

ORIGINAL

Decision No. 84335

BEFORE THE PUBLIC UTILITIES' COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of WESTLAKE WATER COMPANY for
authority to deviate from the
main extension rule.

Application No. 54687
(Filed February 22, 1974;
amended August 19, 1974)

Karl H. Bertelson, Attorney at Law, for applicant.
O'Melveny & Myers, by Harold M. Messmer, Jr.,
Guido R. Henry, Jr., and James B. McDowell,
Attorneys at Law, and L. Wayne Harris, for The
Prudential Insurance Company of America,
interested party.
Robert C. Durkin, I. B. Nagao, and Robert M. Mann,
for the Commission staff.

O P I N I O N

Changes in the ownership of the stock of Westlake Water Company (applicant), a California corporation, together with development of portions of applicant's service area by non-affiliated entities resulted in the filing of this application to modify the main extension rule deviations authorized in Decision No. 79566 dated January 11, 1972 in Applications Nos. 52657, 52658, and 52660. Applicant also seeks authority to enter into new main extension contracts incorporating modifications of its main extension rule. Public hearings were held in Los Angeles before Examiner Levander on August 1, 2, and 19, 1974. The matter was submitted on August 19, 1974.

Background

Decision No. 75375 dated February 25, 1969 in Application No. 50070 granted applicant a certificate of public convenience and necessity and authorized applicant to provide water service to approximately 1,300 acres located in the southern portion of

Ventura County. Applicant expanded its service area by approximately 1,000 acres by advice letter filing. Decision No. 79566 authorized a further expansion of applicant's service area to approximately 5,000 acres. Applicant served 1,866 customers at the end of 1973 and anticipates serving 2,237 customers at the end of 1974.

In 1968, at the hearing on Application No. 50070 applicant asserted that its parent, American Hawaiian Steamship Company (Steamship), a New Jersey corporation, would purchase its stock. On January 1, 1969, which was prior to the authorization or issuance of any shares of applicant, Steamship became an equal partner with The Prudential Insurance Company of America (Prudential), a New Jersey corporation, in the ownership and development of Westlake Village. The partnership agreement provided that the management and control of the business affairs of the partnership, known as Westlake Village (Village),^{1/} would be vested in an executive committee consisting of five members, three to be employed and selected by Steamship and two to be employed and selected by Prudential. One hundred and twenty-three shares of applicant's stock were issued to Village between October 1969 and April 1971 pursuant to the authority contained in Decision No. 75375 and the partnership agreement between Steamship and Prudential. Westlake Village Development, Real Estate and Land Company (Development), a California corporation, was formed by Steamship and Prudential for the purpose, among others, of simplifying tax accounting procedures of various operations connected with the overall development of Westlake Village. Development was wholly owned by Village. On or about December 8, 1971 pursuant to the request of Village the ownership of all issued and outstanding shares of applicant were transferred to Development.

^{1/} Steamship and Prudential each owned 50 percent of Village.

Applicant alleges that on or about June 29, 1972 an additional 17 shares of applicant's stock was issued to Development pursuant to authority contained in Decision No. 79566;^{2/} that on January 3, 1973 Steamship and Prudential dissolved their partnership, Village; that the agreement of dissolution provided that all of the issued and outstanding shares of Development would be transferred to Steamship.

After the subject application was filed Development was merged into Steamship and Development was dissolved. All of the 140 issued and outstanding shares of applicant were transferred on the books of the corporation to Steamship.

Section 854 of the Public Utilities Code, which became effective on March 4, 1972 states in part that "No person or corporation, whether or not organized under the laws of this State, shall, after the effective date of this section, acquire or control either directly or indirectly any public utility organized and doing business in this State without first securing authorization to do so from the Commission."

Applicant contacted the Commission staff in writing and by telephone and submitted a draft application by Steamship and Development providing for the reacquisition of control of applicant by Steamship in the event Commission authorization was required. A member of the staff advised applicant that he saw no reason for filing an application for such approval.

^{2/} Ordering Paragraph 3 of the decision provides for issuance of up to 46 shares of its common stock at the stated value of \$10,000 per share to Westlake Village. Applicant's General Order 24-B filing shows that 17 shares were issued to Westlake Village.

At this time Steamship owns all of the refund contracts which have been entered into with Village. Steamship owns 311 acres of property in applicant's service area consisting of approximately 140 acres in two tracts being subdivided into 169 single-family units and 236 condominium units; 73 acres of commercial property being operated or leased to 51 enterprises; the site for a 95-acre regional shopping center; and three acres of undeveloped commercial building sites. AVCO Savings and Loan Association owns approximately 30 acres within the certificated area of applicant and portions of this acreage are under development. Substantially all of the remaining undeveloped property within the certificated area is presently owned by Prudential. Prudential owns approximately 7,250 acres in Ventura County and approximately 1,000 acres in Los Angeles County in and adjacent to applicant's service area which it plans to develop for residential, commercial, industrial, and recreational purposes.

In September 1971, at a time when all of the development was being carried out by applicant or by its affiliates, applicant requested authority to deviate from Section A.2.b. of its Main Extension Rule. This authorization was conditionally granted in Ordering Paragraph 4 of Decision No. 79566 as follows:

"4. Applicant is authorized to deviate from Section A2b of its main extension rule to permit it to take the following steps from time to time when the balance in its Customer Advances account approaches 50 percent (50%) of its capital structure as defined in Rule 15:

- "(a) Transfer the amounts due as refunds to the Capital Surplus account.
- "(b) Furnish the Commission with a statement showing the balances in the Customer Advances account and the other capital accounts.

- "(c) Furnish the Commission with a list of contracts to be transferred to a sub-account of the Customer Advances account designed to reduce the balance in the principal Customer Advances account to a level below fifty percent (50%) of the capital structure.
- "(d) Furnish the Commission with certified statements from the owners of contracts to be transferred to the sub-account. These statements shall declare that the parties have a financial interest in the company and are willing to forego cash refunds and permit the company to transfer the amounts due them to the Capital Surplus account.

"The authorization granted to deviate from Main Extension Rule No. 15 as above-stated, is subject to the further restrictions that:

- "1. Applicant shall contract only with its parent, Westlake Village, (or contracts with joint ventures of Westlake Village and various builders, which contracts have been assigned to Westlake Village) unless prior Commission authorization has been obtained.
- "2. Main extension agreements shall provide that the agreements will not be sold, transferred or assigned (other than to the utility itself) without a letter of authorization^{3/} from the Secretary of the Commission.
- "3. Backup water plant installed in the future shall be financed by main extension contracts that provide for refunds on a proportionate cost basis. These contracts shall be transferred to the utility to be held by it as investments with refunds being credited to capital surplus."

3/ The required authorization for transfer of these contracts was not obtained.

Authorization Requested

Because most of the further development within applicant's service area is now planned to be carried out by entities which are neither the parent nor affiliates of applicant, applicant believes that the deviation to the main extension rule authorized in Decision No. 79566 will require modification as follows:

- (a) Refund contracts with its parent or affiliated companies be administered in accordance with Rule 15 rather than in accordance with the deviation granted in Decision No. 79566.
- (b) That all present refund contracts which include a waiver of cash refunds be rewritten to allow for future cash refunds to be made when due.
- (c) Section C.1.b. of its Rule 15 be interpreted to enable applicant to require developers^{4/} to advance all costs of those special facilities^{4/} as specified in its master plan, "in those cases when less than 50% of the design capacity is required for the specific development provided that a separate refund contract is entered into by applicant with the developer for each such special facility which will provide for refund of amounts advanced for each residential lot equivalent for which water service is provided, such contract to be in accordance with Section C.2.c. of Rule 15."

^{4/} Special facilities are defined by applicant as "all facilities, except intract facilities and distribution main extensions of such size as are required to serve the area being developed. Included are reservoirs, boosters, pressure regulators and transmission mains, as well as the cost of oversizing offsite main extensions and intract mains beyond that required for the area being developed."

- (d) That funds advanced for a main extension of such size as required to serve a specific development, or for special facilities of which 50 percent or more of the design capacity is needed to serve the specific development, will be refunded in accordance with Section C.2. of its main extension rule without deviation.
- (e) Applicant be authorized to continue to extend service and to execute main extension contracts in the manner set forth above until outstanding advance contract balances reach 70 percent of total capital as defined in Section A.2.a. of its Rule 15 without further authorization of the Commission.

Applicant requests authority to extend service without further authorization because it alleges that satisfying the 50 percent limitation of Section A.2.b. of its Rule 15 will be a source of continuous administrative difficulty for applicant which may mechanically preclude service extensions despite applicant's financial capabilities to serve. Applicant's rationale for exceeding the 50 percent limitation is that:

- (a) The deviation granted in Decision No. 79566 allowed it to exceed this 50 percent limit within the certificated service area being developed by its parent or an affiliated company;
- (b) The principal reason for the 50 percent limitation is to prevent utilities from incurring refund obligations so large as to jeopardize their financial solvency;
- (c) At the present time the limitation could have the opposite effect on applicant's operations because applicant would be required to make a substantial investment in backup facilities, the use of which is dependent upon the conjectural development of new areas;
- (d) By exceeding the 50 percent limitation, applicant will be able to invest in the new required facilities by making refunds in proportion to customers being added to its system; and

- (e) Applicant has access to sufficient funds to meet all projected refund obligations through its parent.

The amendment to this application was for the purpose of securing authorization for the reacquisition of full ownership and control of applicant by Steamship, if necessary.

Applicant has acted in good faith in seeking authorization for the transfer of ownership. While Steamship has at all times controlled applicant either directly or indirectly, the interests of its partner, Prudential, had to be considered by applicant while the partnership existed. The relief sought in this application relies on the financial backing of applicant's parent to make up cash flow deficiencies. This Commission needs to be informed as to the identity, the obligations to applicant, and ability to meet these obligations, of the owner of applicant's stock.

We conclude that authorization for transfers of applicant's stock subsequent to March 4, 1972 should have been sought and that authorization for these stock transfers should be granted.

Applicant estimates that if it terminated its outstanding main extension contracts, there would be a credit to surplus of 43.59 percent of the outstanding contract balances with the remainder being credited to contributions in aid of construction, based upon the remaining contract balances and 1973 revenues. Applicant considers this action as being inappropriate as it would increase its calculated December 31, 1973 rate base from \$1,312,077 to \$1,756,897 which would increase its calculated 1973 revenue requirement from \$742,968 to \$808,025.

Terminations of these contracts would result in somewhat lesser increase in revenue requirements in its current rate proceeding, Application No. 54939, which utilizes a 1975 test year.

The short term effect of termination of advance contracts would be to increase applicant's revenue requirements as compared to re-funding advances as payments fell due. The break-even point for applicant's revenue requirements would occur from three to five and one-half years from the date of termination of contracts, depending on customer growth, rate levels, and revenues received from its customers.

Steamship's vice president and controller testified that Steamship is ready, willing, and able to provide the additional cash requirements needed by applicant to meet its obligations; that Steamship has a substantial cash flow from its operations and that additional cash was available from sizeable assets of cash, commercial paper, certificates of deposit, and marketable securities (over \$24,000,000 on June 30, 1974) to enable it to meet applicant's financial obligations; that Steamship is owned by National Bulk Carriers, Inc. (National) and files a consolidated income statement with National; that National is owned by a single stockholder; that Steamship holds major interests in hotel and office property, real estate developments, a lease development company, a memorial park, and a television company, and it also engages in joint ventures developing apartment houses, raw acreage, and major office buildings; that Steamship's own equity declined from approximately \$75,000,000 on September 30, 1973 to approximately \$68,000,000 on June 30, 1974; that discussions were held as to the sale of applicant to Prudential or to the city of Thousand Oaks; that applicant could not stand on its own under the pending application; but that there is no written commitment from Steamship guaranteeing funds for meeting cash flow deficiencies as contemplated in the subject application.

Applicant estimates its cash flow requirements will require additional funds from Steamship of \$66,000 for 1974 at present rates, of \$51,000, \$104,000, \$65,000, and \$57,000 for 1975 through 1978, inclusive, at the rates proposed in its Application No. 54939, assuming an optimistic rate of customer growth.

A staff exhibit based upon applicant's assumptions modified to reflect slower customer growth shows further amounts required from Steamship of \$14,000 in 1979, and of \$180,000 in 1981. Applicant's Exhibit 22 contains a cash flow projection of one-half of its optimistic customer growth rate and an 8 percent rate of return. This study shows that an additional \$33,000 will be required from Steamship to meet cumulative cash flow deficits through 1981, with a maximum annual requirement of \$29,000 if cash refunds to Steamship on existing main extension contracts are waived. If refunds on those contracts are paid in cash, applicant would have additional cash flow deficits of \$65,000 for 1974, of \$90,000 for 1975, and of \$100,000 per year for 1976 through 1985.

Exhibit 22 also shows a relatively level average cost of water from 1975 through 1985, varying between 60 and 63 cents per hundred cubic feet. During this interval the end-of-year rate base will increase from approximately \$1.3 million to \$4.5 million.

Applicant's rationale for requiring developers to advance all costs of special facilities as specified in its master plan even when less than 50 percent of the design capacity is required for a specific development, is that it is necessary to do so to avoid either undersizing the facility with respect to its master plan requirements and subsequently installing additional plant for another development at a higher total cost

than if the master plan had been followed originally, or of requiring applicant to put up its funds for the oversizing necessary to meet its master plan criteria before additional development required it.

Applicant requested that this provision should cover the installation of a master plan storage tank replacing a temporary hydropneumatic tank installation. Prudential objected to the latter proposal unless applicant was prepared to prorate costs to both the new development and to the existing development served from the hydropneumatic tank. Prudential also requested developer approval of changes in the master plan. Applicant agreed to these modifications.

Absent an objection by affected developers, we will authorize applicant, Prudential, and Steamship to enter into an agreement providing for the developer (Prudential and/or Steamship) to provide the funds for all costs of special facilities specified in applicant's master plan, including those cases in which less than 50 percent of the design capacity is required for the specific development and including the replacement of the above-mentioned temporary facility. This agreement will provide for refunds for each residential lot equivalent in accordance with amounts advanced under Section C.2.c. of the Main Extension Rule. We will require applicant to file this agreement with the Commission and to record the agreement to advise future subdividers of the agreement in the event that any future transfer of undeveloped lands held by Prudential or Steamship within applicant's present service area takes place.

Commission Staff Testimony

A staff engineer testified that applicant is now supplying service in two pressure zones. As of December 31, 1973, approximately 2,100 customers were served in Zone 1 and approximately 84 customers were served in Zone 2. Zone 1, which includes the majority of the presently developed service area, ranges in elevation from approximately 880 feet to 1,050 feet and is supplied from a 5 million-gallon concrete Zone 1 reservoir. A hydropneumatic tank fed from booster pumps located at the Zone 1 reservoir maintains water pressure in a Zone 2 system.^{5/} An additional four reservoirs with a total capacity of 8.5 million gallons are scheduled for installation between the years 1974 and 1977 in the Zone 2 area being developed north of the Ventura Freeway.

The facilities proposed to be installed to serve the Prudential development located north of the Ventura Freeway will be expensive due to the combination of 6 percent compounded estimated annual increases in construction costs and to the nature of terrain to be served.^{6/} Customers will be located in clusters and there will be a great deal of undeveloped land within the service area.

^{5/} Elevations over 1,050 feet located south of the Ventura Freeway.

^{6/} See Figure 3-1 of Reference Item A, a topographical map of applicant's service area, which shows that the facilities scheduled for installation in 1974-1975 will be in valleys surrounded by steep terrain. The present facilities are located in relatively flat terrain. There are large undeveloped hilly areas in the southern portion of the service area. Development in the hilly northern part of the service area will require additional connections to the Russell Valley Municipal Water District (Russell) facilities and the construction of booster pumps and reservoirs connected by long transmission lines.

The staff engineer broke down applicant's projection of plant additions from 1974 through 1985, inclusive, and derived estimated costs per customer of \$792 in the southern portion of the service area and of \$2,076 in the northern portion of the service area. He analyzed applicant's revenue requirement study and derived an average cost of water in 1974 of \$0.71 per Ccf in the south, \$1.21 per Ccf in the north, and \$0.75 per Ccf on a combined basis. The estimated average cost would increase to \$0.75 per Ccf in the south, \$1 per Ccf in the north, and to \$0.89 per Ccf on a combined basis by 1985.

He states that existing customers will receive no benefit from development of the northern portion of the service area. He recommends that future developers contribute allocated costs of plant needed to meet fire flow requirements. The staff allocation to fire flow was 24 percent of reservoir costs, 10 percent of transmission pipeline facilities, and 33 percent of the in-tract costs. These allocations amount to approximately \$2 million through 1985, or 22 percent of the potential advances from subdividers.

Decision No. 84334, dated APR 15 1975 in Case No. 9263, our investigation to determine if General Order No. 103 should be amended to provide fire protection standards, requires that increased costs of distribution mains necessary to meet fire flow requirements higher than the minimums adopted therein and the allocated cost of other facilities required primarily for fire protection purposes be contributed.

The staff engineer testified that it would be inequitable to place the burden of growth in the service area on applicant's present customers; that future development will result in a progressively higher rate base per customer; and that applicant's request would result in cash flow problems due to the high level of refunds generated. He notes that present water rates are high. Applicant is seeking a 72.5 percent increase in its revenues to achieve a rate of return of 9.45 percent on rate base.

Applicant's present zone rates basically compensate for incremental purchased water and power costs between zones. Future development within applicant's service area may require establishment of zone rates on a comprehensive cost of service basis.

A staff financial examiner testified that there has been little change in the financial problems facing applicant at this time as compared to those facing it in 1971, illustrated by applicant's continuing operation losses which totaled \$317,736, as of May 21, 1973; that applicant's reliance on Steamship for meeting its continuing cash flow requirements for an indefinite period is not an adequate substitute for a sound financing program or a sound capital structure; that Steamship has a highly leveraged capital structure (containing 43 percent of debt) and its net income shows meager earnings on investment; that there is no adequate reason to permit Steamship to sell the main extension contracts it holds or to abandon the requirement that refunds on such contracts be credited to capital surplus; that applicant's financial condition, which will not be improved by authorizing the other deviations proposed, is so precarious that it overrides the revenue requirement implications of granting the relief sought; that applicant's customers will eventually be faced with extremely high rates for water service unless some way is found to reduce the overall rate base per connection, which could occur at any time Steamship decides that it should stop absorbing applicant's operation losses and demand a full return on plant investment; that (with rate relief) applicant's financial condition could improve, in a few years, to a point at which applicant could demonstrate its ability to pay cash refunds on existing advance

contracts; that rates for water service would be even higher if the total number of customers added to the system is less than applicant's optimistic growth estimates; that the optimistic customer growth rate estimates of 470 to 530 new customers per year are not likely to occur since the company has averaged a growth rate of about 235 new customers per year in the recent past and there is a general slowdown in housing starts as the result of high interest rates and tight money conditions.

The proposed development in the northern portion of the service area described in Decision No. 79566 calls for an equestrian center, a golf course, townhouses clustered around the golf course, and of single-family residences and commercial areas. It appears that housing will be quite costly in the hilly northern portion of the service area.

The witness testified that the average assessed value of housing in applicant's service area is \$12,500 to \$13,500 (which would represent market values of \$50,000 to \$54,000); and that the full cost of water to a customer would include both water district assessments against property in applicant's service area and water bills. At current rates of 1.4574 dollars per hundred dollars of assessed valuation the typical average monthly property tax assessments for water range from \$15.13 to \$16.40. Approximately 41 percent of this is attributable to Russell's taxes.

Steamship controlled Russell at the time Russell's bond issue was authorized. Steamship was able to have Russell install a portion of the backup plant serving applicant through bond financing which might otherwise have been provided by applicant as part of its original certificate proposal. This circumstance, in fact, caused problems involving applicant's initial financing. Application No. 50070 contained a request

to deviate from the Main Extension Rule by requiring a donation of 50 percent of in-tract facilities. This request was denied.

If applicant, rather than Russell, had put in approximately \$3 million of backup plant and this plant were included in its equity, its revenue requirements could result in a greater per customer impact than is presently reflected in Russell's assessments. We are not assessing the merits of Russell's financing herein.

He cited other actions of this Commission involving deviations from the Main Extension Rule for our consideration in this matter.^{7/} We have reviewed these citations and conclude that different circumstances warrant a case-by-case review of requests for deviations. He testified that the development of the water system in the Los Angeles County portion of the Westlake development is being financed by contributions to a water district.

The financial examiner derived pro forma ratios of advances for construction to capital as defined in the Main Extension Rule. The ratios decline from 69.4 percent in 1974 to 34.4 percent in 1985 based upon applicant's pro forma capital structure.

The staff financial examiner recommends that the restrictions in Ordering Paragraph 4 of Decision No. 79566 which prohibit applicant from entering into main extension contracts other than with its parent be removed; that the restrictions on the sale or transfer of contracts held by Steamship and the waiver of cash refunds provision with credits to capital surplus be continued; that because of its financial condition applicant should be restricted from further expansion

^{7/} The staff engineer summarized a number of resolutions authorizing water utilities to accept contributions.

of service unless developers agree to contribute the estimated cost of all in-tract mains, services, and hydrants plus allocations of backup plant needed to meet fire flow requirements, approximately \$5 million through 1985, to applicant; and that the 50 percent limitation on main extension contracts under Section A.2.b. of the Main Extension Rule should be waived. He testified that such contributions will not eliminate the need for high water rates but would result in significantly lower average rates for water service than would otherwise be required to provide a fair rate of return.

In Exhibit 20 the staff financial examiner shows increases in average revenue per customer per month from \$31.60 in 1975 to \$36.22 in 1985, with refunds paid in cash as proposed by applicant, and increases on his recommended contributions basis from \$30.59 in 1975 to \$31.86 in 1985. This differential between the alternative plans would be reduced to the extent that interest deductions^{8/} from income taxes would reduce revenue requirements under applicant's proposal. These estimated revenues per customer are not representative of residential customers since they include revenues for golf courses, public facilities, and commercial areas. There would be a lesser differential if the staff engineer's recommendations were adopted.

The staff accountant did not anticipate that applicant would have financial problems if the restrictions on existing advance contracts were not removed, assuming we authorize rate relief for applicant.

^{8/} Steamship would also advance the interest under this proposal.

Prudential's Position

Prudential recommends that refunds on existing contracts be treated as interest-bearing long-term debt rather than as credits to capital surplus providing that debt repayment would not occur until the utility had sufficient working capital, including capital necessary to meet its refund obligations to other developers. Prudential stated that this would help improve applicant's debt to equity ratio, as desired by applicant, and would prevent the draining of funds needed for cash flow. Prudential recommended that Steamship provide a letter of credit or other form of guarantee with respect to applicant's refund obligations so that applicant could meet all refund obligations falling due.

Prudential supports applicant's proposal to be permitted to extend service and execute main extension agreements until the outstanding advance balance reaches 70 percent of the total capital.

Prudential vigorously opposed the staff recommendations which could result in it being required to make contributions of approximately \$2 million if the staff engineer's recommendation is adopted or of approximately \$5 million if the staff financial examiner's recommendation is adopted. Prudential argues that the staff position offers the Commission no uniform objective standard to follow in determining whether or not these contributions should be made to applicant by Prudential; that the provisions of the Main Extension Rule, which have been applied on a uniform state-wide basis for many years, were established after lengthy public hearings in which the developer's interests were fully and fairly represented; that the logic of the staff's recommendation is that the Main Extension Rule should be completely rewritten to require

donations to private utilities by developers; and that applicant and Prudential should be treated on a uniform basis with other utilities and developers throughout the State.

Prudential contends that it would be inequitable to require it to charge homeowners higher prices for their homes if the staff recommendations are adopted.

Prudential's witness was unable to state whether or not there was a differential in pricing of comparable houses in the Westlake development located in Ventura County as opposed to the development in Los Angeles County where the water system facilities are donated to a water district.

Prudential states that homeowners will pay for the facilities again if the utility is sold to a municipal water district because they will have to support the bond issue necessary to purchase all of the facilities from the utility and in that event, if developers contributed plant, the owner of the utility may enjoy a windfall profit in being paid for facilities it never invested in. Prudential contends it would be inequitable to require it to contribute to applicant while not requiring Steamship to do so. Prudential further contends that if the Commission should adopt a revision to the Main Extension Rule along the lines suggested by the staff engineer on a state-wide basis, that applicant be required to reclassify an amount equal to 24 percent of its main extension contracts as contributions.

Further Evaluation

The development of portions of applicant's service area by nonaffiliated developers requires modification of Decision No. 79566 to permit applicant to enter into main extension contracts with those developers.

Since applicant's request to permit the ratio of advances to total capital to reach 70 percent is dependent on the continued backing of Steamship to meet its cash flow deficiencies, we will condition our authorization on a guarantee from Steamship to provide the necessary backing.

It is advantageous for applicant not to have to pay refunds on those contracts in which its parent or an affiliated developer agreed to have the amounts of refunds falling due transferred to applicant's capital surplus. Applicant, which has an accumulated operating deficit, has advanced no convincing reason why it would be advantageous to it to incur additional refund obligations.

Decision No. 75205 dated January 21, 1969 in Case No. 5501, our investigation into the reasonableness of the then effective Water Main Extension Rules, states in part:

"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."

All main extension contracts and agreements entered into pursuant to the authorization granted herein should incorporate the fire protection provisions contained in Appendix B of Decision No. 84334. The contributions required in Decision No. 84334 will lessen the financial burden on applicant to refund advances, will reduce applicant's revenue requirements in seeking rate relief, and will accelerate applicant's ability to achieve an independent financial status. The required contributions for fire flow should not be applied retroactively. The record herein is not convincing as to the necessity of making further modifications of the provisions of applicant's Main Extension Rule by requiring contributions over those prescribed by Decision No. 84334 in lieu of refundable advances. The forthcoming Water Main Extension Rule proceeding will deal with the issue of whether further contributions will be required from developers requesting main extensions from all of the water utilities under our jurisdiction.

All elements of providing for the development contemplated in upper portions of the service area will be costly. Applicant should be able to provide water service within its service area with the conditions set forth herein.

We will adopt the staff accountant's recommendation to preserve the status quo with respect to existing contracts entered into between applicant and its parent and/or affiliates. As to future contracts we will authorize the relief sought in Sections (c), (d), and (e) on pages 6 and 7, supra, modified to conform to Appendix B of Decision No. 84334.

Findings

1. Decision No. 79566 prevented applicant from entering into new main extension contracts with anyone other than its parent, Village, or affiliates of Village without further order of this Commission. At that time Village, either acting alone or in joint ventures with various builders, was carrying out all of the development activities in applicant's service area.

2. Steamship and Prudential each owned 50 percent of Village, a partnership, which was the owner of applicant's stock. The partnership agreement provided that the management and control of the business affairs of the partnership would be vested in an executive committee consisting of five members, three to be employed and selected by Steamship and two to be employed and selected by Prudential.

3. On or about December 8, 1971 Village requested that the ownership of all applicant's outstanding shares be transferred to its affiliate, Development.

4. On January 3, 1973 Steamship and Prudential dissolved their partnership, Village, and agreed that all of the issued and outstanding shares of Development would be transferred to Steamship.

5. The Commission staff advised applicant that it was not necessary for it to secure Commission authorization to have its shares transferred to Steamship from Development and/or Village.

6. Applicant has requested our approval of the transfer of its shares from Village and/or Development to Steamship if such authorization is necessary. Such authorization is necessary under Section 854 of the Public Utilities Code and the authorization should be granted.

7. The outstanding main extension agreements were transferred to Steamship without the required letter of authorization from the Secretary of the Commission as set forth in Ordering Paragraph 4 of Decision No. 79566.

8. Most of the development within the service area is now being carried out by subdividers not affiliated with applicant or its parent. Decision No. 79566 needs to be modified to permit applicant to enter into main extension contracts with non-affiliated developers.

9. Applicant has not demonstrated the necessity for our authorizing modification of existing main extension contracts containing waiver of refund provisions so as to provide for cash refunds rather than credits to its capital surplus. This request should be denied.

10. Applicant's request to permit the ratio of advances to total capital to reach 70 percent is dependent upon the continued backing of Steamship to meet its cash flow deficiencies. Applicant would have cash flow deficiencies even without authorization to pay cash refunds on existing main extension contracts containing waiver of refund provisions.

11. We should authorize applicant, until further order of this Commission, to enter into main extension agreements up to a level of 70 percent of its total capital providing that Steamship guarantees it will meet applicant's cash flow deficiencies.

12. The main extension agreements entered into pursuant to the order herein should conform to the fire protection provisions set forth in Appendix B of Decision No. 84334.

13. Applicant should be authorized to enter into an agreement with Prudential and Steamship providing for the developer (Prudential and/or Steamship) to provide the funds for all costs of special facilities specified in applicant's master plan even though less than 50 percent of the design capacity is required for the specific development. This agreement should apply to the replacement of the temporary installations, described in the opinion, providing that there be a pro rata apportionment of charges to the existing development served from the temporary facilities as well as to the new development. The agreement should provide for refunds for each residential lot equivalent in accordance with amounts advanced under Section C.2.c. of the Main Extension Rule and for approval of master plan changes by the affected developer. Applicant should be required to file this agreement with the Commission and to record the agreement to advise future subdividers of the agreement in the event that any future transfer of undeveloped land held by Prudential or Steamship within applicant's present service area takes place. This agreement should conform to the fire protection provisions of Appendix B of Decision No. 84334.

14. Future advances made pursuant to Section C.1. of applicant's Main Extension Rule should be refunded in accordance with the provisions of Section C.2. of the rule.

Conclusions

1. The transfer of applicant's shares from Village and/or Development to Steamship should be approved.
2. Applicant should secure authorization for the transfer of existing main extension contracts to Steamship.
3. Applicant's request to modify existing contracts to permit cash refunds should be denied.
4. Steamship should file a guarantee providing that it will supply necessary funds to meet applicant's cash flow deficiencies until further order of this Commission as a pre-condition of the authorization granted herein.
5. This application should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The transfer of the stock of Westlake Water Company from Westlake Village and/or Westlake Village Development, Real Estate and Land Company to American Hawaiian Steamship Company is approved.
2. Ordering Paragraph 4 of Decision No. 79566 is modified to permit Westlake Water Company to enter into main extension contracts with any party. Such contracts shall conform to the fire protection provisions of Appendix B of Decision No. 84334.
3. Westlake Water Company is authorized to enter into main extension contracts until its outstanding advance contract balances reach 70 percent of its total capital as defined in Section A.2.a. of its Main Extension Rule providing that its parent, American Hawaiian Steamship Company, submits a written agreement wherein it guarantees to supply all necessary funds to meet Westlake Water Company's cash flow deficiencies until

further order of this Commission. The authorization granted herein shall be effective five days after the date of filing of the required guarantee. This provision supersedes the authorization contained in Decision No. 79566 permitting applicant to enter into advance contracts when its advance contract balances exceed 50 percent of its total capital.

4. Westlake Water Company shall file a list of current main extension advance contracts identifying the owner, the tract or area served, the number of lots, the contract date, the amounts advanced under Sections C.1.a. and C.1.b., and the amounts transferred to capital surplus under Sections C.2.b. and C.2.c. accompanied by a letter requesting authorization of the transfer of these contracts to American Hawaiian Steamship Company pursuant to Ordering Paragraph 4 of Decision No. 79566. This filing shall be made on or before fifteen days after the effective date of this order. No further transfer of these contracts shall be made unless authorized pursuant to that order.

5. Westlake Water Company is authorized to enter into an agreement with the American Hawaiian Steamship Company and with The Prudential Insurance Company of America meeting the criteria set forth in Finding 13. Within fifteen days after the execution of the agreement, Westlake Water Company shall file a copy of the agreement with the Commission after having caused the agreement to be recorded in the records of Ventura County, California. This filing shall be in accordance with the procedures prescribed by General Order No. 96-A.

6. Westlake Water Company shall make refunds on new main extension contracts meeting the provisions of Section C.1. of its Main Extension Rule in conformity with Section C.2. of that rule.

7. Westlake Water Company's request to modify existing main extension contracts containing waiver of refund provisions and to make cash refunds on these contracts is denied.

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

Dated at San Francisco, California, this 15th day of APRIL, 1975.

Vernon L. Sturgeon
President
William J. Synovius Jr.
Leonard Ross
Robert B. Brown
Commissioners