

Decision No. 85164

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HARVEY M. & EDNA L. BUSS
AS JOINT TENANTS,

Complainants,

vs.

CALIFORNIA CITIES WATER COMPANY,
A CORPORATION,

Defendant.

Case No. 9901
(Filed April 11, 1975)

Harvey M. Buss and Edna L. Buss,
for themselves, complainants.
Gibson, Dunn & Crutcher, by
Raymond L. Curran, Attorney at
Law, for defendant.
Robert M. Mann, for the Commission
staff.

O P I N I O N

This is a complaint filed by complainants (Buss) against defendant because of defendant's alleged late payments under the main extension refund contracts for Tracts 10244 and 28444 owned by Buss. The parties agree that the current payment was due on April 1, 1975 pursuant to D.83937 dated December 30, 1974 in which the Commission ordered such refunds to be made by April 1 of the year following the calendar year in which revenue derived from the extension is collected. In its letter of February 4, 1975 defendant advised Buss that it intended to comply with this decision. On April 8, 1975 defendant sent Buss a partial refund (about 83 percent), with the balance being paid in June 1975.

Buss' inquiry brought the response that the refunds were late because defendant did not have sufficient cash available at that time to pay them.

Because of their doubt as to whether defendant is sufficiently capitalized to operate a utility in California, Buss requested an order requiring defendant to make monthly escrow deposits of the sums due under the contracts; that defendant notify Buss of these monthly amounts; that annual payment on Tract 10244 be made on or before February 15 of each year;^{1/} that annual payment on Tract 28444 be made on or before April 1 of each year; and that a "late charge" of 2 percent per month of the refund amount be assessed if refunds are not made by the requested dates.

Defendant advised it had filed an application for a rate increase to improve its financial position and cash flow, and objected generally to all demands of complainants.

At the hearing held on August 4, 1975 before Examiner Phillip E. Blecher, Buss requested additional relief ranging from an audit of these contracts for prior years (since 1964) to payment of the full balances due under both contracts. Defendant was ordered to produce audited or verified copies of its financial statements for 1973 and 1974 and documentation indicating collections under these two contracts for the same years. On September 3, 1975 defendant mailed its letter of enclosure and explanation, the required audited statement, and a three-page work sheet for these tracts showing all collections from all services for the years 1965 through 1974. These documents were received into evidence as Exhibits 1, 2, and 3, respectively.

^{1/} This date was selected because of earlier transactions with defendant's predecessor.

These exhibits indicated, for the ten-year period involved:

1. Tract 10244:

- (a) No fire hydrant revenues were included in the refunds to Buss.
- (b) Bookkeeping errors caused an overpayment for 1974 to Buss (which was brought to defendant's attention by Buss).
- (c) There was a total net underpayment of \$285.41.

2. Tract 28444:

- (a) No fire hydrant revenues were included in the refunds to Buss.
- (b) There was a total net underpayment of \$198, due entirely to the exclusion of fire hydrant revenues.

3. Defendant mailed a check for \$483.41 (the total underpayments on both tracts) in September 1975 to Buss with copies of the above exhibits.

Buss then sent a letter and work sheet, received as Exhibit 4, which amounted to a request for an additional \$403.67 from defendant. This sum represents interest compounded at the rate of 7 percent per year on the difference between the amounts due and the amounts paid each year for ten years.

Discussion

We believe our order in D.83937 is applicable to all contract owners to whom refunds are payable by defendant and there is no reason why the payments should not be made at the due date, which we believe to be liberal. But without any provision for penalty in the event payment is not then made, there is no incentive to defendant to comply, and it has not complied with this order during 1975. Thus, we shall compel defendant

to pay interest at the rate of 7/12 percent per month, due on the first day of each month, commencing on April 1 of each year, on any refunds due under the main extension contracts and not paid in full by April 1 of the year following the calendar year in which revenue derived from the extension is collected. Otherwise, defendant is in the position of having an involuntary interest-free loan from its contract owners to whom a refund is due. We do not believe this was or is the intent of the main extension rule.

It is undisputed that there was a total underpayment on both contracts of \$483.41. (Excluding 1974 the total would have been \$874.81.) It is also undisputed that this underpayment was almost wholly due to a total exclusion of fire hydrant revenues in computing the revenues due Buss. Whether this failure was intentional, inadvertent, or negligent is immaterial in our view, for to allow payment now without requiring any interest to be paid would again be equivalent to an involuntary interest-free loan from Buss to the company. Further, it is entirely possible that this error might not have been discovered without the diligence of complainants in attempting to enforce their contractual rights. We also believe that this is not unlike defendant's Rule No. 7.E.1. which requires interest to be paid on deposits to the date of refund (subject to prompt payment of bills). Since this period began in 1965, when the interest payable under this rule was 5 percent, and since the 1965 billings are not due until 1966 (and each year likewise), we have computed the interest due from 1966 (excluding the payment due in 1975) on a compounded 5 percent per year basis for both tracts and shall order defendant to pay to Buss the sum of \$222.62.

Findings

1. Complainants own all the right, title and interest in the main extension contracts pertaining to Tracts 10244 and 28444 in defendant's service area.
2. D.83937 ordered defendant to pay all refunds due under its main extension contracts by April 1 of the year following the calendar year in which revenue from the extension is collected. This revenue includes fire hydrant revenue.
3. For the revenues collected from 1965 through 1974, there was an underpayment in the refunds due Buss in the sum of \$483.41, which sum was paid in September 1975.
4. The total refund due Buss by April 1, 1975 was not fully paid by that date.
5. Refunds not paid in accordance with D.83937 are equivalent to involuntary interest-free loans to defendant.

Conclusions

1. Defendant should be ordered to pay interest on all main extension refunds not paid in accordance with D.83937, as set forth in the ensuing order.
2. Defendant should be ordered to pay interest of \$222.62 on the main extension refunds due to complainants from revenues collected from 1965 through 1973 and not paid until September 1975.

O R D E R

IT IS ORDERED that:

1. Interest at the rate of 7/12 percent per month, due on the first day of each month commencing on April 1 of each year, is payable by defendant on any main extension contract refunds due and not paid by April 1 of the year following the calendar


year in which revenue (including fire hydrant revenue) from the extension is collected.

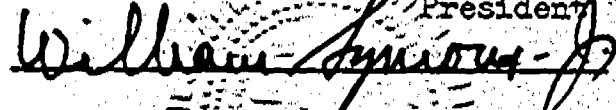
2. Defendant pay to complainants the sum of \$222.62, within twenty days after the effective date of this order, as interest on the unpaid refunds due complainants from revenues collected for the years 1965 through 1973, which refunds were not paid until September 1975.


3. All other relief requested is denied.

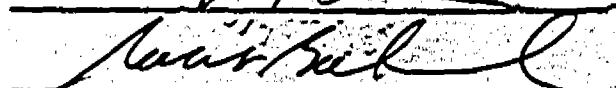
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 25th
day of NOVEMBER, 1975.



President





Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.