refunds of advances but required that such refunds be on a percentage-of-revenue basis rather than the requested proportionate cost basis. This deviation avoided the drain on applicant's cash resources without tending to increase applicant's rate base, revenue requirements or water rates.

Applicant and the subdividers involved in Application No. 44721 entered into main extension agreements in accordance with the deviation prescribed by Decision No. 65121. Both parties now wish the Commission to authorize substitute main extension agreements which would provide for refunds on a proportionate cost basis rather than the percentage-of-revenue basis and would utilize applicant's five percent preferred stock for refunds in lieu of the three percent preferred stock authorized by Decision No. 65121.

Discrimination

A representative of the subdividers testified that applicant's three percent preferred stock is of little value, is not marketable, and renders the refund agreements useless as collateral. He stated that, although he did not consider the five percent preferred stock to be a good investment, he felt that it at least has a market value and would represent a protected investment. He pointed out that real estate developers in other portions of applicant's service area and in other utilities' service areas, receive cash refunds in accordance with the uniform water main extension rule and that developers who must receive three percent preferred stock in lieu of cash refunds are penalized.

Comparison of Securities

The principal differences between applicant's two series of preferred stock, as set forth in applicant's amended articles of incorporation, are as follows:

	<u>Series A</u>	<u>Series B</u>
Dividend Rate	5%	3%
Cumulative	Yes	No
Dividend preference before:	Comm. & Ser. B	Comm.
Liquidation preference before:	Comm. & Ser. B	Comm.
Right to elect majority of directors if two annual dividends passed	Yes	No

Effect of Deviation on Utility Customers

A controlling factor in judging the reasonableness of a deviation from the present uniform main extension rule is its potential effect on the utility's customers, both present and future. Applicant presented no evidence on that subject, but it is obvious that the deviation could have no less adverse effect on the customers than would the similar deviation denied by Decision No. 65121.

Effect of Deviation on Applicant

Applicant's witness testified that the deviation now requested would be of benefit to applicant because the five percent preferred stock is a better class of stock and its use in lieu of three percent preferred stock for payment of refunds would enable applicant to eliminate the three percent stock from its capital structure. He also stated that the issuance of stock as refunds on a proportionate cost basis would increase the proportion of equity in the corporation, placing it in a more favorable position with respect to amounts available and interest rates at which it could attract borrowings.

Exhibit No. 3 shows that advances for construction represent about 41 percent of applicant's depreciated plant and would represent about 32 percent under applicant's proposed deviation. Applicant's filed main extension rule prohibits further extensions when advances reach 50 percent of depreciated plant, but Decision No. 65121 removed that restriction within certain parts of applicant's certificated area.

Effect of Deviation on Refund Contract Holders

Holders of refund agreements would benefit from the proposed deviation because of the almost immediate refund of advances for construction as compared with the long-term refunding under both the deviation prescribed in Decision No. 65121 and the normal refunding under applicant's filed tariffs. Because of the significant differences between applicant's two series of preferred stock, refunds in the five percent preferred stock instead of the three percent authorized by Decision No. 65121 would also benefit holders of refund agreements.

The record shows that applicant's principal stockholder now holds the refund agreement relating to Tract No. 1420-1. Exhibit No. 1 shows that full refund of \$15,551.45 would be payable to this contract holder in five percent preferred stock immediately upon applicant's effecting its proposed deviation. Other contract holders initially would be entitled to \$91,142.17 in refunds, leaving a balance of \$4,677.18 refundable if and when additional customers are added in two incompletd tracts.

Finding and Conclusion

The Commission finds that applicant's proposed refunding of certain extension advances on a proportionate cost basis is adverse to the public interest.

The Commission concludes that the application should be denied.

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ORDER

IT IS ORDERED that Application No. 46673 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 NOVEMBER, 1964.

Fredrick B. Holdoff
 President

James F. Fitzhugh

Cecilia H. Long

Melvin A. Bennett

Commissioners

I concur in the order.

George F. Grover