

ALJ/emk/nb

Decision 83 01 057

JAN 19 1983

~~CONFIDENTIAL~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Arthur H. Burnett,
Complainant,

vs.

Park Water Company,
Defendant.

Case 82-05-02
(Filed May 10, 1982)

Arthur H. Burnett,
Complainant,

vs.

Pomona Valley Water Co.,
Defendant.

Case 82-05-03
(Filed May 10, 1982)

Arthur H. Burnett, for himself, complainant.
Chris S. Rellis, Attorney at Law, for
defendants.

O P I N I O N

In the subject complaints, Arthur H. Burnett seeks Commission orders requiring Park Water Company (Park) and Pomona Valley Water Company (Pomona) to pay interest and penalties on water main extension contract refund payments not paid by those utilities on April 1 of each year.

Burnett is the assignee of a Park main extension contract for Tract 27542 in the City of Norwalk. The contract provides for payment of 22% of estimated annual revenues derived from residential and business consumers served from the facilities installed under the contract, based on the utility average revenue per residential and business customer for the prior calendar year; and for payment of 22% of fire hydrant revenue or revenue from other classes of service served from facilities installed under the contract. The amount advanced, \$13,043.19, is subject to refund, without interest, for 20 years from January 25, 1963, the date of the agreement.

Burnett is also the assignee of a December 12, 1979 Pomona main extension contract for Tract 9494 in the City of Chino, with an adjusted amount of \$21,675.65 subject to refund. The refunds are based on 22% of actual revenues from customers connected to the extension.

Park and Pomona^{1/} each admits it had not made 1982 refunds to Burnett based on 1981 revenues. Each states it will pay refunds in July 1982. Park states it will pay interest on its overdue refunds in compliance with Decision (D.) 87019 in Case (C.) 10111.

Hearings

After notice, a consolidated hearing on the two complaints was held in Los Angeles before Administrative Law Judge Levander on June 28, 1982, and the matters were submitted.

1/ Park acquired control of Pomona by purchasing Pomona's capital stock as authorized by D.90215 dated April 24, 1979 in Application (A.) 58579.

Burnett's Argument

Burnett did not present testimony in these proceedings. He argues that the main extension rule contemplates payment of refunds in a reasonable time. In D.87019 the Commission ordered Park to pay its main extension contract refunds by April 1 of the year following the calendar year in which revenue from customers connected to the main extension is collected; but Park has not seen fit to make the required payments. He contends that while D.87019 provides for interest payments of 7% on delayed payments, D.91269 dated January 29, 1980 in Order Instituting Investigation (OII) 56 signals a new policy on interest rates which should result in increased interest rates on overdue refunds. He requests establishment of an interest rate sufficiently high to induce Park to make timely payments, which would be higher than Park's cost of borrowing. He recommends that the Commission (a) not consider such interest payments in ratemaking; (b) require Park to establish a trust fund of 22% of monthly revenues from customers in tracts installed under main extension agreements to have the funds available to make timely refund payments; and (c) establish other penalties needed to induce Park to pay refunds on the April 1 due date.

He requests that Pomona be ordered to pay interest on refunds not made by April 1, 1982 and that the Commission establish penalties to induce Pomona to conform with a Commission order establishing such requirements.

Defendants' Argument

After Burnett said he had no evidence to present in support of the complaints, defendants moved for dismissal of the complaints contending that Burnett failed to state a cause of action in either complaint. Park argues that Burnett's forum for the relief he seeks is in Superior Court; the California Supreme Court determined that the Commission has no power to determine the priority of certain creditors over other creditors whose respective rights it had no jurisdiction to adjudicate (In re Walter J. Hempy v Public Utilities Commission (1961) 56 Cal 2d 214); in California Water & Telephone Company v Public Utilities Commission (1959) 51 Cal 2d 478, the Court states the Commission is not charged with the enforcement of private contracts.

Park argues that it is in conformity with D.87019; it has not refused to pay the main extension refund, but it intends to pay all of its refunds in July when its multi-utility consolidated cash flow position permits such payments; and its subsidiary Pomona would also pay a July refund to Burnett, without interest, since the Commission had not ordered Pomona to pay interest on main extension refunds made after April 1.

Defendants argue that there is no relationship between an interest rate established in an energy cost adjustment clause (ECAC) proceeding and complaints involving water main extension rule payments; their prior main extension contracts contain no provision for payment of interest and no specified refund payment dates; if Burnett prevailed in a Superior Court action to compel payment of refunds, he could be awarded interest on the amount of judgment at the legal rate

of interest of 7%, but the Court would not award a higher interest rate.

Defendants requested that the complaints be considered along with the evidence in A.82-06-053 where Park seeks to change the refund payment date contained in its new main extension rule filed under D.82-01-62. They requested consolidation of A.82-06-053 with the complaints.

Defendants' Evidence

Park's vice president Daniel Conway testified that due to utility rate structures and to lower sales and revenues in the colder months, water utilities generally operate at a loss in the early months of a year; water utilities do not operate at a profit until the summer, at which time sales and revenues increase; payment of refunds on main extension contracts while a utility is losing money from operations worsens its cash-flow position and could require short-term borrowing of funds to meet those obligations; Park planned to pay its 1982 main extension contract refunds in July, based on 1981 estimated revenues plus interest of 7/12% per month for payments made after April 1, 1982, as ordered in D.87019; in recent years Park met the April 1 date for paying refunds, but it was unable to do so this year; and Park's payment to Burnett would be approximately \$1,300 and Pomona's July 1982 payment to Burnett would be approximately \$300.

Conway testified on potential ratemaking impacts related to the refund issues as follows: If Park and its California utility subsidiaries were compelled to pay main extension refunds on April 1, those refunds would be weighted into their rate bases at three-fourths of the amount of refunds

rather than at an average of one-half of the refunds, which is the Commission's general ratemaking practice; the total revenue requirement associated with such rate base increases for Park and its California subsidiaries would be approximately \$15,000 for 1982, which would be borne by utility ratepayers; and the June 30 payment date specified in the new main extension rule is consistent with inclusion of one-half of a water utility's annual refunds in establishing its rate base. ✓✓

Discussion

C.82-05-02 is the second complaint Burnett filed against Park involving late payment of Tract 27542 refunds. Park's representations of its intent to pay refunds plus interest are in compliance with D.87019. ✓✓

Our decision in D.91259 was a response to our concern that past policy regarding interest rates applied by electric utilities was outdated. That decision changed the interest rates applicable to ECAC balancing account balances of major electric utilities from 7% to the published Federal Reserve Board three months' Prime Commercial Paper rate (plus 50 basis points for San Diego Gas & Electric Company). Those interest rates reflect electric utility short-term borrowing costs. Undercollections of interest-carrying costs reduce electric utility rates of return. The ECAC procedure was established to enable electric utilities to recover their expenses. The ECAC procedure also provides for customer payment of interest on undercollections of electric utility energy expenses

or utility payment of interest on overcollections of energy expenses.

Interest rates which are currently applied to main extension refunds by small water utilities may also be outdated. However, we do not believe the evidence in this proceeding is adequate to establish different standards. The operational and financial requirements of large electric utilities differ from those of small water companies, and those differences should be considered. Therefore, we cannot use D.91269 as a basis for changing interest rates applicable to the main extension agreements of small water utilities.

Refunded advances are an element in a water utility's rate base. In D.87019 we established a 7% rate for overdue refunds paid by Park. Subsequently, D.90575 dated July 17, 1979 in A.57904 adopted a rate base computation for Park's Southern Division which includes refunds weighted at three-fourths of the estimated refunds paid. That treatment is consistent with refunds being paid by April 1. Park's late payment of 1982 refunds is inconsistent with that treatment.

In C.82-05-02 Park did not demonstrate hardship or an inability to borrow short-term funds. It sought to avoid borrowing money while interest rates were high by deferring refund payments until it achieved a positive cash flow.

Burnett is not entitled to any further relief from Park. But Park should not have its rates established in part on an April 1 payment of refunds when it pays refunds in July. As an inducement to secure timely payment of such refunds, we will direct Park to prepare exhibits for introduction in its rate proceedings weighting the difference between 7% and its short-term borrowing costs during the period(s) its refund payments are overdue. This average accumulated interest savings should be used as a reduction in its working cash allowance in the next rate proceeding.

In this decision we are interpreting provisions of a uniform main extension rule. We are not determining preferences between a utility's creditors (In re Hempy) or requiring enforcement of an unexecuted private contract extending a utility's dedicated service area (In re California Water & Telephone Company).

D.87019 cites precedents for establishing an April 1 refund payment date and precedents for payment of interest on overdue refunds. In D.85949 we did not adopt a complainants' request for interest of 10%. We stated that "complainants are entitled to interest at the rate of 7/12 percent per month on amounts due and unpaid until the date of payment. (Cal Const. Art. XX Section 22.)" That limitation is retained in Article XV, Section 1, of the amended Constitution. In D.83937 we stated that what is a reasonable time for paying refunds may vary among different utilities. In D.82-01-62^{2/} the Commission adopted new uniform water main extension rules with provisions for annual refund payments of one-fortieth of amounts advanced to serve subdivisions, including special facilities, eliminated utility-funded refunds on extensions to serve individuals, and established mandatory refund payment dates on amounts advanced for subdivisions of June 30 or a date within six months of the contract anniversary date. In adopting those rules, we noted that the present rules create hardships for some utilities in the form of cash flow and financing problems; smaller water utilities are generally experiencing serious cash flow problems caused by gross revenue water cost offset increases (especially increases to offset increased water costs) far in excess of net revenue increases; even large Class A water utilities would benefit from changes

^{2/} Subsequent modifications of the rules adopted in D.82-01-62 are not pertinent to the issues raised in these proceedings.

in the adopted main extension rule with respect to the refund period for in-tract main extension contracts and the treatment of special facilities. D.82-01-62, however, did not change existing main extension contracts.

In D.87019 issued in March 1977, we ordered Park to pay refunds under its main extension agreements by April 1, and to pay a 7% interest rate on overdue refunds. Since the issuance of that decision, Park acquired control of Pomona. It is therefore reasonable to apply the standards established in D.87019 to Pomona. Pomona could have reasonably assumed that standards deemed appropriate for its parent would also be appropriate for its own operations. We will not recognize the provisions adopted in D.82-01-62 since they do not apply to agreements existing at the time of the decision.

Pomona testified that it faces cash flow problems, and should therefore not be required to pay interest on amounts which are not refunded until July. However, if Pomona is facing economic hardship, it should apply to this Commission for rate relief. We will not protect Pomona from a contractual obligation on the basis of cash flow problems. Further, we do not believe that the interest on the amounts in question will impose a significant financial burden on Pomona. Finally, we note that the amounts owed to Burnett in 1982 were collected in rates by Pomona during 1981. Pomona should have managed its revenues in anticipation of its debt obligations in 1982.

We put Pomona on notice that we will consider an adjustment in its working cash allowance established in future general rate case decisions if it delays payment of refunds beyond the appropriate dates to take advantage of the differential between its or its parent Park's borrowing costs and 7%.

Park's application (A. 82-06-53) to modify D.37019 to change its refund payment date from April 1 to June 30 will be addressed in a decision separate from this one. It was not appropriate to consolidate the hearing in A.82-06-53 with these complaints because it was necessary to provide notice to all holders of Park's main extension contracts.

Defendants argue that Burnett should have filed applications as provided for in the general provisions of their main extension rules to secure Commission interpretations of his contracts. However, Burnett has the alternative of filing complaints under Rule 9 of the Rules of Practice and Procedure, as he has done in this case.

Findings of Fact

1. Burnett is the assignee of a water main extension contract agreement with Park for Tract 27542 in the City of Norwalk. The term of the agreement is 20 years. It provides for annual refunds of 22% of estimated revenues from the tract. The amount subject to refund in the contract is \$13,043.19.

2. Burnett is the assignee of a water main extension contract agreement with Pomona for Tract 9494 in the City of Chino. Payments on the contract are 22% of actual revenues over a 20-year refund term, subject to a possible 5-year extension.

3. In D.87019, Park was ordered to pay refunds of its subdivision water main extension contracts by April 1 of the year following the calendar year in which revenue from the extension is collected.

4. Park was ordered to pay interest at the rate of 7/12% per month due on the first day of each month commencing on April 1 of each year on any main extension agreement refunds due and not paid by April 1 of the year following the calendar year in which revenue from the extension is collected.

5. Park did not pay the main extension refunds due on April 1, 1982.

6. Park agreed to pay its 1982 refund payments in July 1982 plus interest, as ordered in D.87019.

7. Pomona agreed to pay its 1982 refunds on main extension contracts, without interest, in July 1982.

8. Burnett seeks a Commission order increasing the rate of interest on Park's overdue main extension contract refunds to a level higher than Park's cost of borrowing.

9. Burnett seeks interest and penalties on any Pomona refunds paid after an April 1 due date.

10. Burnett presented no evidence in either complaint in support of his request for interest in excess of 7% and/or penalties on overdue refunds.

11. D.90575 established Park's Southern Division rate base. The rate base includes subdivision main extension refunds weighted at three-fourths of the estimated refunds paid. Park's late payment of 1982 refunds is inconsistent with the rate base treatment in D.90575.

12. In D.82-01-62 the Commission recognized water utility cash flow problems and adopted new uniform water main extension rules. The new rules establish mandatory refund payment dates on amounts advanced for subdivisions of June 30 or within six months of contract anniversary dates.

Conclusions of Law

1. Park's proposal to pay its 1982 refunds with interest is in compliance with D.87019.

2. Burnett has not established a basis for increasing the interest rate or for establishing penalty payments on Park's overdue refunds.

3. Article XV, Section 1, of the California Constitution limits the interest rate we establish on late refund payments.

4. The relief requested in C.82-05-02 should be denied.

5. In future rate proceedings, Park's working cash allowances should be adjusted to reflect late payment of refunds.

6. It is reasonable to apply an April 1 refund payment date on Pomona's percentage of revenue main extension contracts consistent with the refund payment date adopted for Park in D.87019.

7. Burnett has not established a basis for requiring Pomona to pay interest and penalties in excess of 7% on its overdue refund payments.

8. Pomona should be required to pay interest on overdue refunds on subdivision main extension contracts at a rate of 7/12% per month on payments made after April 1 for contracts which are not subject to the provisions of D.82-01-62.

O R D E R

IT IS ORDERED that:

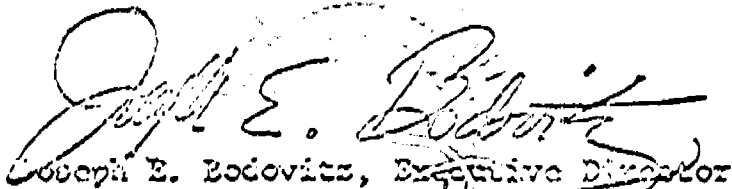
1. The relief requested in C.82-05-02 is denied.
2. In future rate proceedings, Park Water Company's working cash allowances shall be adjusted to reflect late payment of refunds.
3. Pomona Valley Water Company shall pay refunds on amounts advanced for extensions to serve subdivisions not later than April 1 on its percentage of revenue contracts not specifying payment dates.
4. Pomona Valley Water Company shall be required to pay interest on overdue refunds on subdivision main extension contracts which do not specify payment dates at a rate of 7/12% per month on payments made after April 1.

This order becomes effective 30 days from today.

Dated January 19, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director

Commissioner Victor Calvo,
being necessarily absent, did
not participate.

7. Burnett has not established a basis for requiring Pomona to pay interest and penalties in excess of 7% on its overdue refund payments.

8. Pomona should be required to pay interest on overdue refunds on subdivision main extension contracts at a rate of 7/12% per month on payments made after April 1 for contracts which are not subject to the provisions of D.82-01-62.

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1. The relief requested in C.82-05-02 is denied.
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Defendants argue that Burnett should have filed applications as provided for in the general provisions of their main extension main extension rules to secure Commission interpretations of his contracts. However, Burnett has the alternative of filing complaints under Rule 9 of the Rules of Practice and Procedure, as he has done in this case.

7. Burnett has not established a basis for requiring Pomona to pay interest and penalties in excess of 7% on its overdue refund payments.

8. Pomona should be required to pay interest on overdue refunds on subdivision main extension contracts at a rate of 7/12% per month on payments made after April 1 for contracts which are not subject to the provisions of D.82-01-62.

O R D E R

IT IS ORDERED that:

1. The relief requested in C.82-05-02 is denied.
2. In future rate proceedings, Park Water Company's working cash allowances shall be adjusted to reflect late payment of refunds.
3. Pomona Valley Water Company shall pay refunds on amounts advanced for extensions to serve subdivisions not later than April 1 on its percentage of revenue contracts not specifying payment dates.
4. Pomona Valley Water Company shall be required to pay interest on overdue refunds on subdivision main extension contracts which do not specify payment dates at a rate of 7/12% per month on payments made after April 1.

This order becomes effective 30 days from today.

Dated JAN 19 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
PRISCILLA C. CREW
DONALD VIAL
Commissioners

Commissioner Victor Calvo,
being necessarily absent, did
not participate