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ORIGINAL

Decision No. 89056 JUL 11 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LATTANZIO ENTERPRISES, a partnership,

Complainant,

vs.

P.P.D. CORPORATION, dba NORTHEAST GARDENS WATER COMPANY,

Defendant.

Case No. 10166
(Filed August 31, 1976)

Michael E. Moss, Attorney at Law, for complainant.
Brobeck, Phleger & Harrison, by Robert N. Lowry, Attorney at Law, for defendant.
Eugene M. Lill, for the Commission staff.

O P I N I O N

This matter concerns the provision of water services to two large apartment complexes and seven houses which complainant Lattanzio Enterprises, a partnership, was constructing in 1972 and 1973 near Fresno.

Complainant seeks an order (1) confirming that the sum of $53,634.75 allegedly advanced by complainant to defendant P.P.D. Corporation, dba Northeast Gardens Water Company, is subject to a refund annually equal to 22 percent of the revenues received by defendant from customers served by certain water mains and other improvements described in the complaint until said sum has been repaid or for a period not to exceed 20 years

from the date of the initial refund payment, whichever first occurs; and (2) requiring defendant to pay to complainant the sum of $4,389.26 representing the refunds allegedly payable with respect to the years 1973, 1974, and 1975.

By an amended answer filed April 6, 1977 defendant admitted the receipt from complainant of the sum of $53,634.75, and asserted that a substantial portion of this amount represented the cost of complainant's compliance with requirements of the Mid Valley Fire Protection District which could not constitutionally be imposed upon defendant and that such portion constituted a nonrefundable contribution in aid of construction. Defendant also asserted other defenses, including the statute of limitations.

The matter was heard in Fresno before Administrative Law Judge Main on April 19, 1977 and June 7, 1977 and submitted on August 12, 1977 upon the filing of reply briefs.

Defendant and Its Water System

Defendant provides public utility water service under the name of Northeast Gardens Water Company. Its tariff service area encompasses 170 acres and is situated one mile east of the Fresno city limits. The water system is a pneumatic pressure system, as distinguished from a gravity system.

Prior to complainant's real estate development, its sources of water supply consisted of three deep wells, one located on North Backer Avenue (the Backer pump station) and two on East Vassar Avenue (the Vassar pump station). These pumps are controlled by switches which maintain water pressures in the hydropneumatic tanks between a low of 40 pounds per square inch and a high of 65 to 70 pounds per square inch. The Backer pump station is located in the southern portion of the northerly half of the service area and the Vassar pump

station is centrally located in the southerly half of the service area. When facilities were constructed to serve complainant's development, defendant's mains were principally of 4-inch internal diameter or equivalent, in a non-grid layout (i.e., fed from one direction only) with a 6-inch main interconnecting and extending from the Vassar and Backer pump stations.

Complainant's Development

In March or April 1972, Nick Lattanzio, a general partner of complainant, approached defendant's president and manager, Francis H. Ferraro, and requested that water service be extended to a proposed 52-unit apartment complex to be constructed at 4656 East Shields Avenue,[1/] a location also designated as Parcel 13 of the block, situated in the northeast corner of defendant's tariff service area, bounded on the north by Shields Avenue, on the east by Sierra Vista Avenue, on the south by Cornell Avenue, and on the west by Maple Avenue. On or about April 11, 1972, Nick Lattanzio, for complainant, and Francis H. Ferraro, for defendant, executed a partially completed main extension agreement for the provision of service to this development. The construction was to be performed by Headliner Plumbing Company, as permitted by paragraph C.1.c. of defendant's main extension rule. The facilities then to be installed were not described as called for in the agreement (i.e., an Exhibit C, intended for that purpose, to that agreement was omitted).

1/ At the time the agreement was executed, it was expected that the street address would be 4674 E. Shields Ave. The address finally adopted was 4656 E. Shields Ave.

Before this extension was completed, complainant advised defendant of its plans to construct additional apartments and some single-family residences to the west of the proposed 52-unit premises. The extension to serve the 52-unit development was provided by the installation of about 500 feet of 6-inch main westerly from the stub of an existing 4-inch main extending westerly from Sierra Vista Avenue at the rear of two parcels on the south side of Shields Avenue. The facilities to serve the 52-unit development, as installed by Headliner Plumbing Company at a cost to complainant of $3,048, consisted of the following:

Unit	Item	Cost
525 feet	6" AC pipe	$ 761.25
Lump sum	6" to 4" connection	79.15
5 each	6" x 6" x 6" tee	131.00
2 each	6" x 6" x 4" tee	52.40
1 each	3" service connection-10 feet	28.00
1 each	4" gate valve and box	56.15
2 each	Fire hydrant assembly including 6" gate valve and box	665.20
		1,773.15
	Installation and other	1,274.85
		$3,048.00

Construction of the 52 units was completed in December 1972 and furnishing of domestic water service began on April 1, 1973.

With the completion of the 52 units, complainant began construction of a 132-unit apartment complex and seven single-family residences to the west in Parcels 11 and 19 of the block previously described which is situated at the northeast corner of defendant's tariff service area. The facilities to serve these developments and perhaps to serve the remaining undeveloped parts (Parcels 15 and 20 of 5.31 acres and 1.91 acres, respectively) of that block as well as reinforce

supply to the northwest portion of the tariff service area were designed by defendant's consulting engineers, Hanna & Preble. They consist primarily of an 8-inch main extending easterly from an existing 4-inch I.D. equivalent main in Maple Avenue to connect with the 6-inch main installed to serve the 52-unit complex and a well and pumping plant (the Shields pumping plant) situated in an easement area on a 30' x 50' site in the southeast corner of the premises for the 132-unit complex. These facilities, which were installed by defendant through contractors, cost $50,713.39, broken down as follows:

Unit	Item	Cost
Mains and Related Facilities		
750 feet	8" AC pipe	$ 5,028.75
35 feet	6" AC pipe	256.20
7 each	8" gate valves	1,400.00
4 each	6" gate valves	772.00
1 each	8" x 6" x 6" tee	90.00
2 each	8" x 8" x 6" tee	128.00
4 each	8" x 8" x 8" tee	280.00
1 each	Fire hydrant	565.00
8 each	Service connections	512.00
		9,031.95
	Engineering and overheads	890.00
		$ 9,921.95
Special Facilities:		
Pumping Plant		
1 each	50-horsepower pump	$ 6,746.00
1 each	6,000-gallon hydro-pneumatic tank	5,375.00
1 each	Controls - elect.	1,725.00
1 each	Piping, foundations, and appurtenances	4,800.00
1 each	Sand separator	2,470.00
1 each	Microswitch assembly	146.44
		21,262.44

Unit	Item	Cost
Well		
1 each	Setup and move charges	$ 1,750.00
50 feet	30" conductor	2,250.00
250 feet	28" well hole	5,000.00
300 feet	16" casing	3,150.00
150 feet	Perforated pipe	1,335.00
1 each	Holding pond	1,500.00
		$14,985.00
Land and Structures		
	Asphalt and paving	$ 836.00
	Land	-
	Fencing	-
		$ 836.00
		$37,083.44
Overheads		
	Engineering and overheads	$ 3,708.00
	Subtotal Special Facilities	$40,791.44
	Total Cost	$50,713.39

Domestic water service to the 132-unit complex commenced in mid-1973.

Bank of America Loan

The Bank of America loaned complainant $53,634.75 to finance the water system facilities. Defendant assisted in complainant's obtaining the loan. In that regard defendant stated in a letter to the lender dated February 25, 1973:

> "The Lattanzio Enterprise have requested service to their development on E. Shields between N. Maple and N. Sierra Vista. In order that sufficient supply for customer service and adequnte flow requirements for fire protection be provided the developer must follow the sturdy statutory requirements set forth by the Public Utilities Commission in the Tariff for Water Service. I refer to section C of rule 15 dated May 12, 1969, titled 'Extensions to Serve Subdivisions'.
>
> "Briefly stated the provisions of rule 15 state that the utility shall provide the developer with estimates, plans and specifications necessary to service the area to be developed. The developer will then advance to the utility, before construction is started, the cost of installing the specific facilities."
>
> * * *
>
> "Based on the plans and specifications and bids received the utility has determined the breakdown cost to be as follows:

Installation of Water Main Extension Number One	$ 3,048.00
Installation of Water Main Extension Number Two	9,031.95
Installation of Pumping Plant	21,971.00
Installation of Reverse Rotary Well	14,985.00
Engineering Cost	4,598.00
Total	$53,634.75(sic)

> "The developer's advance of $53,634.75 to the utility will be placed into the utility's checking account at the Bank of America's Fashion Fair Branch.

> "In addition to the advance provision section C also provides that the developer be refunded at the rate of 22% of the revenue received by the utility over a 20 year period but not to exceed the advance received by the utility. The annual refund payment by the utility will be computed as of the last day of December of each year."
>
> * * *
>
> "Copies of the Company's certificated service area, anticipated revenue breakdown of area being developed and section C of rule 15 were provided your office at our meeting of February 23, 1973."

Defendant recorded "the developer's advance of $53,634.75" not as an advance for construction (Account 241) but as a contribution in aid of construction (Account 265).

Additional Claim

Complainant asserts that in addition to the sum of $53,634.75 received by defendant, complainant is entitled to refund of the sum of $2,941.36 allegedly representing the cost of work and materials provided by complainant at the Shields pump station site for the account of defendant.

This claim is based upon a purported bill sent by complainant to defendant on or about February 26, 1974 (Exhibit 19). Defendant contends that this billing was obviously a contrived attempt by complainant to create an offset against past-due bills for water service in exactly the same amount submitted to complainant by defendant and that the second sheet of the exhibit shows that to be so.

Defendant further contends that any work performed or materials supplied by complainant in connection with the construction of the Shields pump station other than fencing was pursuant to arrangements with the contractor installing

the pump station and not with defendant. Accordingly, if complainant has a claim for reimbursement of such cost, defendant asserts, its remedy is against that contractor. Except as to fencing, we find merit in defendant's position.

The staff witness ascribed a value of $1,440 to plant additions supplied by complainant, consisting of $1,200 for land and $240 for fencing, for which complainant was not given credit. The former was computed using a land cost of about $.60 per square foot applied to a somewhat larger area than the 30' x 50' easement area complainant was being required to provide for the Shields pump station according to Exhibit 2.

We are persuaded that the cost of the pertinent water system additions should be increased by $1,140, instead of $1,440 to be consistent with the indicated adjustment for the size of the site, but should otherwise conform to the staff recommendation. Thus, the pertinent total cost is the sum of the hereinabove developed $3,048 and $50,713.39 plus $1,140 which equals $54,901.39, an amount which exceeds the advance of $53,634.75 plus $1,140 by $126.64.

Rates and Revenues

The rates for water service in effect prior to complainant's development were authorized by D.77548 issued July 28, 1970 in A.51535. Those rates were set forth in Appendix A to that decision and provided a 30.6 percent increase in revenues over the prior rates based on test year 1970 sales. They were fixed in relation to a rate base of $41,490 and a 7.5 percent rate of return.

A second set of rates was attached to that decision, as Appendix B. The Appendix B rates would yield a 47.9 percent rather than a 30.6 percent increase in revenues and were fixed in relation to a $76,690 rate base and an 8.1 percent rate of return.

According to Decision No. 77548, the Appendix B rates could become effective by the defendant's making the following staff-recommended plant additions to improve service: (a) two new wells, each with a capacity of no less than 150 gallons per minute (gpm); and (b) one new sand separator at each of the then existing three wells.

The Appendix B rates became effective December 17, 1974, after defendant filed its Advice Letter No. 9 dated December 10, 1974 stating:

> "This filing is in compliance with Decision No. 77548 (A-51535) paragraph 2 of the Commission's order.
>
> "The new facilities exceed the minimum requirement referred to in the decision by three times the capacity.
>
> "Staff Engineer, Mr. Cleo Allen, of the Commission's Hydraulics section looked at the new pumping station on December 4, 1974."

The Shields pump station was the "new pumping station" cited in the advice letter.

It can be seen from the following tabulation of defendant's operating revenues, prepared from Exhibits 5 and 18 and from defendant's annual reports to the Commission, that complainant's development accounts for about 15 percent of defendant's total operating revenues.

	1973	1974	1975	1976
Construction water*	$ 445	$ -	$ -	$ -
52-unit complex	1,474	1,966	2,098	2,075
132-unit complex	2,496	4,992	5,312	5,312
7 single-family residences (SFR)	34	564	646	643
Subtotal	4,449	7,522	8,056	8,030
All others	35,361	38,495	43,648	46,639
Total Oper. Revenues	$39,810	$46,017	$51,704	$54,669

*Used for 132-unit and 7 SFR project and obtained from supply to 52-unit complex.

At the time of the hearing in June 1977, defendant's system had 450 service connections (including two service connections serving complainant's apartment complexes) providing flat-rate service to 720 dwelling units. Complainant's total development accounts for 191 of the 720 dwelling units.

Fire Flow Requirements

Defendant contends that both the Shields pump station and the main sizes in excess of 4 inches were needed to comply with fire flow requirements imposed by the county of Fresno on complainant's development, that they were not needed to serve the development's domestic or non-fire flow requirements, and that their cost is not subject to refund. Complainant asserts

that defendant recently created this theory and that it patently runs counter to the representations made by defendant to complainant and to the Bank of America.

The Commission staff's engineering witness made a field investigation and prepared a report on this formal complaint. Although it was clear from his testimony and report that he did not make an in-depth hydraulic analysis of the water system, it was his judgment that the facilities were not overbuilt to serve the domestic uses of complainant's total development and that of adjoining undeveloped parcels consisting of about 8 acres. This witness was aware of the location of defendant's pumping plants, the absence of storage other than the minor quantity associated with the operation of hydropneumatic tanks, the pipeline layout, and design flow rates for various size pipes. As a guide to the peak water demand of complainant's development for which to design facilities, he relied upon the contents of General Order No. 103 as they were when these system facilities were designed and built.

Through late-filed Exhibit 20 complainant's president demonstrated that the well at the Shields pump station has not recently been operated to carry base load and that it is typically used much less than the wells at the two older pump stations. The stated reason for this is that the older stations qualify for a closed Pacific Gas and Electric Company schedule with lower electric rates than those available to the Shields pump station.

He contended that an examination of the water produced monthly by each pump station over the period 1970-1976, as shown in Exhibit 20, reveals that the Shields pump station has not been needed to serve system requirements.

Among the obvious perils in attempting to interpret the array of data in Exhibit 20 is a potential for undisclosed extraneous events such as water being supplied from or to a neighboring utility, or for weather effects, occupancy levels, and changes in land use, distorting the result.

Apart from such potential pitfalls, defendant's contention, however, is not meritorious. It fails to allow for the Shields hydropneumatic tank's regularly supplying system demands and then being refilled by the older pump stations. It similarly ignores the role of the Shields well and pump at times of needle peaks and at times when either the Backer or Vassar pump stations undergo forced outage or scheduled downtime.

Good waterworks design practice calls for having either a third pump station, such as the strategically placed Shields pump station, or a completed grid system suitably sized to make adequate flows available from the Backer and Vassar pump stations together with substantial storage suitably placed to cope with forced outages or other downtime of one or both of the older pumping stations. This assessment of what good practice calls for, of course, is not at odds with improvements being needed per D.77548, supra, long before complainant's development with its high density of dwelling units.

Complainant's evidence established that a fire flow requirement was not directly imposed on its 132-unit apartment complex project. Complainant contends that defendant voluntarily complied with fire protection criteria allegedly promulgated by the Mid Valley Fire Protection District. In response defendant claims that absent such compliance complainant's project would not have been approved by Fresno County.

Be that as it may, the asserted fire flow requirement of either 500 gpm or 750 gpm is singularly unimpressive in this instance. According to Exhibit 12, Guide for Determination of Required Fire Flow, a flow of at least 2500 gpm is indicated for an apartment complex. If facilities were required which would supply a fire flow of that order, the fire protection requirement would then obviously control their design and the domestic-use demand would be incidental. That clearly is not the case with an asserted 500 gpm or 750 gpm fire-flow requirement for large apartment complexes; the domestic-use peak demand effectively controls the design. Assuredly, an appropriate degree of conservatism must inhere in that design.

Violations of Main Extension Rule

In this matter defendant has not followed its tariff Rule No. 15, Main Extensions. The violations include:

(a) Failure to comply with Section A.2.b. which reads:

> "Whenever the outstanding advance contract balances plus the advance on a proposed new extension would exceed 50 percent of total capital, as defined in Section A.2.a.(*) plus the advance on the proposed new extension, the utility shall not make the proposed new extension of distribution mains without authorization of the Commission."
>
> *Section A.2.a. definition: capital stock and surplus plus debt and advances for construction.

(b) Failure to comply with Section A.1.a. which reads in part:

> ". . . A main extension contract shall be executed by the utility and the applicant or applicants for the main extension before the utility commences construction work on said extensions..."

(c) Failure to comply with Section A.8., to seek Commission approval to deviate from the main extension rule (i.e., either to refund costs of the Shields pump station on a percentage-of-revenue basis instead of the per-lot basis of Section C.2.c.2/ or to treat the monies advanced by complainant for those costs as a contribution), which reads:

"In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears unreasonable to either party, the utility, applicant or applicants may refer the matter to the Commission for determination."

The staff asserts that the question of additional capacity to meet fire flow requirements is moot because Section A.4.d.3/ of the main extension rule directs that costs associated with complying with specifications of a public authority are included in the advance.

Defendant takes exception to that assertion and contends, on the basis of Dominguez Water Corporation (1970) 71 CPUC 257, that the cost of providing fire-flow

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2/ Section C.2.c. provides that:

"Whenever costs of special facilities have been advanced pursuant to Sections C.1.b. or C.1.c., the amount so advanced shall be divided by the number of lots to be served by the special facilities. This advance per lot shall be refunded for each lot on which one or more bona fide customers are served by those facilities."

3/ Section A.4.d. provides that:

"When an extension must comply with an ordinance, regulation, or specification of a public authority, the estimated and adjusted construction costs of said extension shall be based upon the facilities required to comply therewith."

capability is not required to be included in the refundable advance. In the Dominguez case, supra, at 274, the Commission said:

> "...Section A.4.d. of the main extension rule, despite complainants' contentions to the contrary, does not provide for refunds of construction advances that include the cost of facilities required by public authorities, but only that the estimated and adjusted costs of the extension include the cost of the facilities so required. Refunds of advances, after adjustment to actual costs and absent prior authority to treat portions of the advances as contributions, are provided for by Section C.2. of the rule." (Emphasis added.)

Contrary to the thrust contended for by defendant the Dominguez case in this regard clearly stands for the need to seek prior authority from the Commission for any departure from the refund provisions of the rule. However, even if this were not so, it would not affect our resolution of this complaint. That is the case because, as developed in a preceding discussion on the subject of fire-flow requirement, it is our holding that the facilities installed to serve complainant's development are in keeping with good waterworks design practices to serve domestic loads.

Staff Recommendation

To resolve this complaint the staff recommends that defendant and complainant enter into three standard tariff contracts, one for each main extension and one for special facilities (i.e., the latter being for the Shields pump station with a cost exceeding $40,000). The main extensions, under such standard tariff contracts, one with a cost of $3,048 and the other with a cost of $9,922, per staff "are

refunded at 22 percent of the revenue...received from the extension. Special facilities are refunded on a per-lot basis for which the facilities were installed."

The staff approach is intended, we think, to make the transactions conform to the requirements of the main extension rule. If so, it falls short with respect to Section A.2.b., supra. Pursuant to that section this "utility shall not make the proposed new extension of distribution mains without authorization of the Commission" because "the advance on a proposed new extension would exceed 50 percent of" its equity capital plus debt and advances for construction. The advance to serve complainant's developments was $53,634 and defendant's total capital plus the advance to serve complainant's developments was $80,143 as of December 31, 1973.

Nunc Pro Tunc Compliance

To make the arrangements to serve complainant's developments conform to the main extension rule or at least to its intent, an indicated way to proceed is:

(1) to assess the need for water service and the economic viability of the proposed extensions including special facilities in light of Section A.2.b.; and

(2) to assess the number of contracts needed in light of the interrelationship of the main extension to serve the 52-unit complex, the main extension to serve the 132-unit complex and the seven single-family residences, and the special facilities which can serve both of complainant's developments.

A principal reason for incorporating the limitation of expansion provisions into the main extension rule was to protect the financial health of the utility. Complainant

proposed developments in defendant's tariff service area, their need for water service if built was obvious, and defendant thus had a duty to serve those needs unless the authorization required, pursuant to the limitation placed on expansion by Section A.2.b., to make the proposed extension was denied.

Although, as brought out earlier in this opinion, complainant's developments have good water revenue producing capability, refunds for the special facilities on the per-lot basis of Section C.2.c.[4/] would appear to be unduly burdensome in this instance. Since refunds become due for each lot as one or more bona fide customers are served thereon by those facilities, it would become necessary for a small water company such as defendant to secure new money through outside financing with which to provide at least part of the refund.

Small water utilities typically experience considerable difficulty in arranging outside financing. Some become delinquent in the payment of refunds and are forced to make refund payments exclusively from internal sources, thus severely limiting the availability of funds otherwise needed for replacements and expansion of facilities. A deviation from Section C.2.c. is warranted in this instance[5/] because the outside financing which would be needed is large in relation to the size of this small water company.

4/ See footnote 2.

5/ Section C.2.c. is consistent with the usual practice of the utility investing its funds in wells and pumping equipment, but limits such investment commensurate with equipment utilization in order to preclude the utility's speculating along with the developer on the success of the development venture.

A suitable alternative to the per-lot refund basis for this utility in these circumstances is the percentage-of-revenue refund basis. The latter basis also comports with representations made by defendant in its letter to the Bank of America, from which we have quoted extensively hereinabove. The contents quoted included: "...anticipated revenue breakdown of area being developed and section C of rule 15 were provided..."

Consistent with the entire advance having a common refund basis and with the interrelationship of the water facilities installed, defendant and complainant should enter into one main extension contract. It should cover a total adjusted cost of $54,901.39 representing $3,048.00 for the initial main extension for the 52-unit complex, $9,921.95 for the main extension to serve the 132-unit complex plus seven houses, and $41,931.44 for special facilities including a modified staff adjustment for an easement area and fencing. Complainant's advance thus far is $54,774.75 including an allowance of $1,140.00 for the easement area and fencing. The entire total adjusted cost of $54,901.39, after a further advance of $126.64 or its equivalent, is to be classified as an advance refundable on the percentage-of-revenue method, as that method is described in Sections C.2.a. and b.

On the basis of annual water revenues of $8,000 from complainant's developments, which was approximately the revenue figure for 1976, an annual refund of about $1,800 is indicated. Incidentally, about 13 percent of such revenues is attributable to the rate increase defendant placed in effect in late 1974 through, as brought out earlier, its using the Shields pump station as the principal system improvement required to qualify for the higher rate levels prescribed in Appendix B to D.77548, supra.

Ratemaking Effects

Defendant argued that contributions in aid of construction are less burdensome on the ratepayer than refundable advances for construction. This argument disregards an essential function of the main extension rule which is not to inhibit sound investment but to provide a method by which the necessary facilities may be developed with minimum financial risk to the investor-owned utility and consumers from potentially uneconomic or speculative developments. Complainant's developments are neither speculative nor uneconomic in this sense.

Putting aside the purposes of the main extension rule, defendant's argument in this instance is badly misplaced. The ratemaking effects of a higher rate base, depreciation expense, and rate of return are already reflected in defendant's rates which were prescribed in Appendix B to D.77548, supra. Moreover, the Appendix B rates were determined without taking into account the benefit of the substantial additional revenues of complainant's developments.

Private Fire Protection Schedule

Defendant contends that its tariff Schedule No. 4, Private Fire Protection Service, applies to the two fire hydrants installed on the 6-inch main. That main according to Exhibit 2 should be in "a water utility easement of sixteen feet (16) on the south portion of the development." Defendant did not bill complainant for private fire protection service.

We are not persuaded that complainant applied for private fire protection service, that private fire protection service has been provided, and that defendant does not own the hydrants. Defendant's claims in this regard are thus dismissed as meritless.

Statute of Limitations

For purposes of resolving this complaint, the parties should be treated as if they had, in fact, complied with the law and executed the refund agreement prescribed on page 19 of this decision. That agreement should have been entered into in the time prescribed under Section A.1.a. of the main extension rule and have a refunding period not to exceed 20 years subject to a five-year extension as required by the rule under specified conditions.

Accordingly, the 20-year period commences to run not earlier than sometime in 1972. Refunds of construction advances become due and payable shortly after the end of each year of that period. A new obligation thus arises at that point each year, and the two-year statutory period of limitations under Public Utilities Code Section 735 is computed for each installment. (D & E Corp. v Park Water Co. (1963) 61 CPUC 387.)

The complaint herein was filed August 31, 1976, more than two years after April 1, 1974 when refunds accruing with respect to 1973 revenues became, at the latest, due and payable. The 1973 water revenue from complainant's development was $4,448.75. Thus refunds for 1973 barred by the statute of limitations are 22 percent of that amount which is $978.85.

Complainant has erred in contending that completion of an investigation by the Commission's staff of the informal complaint made by complainant is a prerequisite to the Commission's acceptance of the formal complaint. An informal complaint does not toll the running of the statute of limitations (Johnson v PT&T Co. (1969) 69 CPUC 290).

Defendant in turn appears vulnerable to the running of a three-year statutory period of limitations under Public Utilities Code Section 737 applicable to the collection of tariff charges. In that regard, according to Exhibit 19, unpaid water charges due defendant for which complainant had been billed in 1973 totaled $2,776.

Admonition

This formal complaint with its inherent complexities is a direct result of a reprehensible disregard for defendant's tariff Rule No. 15, Main Extensions, especially its prerequisites to be met before an extension is made. Defendant is placed on notice that any repetition of such conduct may lead to sanctions pursuant to Sections 2107 et seq. of the Public Utilities Code.

Obviously, complainant is not blameless in this matter. One of its principal partners had reason to know, as early as April 1972 by virtue of the contents of Exhibit 10, that a comprehensive main extension contract was required. Complainant's failure to insist on obtaining such a written contract upon making the $53,634.75 advance to defendant is at least a serious breach of proper business practice.

Findings

1. Pursuant to the limitation of expansion provisions of the main extension rule, defendant was prohibited from constructing the water system facilities to serve complainant's developments without prior approval to do so from this Commission.

2. Defendant did not seek the necessary authority to make the extensions to serve complainant's developments. It nevertheless made the extensions and did so without preparing and the parties executing an appropriate main extension contract.

3. For purposes of resolving this complaint, the parties should be treated as if they did, in fact, comply with the law and an appropriate main extension contract substantially as prescribed by this decision ensued (i.e., a nunc pro tunc compliance).

4.a. The mains and related items and the special facilities comprising the utility plant additions involved in the extensions were necessary for the provision of domestic water service to complainant's developments, and to adjoining undeveloped parcels comprising about eight acres, consistent with good waterworks design practices.

b. By its design this system addition otherwise functions to reinforce the system's capability to serve domestic loads in the northern section of defendant's tariff service area. It will readily provide the reported required fire flow of either 500 gpm or 750 gpm, which is notably modest for large apartment complexes.

5.a. Complainant advanced $53,634.75 plus $1,140 for those plant additions.

b. Their total adjusted cost was $54,901.39.

c. A deviation from the "per-lot refund basis" of Section C.2.c. of the main extension rule is warranted for the special facilities which cost $41,931.44.

d. The entire total adjusted cost of $54,901.39, after a further advance of $126.64 or its equivalent by complainant, is to be classified as an advance refundable on the percentage-of-revenue method, as that method is described in Sections C.2.a. and b. of the main extension rule.

6. On the basis of annual water revenues of $8,000 from complainant's developments, which was approximately the revenue figure for 1976, an annual refund of about $1,800 is indicated.

7.a. Refunds become due and payable on April 1 of each year.

b. Refunds attributable to revenues produced in 1973 and payable in 1974 are barred by the two-year statute of limitations of Public Utilities Code Section 735. The amount thus barred is $978.73.

c. Refunds attributable to revenues produced in 1974, 1975, and 1976 are $1,654.67, $1,772.27, and $1,766.56 respectively.

Conclusions

1. Defendant and complainant should execute a main extension contract consistent with above Findings 3, 5, and 7.a. and substantially as prescribed on page 19 of this decision but otherwise in conformity with the main extension rule, circa 1973.

2. Defendant should pay the overdue annual refunds attributable to revenues produced in the years 1974-1977, inclusive, less unpaid billed water charges which are lawfully collectible from complainant, with interest at 7 percent computed from each due date until paid.

O R D E R

IT IS ORDERED that:

1. Within thirty days after the effective date of this order defendant and complainant shall execute a main extension contract consistent with above Findings 3, 5, and 7.a. and substantially as prescribed on page 19 of this decision but otherwise in conformity with the main extension rule, circa 1973.

2. Within ninety days after the effective date of this order defendant shall make refunds to complainant consistent with Finding 7 and Conclusion 2 above.

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

Dated at San Francisco, California, this 11th day of JULY, 1978.

Robert Batinovich
President

Richard D. Gravelle
Vivian J. Sabo
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.