

ORIGINAL

Decision No. 88868

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ARTHUR H. BURNETT,)
)
 Complainant,)
)
 vs.)
)
 SANTA CLARITA WATER COMPANY,)
 a corporation,)
)
 Defendant.)

Case No. 10328
(Filed May 10, 1977)

Arthur H. Burnett, for himself, complainant.
William G. Fleckles, Attorney at Law, for
 defendant.
Robert M. Mann, for the Commission staff.

O P I N I O N

This complaint by Arthur H. Burnett (complainant) against Santa Clarita Water Company (defendant) involves the payment of refunds under the Main Extension Rules.

The complaint alleges the existence of main extension agreements covering four tracts with Solemint Water Company and six tracts with Bouquet Canyon Water Company; that complainant has been assigned all the right, title, and interest in said agreements; that defendant has assumed obligations under these agreements; that the annual refund under the prior year is due and payable in January of the following year; and that defendant has not made payment of refunds due in January 1977.

Hearing was held November 21, 1977 at San Francisco at which time the parties stipulated that:

"Defendant's attorney would prepare a stipulation within 30 days regarding the contracts in dispute and submit it to complainant's approval. After complainant's approval, the contracts, were to be submitted to the Commission after which an appropriate order would issue."

The stipulation was submitted to complainant who refused the stipulation as prepared. Hearing was then held April 14, 1978 at San Francisco at which time the matter was submitted.

After the complaint was filed and before hearing was held, defendant paid the refunds required by the contracts. The matter is not moot, however, because there still is a dispute between the parties over when the refunds are due and payable. As in prior complaints filed by complainant, complainant takes the position that the refunds based on 22 percent of the annual revenues from services installed under main extension contracts are due and payable in January of the year following the year in which the revenues were collected.

Defendant contends that the Main Extension Rule does not require payment in January and that a reasonable period of time is needed in which to close the books and calculate the refund due. Defendant states that it has been defendant's practice to pay refunds at various times during the period April through September of each year as income permits. Further, defendant states that it is unable to pay by April 1 of the year following collection due to insufficient cash flow.

Complainant testified that it was necessary to seek the Commission's assistance to insure prompt payment on the extension contracts. Complainant stated that in a number of decisions the Commission had held that refunds not paid by

April 1 are equivalent to interest-free loans and therefore required the utility to pay interest at the rate of 7/12 percent per month on the outstanding balance. Finally, complainant stated that because of the high cost of money the 7 percent annual interest authorized by the Commission in the past is insufficient as an inducement to make timely payment. Complainant asked the Commission to:

1. Increase the interest rate on delayed payments to a point where it is truly a penalty payment, to perhaps 15 percent.
2. Require the utility to obtain additional capital as it is undercapitalization that has caused delayed payments in the past.
3. The Commission should not entertain any action for rate increases until the utility is current in payment of its obligations.
4. A utility should not be allowed to enter into further water main extension agreements until it is in position to promptly service the agreements already outstanding.

On cross-examination, complainant stated that he had purchased all of the contracts at a discount and even though earning greater than 7 percent per annum he was unable to state the effective rate of interest. He also stated that he could accept April 1 as a due date for refund payments if the Commission so determined, but that after that date interest higher than 7 percent should be allowed.

The material issues presented herein are what constitutes a reasonable period of time in which defendant should make refunds under the main extension contracts here involved and what is a fair rate of interest beyond the date found reasonable.

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

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

In Burnett v Park Water Company, D.87019 dated March 1, 1977 we stated:

"In Buss our order stated, in part:

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

"This ordering paragraph applied to all main extension contracts, not only Buss's contract. As all main extension contracts entered into by Park are essentially similar, we see no reason not to apply the reasoning in Buss to Park's contracts and extend the result reached in this complaint to all others similarly situated. Therefore, we shall order Park to pay all main extension refunds by April 1 of the year following the calendar year in which revenues from the extension are collected.

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

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

We then determined that interest at the rate of 7/12 percent per month on refunds not paid by April 1 of the year after the year of collection would be proper.

While it is argued by complainant that a 7 percent interest rate is insufficient incentive for prompt payment, we believe that under the circumstances herein it is adequate.

We think the reasoning in the above decisions is equally applicable to the complaint herein.

With respect to defendant's allegation that cash flow prevents payment by April 1 of the year following their collection, we would only reiterate what was stated in D.87019.

"While cash flow problems contribute to this condition, there is nothing in the record to justify these circumstances. These refunds are a known and readily estimable liability which the company must recognize and meet with proper accounting practices."

We also reject defendant's contention that inadequate rate relief from this Commission is a primary cause in defendant's not having the necessary funds to make the refund payments by the April 1 date.

Findings

1. Complainant owns, by assignment, main extension agreements assumed by defendant.
2. Defendant does not pay main extension refunds in advance.
3. Defendant has paid refunds under the above contracts between June and September of each year following the year of collection of revenue.
4. April 1 of the year following the year of collection of revenues is a reasonable time to require payment of refunds due under main extension agreements.

5. Refunds not paid by April 1 of the year following the year of collection are equivalent to involuntary interest-free loans to defendant.

6. Interest at the rate of 7/12 percent per month on refunds not paid by April 1 of the year after the year of collection is reasonable.

O R D E R

IT IS ORDERED that:

1. When a refund is payable under the provision of defendant's Water Main Extension Rule, defendant shall make such refund in accordance with the main extension contract by April 1 of the year following the calendar year in which revenue derived from the extension is collected.

2. Interest at the rate of seven-twelfths percent per month due on the first day of each month commencing on April 1 of each year is payable by defendant on any main extension agreement refunds due and not paid by April 1 of the year following the calendar year in which revenue from the extension is collected.

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

Dated at San Francisco, California, this 31st day of MAY, 1978.

President
William J. ...
Vernon L. Sturgeon
Richard D. ...

Commissioners
Commissioner Robert Batinovich, being necessarily absent, did not participate
-6- in the disposition of this proceeding.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.