

ORIGINAL

Decision No. 75920

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Arthur H. Burnett,
Complainant,

vs.

Solemint Water Company,
a corporation
Defendant.

Case No. 8874
(Filed December 9, 1968)

Arthur H. Burnett,
Complainant,

vs.

Vallecito Water Company,
a corporation
Defendant.

Case No. 8875
(Filed December 9, 1968)
(Amended March 12, 1969)

Everett S. Layman, for complainant.
Karl K. Roos, for defendant, Solemint Water Company.
William M. Lasseleben, for defendant, Vallecito Water
Company.

O P I N I O N

Complainant Arthur H. Burnett seeks an order directing defendants Solemint Water Company (Solemint) and Vallecito Water Company (Vallecito) to pay certain overdue refunds of advances for construction, plus interest at the rate of seven percent per annum from the due date to the payment date.

Public hearings on the two complaints were held before Examiner Catey at Los Angeles on March 17, 1969. Notice of hearing had been sent to complainant, to each defendant and to each party's attorney. Testimony was presented by witnesses for complainant and Vallecito but no representative of Solemint appeared at or attended the hearing. The matters were submitted on March 17, 1969, subject

to the receipt of opening briefs on April 17, 1969, reply briefs on April 24, 1969, and, in Case No. 8874, supplemental reply briefs on May 23, 1969. The presiding examiner ruled that Solemint would be afforded an opportunity to file briefs, even though it was not represented at the hearing. Briefs were filed by complainant and both defendants.

Main Extension Agreements -- Solemint

In 1962, Solemint entered into four main extension agreements with S. V. Hunsaker and Sons (Hunsaker), covering Los Angeles County Tracts Nos 25927, 25122, 27335 and 27336. Pursuant to Solemint's tariffs, Hunsaker advanced to Solemint the estimated reasonable cost of installation of mains required to serve Hunsaker's developments. The amount of the advance was later adjusted to the actual cost, as required by Solemint's tariffs. At that time Solemint's tariffs provided that the adjusted advances were subject to refund on the basis of 22 percent of the utility average annual revenue per residential and business customer for the prior calendar year for each customer served by the extensions, such refunds to be made in annual, semiannual or quarterly payments, at Solemint's election, for a period of twenty years unless the advance is fully refunded, without interest, prior to that time.

At some time not disclosed by the record, Phillip R. Sledge & Company (Sledge) acquired Hunsaker's rights to refund of the aforementioned advances. In 1967 and 1968, complainant in turn acquired Hunsaker's rights from Sledge. The following Table I summarizes pertinent data from Exhibits Nos. 1-A, 2-A, 3-A, and 4-A in Case No. 8874, which exhibits are copies of the documents assigning Hunsaker's refund rights from Sledge to complainant:

TABLE I
REFUND ASSIGNMENTS - SOLEMINT

<u>Item</u>	<u>Tract 25927</u>	<u>Tract 26122</u>	<u>Tract 27335</u>	<u>Tract 27336</u>
Date of Extension Agreement	9-19-62	10-5-62	9-12-62	10-5-62
Date of Assignment	8-16-67	8-16-67	1-9-68	1-9-68
Adjusted Original Advance	\$22,921.64	\$38,916.23	\$31,253.48	\$25,238.58
Remainder Assigned	\$21,199.51	\$33,748.71	\$26,030.89	\$20,909.83

Complainant alleges, and Solemint does not dispute in its briefs, that Solemint elects to make annual refunds rather than semiannual or quarterly refunds, that such annual refunds are due not later than April 30 of the year following each calendar year's accrual, that the amount of refunds which were due April 30, 1968, was \$7,480.93, and that those refunds were not paid until December 22, 1968. Complainant contends, and Solemint disagrees, that complainant should be paid interest on the delinquent refunds. Solemint further holds that this Commission is not the proper tribunal for determination of complainant's right to interest.

Main Extension Agreements - Vallecito

In 1955 Whittier Extension Mutual Water Company (Mutual), a predecessor of Vallecito, entered into a main extension agreement with W. E. Robertson Co. (Robertson), covering Los Angeles County Tract No. 20940. Robertson advanced to Mutual the estimated reasonable cost of installation of mains required to serve Robertson's development. The amount of advance was later adjusted to the actual cost. Mutual agreed that the adjusted advance was subject to refund on the basis of 22 percent of revenue received from customers served by the extension, such refunds to be made in annual, semiannual or quarterly payments, at Mutual's election, for a period of twenty years unless the advance is fully refunded, without interest, prior to that time.

In 1958, Vallecito entered into two main extension agreements with Robertson-North Whittier Co. (North Whittier), covering Los Angeles County Tract No. 21462. Pursuant to Vallecito's tariffs, North Whittier advanced to Vallecito the estimated reasonable cost of installation of mains required to serve North Whittier's development. The amount of the advance was not later adjusted to the actual cost, as required by Vallecito's tariffs.^{1/} Vallecito's tariffs provided that the advances were subject to refund on the basis of 22 percent of the utility average annual revenue per residential and business customer for the prior calendar year for each customer served by the extensions, such refunds to be made in annual, semiannual or quarterly payments, at Vallecito's election, for a period of twenty years unless the advance is fully refunded, without interest, prior to that time.

At some time not disclosed by the record, Sacks Investment Co. (Sacks) acquired Robertson's and North Whittier's rights to refund of the aforementioned advances. In 1968, complainant in turn acquired Robertson's and North Whittier's rights from Sacks. The following Table II summarizes pertinent data from Exhibits Nos. 1-A, 2-A and 3-A in Case No. 8875, which exhibits are copies of the documents assigning Robertson's and North Whittier's refund rights from Sacks to complainant:

^{1/} It is conceivable that no such adjustment was needed. If the work were done under contract, for example, the actual cost might have been known in advance of construction.

TABLE II
REFUND ASSIGNMENTS - VALLECITO

<u>Item</u>	<u>Tract 20940</u>	<u>Tract 21462</u>	
		<u>1st Unit</u>	<u>2nd Unit</u>
Date of Extension Agreement	8-3-55	6-17-58	11-18-58
Date of Assignment	8-27-68	8-27-68	8-27-68
Adjusted Original Advance	\$52,926.32	\$10,696.00	\$16,533.57
Remainder Assigned	\$29,886.48	\$ 8,661.82	\$12,401.84

Decision No. 64536, dated November 8, 1962, in Case No. 5501 revised the uniform water main extension rule applicable to all water utilities under the Commission's jurisdiction. One of the revisions was the addition of Section C.2.e., which permits a utility to negotiate and enter into new and substitute agreements in place of then existing main extension agreements, to guarantee eventual full refund of the total amount advanced. Vallecito's Advice Letter No. 17, a public document of which we take official notice, shows that the three aforementioned agreements, among others, were superseded by revised agreements. Resolution No. W-1100, dated August 22, 1967, authorized Vallecito to carry out the terms and conditions of the revised agreements.

Complainant alleges, and Vallecito does not dispute, that Vallecito in the past elected to make annual refunds rather than semiannual or quarterly refunds, that such annual refunds relating to Tract No. 21462 are due not later than April 30 of the year following each calendar year's accrual, that the amount of refunds which were overdue when the complaint was filed was \$3,934.20 accrued during the year 1965, \$4,086.46 accrued during the year 1966, and \$3,986.72 accrued during the year 1967, that the refunds accrued during the year 1965 were not paid until December 23, 1968, and that the refunds accrued during the years 1966 and 1967 are still unpaid.

Complainant contends, and Vallecito disagrees, that annual refunds relating to Tract No. 20940 also are due not later than April 30 of the year following each calendar year's accrual, and that complainant is entitled to principal plus interest on delinquent refunds relating to all three tracts for all three calendar years. Vallecito contends that no interest is due on the refunds accrued during 1965 and paid in 1968 and that no interest is due on the unpaid refunds accrued during any year relating to Tract No. 20940. Vallecito concedes that principal and interest should be paid on delinquent refunds accrued during 1966 and 1967 relating to Tract No. 21462.

Discussion

Main extension agreements are entered into by a utility as permitted or required by the utility's tariffs. The terms must be as prescribed by those tariffs unless authority first is obtained to deviate therefrom. Water utility main extension rules have long provided specifically that disagreements and disputes regarding the application of any provisions of the rules may be referred to the Commission for settlement. Compliance by a utility with its main extension agreements thus constitutes compliance with the utility's tariffs. We do not concur with Solemint's contention that complainant has chosen the wrong forum in which to seek relief.

In Decision No. 73449, dated December 5, 1967, in Case No. 5501, we stated:

"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."

We have established in the uniform water main extension rules for water utilities the "sufficient and reasonable" financial assistance to be provided water utilities where main extensions are to be installed. It is obvious that refund by the utility of advances for construction on other than the dates due is not economically equivalent to refunding the same amounts when due. When the refunds are made before they are due, the rule provides for discounting the amount to be refunded, in recognition of this economic fact. If the refunds are made later than when due, this constitutes a violation of the utility's tariffs. We do not concur with Solemint's contention that the Commission's regulatory jurisdiction is not involved in regard to interest on delinquent refunds.

Vallecito contends that the contract relating to Tract No. 20940 is significantly different from the ones relating to Tract No. 21462. The alleged key distinction is that the Tract No. 20940 agreement states: "Refunds may be made under the following method..." (Emphasis added) whereas the Tract No. 21462 agreements state: "The company shall pay and refund..." (Emphasis added). Vallecito contends that the use of the word "may" permits any other method or timing than the one set forth in the agreement. We do not agree. The intent is clearly indicated by the further language in the agreement: "The refunds will, at the election of the Company, be made in annual, semiannual or quarterly payments..." (Emphasis added). In the absence of some alternatively stated method or timing, the method and timing specified are controlling.

Vallecito contends that the refunds accrued during 1965 and paid in 1968 are not subject to interest because complainant accepted the 1968 payment, thus foreclosing any claim for interest. We do not agree that the acceptance of Vallecito's belated payment (nor the belated payment by Solemint in the case of other refunds) deprives complainant of the right to interest on the delinquent payments.

Solemint, in its briefs, places emphasis on the language of its rule which states that advances will be refunded "without interest". It is apparent, however, that the term "without interest" refers to the period starting with the date the funds are advanced and ending with the date the refunds are due.

Late payment of refunds together with payment of interest on those delinquent refunds is reasonably equivalent to payment of refunds without interest when due under applicant's tariffs. The addition of interest will place complainant in a somewhat equal economic position with those agreement holders who have been paid their refunds when due. Any others who have not been paid refunds when due have the right to seek relief as did complainant.

Findings and Conclusions

The Commission finds that:

1. Solemint and Vallecito are public utilities under this Commission's jurisdiction.
2. Complainant is the assignee of rights to timely refunds of advances under the main extension agreements with Solemint and Vallecito discussed in the foregoing opinion.

3. Solemint and Vallecito have not paid all refunds to complainant when such refunds were due.

4. Solemint and Vallecito should pay interest on delinquent refunds.

The Commission concludes that Solemint and Vallecito should be directed to pay refunds, including interest, to complainant as set forth in the order which follows.

O R D E R

IT IS ORDERED that:

1. Within 30 days after the effective date of this order, Solemint Water Company shall (a) pay to complainant Arthur H. Burnett the sum of \$338.59, which sum is interest at the rate of seven percent per year, from April 30, 1968 to December 22, 1968, on the delinquent refunds of construction advances in the amount of \$7,480.93, and (b) file in this proceeding written notice of the date of compliance with this paragraph.

2. Within 30 days after the effective date of this order, Vallecito Water Company (Vallecito) shall (a) pay to complainant the sum of \$729.60, which sum is interest at the rate of seven percent per year, from April 30, 1966 to December 23, 1968, on the delinquent 1965 accruals of refunds of construction advances in the amount of \$3,934.20, and (b) file in this proceeding written notice of the date of compliance with this paragraph.

3. Within 60 days after the effective date of this order, Vallecito shall (a) pay to complainant the sum of \$4,086.46 plus interest at the rate of seven percent per year, from April 30, 1967

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to the date of payment, on the delinquent 1966 accruals of refunds of construction advances, and (b) file in this proceeding written notice of the date of compliance with this paragraph.

4. Within 90 days after the effective date of this order, Vallecito shall (a) pay to complainant the sum of \$3,986.72 plus interest at the rate of seven percent per year, from April 30, 1968 to the date of payment, on the delinquent 1967 accruals of refunds of construction advances, and (b) file in this proceeding written notice of the date of compliance with this paragraph.

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

Dated at San Francisco, California, this 15th
day of JULY, 1969.

President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Fred P. Morrissey, being necessarily absent, did not participate in the disposition of this proceeding.