

Decision 82 10 026 OCT 6 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FAIRCHILD CAMERA & INSTRUMENT )  
CORPORATION, )

Complainant, )

v. )

GREAT OAKS WATER COMPANY, )

Defendant. )

Case 82-08-16  
(Filed August 31, 1982)

INTERIM OPINION

Statement of Facts

Great Oaks Water Company (Great Oaks) operates a public utility water service in the southeastern areas of San Jose. Among its customers is Fairchild Camera and Instrument Corporation (Fairchild). Fairchild operates a plant on Bernal Road in the Great Oaks' service area. This plant manufactures semiconductor devices. Great Oaks' Well 13 is situated 2,000 feet from the plant.

A leakage of a mixture of chemicals from an underground fiberglass solvent storage tank at Fairchild's Bernal Road plant assertedly has resulted in contamination of groundwater in the area, forcing removal of Well 13 from use in providing water to Great Oaks' customers. Unless countered by pumping, there apparently is danger that the leading edge of the contaminant plume will spread further.

According to an administrative request by the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (the Board) that Fairchild clean up and

abate the contamination, Fairchild, without admitting liability for the contamination, requested Great Oaks to pump water for an indefinite time from Well 13 and deliver it to Fairchild where it would be filtered to specified standards and then discharged into storm drains. Fairchild obtained a National Pollutant Discharge Elimination System permit (NPDES No. CA 0028185) from the Board to discharge water treated in its reverse osmosis unit into a storm drain tributary to Canvas Creek, a tributary to Guadalupe River.

In addition to receiving the contaminated water from Well 13, Fairchild continues to receive domestic water from other Great Oaks' sources for use in its plant.

Great Oaks has invoiced Fairchild for all water received, both the contaminated output from Well 13 and the domestic supply from other sources, at the rates provided in its published tariff. Fairchild objected to application of the tariff rates to the contaminated water received from Well 13. Faced with discontinuance of service for nonpayment Fairchild paid under protest. More recently Fairchild began depositing the amount of each bill with the Commission under Rule 10 of Great Oaks' published tariff relative to disputed bills. As of August 31, 1982 the amount deposited with the Commission aggregated \$151,447.15.

The Consumer Affairs Department of the Commission unsuccessfully attempted to mediate this dispute, leading to the filing by Fairchild of this formal complaint, and to the filing of a cross-complaint by Great Oaks. Both complaints pertain to the applicability of Great Oaks' published tariff to the contaminated water delivered from Well 13 to Fairchild.

Pending a hearing and a Commission decision on the merits, and to prevent loss of interest on the substantial sums already

*Process*

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deposited and expected to be deposited, the parties have asked that the Commission deposit these sums in an interest bearing savings account in a bank.

Discussion

Fairchild has complied fully with the provisions of Rule 10 of Great Oaks' filed tariff in depositing with the Commission the amounts of the disputed Great Oaks' invoices for service. The sums involved are considerable and may increase as further deposits may be made against future disputed invoices pending resolution of the dispute. At present neither party can draw any interest on these impounded funds. The funds do not belong to the State; rather they are held by the State until resolution of the dispute. Because of the substantial sums placed on deposit with the Commission, we believe the parties are best served by placing these funds in an interest-bearing savings account in a bank pending a decision by the Commission on the merits.

Both parties have indicated to the assigned administrative law judge their desire of having these funds so handled. We find that it is both necessary and convenient in the exercise of our authority to supervise and regulate this public utility to order that these impounded funds be deposited in a manner that would be consistent with the best interests of the parties involved, and most beneficial and just to the prevailing party (see Section 701 of the Public Utilities Code). As further delay would merely mean further loss of interest, this order should be effective immediately. Further loss of interest is sufficient emergency to justify inclusion of this matter on our agenda without notice to the public.

Findings of Fact

1. Fairchild has deposited and is continuing to deposit substantial sums with this Commission relative to disputed bills for services rendered by Great Oaks, all in accord with Rule 10 of Great Oaks' filed tariff.

2. Substantial interest on these impounded funds may be lost while these funds remain held by the Commission pending a Commission decision on the dispute, unless these funds are immediately deposited in an interest-bearing savings account in a bank.

3. Such a loss of interest would not be in the best interests of the parties.

4. Time is of the essence in making such a deposit in a bank.

Conclusion of Law

The funds deposited by Fairchild relative to the disputed bills should immediately be placed in one or more interest-bearing bank accounts if permissible by Section 8002 of the State Administrative Manual.

INTERIM ORDER

IT IS ORDERED that:

1. The executive director of this Commission is directed to deposit in one or more interest-bearing bank accounts, if permitted by Section 8002, State Administrative Manual, the \$151,447.15 deposited by Fairchild Camera & Instrument Corporation with this Commission relative to the disputed Great Oaks Water Company's bills which are the subject of this complaint and cross-complaint; and to add to this interest-bearing account any other amounts which may be deposited with the Commission against other or future disputed bills relative to these complaints.

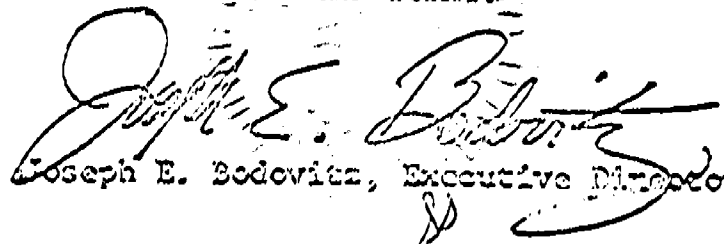
2. Great Oaks Water Company shall not discontinue water service to Fairchild Camera & Instrument Corporation on the issue of these disputed bills pending a decision by the Commission.

This order is effective today.

Dated OCT 6 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. CRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovian, Executive Director

deposited and expected to be deposited, the parties have asked that the Commission deposit these sums in an interest bearing savings account in a bank.

Discussion

Fairchild has complied fully with the provisions of Rule 10 of Great Oaks' filed tariff in depositing with the Commission the amounts of the disputed Great Oaks' invoices for service. The sums involved are considerable and may increase as further deposits may be made against future disputed invoices pending resolution of the dispute. At present neither party can draw any interest on these impounded funds. The funds do not belong to the State; rather they ~~belong to the party which will prevail, and it would be unjust and~~ *are held by the State until resolution of the dispute. Because of the substantial sums placed independent with the Commission, we believe the parties are best served by placing these funds* ~~unfair to that party to lose interest which would be readily available and accrue were these impounded funds to be placed in an~~ interest-bearing savings account in a bank pending a decision by the Commission on the merits. RN

Both parties have indicated to the assigned administrative law judge their desire of having these funds so handled. We find that it is both necessary and convenient in the exercise of our authority to supervise and regulate this public utility to order that these impounded funds be deposited in a manner that would be consistent with the best interests of the parties involved, and most beneficial and just to the prevailing party (see Section 701 of the Public Utilities Code). As further delay would merely mean further loss of interest, this order should be effective immediately. Further loss of interest is sufficient emergency to justify inclusion of this matter on our agenda without notice to the public.

Findings of Fact

1. Fairchild has deposited and is continuing to deposit substantial sums with this Commission relative to disputed bills for services rendered by Great Oaks, all in accord with Rule 10 of Great Oaks' filed tariff.

2. ~~The prevailing party to this dispute stands to lose~~ *may be lost* *Kn*  
 substantial interest on these impounded funds, while these funds remain held by the Commission pending a Commission decision on the dispute, unless these funds are immediately deposited in an interest-bearing savings account in a bank. *set in the best interests of the parties* *Kn*
3. Such a loss of interest would ~~be unjust and unfair.~~
4. Time is of the essence in making such a deposit in a bank.

Conclusion of Law

The funds deposited by Fairchild relative to the disputed bills should immediately be placed in <sup>one or more</sup> interest-bearing <sup>savings</sup> accounts ~~in a bank~~ *if permissible by Section 8002 of the State Administrative Manual.*

INTERIM ORDER

IT IS ORDERED that:

1. The executive director of this Commission is directed to <sup>if permitted by State</sup> deposit in <sup>one or more</sup> interest-bearing <sup>part</sup> accounts ~~in a bank~~ the \$151,447.15 deposited by Fairchild Camera & Instrument Corporation with this Commission relative to the disputed Great Oaks' Water Company bills which are the subject of this complaint and cross-complaint; and to add to this interest-bearing account any other amounts which may be deposited with the Commission against other or future disputed bills relative to these complaints. *Administrative Manual*