

ORIGINAL

Decision No. 68423

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

B. A. YORKSHIRE,
 and
 WILLIAM BERK,

 Complainants
 vs.
 DYKE WATER COMPANY

 Defendant.

Case No. 7964
 (Filed July 30, 1964)
 (Amended October 14, 1964)

Merwin S. Kreeger, for complainants.
Thomas W. Martin, for defendant.

O P I N I O N

Complainants claim that under the terms of a construction advances agreement with defendant, a sum of \$70,490 was advanced to defendant, that refunds have totaled \$31,563.45 and that an unpaid balance of \$39,926.55 remains. Complainants seek an order of this Commission directing defendant to refund the remaining balance.

Defendant admits that under the terms of the agreement there is due and as yet unpaid the sum of \$7,673.26 and denies that any other sum is owing. Said sum is allegedly made up of refund amounts past-due for the year 1963 and for that portion of the succeeding year ending February 24, 1964.

Public hearing in this matter was held before Examiner Emerson on October 14, 1964 at Los Angeles. The matter was submitted on receipt of two late-filed exhibits, filed on October 26, 1964, and is now ready for decision.

In 1954, defendant entered into a written construction advances agreement for the establishment of public utility water service to 380 lots in Tract No. 1934, Orange County.^{1/} On November 3, 1955, complainant Berk became the assignee of the original agreement. On January 2, 1963, Berk assigned the agreement to complainant Yorkshire.

The original agreement, among other things, provides: (1) that refunding of the amount of the construction advance is to be made annually in July of each year, with the annual payment being based upon 35 percent of the gross water revenues collected from the tract during the preceding 12 months; and (2) that such refunding will continue for a period of ten years. The agreement was signed on February 25, 1954. By its terms, it thus terminated on February 24, 1964.

This agreement, as well as other similar agreements, has heretofore been authorized by this Commission and defendant has been directed to carry out the terms thereof by Decision No. 61642, issued March 13, 1961 in Application No. 42454, of which the Commission takes official notice.

Water revenues collected for the 12-month period ending June 30, 1963, amounted to \$13,090.16 and for the period July 1, 1963 to February 24, 1964, amounted to \$8,833.42, or a total amount of \$21,923.58 for the two periods. Thirty-five percent of such total amount is \$7,673.25. This latter sum is the total amount due complainants for such periods.

There is disagreement between the parties as to the total refunds paid, complainants alleging that accumulated payments

^{1/} A copy of the agreement is attached to the complaint.

have totaled \$31,563.45 while defendant's records show that a total of \$33,987.55 has been paid. The difference is attributed to a single check covering part of the refund due for the 12-month period ending June 30, 1957. The total amount due for such period was \$4,766.39. Defendant drew two checks for such total; check No. 264 for \$2,424.10 and check No. 287 for \$2,342.99. Berk claims to have no record of having received check No. 264. The evidence leaves only conjecture as to why Berk waited some seven years to make his present claim that \$2,424.10 of the payment due in July 1957 should now be paid at the direction of this Commission. The time contemplated by the statute of limitations has run out. No award in such respect may now be made.

In view of the evidence, the Commission finds as a fact that Dyke Water Company is obligated to make refunds to complainants to a total of \$7,673.25 on a duly executed construction advances refund agreement of which complainants are assignees.

O R D E R

IT IS ORDERED that Dyke Water Company, a California corporation, be and it is hereby directed to comply with its contract obligations and to make refund forthwith to complainants herein in the total amount of \$7,673.25. Said total amount shall be distributed to said complainants as follows:

1. To complainant Berk, in the amount of \$2,290.77 for the period ending January 1, 1963.

2. To complainant Yorkshire, in the amount of \$5,382.48 for the period commencing January 2, 1963 and ending February 24, 1964.

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

Dated at San Francisco, California, this 5th day of January, 1965.

Fredrick B. Halaloff
President

George H. Crow
William W. Bernard

Commissioners