

Decision 88 03 021 MAR 09 1988

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LATTANZIO ENTERPRISES, a  
partnership, )  
) )  
Complainant, )  
) )  
vs. )  
) )  
P.P.D. CORPORATION, dba NORTHEAST )  
GARDENS WATER COMPANY, )  
) )  
Defendant. )

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Case 10166  
(Filed August 31, 1976)

(See Decision 84-02-048 for appearances.)

OPINION

This proceeding began in August 1976 when Lattanzio Enterprises (complainant) requested that the Commission issue an order confirming that the \$53,624.75 advanced to P.P.D. Corporation (defendant), dba Northeast Gardens Water Company, is subject to refund and requiring that defendant refund to complainant those amounts payable for the years 1973, 1974, and 1975.

Finding that defendant had violated its tariff Rule No. 15, Main Extensions, Decision (D.) 89056 dated July 11, 1978 ordered the parties to execute a main extension contract and ordered defendant to refund \$5,193.50 plus interest for the years 1974-1977, inclusive. No main extension contract was executed pursuant to this decision and no refund was made.

After repeated requests by complainant for an order finding defendant in contempt, we issued D.87-10-059 dated October 28, 1987. In that decision we ordered:

- "1. Within 30 days after the effective date of this order, defendant P.P.D. Corporation shall pay the sum of \$1,000 to the Commission pursuant to Section 2111 of the PU Code.

- "2. Within 10 days after the effective date of this order, defendant P.P.D. Corporation and its officer Francis H. Ferraro, and complainant Lattanzio Enterprises shall execute a main extension contract as ordered by D.89056.
- "3. Within 30 days after the effective date of this order, defendant shall report to the Commission's Evaluation and Compliance Division an accounting of the revenues collected and subject to refund from complainant's development for the years 1974, through, to, and including November 19, 1986.
- "4. Defendant P.P.D. Corporation and Francis H. Ferraro are put on notice that failure to comply with this order will be considered a continuing violation subjecting defendant to a further fine of \$50 per day commencing 30 days after the effective date of this order.
- "5. If defendant P.P.D. Corporation and Francis H. Ferraro fully comply within 10 days of this order, other than the payment of the fine, the order to pay the fine shall be suspended until further order of the Commission."

As ordered in D.87-10-059, the parties executed a main extension contract dated September 11, 1978 (the contract was signed by defendant September 12, 1978 and complainant November 6, 1987). The parties also complied with the other provisions of the order including an accounting of the monies due complainant pursuant to the terms of the executed contract.

Because of the protracted nature of the proceeding, the parties could not agree as to the exact amount due complainant and on December 8, 1987 executed the following stipulation:

"In conformity with orders heretofore made in the above-captioned matter and for the purpose of expediting the final resolution of remaining outstanding issues therein,

"IT IS STIPULATED between the parties hereto as follows:

- "1. Main Extension refunds as set forth on the Accounting of Revenues Collected and Subject to Refund 1974 through November 18, 1987 are due and payable from P.P.D. Corporation to Lattanzio Enterprises, a partnership.
- "2. The parties disagree as to the total amount due and owing by reason of the existence of the following issues:
  - "(i) P.P.D. contends that it is entitled to an offset against the amount due as of April 1, 1974 in the sum of \$2,776.00 being unpaid water charges owed to it by Lattanzio Enterprises. Lattanzio Enterprises contends that said charges are barred by a previous order of the Public Utilities Commission.
  - "(ii) P.P.D. contends it is entitled to an offset of \$1,036.26 against the Extension refund due and payable April 1, 1981 by reason of an unpaid water charge at that time owed to it by Lattanzio Enterprises. Lattanzio denies said charge.
  - "(iii) P.P.D. contends that it incurred costs associated with obtaining easements in the sum of \$2,915.75 as more fully set forth in its Expenses Incurred in Easement Acquisition on file herein; that one-half of said expense should be charged and offset against Main Extension refunds herein, \$435.35 thereof to be offset against the refund due and payable April, 1984, \$629.52 to be offset against the refund due and payable April 1, 1986, and \$375.00 thereof to be offset against the refund due and payable April 1, 1986 (sic). Lattanzio Enterprises disputes a portion of such expenses as more

fully outlined in its Points and Authorities.

- "(iv) P.P.D. contends that the order for payment of interest at 7% per annum applies only for the balances due in 1974, 1975, and 1976 until paid. Lattanzio Enterprises contends that appropriate interest should be charged to all unpaid refunds.

"The parties have been unable to resolve their differences and accordingly agree:

- "3. The issues set forth in the preceding paragraph shall be ruled on by the Administrative Law Judge hearing this matter. The parties may file points and authorities not later than December 21, 1987 and may respond to the other party's points and authorities not later than December 31, 1987. Thereafter, the Administrative Law Judge hearing said matter may make his order determining the amount of refunds less offsets to the extent applicable plus interest to the extent to be charged or in his discretion require such other proceedings as he may determine are necessary or appropriate in the premises."

After reviewing the arguments submitted and the points and authorities submitted, the Administrative Law Judge made the following recommendations on the four remaining areas of disagreement:

- "1. P.P.D. Corporation's contention that it is entitled to an offset of \$2,776.00 for unpaid water charges due from Lattanzio.

"D. 89056 determined that Section 737 of the PU Code barred any refund of 1973 water revenues. That decision also determined that defendant was vulnerable to the three-year statutory period applicable to the collection of tariff charges. Based on Exhibit No. 19 presented in the initial hearing and material subsequently furnished by defendant, it appears that complainant

is responsible to defendant for \$1,664 covering water service for the months of September, October, November, and December, 1973.

- "2. P.P.D. Corporation's contention that it is entitled to an offset of \$1,036.26 for unpaid water charges owed by Lattanzio for service in 1980 and 1981.

"Because of the ongoing litigation, Section 737 of the P.U. Code is not applicable. Nor has there been any evidence submitted that the charges were paid. Since the statute of limitations is not applicable and the charges were never paid, defendant should be allowed an offset of \$1,036.26.

- "3. P.P.D. Corporation's offset of \$2,915.75 for costs incurred in obtaining easements for the execution of the main extension contract.

"D.84-02-048 was explicit that the cost of obtaining the easements of right-of-way was to be shared equally by complainant and defendant. That decision made no reference as to whether only legal costs were to be allowed. Total expenses as calculated by defendant were \$2,915.75 and included costs besides the legal costs. This amount is reasonable and will be accepted. Thus the amount to be offset by defendant is one-half of the \$2,915.75.

- "4. Whether interest at 7% per annum applies only for the balance of refunds due in years 1974, 1975, and 1976.

"D.91916 clearly ordered defendant to place in escrow the amount due complainant for the years 1974, 1975, and 1976 with interest calculated at 7% per annum, interest compounded from the date due."

With respect to the amounts refundable from 1976 on, logic dictates that since defendant was responsible for these amounts and was aware that such amounts were to be refunded after

the execution of a main extension contract, complainant should be entitled to interest computed at the rate found reasonable at the time the contract was to be executed. Though the legal interest rate was changed to 10%, there is no rational basis to change the interest rate from 7%. Accordingly, the amounts due complainant should be calculated at 7% compounded annually.

We believe the ALJ's recommendation on all of the disputed items is reasonable and should be accepted.

Findings of Fact

1. Defendant is a public utility providing water service to a 170-acre tract one mile east of the city of Fresno in Fresno County.

2. Complainant, a general partnership of Robert, Nick, and Bruno Lattanzio, successor in interest to Lattanzio Enterprises, a partnership, is a real estate developer in Fresno County.

3. D.89056 admonished defendant for disregarding its filed Tariff Rule No. 15 in providing water service to complainant without executing the required main extension contract.

4. D.89056 ordered defendant and complainant's predecessor to execute a main extension contract and for defendant to make refunds to complainant for the years 1974, 1975, and 1976 within 90 days.

5. D.91916 dated June 17, 1980 again ordered the execution of a main extension contract and ordered defendant to deposit into an escrow account the refund ordered by D.89056.

6. D.84-02-048 dated February 6, 1984 ordered defendant to commence necessary condemnation proceedings for the execution of a main extension contract.

7. D.87-03-055 dated March 25, 1987 ordered the execution of a main extension contract, refund to complainants of monies for the years 1974, 1975, and 1976, filing with the Commission's E&C division of a summary of revenues collected from complainants'

development from 1977 to the present, and filing of details of the costs of obtaining the easements ordered in D.84-02-048.

8. D.87-06-020 dated June 15, 1987 ordered defendant to appear and show cause why its president Francis H. Ferraro, should not be adjudged in contempt for violation of the orders contained in D.87-03-055.

9. D.87-10-059 dated October 28, 1987 ordered that defendant P.P.D. Corporation and its officer Francis H. Ferraro be fined but that the fine be suspended if the main extension contract was executed within 10 days and an accounting of revenues for the years 1974 through, to, and including November 19, 1986 was filed with the Commission.

10. The main extension contract was executed (the contract was signed by defendant September 11, 1978 and by complainant November 6, 1987) and filed with the Commission. The parties also complied with the other provisions of D.87-10-059.

11. The parties could not agree as to the exact amount due complainant and on December 8, 1987 entered into the stipulation outlined in the body of this decision.

12. As agreed on by the parties in the stipulation, the assigned Administrative Law Judge ruled on the areas of dispute as follows:

- a. Complainant is responsible to defendant for \$1,664 covering water service for the months of September, October, November, and December 1973.
- b. Defendant is entitled to an offset in the amount of \$1,036 for unpaid water charges for the years 1980 and 1981.
- c. Defendant is entitled to an offset of one-half of \$2,915.75, the defendant's cost of obtaining the easements, or \$1,457.88.
- d. Interest should be calculated at 7% per annum compounded annually for the refunds due each year from 1974 to the date the amounts are paid in full.

- e. Based on Findings 12.a. through 12.d above, the refund owed Lattanzio Enterprises by P.P.D. Corporation amounts to \$34,740.45 as of April 1, 1987. Derivation of this amount is shown in Appendix A. Additional interest at 7% per annum compounded annually from April 1, 1987 should be added to the \$34,740.45 amount to determine the total amount due when final refund payment is made.

Conclusions of Law

1. By executing the main extension contract and filing the accounting of revenues collected, defendant has complied with D.87-10-059.
2. The remaining differences of the parties as outlined in the stipulation are contained in the body of this decision. The recommendation of the assigned ALJ to resolve this dispute is reasonable and should be adopted.

ORDER

IT IS ORDERED that:

1. The recommendation of the Administrative Law Judge to resolve the differences of Lattanzio Enterprises and P.P.D. Corporation, dba Northeast Gardens Water Company, as outlined in the text of this decision is adopted.
2. Within ten days of the effective date of this order, P.P.D. Corporation shall pay to Lattanzio Enterprises the amount due in accordance with Finding 12.e. of this decision. Simultaneously P.P.D. Corporation shall provide written notification of such payment to the assigned administrative law judge.



3. Upon payment of the refunds to Lattanzio Enterprises and notification of such payment to the Commission, this proceeding will be closed.

This order is effective today.

Dated ~~MAR 09 1988~~, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Victor Weisser*  
Victor Weisser, Executive Director

*AS*

APPENDIX A

REFUND CALCULATION

C.10166 ALJ/BBB/tcg

: Year:	: Due	: Revenue :Applicable to :Main Extension:	: Main : Extension: : Refund	: Unpaid : Water Co. : Charges	: Principal	: 7% Compound Interest :Factor from due date to : April 1, 1987	: Principal : Plus : Interest
1974	4/1/75	\$ 7,521.23	\$ 1,654.67	\$(1,664.00)	\$ (9.33)	2.2522	\$ (21.01)
1975	4/1/76	8,055.76	1,772.27		1,772.27	2.1049	3,730.45
1976	4/1/77	8,029.80	1,766.56		1,766.56	1.9672	3,475.18
1977	4/1/78	7,018.30	1,544.03		1,544.03	1.8385	2,838.70
1978	4/1/79	7,784.35	1,712.56		1,712.56	1.7182	2,942.52
1979	4/1/80	9,449.37	2,078.86		2,078.86	1.6058	3,338.23
1980	4/1/81	10,269.90	2,259.38	(1,036.00)	1,223.38	1.5007	1,835.93
1981	4/1/82	9,696.77	2,133.29		2,133.29	1.4026	2,992.15
1982	4/1/83	11,314.40	2,489.17		2,489.17	1.3108	3,262.80
1983	4/1/84	13,783.31	3,032.33		3,032.33	1.2250	3,714.60
1984	4/1/85	11,525.57	2,535.63		2,535.63	1.1449	2,903.04
1985	4/1/86	12,996.65	2,859.26		2,859.26	1.0700	3,059.41
1986	4/1/87	9,665.14	2,126.33		2,126.33	1.000	2,126.33
	thru 11/19						
<b>Total</b>							<b>\$36,198.33</b>
Less cost of obtaining easements							<u>(1,457.88)</u>
Balance of refund as of April 1, 1987							<b>\$34,740.45</b>