

ORIGINAL

Decision No. 91189

JAN 8 - 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

W. ART SUTTER,

Complainant,

vs.

CITIZENS UTILITIES COMPANY OF CALIFORNIA,

Defendant.

Case No. 10647
(Filed August 9, 1976)

W. Art Sutter, for himself, complainant.
W. B. Stradley, for Citizens Utilities Company
of California, defendant.

O P I N I O N

Statement of Facts

Citizens Utilities Company is a holding company providing through its subsidiary companies in many states across the nation electric, telephone, water, and gas service to customers in over 550 communities. Maintaining general offices in North Highlands, California, its subsidiary, Citizens Utilities Company of California (Citizens), provides water service in various California districts, including as relevant here, the Suburban system of its Sacramento District.

In the fall of 1976, W. Art Sutter (Sutter), a real estate developer, developed a 13-acre parcel of land in Sacramento at Bradshaw Road and Old Placerville Road into a 45-lot subdivision known as Sutter Estates Unit No. 1. In the course of his developing the subdivision,

Sutter requested Citizens as the water utility serving the area to extend water service to the 45-lot subdivision. In accord with its established procedures, Citizens prepared preliminary estimates and on September 9, 1976 put the project out to bid to seven pipeline construction contractors.^{1/} Five, including Teichert Construction Company (Teichert) (suggested by Sutter to be included among those solicited), returned bids. Bids were opened on September 16, 1976. The low bidder was Wonmor Contracting Company (Wonmor) with its bid for \$16,411.^{2/}

Concurrently with development of Sutter Estates Unit No. 1, Sutter had developed an adjoining one-acre parcel into a 4-lot subdivision, styling this additional development as Sutter Estates Unit No. 2. Three days after receipt and opening of the bids for Unit No. 1, Sutter determined that he also wanted to proceed with Unit No. 2 at the same time, combining the two units, and accordingly, telephoned Citizens to ask that Citizens negotiate an extension to add Unit No. 2 to the project. Citizens' engineer, Taylor, came up with a total project cost estimate to cover both units of \$27,664, and communicated this total to Sutter.^{3/}

Assertedly Sutter wanted a detailed breakdown of costs and allegedly asked that Taylor get such a breakdown. Nonetheless, without waiting to clear up any questions he may have had, on September 23, 1976

^{1/} The bid request to all bidders provided a form whereon a bidder merely entered his bid "to provide and furnish all labor and materials (except Transite pipe and water meters), tools, expendable equipment, and all utility and transportation services necessary" to perform and complete the job. Listed were three components:

2,050 lineal feet of 8-inch pipe with fittings
45 metered water services
6 fire hydrants

There was no provision or requirement for itemization of the bidding contractor's charges.

^{2/} Interestingly, Wonmor underbid Sutter's nominee, Teichert, on Unit No. 1 by approximately \$5,000.

^{3/} At this time no written proposal covering the entire 49-lot project was submitted to or demanded by Sutter.

Sutter signed a main extension agreement with Citizens covering the entire 49-lot project (including Units Nos. 1 and 2) and paid the \$27,664 advance deposit requested.

At the hearing Citizens' explanation of this \$27,664 estimate was that to Wonmor's low bid of \$16,411 for Unit No. 1, it had added for Unit No. 2 a proportionate amount based on its estimate of the main installation component portion of Wonmor's bid, and its estimate of the cost of furnishing and installing four additional home services. Next, it had added the cost of the needed pipe, and finally Citizens' standard 5 percent overhead plus a 2 percent direct labor charge, and a contingency allowance.

Once work began disagreements surfaced and the Sutter-Citizens relationship deteriorated. Assertedly, during construction Sutter several times tried to obtain a cost breakdown. Sutter further asserts that on November 3, 1976, he sent Citizens a message by certified mail requesting that Citizens withhold 10 percent of the contract funds from Wonmor pending Sutter's review of final project costs.^{4/} Sutter also alleges that on December 1, 1976, Taylor advised Sutter by telephone that Wonmor had agreed to a \$2.00 per lineal foot installation price for Unit No. 2 pipe.^{5/}

The project went ahead to eventual completion, and on February 15, 1977 Citizens mailed Sutter a letter advising of completion and relating that the actual final project cost was \$27,487. A Citizens' check for \$177 representing the asserted difference between actual and

^{4/} A copy of a Message-Reply form bearing such a typed message was introduced by Sutter as Exhibit No. 3 to support his contention. It bears no indication of mail certification, and at the hearing Sutter was unable to produce a receipt for the asserted certification of the mail.

^{5/} Sutter introduced a piece of paper at the hearing (Exhibit No. 4) which he testified was an aid-memoire made at the time bearing this information, contending that this slip of paper supported his contentions.

estimated costs for the project, together with a summary tabulation of costs, purporting to show estimated installation cost versus actual or adjusted installation cost, was enclosed. Sutter objected, demanding details. Despite further letter exchanges and meetings between Sutter and Citizens, Sutter remained unsatisfied, asserting that under his reconstruction of costs the total should have been different and claiming variously that there was an entitlement to a \$1,639 refund instead of \$177 and that a \$1,462 shortage was unaccounted for. Attempts to reconcile differences through the Consumer Affairs Branch of the Commission failed and this formal complaint resulted.

A duly noticed public hearing on this matter was held in Sacramento on December 11, 1978 before Administrative Law Judge John B. Weiss. After conclusion of the hearing the matter was submitted upon receipt of a late-filed exhibit on December 13, 1976.

Discussion

In its relations with subdividers desiring service Citizens is bound by the provisions of Rule 15, a standard main extension rule promulgated by this Commission for regulated water utilities. It contains the following applicable standard language:

"Any applicant for a main extension requesting the utility to prepare detailed plans, specifications, and cost estimates shall be required to deposit with the utility an amount equal to the estimated cost of such material. The utility shall upon request make available, within 45 days after receipt of the deposit referred to above, such plans, specifications, and cost estimates of the proposed main extension." Q/

As noted earlier, when approached by a subdivider seeking a main extension, it is Citizens' practice to put the project out to bid to obtain installation costs, rather than to use in-house estimates. Once obtained, to the low bid it adds the cost of the pipe estimated as needed, a 2 percent estimate for direct labor costs, plus 5 percent of that direct labor for direct labor overhead, and an allowance of

6/ Paragraph A-5-B.

5 percent for contingencies. Contractors who bid on a project are not asked to supply detailed breakdowns of individual installation items (except to categories necessary to conform to requirements of the Commission's Uniform System of Accounts). The contingency allowance is to provide against unforeseen or unusual situations which may be encountered once the project is begun. After a project is completed, an adjustment is made between the parties to account for any difference between the amount advanced by the subdividers' deposit and final actual costs of the project.^{7/}

In the instant situation Citizens followed its customary practice; obtaining installation bids and selecting the low bidder. This enabled it to prepare preliminary information preparatory to furnishing Sutter with a cost estimate for Unit No. 1. Sutter had been closely following these steps (including asking that Teichert be included in the bid list). It must be appreciated that at this point Citizens had no itemized breakdown of costs pertaining to per-foot pipe installation, charges for fittings installation, charges for individual valve installation, charges for water service box installation, or charges for hydrant installation. It merely had a contract price for the Unit No. 1 project installation; including 2,050 feet of main, fittings, and valves shown on the drawings, 45 service boxes and 6 hydrants. Nonetheless, when asked by Sutter on a rush basis to expand the project to include Unit No. 2, it consulted with Wonmor, and worked up an estimate to expand Wonmor's \$16,411 low bid for Unit No. 1 to include installation work on Unit No. 2. It then recalculated its project estimate to embrace all costs, installation, materials, overhead, labor, contingencies, etc. for the entire 49-lot project and produced its project estimate of \$27,664 to give Sutter. Sutter signed the main

^{7/} Paragraph A-6-E of Rule 15 also provides that: "Any differences between the adjusted construction costs and the amount advanced shall be shown as a revision of the amount of advance and shall be payable within 30 days of the date of submission of the statement."

extension agreement September 23, 1976. It provided no separate enumeration of individual costs, but merely provided that for a total sum of \$27,664, 2,323 feet of mains, 49 metered service connections and 6 fire hydrants would be provided and installed.

Through what appears to have been oversight and limited knowledge of existing facilities, after the work began it was determined that the project would require two additional valves to meet the requirements of Commission General Order No. 103.^{8/} In one instance a valve had to be added on Lot No. 10 on Sutterwoods Circle on the edge of the project where the street terminated. In the second instance the existing main on Goethe Road had been installed many years previously and the exact location of the nearest valve was not determined until after work began. Installation of this valve was necessary to prevent customers beyond that point from being out of water for any extended period of time.^{9/} These valves were stated to cost \$933 each installed. Similarly, the project extension obviated the need for a blowoff valve valued at \$160. The costs represented by the additions and deletion of these respective valves and their installation were included as part of the cost overall of the entire project within the \$27,644 estimate. Anticipated or not, if required, these resultant costs are a legitimate part of the cost of the project and are chargeable to the subdivider.

^{8/} Which require a valve every 500 feet or at the intersection of each block, whichever is closer.

^{9/} This valve was installed in front of Lot No. 1 in Unit No. 1.

Citizens' breakdown of the final costs of the project follows, segregated by categories:

SUTTER ESTATES UNITS NOS. 1 AND 2

Contractor:

Wonmor - 2,335 feet pipe and fittings installation	\$8,957	
Wonmor - 49 each house services	4,900	
Wonmor - 5 each fire hydrants	<u>4,350</u>	
Subtotal		\$18,207

Purchases:

Johns-Manville - pipe and fittings	\$7,189	
Blueprints	<u>47</u>	
Subtotal		\$ 7,236
Total Contractor and Purchases		<u>\$25,443</u>

Citizens:

Labor	\$ 274	
Overhead	185	
Contingencies	<u>1,585*</u>	
Subtotal		\$ 2,044
Total Cost for Project		<u>\$27,487</u>

- * \$1,018 charged to the Water Main Account.
- \$ 300 charged to the Water Service Account.
- \$ 267 charged to the Hydrant Account.

From the above it is at first difficult to ascertain a solid basis for Sutter's complaint. The completed project finally cost Sutter \$177 less than the overall estimate upon which he paid the deposit. If Sutter was not content with the estimate given him by Taylor, he should have required a more explicit breakdown before he signed the agreement and paid the deposit. Much of the problem herein arises out of the haste under which the project was expanded and then proceeded upon; haste initiated and caused solely by Sutter's exigent requirements. Rather than await new bids for the combined project, it was Sutter who asked Citizens to negotiate extension of Unit No. 1 to add Unit No. 2.

Citizens' negotiations with Wonmor were conducted by Taylor and were verbal. Taylor is no longer available as a witness. How

Citizens arrived, item-by-item, at its \$27,664 estimate was never fully explained. In retrospect it is clear that there were three main elements to the estimate. The Wonmor installation costs, the cost of the Johns-Manville pipe, and Citizens' labor, overhead, and contingency standard charges. The complaint involved the Wonmor contract and Citizens' charges.

Sutter asserts that there was a poor breakdown of the elements of costs making up Wonmor's original bid. But the fact remains that none was called for under the bidding procedure. And it is also a fact that Wonmor's bid of \$16,411 for Unit No. 1 was \$946 less than the next bid, and over \$5,000 below that of Teichert, Sutter's candidate to do the work. Contrasted with these other bids, Wonmor's bid, therefore, was certainly reasonable, and more importantly, acceptable at the time to Sutter in that after knowing it he elected to proceed with Unit No. 2 and asked Citizens to negotiate the extension.

Sutter's basic discontent^{10/} seems rooted in the \$1,796 difference between Wonmor's final billing of \$18,207 for the entire project and Wonmor's \$16,411 bid on Unit No. 1, leaving aside for the moment the issue on the Citizens' "general and administrative overhead" charges. Sutter in essence contends that the difference is overblown and disproportionate considering that addition of Unit No. 2 involved only 230 feet more main and four house connections. Sutter's contention is assertedly buttressed by the fact that addition of Unit No. 2 to the project eliminated one \$160 blowoff valve. Ka

But what did the \$1,796 difference really include? Besides the cost of installing 230 additional feet of main and four house

10/ Sutter also inferred some undefined impropriety in the relationship between the Wonmor contractor and one of Citizens' employees. The contractor for a short while had been married to a receptionist at Citizens. Since divorced from him, she is no longer with Citizens. Citizens' witness testified that the receptionist had nothing to do with the project. We reject any allegation of an improper or questionable relationship between the pipeline contractor and Citizens as unproven.

connections, addition of Unit No. 2 required connection of the extended main to the existing main beyond the project on Hanks Street on the northern border of Unit No. 2. We cannot definitively, retrospectively compute Wonmor's lineal foot charge to install pipe because his Unit No. 1 bid was not itemized. The installation bid included installation of both pipe and valves. Sutter alleges that on December 1, 1976 Taylor told Sutter that Wonmor had agreed to a \$2.00 per foot installation charge to be applicable to the 230 feet of Unit No. 2. But this does not seem entirely credible. Why would Wonmor, already the lowest bidder by a substantial margin, install Unit No. 2 pipe at least 17 percent cheaper than he had bid to install on Unit No. 1? Elsewhere (see Exhibit No. 2), in what Sutter presented as his reconstruction of the "basis" for Citizens' \$27,664 estimate of September 23, 1976, Sutter states that "\$4,911 was Taylor's estimate of installation cost of pipe only from Ia" (meaning Unit No. 1). By that Sutter projection, Wonmor's unit bid for pipe installation only for Unit No. 1 would have been \$2.346 per lineal foot for each of the 2,093 feet in Unit No. 1. (The initial estimate bid by Wonmor was based upon the bid invitation listing 2,050 feet. However, by December 1976 the project was well along and all parties were aware that there were 2,093 lineal feet involved in Unit No. 1.) Accordingly, a proportionate estimate, based upon Unit No. 1, for the 230 feet in Unit No. 2 would more likely have been \$540 (230 x \$2.346), rather than the \$460 (230 x \$2.00) Sutter asserts. Nonetheless, for argument's sake we will use Sutter's \$460 figure. For Unit No. 2 costs we then would have \$460 for pipe installation, plus \$200 for four home services, less \$160 for the deleted blowoff valve, SS ✓ or a total of \$700 10/ for Unit No. 2.

SS ✓ 10/ The expense incurred by Wonmor in adding the connection on Hanks Street necessitated by adding Unit No. 2 to the original project is unknown, but it would push the \$700 of Unit No. 2 costs even higher.

But it cannot be assumed, as Sutter apparently does, that the \$1,796 difference between Wonmor's bid on Unit No. 1 and his final billing for the entire project (Units Nos. 1 and 2) is ascribable solely to Unit No. 2 costs. To do so would be to overlook the extras on Unit No. 1; namely, the two 8-inch gate valves which were installed at a cost (according to Citizens) of \$933 each. These valves were not included in the drawings which formed the basis for Wonmor's (and the other bidder's) bid on Unit No. 1, and if Wonmor were required to add these during construction, he is certainly entitled to be paid for them, and the additional cost goes to the subdivider. It is axiomatic that the full costs of bringing water to undeveloped tracts being subdivided must be borne by the subdivider (Thury v Lucerne Water Co. (1964) 62 CPUC 525; Fontana Domestic Water Co. (1928) 31 CRC 117). Furthermore, it does not matter that the full extent of such costs are ascertained only after construction is completed. The effect otherwise would be to shift to the utility, and ultimately to the ratepayers, the cost of getting water to lots being developed, which cost should properly be borne by the developer or land speculator. Thus, it is apparent that even the cost of but one of these additional gate valves would, when added to the \$700 Sutter asserted costs of Unit No. 2, account for most of the \$1,796 difference between Wonmor's Unit No. 1 bid and his final project completed billing. But besides the additional gate valves, there is also the cost of installing the additional footage of pipe in Unit No. 1 beyond the 2,050 in the invitation to bid. In all, Wonmor installed 2,335 lineal feet of main; 55 feet more than the 2,050 bid in Unit No. 1 and the 230 added by Unit No. 2. Even at Sutter's figure of \$2.00 per lineal foot, this 55 additional feet in Unit No. 1 would add another \$110 to Wonmor's legitimate charge. This, plus the Hanks Street connection, more than accounts for Wonmor's \$1,796 difference. From the above analysis we conclude that Wonmor's charges are proper and reasonable.

We next address that portion of Sutter's complaint relating to what Sutter calls Citizens' "general and administrative overhead rate". Citizens refers to these items as: (1) labor fee, (2) labor overhead fee, and (3) construction fee. Here we encounter difficulties, not so much because these items are included, but rather because of Citizens' murky way of including them. Here these items were not clearly spelled out to Sutter before the work began. Sutter alleges he was told that there was a 5 percent provision included. But the September 23, 1976 Main Extension Agreement buries them entirely, merely stating (see Exhibit No. 26) that the total project is estimated to cost \$27,664. Even after the project was completed and Citizens on February 15, 1977 sent Sutter (1) a refund of \$177 representing the difference between its estimate and the final costs, and (2) a letter (see Exhibit No. 5) purporting to include in tabulation form "the detail of this cost differential," there was no mention of any of these three items. The only amounts shown are the totals on the project stated separately for main, service, and hydrant accounts. When Sutter demanded details and got together on March 1, 1977 with Citizens' representatives Snodgrass and Stradley, he learned little more. A Citizens' letter on March 29, 1977, supposedly in response to these requests for further cost breakdowns, merely added tantalizing hints by partially separating installation and material charges, and in a rearrangement purporting to set forth estimates for Unit No. 1 and Unit No. 2, ~~12/11~~ ^{12/11} still provided no meaningful breakdown to meet Sutter's request. *KK*

SS ✓ 12/1 But the breakdown purporting to separate Unit No. 1 and Unit No. 2 failed to segregate installation costs from material costs and did not even mention Citizens' labor, overhead, and construction fees (either in the aggregate or by subdivision unit). Although the original estimate (based on Womor's low bid) was for 2,050 feet in Unit No. 1, here 2,093 feet was used.

As we examine the record in this proceeding we can appreciate Sutter's growing frustration. Citizens' shifting sands explanations to Sutter involved a shuffling of figures and recapitulations that always added up to a \$177 refund but securely veiled actual cost components. Although afforded opportunity to do so, Citizens let the complaint go to hearing and submission without providing at any time a clear-cut explanation of its charges. Buried in the endless recapitulations are \$2,044 representing Citizens' labor, overhead, and construction fees. Just what Sutter got for this \$2,044 is never explained clearly. These items were laid out for the first time at the hearing as to amounts. When asked where the money went, Stradley stated that "the invoices are in Exhibit 26, and that's exactly where the money went, and it's detailed". We do not agree.

Exhibit No. 26 discloses the following expenditure totals: Under Direct Labor, \$264 was distributed to the Main Account; \$6.00 to Water Service, and \$4.00 to Hydrants. Overhead on this direct labor was in turn distributed to the respective accounts in the amounts of \$179, \$3.00, and \$3.00. Direct Labor includes field inspection work in connection with the construction and does not appear disproportionate nor unreasonable. Similarly, the overhead in that direct labor appears reasonable. Taken together, the direct labor and overhead amount to \$459, 1.6 percent of the non-Citizens' costs on the job. 14/13/

Going further into Exhibit No. 26, we come to the "Construction Fee", and it is this entry in the amount of \$1,585 which concerns

SS 15/ Citizens' witness, Stradley, testified that these labor charges are based upon time cards submitted by their employees.

SS 13/ As noted earlier, Citizens' practice is to estimate a 2 percent direct labor charge plus a 5 percent of that 2 percent estimate for direct labor overhead; in all, a compounded 2.1 percent estimate. Here, obviously, the 1.8 percent achieved is below the 2.1 percent estimate.

us. Also termed a "contingency fee" during the hearing, Citizens' witness testified that it was customarily included in an estimate at 5 percent of total estimated project costs, "and the purpose of that is just to take care of unforeseens, just like in any construction project." ~~5/14~~ SS / Witness Stradley went on to respond to the Administrative Law Judge's question: "Were there any contingencies found in this job, Sir?," by stating: "Not to the best of my knowledge, No". He then went on to testify that "the contingency fee that had been advanced was just rolled into the total moneys advanced." But then, on the final workup of costs represented on Exhibit No. 26, there is the \$1,585 "Construction Fee" charge included in the \$27,487 total cost of the job.

There appears to be a significant misconception in Citizens' viewpoint of the nature and role of these contingency or construction fees. They are not merely add-ons to the final cost of a main extension project; amounts which are to the extent unused, a windfall to the utility. The contingency or construction fee portion of the

~~5/14~~ SS / If Citizens intends that its contingency fee (or "construction fee") be part of some form of a flat, general and administrative overhead type charge, a charge to be levied on the final total project cost irrespective of contingencies, it should clearly term it as such, and set it forth as such in each estimate, so that there can be no question about the charge before a subdivider signs a main extension agreement. The evidence here is to the contrary, with Citizens' witness denying any such charge and testifying:

"We charge a standard 5 percent overhead for estimating purposes. We charge a 2 percent estimate on direct labor, based upon our past experience. Those are both adjustable to actual costs that may be occurring at the time. They have historically stayed right in the area of 7 percent, just exactly like this job did."

deposit is required of the developer to assure that funds are available without further recourse to handle unforeseen contingencies; but just as a developer is required to advance the deposit, a utility has a correlative obligation to make refund to the developer of all or any portion of the contingency advance which was unneeded to complete the project. Furthermore, the developer is entitled to a full and detailed explanation of what contingencies arose and of the costs incurred meeting them. It does not suffice to merely inform the developer that the project cost total was less than the estimate, and refund the difference without explanation. A public utility is created for public purposes and performs a function of the state. It acquires the status of a quasi-trustee (Smith v Ames (1898) 169 U.S. 466, 544; Western Canal Co. v R.R. Com. (1932) 216 C 639, 647, cert. denied, (1933) 289 U.S. 742). The deposits of a subdivider-developer under these circumstances are held in a semi-fiduciary capacity.

While Citizens' witness initially testified that no contingencies had arisen on this project, on its own work sheets (see Exhibit No. 26) it listed a "construction fee" in the amount of \$1,585. It appears, gleaned from the record as a whole, that as the result of inadvertent oversight or negligent engineering, Citizens overlooked two \$933 valves in putting this job out to bid and that these subsequently had to be added to the project. Thus, its estimate was overrun correcting these oversights if there were no contingencies. The cost of these valves was passed back to Sutter - The question is where? The cost of one such valve we attributed earlier as being buried in Womnor's disproportionate total billing for the combined Units Nos. 1 and 2. It would appear that the cost of the second valve was recovered by burying it in the "construction fee" item. It further appears that while Sutter tried to get explanations, he was instead given a barrage of summarized subtotals which assiduously avoided ever mentioning the construction fee, although the rearranged subtotals always added neatly up to \$27,487.

Oversights and omissions are regrettable, but they do happen, and they are to be set forth and explained; not hidden.

In finally resolving this complaint we will use what information we have been able to extract from Citizens. Given ample opportunity over a year and a half passed in communication on the subject, and again at the hearing, to produce a full detailed accounting of the "Total Costs Units Nos. 1 and 2 Sutter Estates," Citizens has piecemeal come forth with or supplied information by which we have been able to generally account for all save approximately \$652 of the \$27,487 stated by it to be the final costs. We therefore conclude that this \$652 balance was not expended on this project and will order that it be refunded in full to Sutter within 45 days of the effective date of this order.

Findings of Fact

1. The adjacent real estate subdivisions known as Sutter Estates Units Nos. 1 and 2 are situated in a suburban area in which the public utility water services are provided by Citizens.
2. Sutter, the subdeveloper of Sutter Estates Units Nos. 1 and 2, requested extension of water service to its two units in the fall of 1976.
3. Preparatory to furnishing Sutter with an estimate of the advance required under its Main Extension Rules, Citizens put the installation project out to bid. The low bidder was Wonmor.
4. Closely following developments in the preparation of the estimate, Sutter at the last minute determined to add Unit No. 2 to the project. To save time Sutter asked Citizens to expand the 45-home Unit No. 1 project to include the 4-home Unit No. 2 extension.
5. Citizens recomputed and gave Sutter a total Unit Nos. 1 and 2 project cost estimate (without detailing component costs) of \$27,664 on September 9, 1976, and Sutter thereupon signed a Main Extension Agreement for the project, advancing the \$27,664 deposit.
6. The project completed, Citizens on February 15, 1977 informed Sutter that the final total project cost was \$27,487 and refunded the \$177 remaining from the deposit.

7. Sutter repeatedly but unsuccessfully requested detailed component cost breakdowns from Citizens; in response receiving a series of analyses and recapitulations which totaled \$27,487 but veiled component costs.

8. During construction there were unanticipated additional costs, including valves, and it cannot be assumed that the dollar difference between Wonmor's bid on Unit No. 1 and Wonmor's final billing for the entire completed project is ascribable solely to the addition of Unit No. 2 to the project.

9. Wonmor's charges for the entire project, considering the facts of the amount of its bid on Unit No. 1, proportionate probable costs for Unit No. 2, and the additional elements added during construction, have not been shown to be anything but proper and reasonable.

10. There has been no credible evidence presented of any improper relationship between Citizens and Wonmor.

11. At the hearing Citizens presented a breakdown of elements in its final total costs for the project which breakdown identified one of the elements as a contingency charge labeled as a "construction fee" in the amount of \$1,585.

12. Citizens was unwilling or unable to furnish a breakdown of its "construction fee" of \$1,585 beyond conceding that a valve added cost \$933.

13. In that the deposits of a subdivider are held by a utility in a semi-fiduciary capacity, Sutter was owed a more detailed accounting of funds spent as contingency items.

Conclusions of Law

1. Citizens has failed to properly and adequately account for contingency expenditures on this project.

2. Citizens should be required to refund an additional \$652 to Sutter.

O R D E R

IT IS ORDERED that Citizens Utilities Company of California refund an additional \$652 to W. Art Sutter from the \$27,644 advance deposit made to secure construction of a water main extension to furnish public utility water service to Sutter Estates Units Nos. 1 and 2, and that said refund be made within forty-five days of the effective date of this order.

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

Dated JAN 8 - 1980, at San Francisco, California.

John E. Coyne

 President

James L. Thompson

Richard D. Howell

Clare J. ...

James ...

 Commissioners