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Decision No. 75205

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the reasonableness of Water Main Extension Rules presently effective for water utilities throughout the State, and the development of such revised extension rule as appears reasonable.	Case No. 5501 (Reopened August 24, 1965)

(Appearances are listed in Appendix A)

O P I N I O N

Public hearing on this reopened proceeding was held before Examiner Catey in San Francisco on September 18, 1967, November 13, 1967, November 14, 1967, and April 16, 1968, and in Los Angeles on October 16, 1967, and February 27, 1968. All parties were afforded an opportunity to file opening briefs on June 19, 1968, and reply briefs on July 10, 1968. The matter was submitted on July 10, 1968.

The Commission staff presentation was made through an accountant and an engineer. A vice president of Southern California Water Company testified for California Water Association. The captain assigned to the Research and Planning Division of the Los Angeles County Fire Department testified for the County of Los Angeles. An attorney testified for California Builders Council.[1/]

Scope of Reopened Proceeding

The order reopening this proceeding on August 24, 1965, limited the scope of the reopened proceeding to three specific issues.

1/ Formerly known as Homebuilders Council of California.

Pursuant to the procedure formulated in a prehearing conference and set forth in detail in Exhibit No. 68, four parties petitioned for discontinuance of the reopened proceeding, one party petitioned for either discontinuance of the proceeding or modification of its scope, and one party concurred in the petitions of the other parties. Decision No. 72215, dated March 28, 1967, modified the scope of the proceeding to include five specific issues, but in all other respects denied the petitions.

On August 29, 1967, California Water Association petitioned for further broadening of the scope of the reopened proceeding to include a review of all provisions of the main extension rule and of all issues arising out of the application of those provisions. Decision No. 73177, dated October 10, 1967, prescribed a procedure and time schedule permitting any of the parties to suggest specific changes which they wished made in the present rule. At the October 16, 1967 hearing, however, California Water Association did not oppose, and other parties joined in, a motion presented by California Builders Council that the proceeding be terminated without making any changes in the main extension rule. The motion was received with the understanding that if it were not granted by November 13, 1967, the date scheduled for cross-examination of the Commission staff witnesses, the motion would be deemed denied. After careful consideration of the motion, the Commission decided to let the proceeding continue as then scheduled.

At the hearing on November 13, 1967, the California Builders Council moved that consideration of a full-contribution rule be dropped from the list of subjects to be considered in this proceeding. Several other parties joined in the motion and none

opposed it. The presiding examiner asked if any of the parties wished to present evidence in support of a full-contribution rule prior to our ruling on the motion. None offered to make such a presentation. Decision No. 73449, dated December 5, 1967, granted the motion.

Only two of the parties proposed, under the procedure prescribed by Decision No. 73177, specific changes in the existing rule to be considered along with the remaining issues after eliminating consideration of a full-contribution rule. On December 14, 1967, the County of Los Angeles proposed a modification of Section A.4.d. and the addition of a Section A.4.e. to the rule. On December 19, 1967, the California Builders Council proposed a modification of Section C.1.b. of the rule. These proposals increased the scope of the reopened proceeding to a total of seven issues.

Rearranged in the order of the related portions of the present rule, the issues to be considered are the desirability, propriety, feasibility and effect of:

1. Modifying Section A.1.a. of the present rule to remove its applicability to the initial unit served by a new utility, and to define such initial unit.

2. Modifying Section A.2. of the present rule so as to (1) establish a different basis for limitation of expansion; (2) provide automatic relief from such limitation under appropriate circumstances; or (3) both.

3. Modifying Section A.4.d. of the present rule to interpret the words "must comply" in situations where the compliance is enforceable against the applicant for an extension, rather than against the utility.

4. Adding a Section A.4.e. to the present rule to interpret the words "must comply" in situations where compliance is effected voluntarily by the utility, even though not enforceable against it.

5. Modifying Section C.1.b. of the present rule to require the applicant for an extension to pay for the cost of special facilities only when such special facilities are requested by the applicant and would not otherwise normally have been installed by the utility.

6. Modifying or deleting Section C.2.d. of the present rule, which now guarantees eventual full refund of the original amount of an advance relating to a subdivision with 80 percent occupancy.

7. Modifying Section C.3.a. of the present rule so as to place a more realistic ceiling than is now provided on the payment that may be made by a utility for the purpose of terminating a main extension contract.

Analysis of each of the above problems is outlined below.

Applicability to Initial Unit

Section A.1.a. of the present rule states that the rule is applicable to all extensions of distribution mains, from the utility's basic production and transmission system or existing distribution system, to serve new customers (other than for fire protection, resale, temporary, standby or supplemental service) unless specific authority is first obtained from the Commission to deviate from the rule. In a number of recent certificate proceedings, authority has been granted the utility to deviate from the rule insofar as financing a specified "initial unit" is concerned.

In Exhibit No. 69, the staff lists the following possible effects if the rule is not considered to be applicable to the financing of in-tract facilities of the initial unit of a new utility:

1. The initial capital structure might be more desirable.

2. To the extent that the in-tract facilities were financed by equity, there would be less cash required for refunds or debt service.

3. The rate base would be higher.

4. Formation of new utilities, rather than extension of or service by an existing utility, might be encouraged.

5. Individuals might attempt to form several new water utilities and then consolidate them into a single company so as to obtain a larger rate base, without advances.

6. After the subdivision is sold, the subdivider-utility owner might sell the water system to a new owner, who might then request authority to increase the initial low rates, based on the relatively high net plant investment per customer.

7. Because of the great range in size of initial units for different utilities, the resulting variations in the amount of equity financing could conceivably result in different rate bases and different rates for utilities that were identical in all other respects.

The staff also lists the following possible effects if the rule is considered to be applicable to the financing of in-tract facilities of the initial unit of a new utility:

1. The initial capital structure might be less desirable.

2. There might be increased cash requirements for refunds.

3. The rate base would be lower.

4. Formation of new or numerous utilities might be discouraged. Lower rate base might reduce frequency of early rate increase proposals prompted by changes in ownership of the utility.

5. Problems associated with definition of initial unit would be eliminated.

6. An initial substantial amount of advances could lead to early limitation of expansion of a new utility under Section A.2. of the rule.

The staff made no recommendation as to whether or not the rule should be revised to exclude the initial subdivision unit served by a new utility. California Water Association, the California Section of American Waterworks Association, and Pacific Gas and Electric Company, contend that a statement in the rule of policy regarding new utilities serves no useful purpose in any event, because by the time a tariff containing the rule has been filed by a new utility, the Commission's policy regarding that utility will have been set in the decision on the utility's application for a certificate to construct the system. California Builders Council takes a similar position.

The water main extension rule deals primarily with the responsibilities of the utility and of the applicant for a main extension. We stated in Decision No. 73449 herein:

> "The present interest-free use of subdividers' advances has long been considered a sufficient and reasonable form of financial assistance to be provided to water utilities in recognition of the mutual problems of, and benefits to, both parties in the extension of facilities to serve subdivisions."

Considering only the appropriate relative responsibilities of the utility and the subdivider, there is no reason that these relative responsibilities should be different for the initial unit than for subsequent units of a subdivision, should be different for an extension made by a new utility than for one made by a utility which already is in operation, or should be different between affiliated subdividers and utilities than between nonaffiliated. Inasmuch as the applicability of the rule affects the utility's rate base and potentially the customers' water bills, it follows that there is no reason that water users of a new utility should be

subjected to less favorable policies affecting water rates than the policies that affect customers of older utilities.

In those instances where the Commission has exempted certain initial units from the applicability of the main extension rules, there have generally been potential financial problems such as the utility's inability to make future refunds of advances required by the rule. This does not appear to warrant revising the rule because each situation can be evaluated in the related certificate proceeding. In fact, rather than to change the rule, the discussion in Exhibit No. 69 on the effects of deviating and not deviating from the rule for initial units leads us to believe that there may be better solutions to the financial problems encountered by a new utility than to relieve the initial subdivider of his obligation to advance the cost of the required main extension. For example, when a new utility is formed by the subdivider who needs water service to his property, as is almost invariably the case with new water utilities, the developer may be willing to forego cash refunds and credit them to proprietary capital or capital surplus, accept refunds in common stock or, without terminating the initial main extension agreement, turn it over to his utility as part of its assets. As a result, the utility's equity in utility plant would increase as refunds become payable but there would be no cash drain on the utility. These and other potential solutions can be explored in the individual certificate proceedings, rather than to prescribe a blanket solution for all situations. No change relating to the initial unit served by a new utility is made in the rule.

Limitation of Expansion

Section A.2. of the present rule requires a utility to obtain Commission authorization before extending distribution mains

if the outstanding advance contract balances exceed 50 percent of depreciated plant.

In Exhibit No. 69, the Commission staff points out that very few utilities are affected by the present limitation. The staff recommends that:

1. A criterion of 50 percent of total capital be used in lieu of 50 percent of depreciated plant.

2. Utilities should be required to notify the Commission when advances reach 40 percent of total capital and to submit financial projections related to future expansion.

3. Utility owners who have purchased or are holding main extension contracts as personal investments should have the utility terminate the contracts if the level of outstanding advances is excessive.

4. Main extension contracts that were entered into by the utility with an affiliate, on which the affiliate has indicated a willingness to accept refunds in the form of capital stock, if authorized, or to have them credited to the utility's capital surplus or proprietary capital account, should be excluded from any expansion limitation calculations.

5. A utility should not enter into additional main extension contracts if it is not current in the payment of refunds when due.

None of the parties had objections to the staff recommendations. California Water Association, the California Section of American Waterworks Association, and Pacific Gas and Electric Company question whether the problems involving excessive levels of outstanding advances are of sufficient magnitude to warrant changes in the rule at this time. Inasmuch as several of the staff's suggestions have merit and can be implemented rather easily, some changes are warranted and are effected by the order which follows.

The substitution of 50 percent of total capital for 50 percent of depreciated plant as a criterion for limitation of

expansion would avoid distortions caused by such conditions as large amounts of contributed plant. The inclusion of advances and plant related to a proposed new extension also is appropriate. These staff suggestions are adopted.

Notification to the Commission when a utility's outstanding advances reach 40 percent would alert the Commission and its staff to possible future problems. The utility could then be requested to provide such data as appears appropriate in each instance, concerning future plans for extensions, financing, cash flow and related matters. This staff suggestion is adopted.

The suggestion that utilities terminate main extension contracts being held as personal investments by the utility's owners appears to be a matter for consideration selectively as utilities' outstanding advances become excessive. In some instances the utility's owners may even be willing to credit refund accruals to proprietary capital or capital surplus, or turn the contracts over to the utility as part of its assets, as hereinbefore discussed under "Applicability to Initial Unit". No change relating to this staff suggestion is adopted.

The suggestion that advances related to certain main extension contracts with affiliates be excluded from expansion limitation calculations is also a matter that requires individual consideration in each case, rather than blanket authorization. For example, although a subdivider had indicated a willingness to accept refunds in the form of capital stock or to defer receipt of refunds, the situation could change if either the utility or the main extension contract changed hands or if all of the lots in the subdivision were sold. No change relating to this staff suggestion is adopted.

A provision that a utility be prohibited from entering into additional main extension contracts if it is delinquent on its existing refund obligations could have undesirable side effects. For example, a utility which wished to be relieved of its responsibility to extend mains further within its dedicated service area might be tempted to become delinquent on refunds. No change relating to this staff suggestion is adopted.

Section A.2. of the rule will be revised as follows - (deletions struck out, additions underlined):

"a. Whenever the outstanding advance contract balances reach 40% of total capital (defined for the purpose of this rule, as proprietary capital, or capital stock and surplus, plus debt and advances for construction) the utility shall so notify the Commission within 30 days.

"b. Whenever the outstanding advance contract balances plus the advance on a proposed new extension would exceed 50% of the ~~total water utility plant less depreciation reserve~~, total capital, as defined in Section A.2.a. plus the advance on the proposed new extension, the utility shall not make any ~~further~~ the proposed new extension of distribution mains without authorization of the Commission.

"c. Whenever the outstanding advances contract balances reach the above level, the utility shall so notify the Commission within 30 days."

Compliance with Local Ordinances

Section A.4.d. of the present rule provides that, when an extension must comply with an ordinance, regulation, or specification of a public authority, the estimated and adjusted construction cost of the extension shall be based upon the facilities required to comply therewith.

The County of Los Angeles proposes to add the following to Section A.4.:

> "d. . . .
> If an ordinance, regulation, or specification of a public authority requires that water be supplied at a stated pressure, or stated quantity, or through mains of a specified size or specification, in order to make a desired use of any property, including the approval of a subdivision, a change of zone, or the obtaining of a building permit and the extension does comply therewith, in such case for the purpose of this Paragraph "d" it shall be deemed that such extension must comply with such ordinance, regulation or specification.
>
> "e. When an ordinance, regulation, or specification of a public authority is so worded that it would apply to an extension except for the fact that the extension is that of a public utility, but such public utility, nevertheless, in making such extension voluntarily complies with such ordinance, regulation, or specification, in that case, at the option of such public utility, the estimated and adjusted construction costs of such extension shall be based upon the facilities which do comply therewith, and for the purpose of setting rates it shall be deemed that such ordinance, regulation or specification does apply to such public utility."

The stated purposes of the County of Los Angeles are:

1. To facilitate cooperation of public utilities with public fire protection authorities.
2. To insure that public utilities which do provide sufficient facilities for adequate fire protection will be permitted to consider the cost thereof in their rate structures.

At the February 27, 1968 hearing, California Water Association moved to exclude from consideration the issues relating to fire flow capabilities of water mains covered by the rule additions suggested by the County of Los Angeles. The motion was concurred in by the California Section of American Waterworks Association and by

California Builders Council. The principal arguments set forth in the motion are:

1. The county's proposed amendments to the rule are an attempt to circumvent the holdings of the courts that local fire flow ordinances do not apply to public utilities.

2. Since water system standards have been held to be a matter of general law and of statewide concern, the Commission should not delegate the power to regulate in this field to local governmental agencies.

3. If the Commission should conclude that it should prescribe minimum fire flow standards, General Order No. 103 is the proper vehicle to accomplish this.

In regard to the first argument presented, a careful reading of the rule additions proposed by the County of Los Angeles discloses that they impose no additional design criteria, they merely treat specifically a situation already covered generally in Section A.4.d. of the rule and prescribe rate-making policy in those situations where a main extension does conform with the standards developed by a public authority.

In regard to the second argument presented, here again there is nothing in the rule changes proposed by the County of Los Angeles which would in any way delegate regulatory powers to local governmental agencies. In fact, although the county cannot require the utility[2/] to comply with the design criteria in the county

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2/ In Calif. Water & Tel. Co. v. L.A. (1967) 253 Cal.App.2d 16, the applicability to Commission regulated utilities of a county ordinance re design and construction of water facilities was held to be unconstitutional, this not being a municipal affair but a matter of state concern. -"If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, such as a county ordinance, even if the subject were otherwise one properly characterized as a "county affair". .... We assume for the purposes of this opinion that the Water Ordinance can be properly applied to building permit applicants. We hold only that the Water Ordinance cannot be constitutionally applied to respondents."

ordinances, the record shows that the County of Los Angeles is rather effectively invoking its water system design criteria for main extensions indirectly, through county control over subdivisions and permits, by making compliance with those criteria a condition of permit and zoning approvals sought by land developers. As a practical matter, if an extension were installed to serve a subdivision and the extension did not meet the county's requirements, the county would not approve the subdivision plans and the main extension would thus serve no customers.

We concur with the statement in the third argument presented, but it appears to have no bearing on the issue because the rule changes proposed by the County of Los Angeles do not prescribe minimum fire flow standards.

Although we do not grant the motion to exclude from consideration the rule changes proposed by the County of Los Angeles, it has not been shown that those changes are necessary or desirable. The present language in Section A.4.d. appears to cover all situations where an "extension" must comply with requirements of public authorities, regardless of whether the requirements are enforceable against the utility or the subdivider. In circumstances where the application of this provision of the rule appears unreasonable to either or both parties, Section A.8. of the present rule permits the matter to be referred to the Commission for determination. If both parties agree on an equitable deviation from the rule, authorization to make effective a contract incorporating the deviation presumably could be requested by advice letter pursuant to Section X.A. of General Order No. 96-A; if the parties disagree, an appropriate formal pleading should be filed. For example, if a

county will not approve a subdivision unless the subdivider has his tract served by larger mains than a utility would have installed for a single subdivision but the utility normally would have installed the larger mains as part of its master plan for a good system, and normally would have paid the additional cost of such oversizing as provided in Section A.3.c. of the rule, the utility may be willing to exclude the cost of oversizing from the amount to be advanced by the subdivider. On the other hand, if a county will not approve a subdivision unless the subdivider has his tract served by considerably more costly facilities than under the utility's normal construction standards, the utility may wish to request an appropriate deviation from the requirement that the entire advance be refundable.

The application of the County of Los Angeles to consider its proposed rule changes states that under existing regulations of this Commission, the cost of improvements necessary to provide adequate fire flows is not considered in setting rates charged to customers. This is not correct. It is true that any portion of the cost of such facilities represented by contributions in aid of construction or outstanding advances for construction normally is excluded from rate base. Also, if facilities are oversize temporarily because of sparse development of a service area, a "saturation adjustment" sometimes is adopted and reduces the rate base. It is reasonable to assume, however, that by the time the portion of an advance covering the cost of a normal main extension has been fully refunded and the utility has commenced[3/] to refund any

3/ Refunds are based upon 22 percent of gross revenue so the rate of refunding is unaffected by the amount of the advance. The total refunds, and thus the length of time required to fulfill the refund obligations, are affected by the amount of the advance.

additional amounts advanced for larger mains to meet county standards, the customer density will have achieved a level which would obviate any need for a "saturation adjustment" to rate base.

Special Facilities

Section C.1.a. of the present rule provides that, for extensions to serve subdivisions, tracts, housing projects, industrial developments or organized commercial districts, the cost of a main extension shall include, in addition to the mains, any necessary service stubs or service pipes, fittings, gates and housing therefor, meter boxes and fire hydrants requested by the developer or required by public authority whenever such hydrants are to become the property of the utility. The advance related to these special facilities is refundable on a percentage-of-revenue basis.

Other necessary items of plant, such as production, purification, storage and pressure facilities are normally the utility's responsibility. Section C.1.b., however, provides that "special facilities" which are "required primarily for the service requested" may be included in the advance, subject to refund in proportion to the customer density. With this refund method, even in cases where the cost of special facilities is advanced by a subdivider, that portion of the total advance is refunded rather rapidly if homes are built and sold promptly in the subdivision.

California Builders Council contends that the terms "special facilities" and "primarily for the service requested" are ambiguous and that, in any event, there is no justification in the record for requiring subdividers to advance the cost of standard pumping, transmission and storage facilities. The rule change proposed by the builders would eliminate advances for facilities other than those covered by the percentage-of-revenue refund

provisions but would require a subdivider to contribute the extra cost of any facilities he may request which are in addition to, or in substitution for, standard facilities which the utility normally would install.

California Water Association, the California Section of American Waterworks Association, Pacific Gas and Electric Company, California Water Service Company and San Jose Waterworks oppose the builders' proposed rule change. The utility representatives contend that the proposed revision also is ambiguous and might deter some utilities from providing any fire flow capacity in their system design.

The principal purpose of Section C.1.b. of the present rule is to prevent a situation where a utility is required to invest in booster pumps, tanks, pressure reducing stations and similar facilities to serve a subdivision in which a significant percentage of the lots remain vacant. Investment of funds by a utility in plant such as pumps or tanks that are not fully utilized is just as detrimental to the utility and its customers as investment in distribution mains that are not fully utilized. The rule changes proposed by the builders would remove the protection provided by the present rule and require the utility to speculate along with the subdivider on the success of the subdivision venture.

We agree that the terms "special facilities" and "primarily for the service requested" are not very definitive. The following revision (deletions struck out, additions underlined) to Section C.1.b. should correct the present deficiencies:

"b. If, for any purpose, special facilities consisting of items not covered by Section C.1.a. are required ~~primarily~~ for the service requested and, when such facilities to be installed will supply both the main extension and other parts of the utility's system, at least 50% of the design capacity (in gallons, gpm, or other appropriate units) is required to supply the main extension, the cost of such special facilities may be included in the advance, subject to refund, as hereinafter provided, along with refunds of the advance of the cost of the extension facilities described in Section C.1.a. above."

The method of proration of cost where the utility installs facilities with a larger capacity than required for the service requested is covered by Section A.3.c. of the present rule. The refunding of the advance in proportion to customer density is covered by Section C.2.c. of the present rule.

Guaranteed Full Refund

Sections C.2.d. and C.2.e. of the present rule provide for the eventual refund, without interest, of the full amount advanced for a main extension, provided there is an 80 percent customer density in the specific area directly served by the extension.

The staff presented, without recommendation, the following alternatives:

1. Make no changes in Sections C.2.d. and C.2.e.
2. In the future, give the utility the option of guaranteeing or not guaranteeing refund of the full amount advanced.
3. Revise the present rule to guarantee refund of only the total amount which would result from the current rate of refunding.

California Water Association, the California Section of American Waterworks Association, Pacific Gas and Electric Company,

California Water Service Company, and San Jose Waterworks, with the concurrence of California Builders Council, urge that no change be made in the present rule because such changes could cause tax authorities to disallow depreciation expense for tax purposes on plant financed by advances.

Testimony on this subject was presented by the Commission staff and by an executive of a utility which has had experience with disallowance of depreciation on plant covered by advances where the future refunds technically were only a contingency. There is full agreement that the present rule has permitted depreciation on plant covered by advances to be claimed for tax purposes in instances where the utility and its customers otherwise would have lost this tax benefit. In the absence of compelling reasons to change, it would be unwise to tamper with the present language in this portion of the rule.

Termination of Main Extension Contracts

Section C.3. of the present rule provides for termination of main extension contracts by utilities and establishes a ceiling price based upon the present worth of assumed future refunds, discounted at a 6 percent interest rate. A 60 percent customer density is required before termination.

In Exhibit No. 69, the Commission staff states that the present ceiling price on termination payment results in a price of about 59 percent of the contract balance at 19 years remaining term of refunds whereas the actual market value has, in many instances, been in the range of 30 to 40 percent of contract balances. The staff cited instances of abuses encouraged by the disparity between the ceiling price and the market price, wherein affiliates or relatives of the utility or its officers would purchase main

extension contracts from their holders at the market price and then terminate the contracts with the utility at the ceiling price.

In summary form, the staff recommendations are that:

1. The 60 percent customer density prerequisite be removed from the termination authorization since it now appears to serve no useful purpose.

2. The ceiling price for termination be based upon a 12 percent present worth calculation rather than a six percent present worth, to more nearly reflect the market price of the contracts.

3. A short table of present worth factors be included in the rule to simplify calculations.

California Water Association, the California Section of American Waterworks Association, California Builders Council, and Pacific Gas and Electric Company all advocate leaving unchanged the present provisions for contract termination. Their reasons, set forth in the various briefs, include the following principal contentions:

1. No party in interest seeks a change in the present termination provisions.

2. The staff's proposal would reduce the maximum permissible termination payment.

3. The staff's proposal would not prevent unreasonable termination payments to insiders.

4. The staff's proposal impairs utilities' ability to terminate contracts.

5. The Commission already has adequate means of preventing abuses in the repurchase of contracts.

6. The abuses cited by the staff took place before the present requirement that the utility obtain Commission authorization before termination of a contract.

7. The ceiling price proposed by the staff is not necessarily realistic.

The evidence shows that the market price of some main extension contracts has been considerably lower than the ceiling

prescribed by the present rule and that a remarkably small percentage of main extension contracts have been terminated by utilities. These facts alone warrant consideration of changes in the present termination provisions.

Any reasonably simple basis for establishing a ceiling price for terminating main extension contracts must, of necessity, be somewhat arbitrary. An amount near the top of the range of prices likely to result from arms-length dealing can be determined, and the utility can be required to show in each instance that the termination price is reasonable. That approach is used in the present rule and may well have been a deterrent to terminations by utilities. For example, a utility could not even make a firm offer to terminate a contract at or near the prevailing market price, because termination was contingent in every case upon obtaining Commission authorization.

It now appears that a better approach would be to determine an amount lower down in the range of prices likely to result from arms-length dealing, and to permit utilities to terminate, without individual authorization, whenever the termination price does not exceed the price determined by the provisions in the rule. As at present, a showing by advice letter or formal application could be made if the utility wishes to deviate from the rule and can show that a higher termination price is reasonable and not adverse to the public interest. This revised approach is adopted in the rule amendments prescribed by the order which follows.

California Water Association and the California Section of the American Waterworks Association contend in their brief that the staff's proposal ignores such important factors as present and prospective customer density, the likelihood of rate increases in

the future, the history of the company in making refunds, and the desire of a utility to reduce its outstanding refund contract balances or to increase its rate base. The filing of a request for deviation from the rule will afford utilities an opportunity to bring such factors as apply in each particular case to the Commission's attention.

The staff recommendations regarding elimination of the 60 percent density requirements and inclusion of an annuity factor table appear reasonable and are adopted. Further, the rule is clarified to show that the termination provisions do not apply to the special facilities contracts, wherein refunds are not based upon percentage of revenues.

Following is the revised Section C.3. (deletions struck out, additions underlined):

> "a. Any contract with refunds based upon percentage of revenues and entered into under Section C of this rule, or under similar provisions of former rules, may be purchased by the utility and terminated, after first obtaining the authorization of the Commission, at any time after the number of bona fide customers then receiving service from the extension for which the advance was made equals at least 60% of the total number of bona fide customers for which such extension was designed by the utility, provided the payment is not in excess of the estimated revenue refund multiplied by the termination factor in the following table, present worth, at 6% per annum of an annuity with annual payments equal to the refunds payable under the main extension contract during the preceding year to the final refund date which would otherwise apply, and the terms are otherwise mutually agreed to by the parties or their assignees and that Section C.3.b. and Section C.3.c. hereof are complied with. The estimated revenue refund is the amount that would otherwise be refunded, at the current level of refunds, over the remainder of the twenty-year contract period, or shorter period that would be required to extinguish the total refund obligation. It shall be determined by multiplying 22% of the average annual revenue per service for the immediately preceding calendar

year by the number of bona fide customers at the proposed termination date, times the number of years or fractions thereof to the end of the 20-year contract period or shorter period that would be required to refund the remaining contract balance."

(Short table of 12 percent present worth factors added. See Appendix B.)

"b. The utility, in requesting authorization for such termination, shall furnish promptly to the Commission the following information in writing by an advice letter in the event the termination is to be accomplished by payment in cash, and shall obtain prior authorization or by a formal application under Sections 816-830 of the Public Utilities Code if payment is to be made otherwise than in cash:

(1) A copy of the main extension contract, together with data adequately describing the development for which the advance was made and the total adjusted construction cost of the extension.

(2) The balance unpaid on the contract and the calculation of the maximum termination price present worth, as above defined, as of the date of termination and the terms under which the obligation is requested to be was terminated.

(3) The name of the holder of the contract when terminated.

The total number of bona fide customers for which the extension was designed and the number of bona fide customers actually receiving service on said extension as of the proposed termination date of the contract.

"c. Discounts obtained by the utility from contracts terminated under the provisions of this section shall be accounted for by credits to Ac. 265, Contributions in Aid of Construction."

Findings and Conclusions

The Commission finds that:

1. Section A.1.a. of the present water main extension rule, which describes the applicability of the rule, is just and reasonable.

2. Section A.2. of the present water main extension rule, which limits further expansion of utilities with a high level of outstanding advance contract balances, is unjust and unreasonable, and the revision prescribed herein is just and reasonable, in that:

(a) The present rule does not provide for advance notification to the Commission as a utility approaches the level of outstanding advance contract balances which will limit its further extension of distribution mains, whereas the revised rule does.

(b) Percentage of total capital is a more reasonable criterion than percentage of depreciated plant in determining when the level of outstanding advance contract balances may be dangerously high.

3. Section A.4.d. of the present rule, which covers situations where an extension must comply with requirements of a public authority, is just and reasonable.

4. Additions to the present rule which would elaborate on Section A.4.d. thereof are not necessary.

5. Section C.1.b. of the present rule, which deals with facilities needed in addition to those covered by the percentage-of-revenue refund provisions of the rule, is unjust and unreasonable and the revision prescribed herein is just and reasonable in that the present rule is subject to misinterpretation of the terms "special facilities" and "primarily for the service requested", which terms need definition as in the revision prescribed herein.

6. Section C.2. of the present rule, which provides for the eventual refund, without interest, of the full amount advanced for extensions with a reasonably high customer density, is just and reasonable in that it achieves its purpose of obtaining or preserving, for the benefit of utilities and their customers, a reasonable income tax depreciation deduction for plant covered by advances for construction.

7. Section C.3. of the present rule, which provides a minimum discount to result from premature termination of main extension contracts, is unjust and unreasonable, and the revision prescribed herein is just and reasonable in that:

(a) The market price of some main extension contracts has been considerably lower than the ceiling prescribed by the present rule and closer to the revised ceiling prescribed herein.

(b) The requirement that a utility obtain Commission authorization before terminating a main extension is reasonable under the higher ceilings prescribed by the present rule but is not necessary nor desirable under the lower ceilings prescribed by the revisions adopted herein.

The Commission concludes that:

1. Sections A.1.a. and C.2. of the present rule should not be revised.

2. Sections A.2., C.1.b. and C.3. should be revised as required by the order herein.

O R D E R

IT IS ORDERED that:

1. Sections A.2., C.1.b. and C.3. of the uniform water main extension rule prescribed by Decision No. 64536, dated November 8, 1962, are revised to read as set forth in Appendix B to this order.

2. Within ninety days after the effective date of this order, each water utility in California subject to the jurisdiction of the Commission, except those which supply water primarily for irrigation uses, shall file revised tariff sheets which modify Sections A.2., C.1.b. and C.3. of the present water main extension rule in accordance with Appendix B to this order. Such filing shall comply

with General Order No. 96-A. The effective date of the revised sheets shall be four days after the date of filing.

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

Dated at San Francisco, California, this 21st day of JANUARY, 1969.

William Symons Jr. President

Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

RESPONDENTS: Bacigalupi, Elkus, Salinger & Rosenberg, by Claude N. Rosenberg, for California-American Water Company; Knapp, Gill, Hibbert & Stevens, by Wyman C. Knapp, for California Cities Water Company and California Consolidated Water Company; McCutchen, Doyle, Brown & Enersen, by A. Crawford Greene, Jr., for California Water Service Company and San Jose Water Works; Homer H. Hyde, for The Campbell Water Company; Kennan H. Beard, Jr., for Del Este Water Company; Alex Lawrence, for Dominguez Water Corporation; F. T. Searles, John C. Morrissey, R. Workman and John C. M. Lambert, for Pacific Gas and Electric Company; John E. Skelton, for San Gabriel Valley Water Company; Walker Hannon, for Suburban Water Systems.

INTERESTED PARTIES: Charles L. Stuart and C. G. Ferguson, for American Water Works Association, California Section; John C. Luthin, for Brown & Caldwell; Brobeck, Phleger & Harrison, by Robert N. Lowry, for California Water Association; Cooper, Schnake & Louie, by Fred F. Cooper, for California Builders Council (Formerly Home Builders Council of California); Harold W. Kennedy and Edward H. Gaylord, by Edward H. Gaylord, for County of Los Angeles and Fire Protection Districts of the County of Los Angeles.

COMMISSION STAFF: Cyril M. Saroyan, Counsel, and Martin Abramson.

REVISED SECTIONS A.2., C.1.B. AND C.3.
OF UNIFORM WATER MAIN EXTENSION RULE

A.2. Limitation of Expansion

a. Whenever the outstanding advance contract balances reach 40 percent of total capital (defined, for the purpose of this rule, as proprietary capital, or capital stock and surplus, plus debt and advances for construction) the utility shall so notify the Commission within thirty days.

b. Whenever the outstanding advance contract balances plus the advance on a proposed new extension would exceed 50 percent of total capital, as defined in Section A.2.a. plus the advance on the proposed new extension, the utility shall not make the proposed new extension of distribution mains without authorization of the Commission.

c. Whenever the outstanding advance contract balances reach the above level, the utility shall so notify the Commission within thirty days.

* * *

C.1.b. If special facilities consisting of items not covered by Section C.1.a. are required for the service requested and, when such facilities to be installed will supply both the main extension and other parts of the utility's system, at least 50 percent of the design capacity (in gallons, gpm, or other appropriate units) is required to supply the main extension, the cost of such special facilities may be included in the advance, subject to refund, as hereinafter provided, along with refunds of the advance of the cost of the extension facilities described in Section C.1.a. above.

* * *

C.3. Termination of Main Extension Contracts

a. Any contract with refunds based upon percentage of revenues and entered into under Section C. of this rule, or under similar provisions of former rules, may be purchased by the utility and terminated, provided the payment is not in excess of the estimated revenue refund multiplied by the termination factor in the following

table, the terms are otherwise mutually agreed to by the parties or their assignees and Section C.3.b. and Section C.3.c. hereof are complied with. The estimated revenue refund is the amount that would otherwise be refunded, at the current level of refunds, over the remainder of the twenty-year contract period, or shorter period that would be required to extinguish the total refund obligation. It shall be determined by multiplying 22 percent of the average annual revenue per service for the immediately preceding calendar year by the number of bona fide customers at the proposed termination date, times the number of years or fractions thereof to the end of the twenty-year contract period or shorter period that would be required to refund the remaining contract balance.

Termination Factors

Years Remaining	Factor	Years Remaining	Factor
1	.8929	11	.5398
2	.8450	12	.5162
3	.8006	13	.4941
4	.7593	14	.4734
5	.7210	15	.4541
6	.6852	16	.4359
7	.6520	17	.4188
8	.6210	18	.4028
9	.5920	19	.3877
10	.5650		

b. The utility shall furnish promptly to the Commission the following information in writing and shall obtain prior authorization by a formal application under Sections 816-830 of the Public Utilities Code if payment is to be made other than in cash:

(1) A copy of the main extension contract, together with data adequately describing the development for which the advance was made and the total adjusted construction cost of the extension.

(2) The balance unpaid on the contract and the calculation of the maximum termination price, as above defined, as of the date of termination and the terms under which the obligation was terminated.

(3) The name of the holder of the contract when terminated.

c. Discounts obtained by the utility from contracts terminated under the provisions of this section shall be accounted for by credits to Ac. 265, Contributions in Aid of Construction.