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ORIGINAL

Decision No. 87326

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion to determine whether the tariff provisions of WASHINGTON WATER AND LIGHT COMPANY pertaining to nonrefundable acreage payments should be revoked.	Case No. 10013 (Filed December 2, 1975; amended May 11, 1976)

John H. Engel, Attorney at Law, and W. B. Stradley, for Washington Water and Light Company, respondent.
Boyd Stockdale, DD, for East Yolo Recreation Advisory Committee; Carl Ekstrom, and Manuel B. Aceituno, for themselves; Grace K. Ohlson, for East Yolo People for Better Water; Peter Belli, Attorney at Law, for James H. Wolfe; John J. Taaffe, for G. W. Williams, Co.; C. Lee Humes, Attorney at Law, for Yolo County - Parks and Library; Noel Dyer and Dudley Zinke, Attorneys at Law, for West Sacramento Port Center, Murchison Construction Co., Capitol Coors Co., American Homes, Ltd., Wm. Lodewyk & Charles Risley, Donald Ingoglia, Wismer & Becker, and West Sacramento Land Co.; and Robert O. Brugge, for West Sacramento Sanitary District; interested parties.
Mary Carlos, Attorney at Law, Eugene M. Lill, and Ichiro B. Nagao, for the Commission staff.

I N D E X

O P I N I O N

BACKGROUND INFORMATION

Purpose of Investigation

This is an investigation on the Commission's own motion into those tariff provisions of Washington Water and Light Company (Washington Water and Light) which require that all applicants for water service to premises not previously served by Washington Water and Light make nonrefundable payments to the utility. The purpose of the investigation is to reexamine the nature and effect of these nonrefundable payments so as to determine whether it is necessary or desirable to continue the tariff relating to them.

Description of the Utility

Washington Water and Light provides water service in the area of Yolo County located directly across the Sacramento River from the city of Sacramento. It serves the port of Sacramento and the unincorporated communities of Broderick, Bryte, West Sacramento, and Southport. As of December 31, 1975, there were 5,446 flat rate and 557 metered customers. There were also 43 private fire connections and 468 public fire hydrants.

Although the Sacramento River forms the easterly boundary of its service area, Washington Water and Light obtains all of its water from 21 wells, five of which are located in Broderick, two in Bryte, four in the Southport area, and the remaining ten in West Sacramento. As will be explained below, the well water is of poor quality and requires treatment before it can be used for domestic purposes.

Records of the Commission show that Washington Water and Light was organized in 1897 for the purpose of serving the community of Broderick which, at that time, was also known as the town of Washington. In 1946 it extended its facilities to serve Bryte and West Sacramento.

In 1967, all of Washington Water and Light's capital stock was acquired by Citizens Utilities Company (Citizens of Delaware), a Delaware corporation with headquarters in Stamford, Connecticut. Citizens of Delaware at that time also acquired all the stock of Port Water Company (Port) which had been organized in 1952 to serve an area lying south of the Sacramento Barge Canal, across from Washington Water and Light's service area. In 1970, Citizens of Delaware merged Port into Washington Water and Light.

Washington Water and Light is, except for a local manager directly on its own payroll, operated by employees of another Citizens of Delaware subsidiary, Citizens Utilities Company of California (Citizens of California), from offices in Redding and Sacramento.

Despite its name, Washington Water and Light has never rendered electric service.

Water Quality Problem

On August 26, 1970, approximately three years after its stock had been acquired by Citizens of Delaware, Washington Water and Light filed an application for a rate increase. At the hearings held on the increase many customers complained about water service and particularly about the quality of the water being purveyed. Yolo County appeared as a protestant and asked that Washington Water and Light be required to take affirmative action to improve its water service. Representatives of two local chambers of commerce requested a similar order.

Investigations made by engineers of the Commission staff, and by an engineer and geologist retained by Washington Water and Light, showed that the water from the utility's wells contained iron, manganese, hydrogen sulfide, methane, and some sodium chloride (salt). Iron and manganese cause staining of clothes, plumbing fixtures, and water-using appliances. Hydrogen sulfide has an odor of rotten eggs and methane gives water a bad taste.

Decision No. 79919 dated April 4, 1972 in Application No. 52160, granted Washington Water and Light a portion of the requested rate increase and ordered the water company to develop and execute a plan to improve its water service and the quality of water produced. The utility was to report on the progress, or lack thereof, in improving the quality of the water every six months.

In compliance with Decision No. 79919, Washington Water and Light employed Brown and Caldwell, consulting engineers, to prepare

a plan for the improvement of the quality of its water. The plan was completed in September of 1973 and introduced as an exhibit in the utility's Application No. 54323, filed September 14, 1973, by which the company asked for a further increase in rates. Because of Washington Water and Light's continuing service problems, Application No. 52160 was consolidated with Application No. 54323 for further hearing.

Brown and Caldwell developed four alternatives, as follows:

Plan A. Retain present well system. Drill 20 new wells. Construct five new water treatment plants. (Capital cost $10,650,000; annual operation and maintenance cost $418,000.)

Plan B. Import water purchased from the city of Sacramento municipal system. Construct large diameter feeder mains throughout the system. (Capital cost $9,430,000; annual operation and maintenance cost $752,000.)

Plan C. Divert water from the Sacramento River. Construct a single large treatment plant and large diameter feeder mains throughout the system. (Capital cost $13,200,000; annual operation and maintenance cost $720,000.)

Plan D. Collect Sacramento River water from gravel beds underlying the river by means of the Ranney method, construct feeder mains as in Plan C.[1] (Capital cost $11,870,000; annual operation and maintenance cost $340,000.)

1/ The Ranney method consists of sinking a reinforced concrete caisson into the ground adjacent to the river and installing tubular screens horizontally from the caisson out into the gravel beds.

Brown and Caldwell recommended Plan A as being the most effective and least costly of the four plans. The forecasted impact of constructing the proposed facilities on the cost of service was, however, staggering. According to Decision No. 83610 dated October 16, 1974, in Applications Nos. 52160 and 54323, Stage I of the plan would, over a four-year period, require a revenue increase of 359 percent and a $17.90 monthly rate for flat rate residential service.2/

At the hearings held on consolidated Applications Nos. 52160 and 54323, various public witnesses questioned the assumptions of the Brown and Caldwell report and the Board of Supervisors of Yolo County, after allocating $10,000 for an analysis of the report, requested a moratorium on any rate increase pending the completion of the county's studies.

Washington Water and Light stated that it was willing to make the required investment but that it would not make such investment until: customers indicated their willingness to assume the necessary rate increases; the Board of Supervisors and unspecified community associations and groups had passed "unequivocal resolutions" indicating their wishes; the project had been approved by the Department of Health; and this Commission had approved the project and the level of rates necessary to recover operations and maintenance costs of the facilities and to provide a reasonable return on the investment required.

2/ By Application No. 56543 filed June 9, 1976, Washington Water and Light is requesting step flat rates that would reach $33.92 in 1980, an increase of 611 percent.

In Decision No. 83610, dated October 16, 1974, in Applications Nos. 52160 and 54323, the Commission concluded its opinion by stating:

> "Although we shall make no service determination in this proceeding, it is not appropriate to defer indefinitely applicant's request for rate relief pending the completion of public studies. At such time as they are complete it will be appropriate to request the Commission to order desired improvements. However, the foregoing does not in any way relieve applicant of its duty as a public utility to solve its water quality and rate problems and render adequate service at reasonable rates. The statement of conditions under which applicant is willing to improve its service does not relieve applicant of its public utility responsibilities. It is not the function of regulation to relieve management of responsibility for the assumption of the risks of operating as a public utility in a free economy."

Fredricks-Southport Agreement

Fredricks-Southport, a partnership composed of West Sacramento Port Center, Inc. (a subsidiary of Del Monte Corporation) and Fredricks Development Corporation (a subsidiary of Pacific Lighting Corporation) was the developer of a residential tract adjacent to that portion of Washington Water and Light's service area south of the Barge Canal that was formerly served by Port. The tract, called the Southport Development, covers 361 acres and the plans for ultimate development contemplated 540 single-family dwellings, 2,540 multi-family units, a recreation center, a shopping center, several parks, and a school.

Washington Water and Light, by Application No. 53333, filed May 16, 1972, requested a certificate of public convenience and necessity to construct and operate the water facilities intended to serve the Southport Development. Since Southport was contiguous to Washington Water and Light's service area, authority to serve ordinarily could have been sought by means of a tariff

filing pursuant to Section 1001 of the Public Utilities Code and to this Commission's General Order No. 96-A. (G.O. 96-A). Since Washington Water and Light's existing service area was experiencing severe water quality problems, however, and since the proposed serving arrangements were complex and involved substantial deviations from the utility's filed tariffs, authority to serve was sought by the formal procedure of filing an application for a certificate of public convenience and necessity.

The estimated cost of the Southport water facilities was, at 1972-1973 price levels, $1,395,530. The agreement between Washington Water and Light provided that all of this sum, except approximately $10,000 for meters, would be advanced by Fredricks-Southport and the water company would repay Fredricks-Southport 22 percent of the revenues received from customers served by the facilities for a period of 20 years.

The Commission by Decision No. 80460, dated August 31, 1972, granted the requested certificate ex parte but required Fredricks-Southport to finance the necessary treatment facilities by means of contributions in aid of construction not subject to refund.

On February 20, 1973, in accordance with Decision No. 80460, Washington Water and Light and Fredricks-Southport entered into an agreement for construction of the water facilities to serve the Southport development.

As required by the decision, the agreement provided that the Southport water treatment plant would be built by the developer and contributed to the utility. The plant was to be built in two stages. During initial years of each stage the capacity of the plant would exceed the need of the subdivision and the agreement provides that, should the utility use the facilities of the Southport water treatment plant to furnish water service to users located outside of the development, Washington Water and Light would obtain contributions from those users. If and when the capacity of the

Southport plant were to be fully utilized, and provided that additional capacity should be required to serve the contemplated requirements of the Southport development, the utility would then expand the treatment plant at its own expense. The funds received by Washington Water and Light from applicants for water service were to be segregated in a special account identified for expanding or constructing additional water treatment facilities in the Southport portion of the service area.

Washington Water and Light submitted the agreement by its Advice Letter No. 24 and it received approval by the Commission's Resolution No. W-1541, dated April 16, 1974.

Filing of Nonrefundable Payments Agreement Form

On November 27, 1974 shortly after the Commission's admonition in Decision No. 83610, as quoted above, Washington Water and Light filed by its Advice Letter No. 28, Original Cal. P.U.C. Sheet No. 203-W, the nonrefundable payments agreement form that is the subject of this investigation. The advice letter requested that the filing become effective on less than regular statutory notice.

The staff of the Utilities Division's Hydraulic Branch placed the filing before the Commission on December 17, 1974, with the recommendation that it become effective on approval by the Commission. By Resolution No. W-1652, the Commission, at the December 17, 1974 conference authorized the utility to file the form as part of its tariffs, effective on the date of authorization.

Provisions of Nonrefundable Payments Agreement Form

The nonrefundable payments agreement is intended to apply to, and be executed by, applicants for water service, including private fire protection service, to premises which have not previously been served by Washington Water and Light. It also is intended to apply to, and be executed by, applicants who are engaged,

or about to engage, in construction upon, or development of, lands they own or control, and who desire Washington Water and Light to furnish water service to such premises.3/

It requires that an applicant for service is also to execute a regular main extension contract and it restricts service, except fire protection service, to metered connections only, thus effectively closing flat rate service to new premises.

The capacity payment for other than fire protection service is determined by multiplying "equivalent units" for each meter serving the premises by a "factor" determined according to the agreement. Equivalent units range from 1 for a 5/8 x 3/4-inch meter to 80 for an 8-inch meter. The factor was established at $525 for the year 1974. The factor is to be increased annually by the percentage of increase of the Handy-Whitman Index of Water Utility Construction Costs, Pacific Division, for large treatment plant. The capacity payment so determined is not to be less than a minimum of $2,500 per acre, provided that the minimum capacity payment is not to be less than $2,500.

The private fire protection service payment is determined by a schedule based on size of connection. The payments range from

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3/ In practice, neither the Fredricks-Southport agreement nor the nonrefundable payments agreement are applied to applicants for service to individual single-family dwellings. It was developed at the hearings that this practice was in accordance with advice of the Commission staff, which advice Washington Water and Light apparently gave precedence to the requirements of Section 532 of the Public Utilities Code that no public utility shall charge other than the rates and charges specified in its filed tariff schedules.

$1,500 for a 2-inch connection to $50,000 for a 12-inch connection. This payment is also to be increased by the Pacific Handy-Whitman Index, but for distribution mains.4/

The minimum capacity payment is payable upon the earlier of the execution of a main extension contract or upon application for water service. The remainder becomes due as meters are installed. The private fire protection payments are payable upon the earlier of the execution of a main extension contract or upon application for private fire protection service.

The nonrefundable payments received are to be accounted for in a special deferred credit account and identified for use in providing new water production, treatment, storage, and major transmission facilities. Upon the construction of such facilities, amounts representing money so spent are to be transferred from the special deferred credit account to Account 265, Contributions in Aid of Construction.

Any balance remaining in the special deferred credit account on December 31, 1990, will be refunded, without interest, on a pro rata basis to all applicants for service making nonrefundable payments to the utility prior to said date, provided, however, that if on December 31, 1990, the utility has undertaken or committed itself to construction of new water production, treatment, storage, and major transmission facilities which have not been completed

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4/ Handy-Whitman Index Values are as follows:

	Large Treatment Plant Account Nos. 331 and 332	Distribution Mains Account No. 343
1/1/49	100	100
1/1/74	291	316
1/1/75	357	322
1/1/76	391	347
1/1/77	Not Available	Not Available

as of that date, the date for determining the balance in the special deferred credit account which will be refunded, and the refunding thereof, will be extended until the date that all such facilities shall have been completed and the amounts used therefor have been transferred to the contributions in aid of construction account. There is no requirement in the agreement that Washington Water and Light shall, after collecting the nonrefundable payments, actually proceed with construction of facilities.

The agreement provides that applicants for service shall file with all of the plots of premises that they file or record, and with each conveyance of lands, liens and covenants subjecting the property to the agreement, such covenants to run with the land. The agreement itself, or a memorandum thereof, may also be recorded by the utility.

Finally, the agreement provides that it shall at all times be subject to changes or modifications by this Commission as the Commission may, from time to time, direct in the exercise of its jurisdiction.

Irregularities in Tariff Filing Procedure

The Commission's rules for filing tariff schedules of gas, electric, telephone, telegraph, water, and heat utilities are set forth in G.O. 96-A.

A review of the documents associated with the filing of the nonrefundable payments agreement form discloses several significant departures from the procedures prescribed by G.O. 96-A. A brief summary of these departures follows:

1. Use of Sample Forms to Impose Rates and Charges - Paragraph II.C(4) of G.O. 96-A provides that appropriate general rules should cover the application of all rates, charges, and service when such applicability is not set forth in and as a part of the rate schedules themselves. This paragraph of G.O. 96-A lists nineteen subjects that should be covered in the rules and directs

that, in addition to the listed subjects, other items having special significance to particular conditions should be embodied within the rules. Paragraph II.C(5) requires that sample copies of printed forms that are normally used in connection with customers' services, such as applications for service, regular bills for service, contract forms, delinquency notices, disconnect notices, deposit receipts, and similar forms shall be considered a part of a utility's tariff schedules. Such forms are to be maintained currently up-to-date in the same manner as rates, charges, and rules, insofar as changes therein affect rates and conditions of service.

It is clear from the above referenced paragraphs that rates and charges exacted from customers as a condition of receiving utility service are to be set forth in rate schedules or in a utility's rules. The sample forms themselves are to illustrate the means by which a utility's rate schedules and rules are actually being applied, and are not intended to be for the purpose of setting out, independently of the rate schedules, and rules, and charges that are not included in the rate schedules and rules. For contracts, moreover, G.O. 96-A, in Paragraph IX, specifically requires:

> "Whenever it is expressly provided by a filed tariff sheet of a utility that a written contract shall be executed by a customer as a condition to the receipt of service, relating either to the quantity or duration of service or the installation of equipment, the executed contract need not be filed with the Commission, but a copy of the general form of contract to be used in each case shall be filed with the tariff schedules as hereinabove provided. ..."

The nonrefundable payments agreement filing deviated from Paragraph IX in that nowhere in Washington Water and Light's filed tariffs is it expressly provided that the nonrefundable payments contract be executed as a condition of receipt of service.

2. Filing of Increased Rates or More Restrictive Conditions by Advice Letter - According to Section 454(a) of the Public Utilities Code, no public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the Commission and a finding by the Commission that such increase is justified. Section 454(b) of the code gives the Commission authority to establish such rules as it considers reasonable and proper for each class of public utility, providing for the nature of the showing required to be made in support of proposed increases, the form and manner of the presentation of such showing, and the procedure to be followed in the consideration thereof.

Pursuant to the authority granted in Section 454(b), the Commission has established Section No. VI of G.O. 96-A which states:

"The tariff schedules of a utility may not be changed whereby any rate or charge is increased, or any condition or classification changed so as to result in an increase, or any change made which will result in a lesser service or more restrictive conditions at the same rate or charge, until a showing has been made before the Commission and a finding by the Commission that such increase is justified.

"A formal application to increase rates shall be made in accordance with the Commission's Rules of Procedure, except where the increases are minor in nature. Any utility or district of a utility with projected annual operating revenues at requested rate of $150,000 or less may, however, request authority for a general rate increase by an advice letter filing which includes an adequate showing and justification. The Commission may accept, reject or modify such general rate increase by advice letter filing. If the Commission grants an application the utility shall prepare and file appropriate tariff sheets, accompanied by an advice letter as provided in Section III herein. In cases where the

> proposed increases are minor in nature the Commission may accept a showing in the advice letter, provided justification is fully set forth therein, without the necessity of a formal application. The filing of any tariff sheet which will result in any increase in any rate or charge or in a more restrictive condition shall be by the advice letter designated in Section III."

Whether the imposition of a charge of not less than $2,500 as a condition of furnishing water service is "minor in nature" and therefore need not be filed by a formal application and thus avoid the scrutiny of our decision-making process, is a question of judgment that the Commission's tariff procedure delegates to the Utilities Division. The imposition of a minimum charge of $2,500, where none at all existed before, can, however, reasonably be concluded to be an "increase" and G.O. 96-A is quite specific in requiring that justification for an increase must be fully set forth in the advice letter.

Advice Letter No. 28 is, however, merely a recitation of the provisions of the agreement form, and contains no justification for the imposition of the nonrefundable charges. The staff, in the memorandum by which it submitted the agreement form to the Commission for approval, did supply the showing that the advice letter lacked. (Section 454(a) of the Public Utilities Code only requires a showing. It does not say by whom.) The staff apparently did not understand all of the ramifications of the agreement because the memorandum states that the form applies to applicants who are land developers. The agreement form itself, however, applies to all applicants for service at locations where the utility has not previously rendered service.

The memorandum also states that the funds collected are to be used for the purpose of paying for treatment facilities, whereas the agreement form provides that the funds may be used, not only to pay for treatment facilities, but for production, storage, and major transmission facilities. The memorandum does not report that

money collected from the nonrefundable payments is, until spent for the specified purposes, not required to be segregated in a separate bank account but may be commingled with other funds of the Citizens group of companies and used for general corporate purposes.

The memorandum does not disclose that, although approximately 90 percent of Washington Water and Light's customers presently receive flat rate service, service rendered to customers served from connections made according to the agreement must be metered service, plainly a more restrictive condition, for which no showing was made.

Neither the advice letter nor the staff memorandum explain why fire protection service should be assessed a charge to pay for treatment plant facilities.

3. Establishment of Nonrefundable Payments Form on Less Than Statutory Notice - Section 491 of the Public Utilities Code requires that no change shall be made by any public utility in any rate or classification, or in any rule or contract relating to or affecting any rate, classification, or service, except after 30 days' notice, such notice to be given by filing new tariff schedules. Section 491 also allows the Commission, for good cause shown, to allow changes without requiring the 30 days' statutory notice.

Advice Letter No. 28, despite the requirements of Section 491 regarding good cause shown as a requisite, requested that the filing become effective on less than regular statutory notice but did not supply a showing why the 30 days' notice provision should be waived. The staff, in its memorandum for the December 17, 1974 Commission conference, recommended that the tariff filing become effective upon approval of the Commission, but the staff did not, as it had done in justifying the contract form, supply the required showing that the utility had omitted. The Commission, acting upon the staff recommendation, adopted the staff's draft of a Resolution No. W-1652, and the filing became effective on December 17, 1974.

The above irregularities have been described, not for the purpose of chiding Washington Water and Light or our staff for departing from the tariff filing procedures that have been, for the most part rigorously adhered to since the Commission, in Decision No. 35817 in Case No. 4626 (44 CRC 393) modernized its tariff filing procedures by adoption of its original General Order No. 96 on September 29, 1942.[5/] A knowledge of the departures is necessary for our understanding the rather cursory circumstances under which the nonrefundable payments agreement form was adopted and the reasons for the subsequent difficulties in its application.

Commission Letter Concerning
Accounting for Funds Collected

On October 31, 1975, the Finance and Accounts Division of the Commission staff originated the following letters:

5/ Utilities Division Special Study No. S-105, Procedure for Filing of Tariff Schedules Under General Order No. 96, San Francisco, California, January 11, 1943.

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October 31, 1975

File No. 601-3

Washington Water & Light Company
P.O. Box 2218
Redding, California 96001

Attention: Mr. C. B. Bromagem, Controller

Gentlemen:

NONREFUNDABLE ACREAGE PAYMENTS

In Resolution No. W1652 dated December 17, 1974, the Commission approved Washington Water and Light Company's tariff relating to nonrefundable acreage payments for purpose of establishing a fund to build necessary water treatment facilities. The company was silent concerning the accounting of the funds collected under this special tariff provision.

The Commission requires that Washington Water and Light Company account for the funds collected under the acreage payment agreement in the following manner:

1. Funds collected under the nonrefundable acreage payments must be deposited in a special interest bearing account in a bank or savings and loan association.
2. Interest earned on the special deposit account will remain in that account.
3. Disbursements from the special deposit account will require letter of approval from the Commission.
4. Records supporting the monies collected will be maintained in a manner to permit the company to refund the funds collected plus accrued interest when ordered by the Commission.

Very truly your,
PUBLIC UTILITIES COMMISSION
By
WILLIAM R. JOHNSON, Secretary

C.10013 kd

On November 25, 1975, Citizens of Delaware's Connecticut office responded in behalf of Washington Water and Light:

WASHINGTON WATER AND LIGHT COMPANY

Administrative offices • High Ridge Park • Stamford, Connecticut 06905

November 25, 1975

William R. Johnson, Secretary
Public Utilities Commission
State of California
California State Building
San Francisco, California, 94102

Re: Nonrefundable Acreage Payments -
Your Letter of October 31, 1975
File No. 601-3

Dear Mr. Johnson:

The subject letter has been reviewed and discussed with Mr. Kenji Tomita, Finance and Accounts Division, by Mr. John Engel of this office. Mr. Tomita suggested that we communicate our views to the Commission by letter.

The underlying purposes of your letter appear to be identification and security of the funds collected under the relevant tariff provision. Washington Water and Light Company maintains precise records which identify each payment collected by payor, amount, and date received. Washington Water and Light is a financially sound enterprise, and the security of these funds and our ability to repay them should the Commission so order, is not in question.

Segregating these funds in a bank account would be detrimental to the best interests of our customers and the company, since it would mean incurring additional expense to provide capital.

We respectfully request that the content of your letter of October 31, 1975, be amended by deleting the requirement for a banking arrangement for the funds and substituting, should the Commission so desire, the requirement that specific accounting records of payors, amounts, and dates received be maintained.

Very truly yours,

B. S. Schwartz
Assistant Treasurer

Two points stand out in the above correspondence. The first is that although Section 794 of the Public Utilities Code states:

> "794. The commission may, after notice, and hearing if requested within 15 days after receipt of notice, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. Where the commission has prescribed the forms of accounts, records, or memoranda to be kept by any public utility for any of its business, it is unlawful for such public utility to keep any accounts, records, or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other state or of the United States, except such accounts, records, or memoranda as are explanatory of and supplemental to those prescribed by the commission."

any references to notice, hearing, or formal Commission order are, in the above staff letter, conspicuous by their absence.

A second point is that the Connecticut management of Washington Water and Light apparently regards the unexpended funds from the nonrefundable payments as a cost-free source of capital.

The staff replied on December 3, 1975, to the November 25 letter by advising Washington Water and Light's Connecticut office that the matters discussed in that letter would be considered during the hearings in this investigation.

Formation of East Yolo
Community Services District

On December 1, 1975, the Board of Supervisors of the county of Yolo applied to the Local Agency Formation Commission of Yolo County (LAFCO) for dissolution of the West Sacramento Sanitary District and County Services Area No. 5[6/] and the formation of the

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6/ The sanitary district provided garbage and sewage disposal services while the county services area was responsible for parks and recreation, including maintenance of playgrounds and swimming pools.

East Yolo Community Services District (EYCSD). The EYCSD was intended to assume the functions of the predecessor agencies, but significantly the first of the purposes of the new district to be listed was:

> "(1) To supply the inhabitants of the District with water for domestic use, irrigation, sanitation, industrial use, fire protection and recreation;".

The proposed reorganization was approved by LAFCO on February 20, 1976; and the reorganization was ordered, subject to a vote of the electors of the district, by the Board of Supervisors on March 16, 1976. The reorganization was submitted to the voters at the primary election of June 8, 1976. The proposal was approved, 4238 votes yes to 1279 no, and EYCSD commenced operations on September 2, 1976.

Institution of Commission Investigation

In the months following approval of the nonrefundable payments agreement form, the Commission received many protests over the application of the agreement form and the charges extracted from applicants for service. At the October 28, 1975 conference, a majority of the Commissioners expressed a desire to explore the desirability of continuing the tariff and, accordingly, the staff drafted an order of investigation which the Commission adopted on December 2, 1975, as Case No. 10013.

According to the order, the investigation was to consider, but not be limited to, the following matters:

a. Effect of the tariff requirement on existing and potential developers in the service area covered by the tariff.

b. Current accounting for funds collected under nonrefundable payments agreements.

c. Discussion of appropriate safeguards for these funds.

d. Current estimates of the potential for development of the area.

e. Discussion of the continuing need for a treatment plant, including estimates of the costs associated therewith.

f. Current estimate of the effect on individual rates if the treatment plant were built with utility funds.

g. Consideration of alternatives to the presently existing agreements.

h. Any other matter pertinent to this investigation.

All known entities having entered into nonrefundable payments agreements were named as respondents and, by an amendment to the order instituting investigation dated May 11, 1976, three additional respondents who had entered into agreements since December 2, 1975 were named.

Fazio Bill

On March 15, 1976 Assemblyman Vic Fazio, whose district includes Washington Water and Light's service area, introduced Assembly Bill No. 3553 (AB 3553), with Senator Dunlap as coauthor. AB 3553, after several amendments, was passed by the Legislature and, after approval by the Governor, was filed by the Secretary of State on June 25, 1976 as Chapter 261 of the 1976 statutes.

Chapter 261 reads as follows:

"SECTION 1. The Legislature finds and declares that a special statute is required to prohibit the expansion of the Washington Water and Light Company, a private water corporation operating in an unincorporated area of Yolo County, wherein an election has been called for June 8, 1976, to form a community services district to, among other things, provide water service. This act specifies the period when such expansion shall be prohibited.

"SEC. 2. No water corporation, as defined in Section 241 of the Public Utilities Code, operating in Yolo County shall engage in any construction work, for the period specified in Section 3 of this act except where necessary:

(1) To extend service to customers;

(2) To maintain the existing water system;

(3) To meet an emergency; or

(4) To protect the safety and health of the public or any portion thereof.

"SEC. 3. No construction work, except as specified in Section 2 of this act, shall be done from the effective date of this act until July 1, 1978. If the proposition creating the community services district is rejected by the voters of east Yolo County on June 8, 1976, this act shall become inoperative.

"SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

"This act is necessary to meet the time requirements for the formation of a community services district in Yolo County. In order that the purposes of this act may not be frustrated, it is essential that this act take immediate effect."7/

7/ Although Chapter 261 was intended to apply only to Washington Water and Light, Chapter 261 also, apparently inadvertently, applies to the Brentwood Water Company which serves approximately 70 customers in Brentwood Village Subdivision, northwest of Woodland, Yolo County.

INFORMATION LEARNED AT PUBLIC HEARINGS

Public Hearings

After notice, six days of public hearing were held in West Sacramento on May 17, 18, and 19 and July 20, 21, and 22 before Examiner Boneysteele. Eighteen witnesses testified, two for Washington Water and Light, two for the staff, five representing the named respondents, and nine representing themselves or other interested parties. Twenty-seven exhibits were received, and one exhibit number was reserved for a resolution which was to state the position of the EYCSD after the district was formally organized on September 2, 1976. The matter was briefed by Washington Water and Light, the staff, and counsel who represented several of the respondent developers and the West Sacramento Port Center, Inc. (Port Center). The investigation was submitted for decision upon receipt of EYCSD's resolution on October 22, 1976.

Analysis of the complex record is difficult because neither of the staff showings were organized so as to address, in an orderly fashion, the topics that the Commission specified in the order of investigation.

Effect of the Tariff Requirement on Existing and Potential Developers

The public witnesses who testified were unanimous in their opposition to the nonrefundable payments. Several landowners complained that the charges precluded either development of their lands or their resale at reasonable prices. They said that the new development in Washington Water and Light's service area is aimed at low and moderate income groups, and the burden of the nonrefundable payment charges was causing sales prices and rents to be set at a level above what these groups could pay.

One small businessman, James H. Wolfe, the operator of a collection agency, testified that he had been required to contribute $2,500 to get water service to his office. Mr. Wolfe's water usage was minimal; his last water bill being only $10.80 for two month's service, and he felt the nonrefundable charge was disproportional to his demands on the water system.

A minister of a local church, who also served as chairman of the East Yolo Recreation Advisory Committee, Boyd Stockdale, D.D., related that it was necessary for Yolo County Services Area No. 5 (since absorbed into the EYCSD) to pay $7,875 for service to "one itsy bitsy bit of ground with some swings on it", a small parcel on which a service club proposed to build a children's playground.

A local restauranteur, Vinces Frugoli, related that the total cost to develop the playground site, a triangular piece of land having a footage of 80 feet and a depth of 60 feet, was $5,200, as compared to the $7,875 nonrefundable payment for water service. Mr. Frugoli also said he was the owner of a lot in Bryte, zoned commercial, for which he paid $1,000. He protested that the minimum nonrefundable payment fee for his lot would be almost triple the purchase price.

The chairman of the East Yolo People for Better Water Committee (EYPBWC), Carl Landerman, testified that his organization, comprised of approximately 150 members, believed that the effect of the present fee has been negative. The heaviest impact is on the buyers of small homes, and the operation of the nonrefundable payment inhibits the advance of growth and government service.

Current Accounting for Funds Collected Under Nonrefundable Payments Agreement

Staff reports show that as of April 30, 1976, $209,805 had been collected by means of the nonrefundable payments agreement. Of this amount, $24,400 was for fire protection. These payments are being recorded in a special Account No. 242D, Other Deferred Credits. The witness for the Finance and Accounts Division of the Commission staff, Mr. Terry R. Mowrey, speculated that the utility may have hoped, in this manner, to avoid having unexpended funds deducted from rate base as contributions in aid of construction. Mr. Mowrey recommended that the payments should be recorded in Account No. 265, Contributions in Aid of Construction.

A schedule of the nonrefundable payments is shown below:

Contract Date	Applicant	Number of Acres	Size of Service	Amount Paid
12-10-74	Montreuil-Robertson	.67	2"	$ 4,200
5- 5-75	Murchison Construction Company	4.46	2"	11,555
7-14-75	Yolo County Park Department	1.84	3"	7,875
7-14-75	Yolo County Library	0.00	2"	4,200
8-15-75	James H. Wolfe	0.00	3/4"	2,500
7-25-75	Samuel Sudler & David S. Steiner	0.00	8" FP[a]	15,000
9- 8-75	William J. Lodweyk & Charles F. Risley	0.41	1"	2,500
10-20-75	Earnest Silverton	0.00	1½"	2,625
10-30-75	John L. Williams & John B. Bowker	0.00	1"	2,500
1-13-76	Capital Coors Company	3.83 0.00	2" 6" FP[a]	9,575 9,400
4- 2-75	State of California	52.00	8"	130,000
2- 6-76	Alvie Floyd	0.00	3"	7,875
Total				$209,805

a/ For private fire protection.

In addition to the above payments, Port Center has, in a temporary settlement of a dispute whether Port Center was eligible to receive service without making a nonrefundable payment, deposited an irrevocable letter of credit, in an amount of $30,760, with Washington Water and Light, pending a decision by the Commission on this case.

According to statements of funds provided and funds applied as submitted by Washington Water and Light, $289,771 in nonrefundable payments had been received as of June 30, 1976.

The assistant vice president and general manager of the Citizens of California water systems, who also functions as assistant vice president and general manager of Washington Water and Light, Ben Stradley, testified that, as of the time of the hearings, none of the nonrefundable payments had been expended for the purposes specified in the agreements.

The accounting for the funds collected under the nonrefundable payments agreements was explained by Charles R. Bromagem, assistant treasurer and secretary of Washington Water and Light and assistant vice president, revenue requirements, of Citizens of California. Mr. Bromagem explained that, in general, checks received by Washington Water and Light are deposited in a checking account, identified as Account No. 39, that Citizens of California maintains with the Bank of America. The receipts are recorded on Washington Water and Light's books as debits to Account No. 223, Payable to Associated Companies, and credits to Account No. 242D, Nonrefundable Deposits. Since Washington Water and Light owed Citizens of California over one million dollars, it was more practical to reduce Washington Water and Light's liability to Citizens of California than to make cash interchanges. In

this way the funds were commingled with funds from other companies of the Citizens group. Mr. Bromagem testified that the general direction of cash flow, since Washington Water and Light had instituted the nonrefundable payments, was in the direction of Washington Water and Light, and, in 1975, that utility had received a net of approximately $625,000 from Citizens of California. Mr. Stradley had earlier testified that Washington Water and Light had constructed major production and transmission facilities, using "funds that were available to the company".

Mr. Bromagem said that Washington Water and Light intends, when the plant for which the funds were intended is ultimately procured, to transfer the entries from Account No. 242D to Account No. 265, Contributions in Aid of Construction, thus offsetting assets acquired with contributions.

There was speculation at the hearings that Revenue Ruling 75-557 of the Internal Revenue Service, which became effective February 1, 1976 might result in all contributions to utilities being classified as taxable income. The Tax Reform Act of 1976 settled this question insofar as water and sewer utilities are concerned. According to Section 2120 of the Act, which added a new subsection to the Internal Revenue Code as Section 118(b), contributions in aid of construction received by regulated water and sewer utilities are not to be considered taxable income if the money collected is expended for the acquisition or construction of the tangible property which was the purpose motivating the contribution and provided that the expenditure occurs before the end of the second taxable year after the year in which the amount was received. The new Section 118(b) applies to contributions made after January 31, 1976, thus only the $7,875 contribution made by Alvie Floyd and similar contracts made after the staff investigation are subject to its provisions.

Appropriate Safeguards for the Funds

Both staff witnesses had recommendations concerning appropriate safeguards for the funds collected under the nonrefundable payments agreement.

Francis S. Ferraro, P. E., a registered professional engineer employed in the Hydraulic Branch of the Utilities Division, stated that the requirements set forth in the October 31, 1975 letter from the Commission to Washington Water and Light, as reproduced above, would provide adequate safeguards, and Mr. Ferraro recommended that they should be implemented.

Mr. Mowrey concurred with the Utilities Division's recommendations.

Although Washington Water and Light presently has the use of the nonrefundable payments until the money is spent for the specified plant items, it did not, in its brief, object to the staff's proposals. It did, however, question the staff conclusion that the interest on funds so deposited would not be taxable until the utility should withdraw the money. Washington Water and Light asked, in its brief, that should the Commission require that the funds be deposited in an interest-bearing account, it should make provision for the resultant tax effect, and not require that all the interest be credited to the contributed funds.

Regarding the staff proposal that no withdrawals from the nonrefundable payments deposit account be made without a letter of authorization from the Commission, Mr. Stradley testified that it was the utility's intention, before proceeding with any major improvements, to seek Commission approval; and in its brief Washington Water and Light asked the Commission, should it feel that a formal enunciation is required in this respect, to indicate clearly the procedure to be followed in obtaining such approval.

Current Estimates of the Potential for Development of the Area

The staff studies show that there are approximately 1,600 acres in Washington Water and Light's service area that remain to be developed. Mr. Ferraro estimated that, of this amount, 1,300 acres were zoned light industrial or industrial and 300 were zoned residential. Based on the $2,500 per acre charge, at least $4,000,000 in nonrefundable payments could be collected. Considering that amounts already collected, including fire protection payments, have ranged about $3,000 per acre, Mr. Ferraro projected the amount the undeveloped acreage could generate as $4,800,000.

Continental Development Corporation (Continental) is developing a 632-acre industrial subdivision which it is calling Continental Port Industrial Park (CPIP). The director of public works or the county of Yolo, Lloyd H. Roberts, testified that he had engaged in negotiations with Continential over CPIP, and that although the county originally attempted to dissuade the move, Continental, claiming that it wanted better quality water than Washington Water and Light could provide, had organized the Continental Port Industrial Park Mutual Water Company, on September 15, 1975 and had filed articles of incorporation with the Secretary of State.8/

Mr. Roberts said that the mutual had purchased rights to divert 2,000,000 gallons of water per day from the Sacramento River at the Bryte Bend Bridge and Continental was offering to post a $2,400,000 bond to guarantee the availability of water.

8/ Corporate existence begins upon the filing of articles of incorporation, Corporations Code Section 9304.5.

The organization of the mutual to serve 632 of the 1,300-acre industrial zone that Washington Water and Light had anticipated serving will reduce the utility's undeveloped service area by 40 percent, and the assumed minimum of $4,000,000 to be collected to approximately $2,400,000.

Continuing Need for Treatment Plant, Including Estimates of the Costs Associated Therewith

The only comprehensive cost estimates for needed facilities are those contained in the Brown and Caldwell report as summarized earlier in this opinion. Of the $10,650,000 estimated cost of Plan A, $3,700,000 represents ground water treatment plants to serve the area covered by the nonrefundable payments agreement tariff. The remainder is the estimated cost of new wells, storage plant, and expanded and reinforced distribution mains.

The staff engineering witness, Mr. Ferraro, testified that he had read the report of Brown and Caldwell, Washington Water and Light's consulting engineers, thoroughly, and he had no objection to their recommendation that Plan A, which proposed expansion of the well system and construction of ground water treatment plants, be implemented.

The witness from the Finance and Accounts Division Mr. Mowrey, had reservations about Plan A, however. Mr. Mowrey noted that the funds appropriated by the Board of Supervisors for an analysis of the Brown and Caldwell report had been used to retain the engineering firm of Clendenen and Associates and that Clendenen had recommended the use of Sacramento River water, as studied by Brown and Caldwell in their Plan C. Mr. Mowrey was concerned that, because of the two conflicting engineering recommendations, the withdrawal of the Continental acreage, and the conditions which Washington Water and Light had declared must be met before it would invest its own funds in treatment facilities,

a sizable amount of money might be collected from developers without adequate assurance that such funds actually would be expended for construction of water treatment plants.

In her brief, staff counsel argued that, assuming that it is the choice of the community services district to propose a plan for a surface water system, there is no way of knowing when or even if such a change would be effected by the district. No decision has been made yet to try to buy out Washington Water and Light and run the water system, and no bond issue has been approved by the voters to provide funds to buy out the company if such a decision is made. The staff counsel states that, even if the district does achieve voter approval of a bond issue, condemnation proceedings typically take several years. It is staff's position that the need exists presently and that postponement to see what, if anything, the community services district will do over the next few years would be tantamount to suspending the Commission's duty to see that a utility's customers receive the best quality water that can be provided at reasonable rates. It appears likely to the staff counsel that the Commission will be regulating Washington Water and Light for the next few years, if not indefinitely and the staff believes that any decision must be made on this basis rather than on speculation as to uncertain future possibilities. The staff counsel argues that, if the Commission were to approve a return to ground zero and to delay its action and to delay the company's plan to construct a treatment plant until it becomes certain whether or not the district will buy out Washington Water and Light, the customers in the area would be required to wait that much longer for good water and would inevitably be paying more for it as inflation takes its toll on construction costs and operating costs.

The staff counsel does not believe that construction of treatment plants is precluded by the Fazio Bill, Chapter 261 of the 1976 statutes. The Fazio Bill provides that no construction work, except for four specified reasons, shall be done by Washington Water and Light until July 1, 1978. The four exceptions are as follows: to extend service to customers, to maintain the existing water system, to meet an emergency, or to protect the safety and health of the public or any portion thereof.

The staff counsel believes that it is the last exception which would permit Washington Water and Light to construct a treatment plant to reduce high concentrations of iron and manganese in the water. According to the staff counsel, both the California Department of Health and U.S. Public Health Service have limitations on concentrations of manganese (see 42 C.F.R. Sec. 72, 205(b)(1) and Title 17 Cal. Admin. Code 7020(a)). The federal limitations are only suggested, and the state limitations are based on a combination of recommended levels and customer tolerance (Title 17 Cal. Admin. Code 7020(b)).

The staff counsel advises that, nowhere in the Fazio Bill does it appear that it is necessary to wait until danger to public health is imminent and severe before authorizing Washington Water and Light to perform necessary construction to remedy the danger. Indeed, to the staff counsel, it would be foolish to wait that long, since construction of any kind requires time to plan, to purchase land and materials, and to complete. Since both state and federal health agencies set limitations, even recommended ones, on concentrations of certain elements in water, the staff counsel believes that it is a matter of health and safety to remove them if possible.

Arthur Edmonds, the supervisor for the First Supervisorial District of Yolo County, which district includes most of the utility's service area, testified with the authorization of the Board of Supervisors. He related how the board, at the request of EYPBWC, had, because public dissatisfaction with the existing water system was so widespread, commissioned another firm of civil engineers, Clendenen Associates, to study the situation.

The supervisor said that Clendenen concluded that the quality of water desired by the residents can be achieved only through use of a surface supply, namely, the Sacramento River. According to Mr. Edmonds, the Clendenen report assumed public, rather than private, financing for the system and determined that a publicly financed surface system could be constructed for a lower cost than the ground water system preferred by Brown and Caldwell.

Mr. Edmonds said that, following the issuance of the Clendenen report, the Board of Supervisors, after receiving substantial public support for the formation of a governmental entity with the authority to implement a surface water system, initiated EYCSD with the express intention of establishing a district that could provide water service. Supervisor Edmonds further said that Yolo County's position was that building the ground water treatment plants proposed by Brown and Caldwell would be pointless because Washington Water and Light's facilities may be acquired by a public entity with the intention of switching to a surface system.

At the second series of hearings in July, Supervisor Edmonds explained the circumstances behind the enactment of the Fazio Bill. He said that the community became concerned that Citizens in Washington Water and Light was irrevocably committing the area to a ground water system and requested Assemblyman Fazio to introduce the legislation that was finally enacted as Chapter 261. The Supervisor said that during hearings on the Bill, the major portion of the testimony related to construction of treatment plants and the legislature conceived the divergency or incompatibility between the two methods of treatment.

Earlier, at the May hearings, the Supervisor had testified that the Brown and Caldwell report had not been accepted by anyone, the Board of Supervisors, the local Chamber of Commerce, or the citizens of the community. He said that the best reason that he had for not accepting it was the new plant in the Fredricks-Southport area, the Touchstone plant.

Carl Landerman, the chairman of EYPBWC, also testified that he knew of no one who accepted the Brown and Caldwell report. He reported that the Touchstone ground water treatment plant was not functioning as expected.

Gordon Bridges, a resident of the Fredricks-Southport area who lived immediately adjacent to the Touchstone plant, testified that the quality water processed by the Touchstone plant was "very very poor" and that most of the neighbors with whom he was acquainted tended to buy bottled water. He complained that the water contained a white substance and had a fairly poor taste and a highly objectionable odor.

Mr. Stradley related how, after receiving the Brown and Caldwell report, he, his staff, and representatives of Brown and Caldwell had appeared before various civic groups, such as the Chamber of Commerce, Kiwanis, Lions, senior citizens, and, on at least two occasions, the Board of Supervisors. They explained the options that Brown and Caldwell had proposed and left forms of resolutions by which the local organizations could apprise the utility of their wishes. Mr. Stradley said that there were no responses during the period of time allowed so the utility then retained a public relations firm to elicit public reaction. The only answers generated were general comments to the effect that the plans proposed were too expensive. Mr. Stradley testified that Washington Water and Light has made no final commitment to one type of treatment system and appreciates that recent indications are that the community prefers a surface water system. Since the EYCSD had not been organized, the company had not considered what the preferences of that agency might be, but Mr. Stradley thought that it did not make sense to build facilities that would not be used or useful.

Washington Water and Light, in its brief, agreed with the staff interpretation of the Fazio Bill that the exception permitting extension of service to customers would encompass the construction of production, storage, treatment plants, and transmission facilities to serve them.

The utility disputed the recommendation of Supervisor Edmonds that the nonrefundable payments agreement tariff provisions should be suspended until the EYCSD decides whether it wishes to acquire the Washington Water and Light system. It argues that a bond election and condemnation proceedings could take a long time, and, in the meantime, improvements which are claimed to be needed now could proceed under the nonrefundable payments agreement program.

Except for the utility, the staff engineer, and staff counsel, there was no support for the implementation of Brown and Caldwell, Plan A.

The final item concerning the continuing need for treatment plant was the resolution stating the position of EYCSD, which resolution, filed October 22, 1976, reads as follows:

"RESOLUTION NO. 76-13

Resolution in Regards to California Public Utilities Commission (PUC) Case No. 10013 OII; Washington Water and Light Nonrefundable Acreage Payments and a Graduated Private Fire Protection Service Payment:

WHEREAS, the Public Utilities Commission on December 2, 1975 signed an Order Instituting Investigation, Case 10013, to determine whether the tariff provisions of Washington Water and Light Company relating to refundable acreage payments for water service should be retained, revoked, or modified and;

WHEREAS, the Board of Directors of the East Yolo Community Services District was given the opportunity of submitting its petition and recommendations to be entered as Exhibit No. 24 in this case; and

WHEREAS, the Board of Directors has had the time to review and listen to the following during the course of the PUC hearing and since;

a. Report on Accounting and Financial Aspects of Commission Investigation of Washington Water and Light Company. Nonrefundable Acreage Payments for Water Service, Washington Water and Light Company Case No. 10013 (PUC) date 10 May 1976, and

b. Report on Washington Water and Light Company, Case No. 10013 date May 6, 1976 by Mr. Francis S. Ferraro, Associate Utilities Engineer, (PUC) and

c. Testimony by Supervisor Arthur H. Edmonds, Supervisor, First Supervisorial District, Yolo County, California; and

d. Oral Arguments presented during the hearing, both pro and con; and

WHEREAS, the East Yolo Community Services District was created by the people of this area for the expressed purpose of reviewing the water situation and taking what action is deemed advisable, which could lead to a bond election, to assure public ownership of the existing privately owned water company

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Yolo Community Services District of Yolo County, State of California:

1. That the Public Utilities Commission should immediately revoke the existing tariff requiring applicants for water service to make nonrefundable contributions to finance construction of water facilities, to include capacity payments based upon rated delivery per minute of various sized meters and private fire protection payments based upon size of connection and all such fees collected to date be refunded to the original contributors; and

2. Should the PUC not concur with the above recommendation to revoke the existing tariff, it is recommended that all construction proposed utilizing nonrefundable contributions be reviewed by that body and approval granted only when such construction would be consistent with the Districts adopted plan of future water source; and

3. If the PUC should decide that a nonrefundable contribution from applicants is required for water service that it be based solely on estimated water usage, that it be in a dollar amount sufficient only to pay a pro rata share of the cost of water treatment facilities to serve that development and that such contributions be used only to finance construction of Water Treatment facilities. Further, that all such funds collected in excess of that based upon estimated water usage be refunded to the originators of those nonrefundable contributions; and

4. That should the PUC entertain any suggestion for the change to the existing tariff, other than revoking it, or should it consider the adoption of a new tariff, that public hearing be held in this area.

PASSED AND ADOPTED by the Board of Directors of the East Yolo Community Services District this 20th day of October, 1976 by the following vote on roll call.

AYES: GONOT, STRATFULL, WEBER

NOES: KRISTOFF

ABSENT: LANDERMAN

/s/ PATRICIA G. STRATFULL
President, Board of Directors
East Yolo Community Services District

ATTEST:

/s/ ROBERT O. BRUGGE
Secretary, Board of Directors
East Yolo Community Services District"

Current Estimate of the Effect on Individual Rates if the Treatment Plant Were to be Built with Utility Funds

The staff engineer, Mr. Ferraro, testified that the Plan A ground water treatment plant, estimated to cost $3,700,000, if added to rate base, would require approximately $900,000 per year in revenues to pay ad valorem and income taxes, allow for depreciation expense, and provide a rate of return of approximately 8½ to 9 percent. This increase in revenue requirement would increase the rate for the average residential customer from $5.55 to over $18 per month.

The staff accountant, Mr. Mowrey, made no detailed studies of the impact of water treatment plant on customer rates, but stated that a $2,000,000 investment spread over 6,000 customers would add at least $6.00 per month to an average customer's bill, without consideration of the treatment plant operating costs.

Neither of the staff reports considered what level of rates would be required to support the entire $10,650,000 cost of Plan A. Mr. Stradley did, however, calculate that for every $1,000,000 of nonrefundable payments used to construct water utility plant, there would be annual customer savings of $40.93. On this basis, for the assumed $3,700,000 cost of treatment facilities, there would be monthly savings of $12.62 per customer. For the entire $10,650,000 cost of Plan A there would be monthly savings of $36.32.

In its Application No. 56543 filed June 9, 1976 Washington Water and Light proposed that, should the Commission direct the utility to undertake construction of treatment plants and other facilities requiring an estimated capital expenditure of $10,144,100 by 1980, the Commission should authorize yearly rate increases to compensate the utility for the construction of such facilities. Installation of the facilities, together with the other factors that impelled the company to seek a rate increase, would require an increase in the single family general flat rate for a 3/4-inch service from the present $5.55 a month to $33.92 by 1980.

Consideration of Alternatives to Presently Existing Agreements

Mr. Stradley explained that the basis of the original $2,500 per acre minimum nonrefundable payment was determined by dividing the $5,000,000 estimated Stage I of Plan A costs for the area north of the Barge Canal by 2,000 acres, that acreage being the area, both within and without the service area, that conceivably could be developed.

Staff engineer Ferraro made an independent determination of the number of acres, and as related earlier, determined that the undeveloped area consisted of 1,600 acres, 1,300 of which were zoned industrial or light industrial and 300 were zoned residential. He accepted the equivalent unit concept of the nonrefundable payments agreement but determined that, at two equivalent units per acre, the present equivalent unit charge should be increased from $525 to $1,150 in order to generate the $3,700,000 required for the Plan A treatment plants. The unit charge would be adjusted annually to track the Handy-Whitman Index, as is the present charge. The staff engineer's proposal would abandon the minimum acreage charge. According to Mr. Ferraro, there is no basis for this minimum; water treatment plants are not designed according to acreage, but rather to meet anticipated demands. Mr. Ferraro recommended that the charge be based on the actual size of the water service.

Regarding the nonrefundable payment required for fire protection service, Mr. Ferraro stated that, based on his current review, he could not see the necessity for this charge. By Decision No. 84334 dated April 15, 1975 in Case No. 5663, the Commission amended General Order No. 103 to provide for minimum fire flows. Fire flow is provided by storage capacity and does not require treatment plants. Mr. Ferraro saw no unusual circumstances that warranted Washington Water and Light's receiving nonrefundable payments for private fire protection.

The staff accountant, Mr. Mowrey, also supported the concept of a nonrefundable payment, but he took a different approach in determining an appropriate amount. He determined that if the $3,700,000 cost of the Plan A water treatment plants

were to be spread across all water users, the allocation to each user would be about $500 per equivalent unit. If the $500 per unit were charged to new applicants only, they would contribute about $1,600,000 towards the cost of the treatment plant. Allowing for increases in cost since the Brown and Caldwell study, he recommended that the contribution should be obtained from new applicants only and should be set at $525 per equivalent unit. The nonrefundable payment would be changed annually to reflect changes in the Handy-Whitman Index.

Both Mr. Ferraro and Mr. Mowrey recommended that Washington Water and Light should be required to refund all amounts of contributions collected under the present nonrefundable payments agreement tariff that would be in excess of the amounts that would have been collected in accordance with the staff recommendations.

In addition, Mr. Mowrey recommended that Washington Water and Light should "[f]ile a document with this Commission, signed by the president and each member of the board of directors, indicating acceptance of the provision that if during the next 30 years Respondent's properties, or any part thereof, are acquired by a public agency, that any payments for those properties constructed with nonrefundable contributions shall be held in trust for the benefit of the landowners on which the contribution was based or shall be disposed of in such other manner as the Commission or a court of competent jurisdiction shall direct."

Supervisor Edmonds testified at the May hearings that since the present nonrefundable payments agreement is based on the basic assumption that the ground water source recommended by the Brown and Caldwell report would continue to be the source of water, and that since the report had no local acceptance, he saw nothing that would be achieved by allowing Washington Water and Light to continue the collecting of nonrefundable payments to build ground water treatment plants.

At the July hearings the supervisor testified, on behalf of Yolo County, that, since the Fazio Bill prohibits major construction until July 1, 1978, and since the EYCSD would have a bond election to acquire the Washington Water and Light system with the intention of converting to a surface water supply, that the tariff should be revoked.

Regarding the money already collected, the supervisor said that the county recommended that the Commission impose a trust on all of the money previously collected and reserve a decision on how the funds should be disbursed until the EYCSD had formulated a position on their disposition.

Counsel for the developers and Port Center contend in their brief that:

1. The tariff provisions providing for the nonrefundable acreage payments are unreasonable and discriminatory and should be revoked.

2. The tariff is unreasonable in allowing utilization of the nonrefundable payments for construction of mains and other facilities in addition to treatment facilities. If the Commission retains the tariff in any form, it should provide that the nonrefundable payments should be utilized only for new production facilities, including treatment plants. In no event should the minimum acreage charge of $2,500 be retained and the maximum payment for a connection should be $525.

3. The payments heretofore made should be refunded with interest. Washington Water and Light has no present schedule for the erection of treatment facilities and it appears doubtful that the treatment facilities will be required by Washington Water and Light or constructed by them.

4. The nonrefundable payments have discouraged development and have added to the cost of properties within the service area.

5. The fire protection charge required by the nonrefundable payments agreement has no factual support in the record and is unreasonable. This charge should be rescinded and canceled.

In support of their contentions, counsel point out that the tariff was adopted without a hearing and with no showing of reasonableness. They argue that the tariff is unreasonable in its terms and discriminatory in the manner in which it will be carried out. The requirement for immediate, substantial contributions to the utility is plainly set forth, but there is no requirement that those monies be utilized at any designated time for the construction of facilities. The utility has the option to retain and use the funds until the year 1990 and, dependent on certain circumstances, indefinitely beyond that time. According to counsel, the contracts were executed and the money paid on the implicit understanding that there would be timely scheduling and construction of needed facilities. Admittedly, the utility has neither scheduled nor commenced construction nor, because of the enactment of the Fazio Bill and the formation of the EYCSD, has it definite plans to do so. It retains the money and uses it without payment of interest to the payors with no requirement that this retention be terminated either by timely construction or return of the money. Counsel point out that an exhibit presented by Mr. Stradley shows that, with no consideration flowing to the payors, Washington Water and Light is currently earning about a 12 percent return on the nonrefundable payments.

Counsel further argue that the tariff is applied in a discriminatory manner. The utility has not assessed nonrefundable charges against land of individual residents who erect a home thereon, but land of a homeowner who purchases from a developer or landowner is burdened with those payments. Counsel claim that this is an obvious discrimination which should be removed by the Commission. It is also clear to them that discrimination exists in the fact that present owners of commercial, industrial, and residential properties are not required to make the nonrefundable payments whereas landowners who hereafter wish to make water connections to commercial or industrial properties must make the payments.

Regarding the recommendation of Supervisor Edmonds that the Commission impose a trust upon the funds collected, counsel see an oblique suggestion that the funds be retained and transferred to EYCSD for its purposes. Counsel for the developers contend that this action would be beyond the power of the Commission. Moreover, should the money not be required for the purpose intended, consideration would fail as a matter of contract law, and the payors would be entitled to a return of their payments with interest.

Washington Water and Light, in its brief, notes that each of the staff reports contains assertions that the intent of the nonrefundable payments agreement was to finance water treatment facilities only. The utility reminds us, however, that in fact the tariff, as originally propounded by the staff, was intended to finance the improvement program in a manner which would minimize the impact upon rates, and was not limited to application to treatment plants. In discussing the Brown and Caldwell plan with the staff, it was obvious that there were substantial facilities to construct other than treatment plants. Consistent with the the intent of the nonrefundable payments agreement to keep rates

as low as possible, the staff's Chief Hydraulic Engineer suggested that the nonrefundable payments agreement form include not only treatment facilities but source of supply, storage, and major transmission facilities. Moreover, the utility states that there is an overlap of functions of treatment plants and these other facilities, and the relationship between them is such that they are all logically included in the nonrefundable payments agreement.

Washington Water and Light states that it is questionable whether the Commission has the authority to order refunds, or, as was suggested by questions of the utility's counsel to Mr. Ferraro, to order the collection of additional amounts, with respect to charges collected pursuant to effective tariffs. In the context of this proceeding, and for purposes of this proceeding only, however, Washington Water and Light would not contest such a direction by the Commission should the Commission feel it to be appropriate.

Washington Water and Light does object, in its brief, to the staff accountant's proposal that the nonrefundable payments be held in trust. This arrangement would not be acceptable to the utility for a number of reasons. Washington Water and Light says that, for example, in no event does the nonrefundable payments agreement contemplate that only complete, specific, units would be built with contributed funds. The water company would also have invested in those facilities. During the period - up to 30 years as proposed by the staff - Washington Water and Light would have been reinvesting capital in the facilities. It would also have been assuming the risks attendant to their operation. In the event of condemnation, there is no reason whatsoever to consider the ownership of property constructed with funds contributed by nonrefundable payments any differently from the ownership of property constructed with any other funds contributed or otherwise provided for the construction of the property being condemned.

Other Matters Pertinent to this Investigation

A side issue in this case were reports that, in at least two instances, Washington Water and Light had required nonrefundable payments agreements, as a condition of service, before the December 17, 1974 effective date of the tariff, and in one case, involving Port Center, at least four months before the filing date.

To these Washington Water and Light counters that, concerning the first instance, the December 10, 1974 contract with Montreuil-Robertson, the utility had advised Montreuil-Robertson that the tariff was pending and provided them with a copy of the advice letter filing. After the advice letter was filed, Mr. Stradley discussed this matter with the staff. He explained that Montreuil-Robertson was anxious to proceed with the development, and advised the staff that the utility proposed to enter into a nonrefundable payments agreement with Montreuil-Robertson. The staff indicated that it was reasonable to so do. Montreuil-Robertson did not protest the filing.

The other instance involved Port Center. As mentioned earlier in this opinion, Port Center has deposited an irrevocable letter of credit of $30,760, pending the outcome of this case.

Port Center presented, as Exhibit No. 9, the following letter:

C.10013 · ddb

CITIZENS UTILITIES
COMPANY
OF CALIFORNIA
P.O. BOX 15468 - SACRAMENTO, CALIFORNIA 95813 - (916) 481-7350

September 27, 1974

West Sacramento Port Center, Inc.
215 Fremont Street
San Francisco, California 94119

Attention: Mr. Ralph Olpin

Gentlemen:

This is in reference to the main extension which you have requested for the Westerly Extension of Industrial Blvd., West Sacramento. We have recently been advised that you desire to increase the length of the contemplated extension by about 555 feet. We will, therefore, withhold the preparation of a main extension contract until such time as we have obtained construction prices for this additional footage, and obtained your advance to cover such costs.

Enclosed herewith is a form of agreement which we are in the process of obtaining California Public Utilities Commission authorization to execute with new customers.

Before construction is commenced on the proposed Industrial Blvd. Extension, it will be necessary that both the standard main extension agreement and the enclosed agreement be executed.

If the Commission ultimately approves an agreement in a form other than that enclosed, an appropriate adjustment of payment will be made.

Very truly yours,

W. B. Stradley
General Manager, Water

WBS/js
Enc.

Washington Water and Light, during the cross-examination of Port Center's witness, Robert S. Brown, presented a series of letters starting with Port Center's initial July 18, 1974 request for service. The utility explained in its brief that it follows the practice of not commencing construction until it has an executed main extension agreement. Because of many changes in plans and a dispute between Port Center and purchasers of its land concerning the required payments, the main extension agreement was not signed until after the tariff went into effect. Mr. Stradley testified that representatives of Port Center attended a meeting at the Hydraulic Branch of the Commission staff, at which meeting the Chief Hydraulic Engineer indicated to them that the utility was proceeding with the drafting of an agreement to require nonrefundable payments. Washington Water and Light points out in its brief that, although they were provided with a copy of the advice letter filing, Port Center did not protest the filing of the nonrefundable payments agreement nor did they complain to the Commission until the hearing in this proceeding.

Another matter explored at the hearings was an explanation of how the nonrefundable payments agreement became to be filed as a part of Washington Water and Light's filed tariffs.

The only participant in the actual formulation and filing of the tariff to testify was Mr. Stradley. He testified that he delivered a record of the public meetings that he had attended to the Chief Hydraulic Engineer and also discussed the minor points of the problem with an engineer of the Hydraulic Branch Compliance and Tariff Unit and with the Assistant Chief Hydraulic Engineer in charge of the Service, Compliance, and Tariff Section. The Chief

Hydraulic Engineer, with whom Mr. Stradley dealt primarily, was concerned that the financing of the Brown and Caldwell project not place the burden of high rates upon the customers. After reviewing the Brown and Caldwell report, it became obvious to the Chief Hydraulic Engineer that there was a substantial amount of facilities, beyond just treatment facilities, to construct. The Chief Hydraulic Engineer suggested that Washington Water and Light expand somewhat on the Fredrick-Southport arrangement, and include on nonrefundable advances the cost of not only treatment, but also source of supply, storage, and major transmission facilities. Mr. Stradley and his assistants proceeded to draft the agreement form and an advice letter and reviewed the proposed filing and submitted it to the Commission staff for review.

The staff proposed several changes and most of these were duly made, but one: a suggestion by the Chief Hydraulic Engineer that individuals constructing single-family residences be excluded was not made. Mr. Stradley was at a loss to explain why single-family dwellings were not excluded, but he reported that, upon advice of the Chief Hydraulic Engineer, the tariff has not been applied to individual single-family dwellings.9/

Mr. Stradley could not explain why there had been no showing in the advice letter, as required by G.O. 96-A, but agreed with the examiner that an explanation could be that both the utility and the staff were so familiar with the problem and the proposed solution that they both failed to note that it did not contain a showing.

9/ Section 532 of the Public Utilities Code requires public utilities to charge their filed tariffs, except in those instances where the Commission, by rule or order, establishes exceptions.

DISCUSSION OF EVIDENCE

Discussion of Effect of the Tariff Requirement on Existing and Potential Developers

Testimony of developers, individual investors, and citizens of the area indicates that the tariff is having a stifling effect on development of the area, including the development of parks and public buildings. The stifling effect would be even more pronounced were the utility, with the advice and concurrence of the Commission staff, not applying the filed tariff to the construction of single-family dwellings.

Discussion of Current Accounting for Funds Collected Under Nonrefundable Payments Agreements

It is obvious from the flow of funds as explained by the utility's management, that the money received under the nonrefundable payments agreements has, after passing through Citizens of California's bank accounts, been invested in Washington Water and Light's utility plant. Since the payments are not irrevocable contributions, there is the contingency, albeit remote, that funds not expended by 1990 would be refunded. Under the circumstances, the use of Account No. 242D, Nonrefundable Deposits, rather than the staff recommended Account No. 265, Contributions in Aid of Construction, does not appear to be inappropriate. The accounting instructions for Account No. 265 are complex, and do not contemplate deposits of cash which may possibly be refunded. The mere recording of the nonrefundable payments in Account No. 242D does not preclude their being deducted, in a rate decision, from rate base as funds not supplied by an investor.

Discussion of Appropriate Safeguards for the Funds

If there is to continue to be a nonrefundable payments tariff, we see no need for the separate bank account as recommended by the staff. Water utilities in growing areas are in constant need

of funds and it seems incongruous to require the utility to keep money tied up in a bank account at bank rates of interest, and at the same time seek funds in the capital markets. Conceivably the bank could use money in the special account to purchase debt securities of Washington Water and Light itself.

In the past the Commission required such restricted bank accounts only for utilities expanding into speculative service areas, such as recreational second home subdivisions. Whatever difficulties may be expected in the regulation of the various utilities of the Citizens group, the specter of insolvency is not one of them. A restricted account would tie up needed funds for a meager return, which return would further be reduced by federal and state income taxes. We see no need for such a restricted fund in this instance.

Discussion of Current Estimates of the Potential for Development of the Area

As noted earlier in this opinion, the organization of the Continental Port Industrial Park Mutual Water Company will reduce the undeveloped portion of Washington Water and Light's service area by 40 percent. It is significant that an industrial developer, faced with the choice of merely signing agreements with a going concern for water service, or engaging in the difficult and troublesome task of organizing, constructing, and managing, initially at least, a competing, nonregulated mutual water system, chose to form a mutual. Representatives of the mutual did not appear at the hearings and explain their reasons for going it alone, but the advent of the mutual makes it apparent that the cost of the public utility service, or the quality of water supplied by Washington Water and Light, or possibly both, is such that nonutility water service was the preferred choice.

Discussion of the Continuing Need for a Treatment Plant

The withdrawal of the Continental acreage into the service area of a mutual, the organization of EYCSD, the enactment of the Fazio Bill, the unanimous opposition of the public witnesses who testified at the hearing, and finally the resolution of the board of directors of EYCSD are persuasive indications that the community opposes overwhelmingly the construction of the ground water treatment plant facilities by Washington Water and Light. The need for better quality water is undisputed, but Brown and Caldwell's Plan A is plainly unacceptable to the community.

The utility and the staff urge that the exceptions contained in the Fazio Bill are sufficiently broad to permit the utility to press on with the construction of ground water treatment plants, and staff counsel cites a need to meet state and federal recommended limits for iron and manganese as justification for such construction. This interpretation we cannot accept. The proponents of the Fazio Bill knew that the ground water quality of the West Sacramento area leaves much to be desired. It is clear that their motive in seeking enactment of the Fazio Bill was to prohibit the construction of treatment plants designed to process ground water and to afford the community an opportunity to arrange for a surface water source. For the Commission to disregard the legislative history of the bill, and to provide that funds be extracted by means of nonrefundable payments for the purpose of continuing the construction of ground water facilities would be an improper use of an exception that obviously was intended to cover specific emergency situations where public health and safety might actually be jeopardized. It obviously was not intended to be a loophole to be used to frustrate the entire objective of the legislation. It is the Commission's interpretation of Chapter 261, the Fazio Bill, that Washington Water and Light is prohibited from the construction of treatment facilities until after July 1, 1978.

Discussion of Current Estimates of the Effect on Individual Rates if Treatment Plant Were to be Built with Utility Funds

The precise effects that construction of facilities necessary to produce, treat, and deliver an acceptable quality of water would have on rates is a subject that will be considered in Application No. 56543. From the rather cursory estimates made for the purposes of this proceeding it is clear that, should the utility finance the required facilities, a monthly flat rate in excess of $30 would be required. Such a rate level would obviously be unacceptable to the community.

Discussion of Consideration of Alternatives to the Presently Existing Agreements

It is apparent that the Commission has before it only three alternatives:

a. Continue with the existing tariff.

b. Modify the tariff.

c. Cancel the tariff and order refunds of the amounts collected under the tariff.

As Washington Water and Light points out in its brief, it is questionable whether the Commission has the authority to direct refunds of charges collected pursuant to effective tariffs. As the utility has agreed in the context of this proceeding, and for the purposes of this proceeding only, not to contest such direction, the ordering of refunds is available as an alternative.

Since we have determined that the Fazio Bill prohibits the construction of new treatment plants, continuation of the collection of nonrefundable payments would result in the monies so collected not being spent for the purpose intended until after July 1, 1978. As discussed earlier, according to the Tax Reform Act of 1976, contributions collected after January 31, 1976, and not spent within the end of the second taxable year after the year received become taxable as income. Should the Fazio Bill deadline be

extended, or should, for some other reason construction not commence, funds contributed after January 31, 1976 could be subjected to federal income taxes.

On the other hand, it is obvious that if contributions are not required conventional utility financing of either a ground or surface water supply cannot be supported entirely through rates.

It has been the consistent policy of this Commission that the capital for construction of utility plant should be supplied by investors, an exception being where the investment in plant would not be remunerative.[10/] By the operation of the nonrefundable payments agreement, the ultimate developer of properties in the service area is required to supply capital funds for the construction of basic production, treatment, storage, and transmission facilities. Such contributions have the further troublesome aspect that, while they are for the benefit of the entire community, they are the burden of only the developers of newly developed properties. Without such contributions however, the utility would be unable to meet its future demands for service except at very high rates that all customers, new or old, would be required to pay. Such high rates would also have a controversial aspect, old customers would be required to pay for facilities needed for service to new customers.

The Commission thus faces a situation where contemporary local conditions are such that conventional regulatory principles cannot be successfully applied. In similar situations, where it appeared

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10/ Decision No. 107 dated June 18, 1912 in Case No. 269, Pacific Gas and Electric Company v Great Western Power Company, and in Application No. 5 of Great Western Power Company (1 CRC 203, 215).

infeasible for public utilities to treat water economically, they have arranged for public agencies to provide that function.[11/] This alternative may be applicable to the West Sacramento area. Should EYCSD not wish to proceed with the acquisition of the Washington Water and Light properties, it might wish to explore the possibility of constructing production and treatment plant, and if necessary, transmission facilities, and wholesale water to Washington Water and Light.

Discussion of Other Matters
Pertinent to the Investigation

Disputes such as that with Port Center over whether the Port Center was properly charged under the nonrefundable payments agreement form are to be expected when a scheme requiring customers to contribute substantial sums to pay for basic elements of utility plant is first imposed. Developments such as those that the Port Center is undertaking are complex matters involving negotiations with many parties, and also involving many changes before plans are completed. It is inevitable that departures from conventional regulatory procedures in such situations will produce disputes, especially where a complex special arrangement is established for a single utility.

Not long after this Commission was reestablished in its present form, the Commission, on September 23, 1914, instituted Case No. 683 for the purpose of bringing uniformity to utility rules. That investigation was prompted by the large number of complaints, both formal and informal, that were constantly being

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11/ Examples of such instances are the Oroville, Stockton, Livermore, Bakersfield, and Hermosa-Redondo Districts of California Water Service Company, and also the San Jose Water Works Company, Campbell Water Company, Santa Clarita Water Company, and many utilities in the Los Angeles area supplied with filtered water by member districts of the Metropolitan Water District.

made against the widely varying rules, regulations, and practices then in effect. The Commission by Decision No. 2689 dated August 12, 1915 (7 CRC 830) and Decision No. 2879 dated November 5, 1915 (8 CRC 372) proceeded to establish uniform rules in the hope that they would not only be advantageous to the utilities and their customers, but would also materially lighten the labors of this Commission in the disposition of such complaints.[12/] The Commission, for the many water utilities under its jurisdiction, has, since Case No. 683, endeavored to maintain a uniform set of rules, and to keep deviations therefrom to a minimum. The difficulties experienced by Washington Water and Light and by the Commission staff in applying the novel nonrefundable payments agreement tariff serve to remind us, forcefully, of the wisdom of this long-standing policy.

In reviewing the history of how the nonrefundable tariff came to be filed, we must keep in mind that Washington Water and Light and the staff were reacting to our comments in Decision No. 83610 concerning the duty of the utility to solve its water quality and rate problems and render adequate service at reasonable rates. Perhaps, under the circumstances, this was an impossible assignment, and, in their zeal to formulate a procedure that would meet these objectives, the utility and staff overlooked both the letter and the spirit of the Commission's long-standing policies, both traditional policies and those formally required by G.O. 96-A.

This proceeding has been valuable as a review of staff conformance to prescribed procedures, and as an illustration of the misinformation that flows and misunderstandings that arise when the

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12/ Thirteen water utilities participated in the investigation, of which Washington Water and Light is the only survivor.

prescribed procedures are not followed. Every member of the Commission's professional staff is supplied with copies of the pertinent portions of the Public Utilities Code, and General Orders of the Commission. A working knowledge by the staff of these resource materials, and their application to the situation at hand could have obviated the misunderstanding of the nature of the tariff by the Commission and the ensuing public reaction.

Indicated Action

As stated in the order instituting investigation, the purpose of this investigation is to reexamine the nature and effects of the nonrefundable payments to determine whether it is necessary or desirable to continue the tariff relating to them.

To make this determination we have considered the evidence compiled for each of the topics specified in the order of investigation.

After careful consideration of all the aspects of this case, as summarized by the findings set out below, the Commission believes that the tariff should be canceled and the money collected pursuant to the tariff refunded. The utility and the community would then be free to develop a solution that would have local acceptance.

Because the charges were collected pursuant to a filed tariff, we will not require the payment of interest.

Findings

1. The filing and processing of Original Cal. P.U.C. Sheet No. 203-W of Washington Water and Light was not made in accordance with this Commission's G.O. 96-A.

2. The Commission was not fully informed of the provisions of the nonrefundable payments agreement form filed by Washington Water and Light's Original Cal. P.U.C. Sheet No. 203-W.

3. The nonrefundable payments agreement form is not being required from applicants for service to individual single-family

dwellings despite the absence of any provisions in the tariff exempting such dwellings.

4. The nonrefundable payments agreement, as it is currently being applied, discriminates against developers of multi-family residential and commercial units, and of tracts of single-family dwellings, and in favor of persons constructing individual-family dwellings. It also discriminates against applicants for service to new developments, as opposed to applicants for service to premises previously served, thus distorting land values.

5. The imposition of the nonrefundable payments agreement tariff is hindering the development of Washington Water and Light's service area and encouraging the formation of competing water purveyors.

6. The funds collected according to the nonrefundable payments agreement, having been used to repay Washington Water and Light's construction debt to its affiliate, have effectively been invested in Washington Water and Light's utility plant.

7. Segregation of the nonrefundable payments into a separate bank account would only yield a nominal return, which return would be reduced by federal and state income taxes.

8. Construction of the facilities for which the nonrefundable payments are being collected is prohibited by Chapter 261 of the Statutes of 1976 until July 1, 1978.

9. Washington Water and Light will not contest direction by the Commission that nonrefundable payments be refunded.

Conclusions

1. It is neither necessary nor desirable to continue the agreements of Washington Water and Light relating to nonrefundable payments or to continue the tariff relating to them.

2. The tariff provisions of Washington Water and Light relating to nonrefundable payments should be revoked and the tariff canceled.

3. All sums collected pursuant to the nonrefundable payments agreements should be refunded without interest to the persons or entities originally making such payments.

O R D E R

IT IS ORDERED that:

1. Original Cal. P.U.C. Sheet No. 203-W of the filed tariffs of Washington Water and Light Company is canceled.

2. All sums collected pursuant to the nonrefundable payments agreement tariff, Cal. P.U.C. Sheet No. 203-W, should be refunded, without interest, within ten days after the effective date of this order, to the persons or entities originally making such payments.

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

Dated at San Francisco, California, this 17th day of MAY, 1977.

Robert Batinovich
President

I dissent.
William Symons Jr.
Commissioner

Vernon L. Sturgeon
Leonard M. Grimes

Commissioners