

Decision No. 87019

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ARTHUR H. BURNETT,  
Complainant,

vs.

PARK WATER COMPANY,  
a corporation,

Defendant.

Case No. 10111  
(Filed June 7, 1976)

Arthur H. Burnett, for himself,  
complainant.  
Chris S. Rellas, Attorney at Law,  
for defendant.  
Joel H. Lubin, for the Commission  
staff.

O P I N I O N

Arthur H. Burnett (Burnett) owns a water main extension agreement, Contract No. 109, covering Tract No. 27542 of Park Water Company (Park). This agreement was entered into on January 25, 1963 and was purchased by Burnett in July 1973. Refunds due under this agreement are 22 percent of the estimated annual revenues received from the above tract. The estimated annual

revenue is derived from the average annual revenue per customer for the prior calendar year (Exhibit 2).<sup>1/</sup> Refunds to Burnett were made as follows:

<u>Date of Refund</u>	<u>Amount</u>
July 5, 1974	\$595.95 - For Year 1973
July 2, 1975	\$725.55 - For Year 1974
July 7, 1976	\$814.15 - For Year 1975

Burnett first inquired of Park with respect to the dates of payment on April 1, 1976. Burnett's assignor indicated to him at the time he purchased this contract that payments were made in July. Burnett contends these refunds should be made within a reasonable time after the end of the year in which the revenues are collected. Burnett believes a reasonable time is 30 days. Park wants to continue its current practice of paying between June and September. Burnett said he did not complain to Park earlier because he then had complaints pending before this Commission on the same issue.

Park's evidence indicates that payments are made in the summer months because that is when it has cash available to make these payments as its revenues are significantly lower in the winter months. Park also must pay half of its annual ad valorem tax on April 10 of each year. After that date, Park maintains it is able to accumulate cash to make these payments.

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<sup>1/</sup> Park's current main extension rule first became effective on February 10, 1963. It provides for a refund of 22 percent of the revenue received from customers of the extension involved.

Park also contends Burnett is being paid in advance under paragraph 5 (Exhibit 2) of his agreement. This theory is based on the language of Exhibit 2 requiring payment based on estimated revenues; because payment is made before the end of the year of estimate, Park contends payment is being made in advance. Park contends that the three checks received by Burnett (all before this controversy began) which indicated that payment was being made for the prior calendar year were in error. This theory ignores the language in Exhibit 2 which bases the estimated payment on the revenues received in the prior calendar year.

The advances for construction are treated for rate base purposes by adding to rate base the average of the beginning of the year advance balance and end of year balance creating the average balance as of June 30 or July 1, thus assuming all refund payments are made then. Since the average payment date (Exhibit 1) has been much later, Park has been receiving higher rates than it should. If the refunds were made earlier than midyear, rate base should be increased by a greater than average amount. This would cause higher water rates.

Park testified that current contracts require payment of prior year's revenue but Burnett's does not. Park insists it does not have use of these funds for an average of one year (midyear of the year of collection to midyear of the year of payment). It maintains the water customers have use and custody of that money because that money is not included in rate base, but Park admits that it has collected and holds the revenues and has been granted a working cash allowance in rate base to cover cash needs of the company prior to the receipt of customer revenues.

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Cross-examination by the staff adduced testimony by Park's witness that these refunds are in effect paid on the basis of 22 percent of actual revenues approximately six months after the end of the year.

Park also indicates its test year rate base includes the estimate of refunds to be made in the test year, all based on prior year's revenues. This does not distinguish between the old contracts like Burnett's and the new contracts requiring payments computed on last year's collections. Park's rule also does not specify when the refund should be made. Park last borrowed money two or three years ago on a long-term (more than one year) basis for captial improvements and paid  $8\frac{1}{2}$  percent interest then for that loan.

Park has about 50 main extension refund contracts outstanding. Burnett's is typical of these agreements. Burnett owns about 150 such agreements with various water utilities.

Discussion

We find the incongruity between Park's contention that it is paying Burnett in advance and its statements that it makes refunds during the summer months because of the availability of cash at that time so staggering that Park's credibility is not persuasive. Park wants us to believe that it is short on funds to pay required refunds based on last year's receipts but still pays Burnett in advance. Moreover, Park wants us to believe that the three checks issued Burnett prior to this controversy were all incorrect but its theory of advanced payment (which was not even pleaded in its answer to the complaint) and apparently concocted for the hearing on Burnett's complaint reflects the true circumstances. We reject Park's attempt to avoid the issue. ✓

Park's evidence indicates its rate base regarding these advances and refunds includes that test year refunds based on prior year's revenues. It does not distinguish between advance refunds and refunds based on prior revenues as no such distinction is possible because all the credible evidence indicates all Park's refunds are based on last year's revenues. There are no advance refunds.

Further, these funds for refund are collected during the prior year but Park uses funds collected during the next year to pay the refunds due on the prior year's revenues. While cash flow problems contribute to this condition, there is nothing in the record to justify these circumstances. These refunds are a known and readily estimable liability which the company must recognize and meet with proper accounting practices.

In Burnett v California Cities Water Company, D.83937 dated December 30, 1974 we found that April 1 was a reasonable date by which main extension refunds should be made for the prior calendar year. We see no reason or evidence in this proceeding to alter that date and will find the same to be true for Park.

In Buss v California Cities Water Company, D.85164 dated November 25, 1975 we found that main extension refunds not paid by April 1 of the year following collection are equivalent to involuntary interest-free loans to the utility. This was reaffirmed in Levine Brothers Investments v Mesa Crest Water Company, D.85949 dated June 15, 1976. This principle applies equally to Park.

In Buss our order stated, in part:

"1. Interest...is payable by defendant on any main extension contract refunds due and not paid by April 1..."

This ordering paragraph applied to all main extension contracts, not only Buss's contract. As all main extension contracts entered into by Park are essentially similar, we see no reason not to apply the reasoning in Buss to Park's contracts and extend the result reached in this complaint to all others similarly situated.

Therefore, we shall order Park to pay all main extension refunds by April 1 of the year following the calendar year in which revenues from the extension are collected.

In Buss, supra, we also stated (page three):

"But without any provision for penalty in the event payment is not then made, there is no incentive to defendant to comply, ..."

We think this language is appropriate here also and will require Park to pay interest at the rate of 7/12 percent per month on refunds not paid by April 1 of the year after the year of collection.

#### Findings

1. Burnett owns the main extension agreement of Tract No. 27542 in Park's service area.
2. Park does not pay main extension refunds in advance to Burnett under Contract No. 109 for Tract No. 27542.
3. Park has paid refunds under the above contract between June and September of each year following the year of collection of revenues.
4. April 1 of the year following the year of collection of revenues is a reasonable time to require Park to pay refunds due under its main extension agreements.
5. Refunds not paid by April 1 of the year following the year of collection are equivalent to involuntary interest-free loans to defendant.

Conclusion

Refunds not paid by April 1 of the year after the year in which collection is made should bear interest as set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

1. Park Water Company, a corporation, shall pay all main extension agreement refunds by April 1 of the year following the calendar year in which revenue from the extension is collected.

2. Interest at the rate of seven-twelfths percent per month due on the first day of each month commencing on April 1 of each year is payable by Park Water Company 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.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of MARCH, 1977.

Robert Betman  
 President

William J. Quisenberry  
 Commissioner

Howard Ross  
 Commissioner

Richard D. Moore  
 Commissioner