ALJ/KKH/mrj

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Decision 98-10-025 October 8, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the Commission's own Motion into whether the Bidwell Water Company misused its Safe Drinking Water Bond Act Surcharge revenues and has violated rules, orders, and decisions of the Commission.	Investigation 97-04-013 (Filed April 9, 1997)

(See Appendix A for List of Appearances.)

O P I N I O N

1. Summary

This decision finds that Bidwell Water Company (Bidwell) violated a prior Commission order by failing to credit $116,277 of surcharge revenues to the balancing account (interest over the period increases this to $145,004) which was earmarked for payment of a Safe Drinking Water Bond Act (SDWBA) loan during the period 1980-1997. This decision directs Bidwell to comply with the prior order by restoring the accounts to the proper balance, and allows Bidwell to do the restoration over a period of years. This decision also sets a new SDWBA surcharge that will reflect a reasonable estimate of the balance that should be in the account if all surcharge revenue had been properly credited. A punitive fine of $1,000 is imposed.

2. Description of Company

Bidwell is an incorporated public utility water company as defined in § 2701 of the Public Utilities (PU) Code. Tom Jernigan and Vickey Jernigan are its sole shareholders. Bidwell serves about 512 customers in the town of Greenville

and vicinity. Excluding the SDWBA surcharge revenue, Bidwell typically receives about $140,114 in annual revenue.

3. Background

Commission Decision (D.) 90714 issued August 28, 1979, in Application 58617 authorized Bidwell to arrange a loan for $557,230 from the Department of Water Resources (DWR) pursuant to the SDWBA of 1976. Excerpts from pages 5 and 6 of D.90714 are:

> "Applicants propose to establish a balancing account which would be credited with revenue collected through the surcharge and with investment tax credits arising out of the plant reconstruction program, as they are utilized. The balancing account would be charged with payments of interest and principal on the loan. The surcharge would be adjusted periodically to reflect changes in the number of customer connections and resulting overages or shortages in the balancing account."

> "The surcharge proposed herein covers only the costs of the loan incurred to finance the added plant, not any additional operating expenses that may be incurred. It would not preclude future rate increase requests to cover increased wages, property taxes, power bills, or other operating expenses that may be incurred in the future."

From the Findings of Fact at pages 15 and 16:

> "2. The DWR loan provides the lowest cost capital for the needed water system improvements and is a prudent means of acquiring necessary capital. The proposed borrowing is for proper purposes and the money, property or labor to be procured or paid for by the issue of the loan authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income."

> "4. The rate surcharge which is established to repay the DWR loan should last as long as the loan. The surcharge should not be intermingled with other utility charges. Special accounting

requirements are necessary to ensure that there are no unintended windfalls to private utility owners."

From the Ordering Paragraphs at page 17:

"2. Applicants are authorized to borrow $557,230 from the State Department of Water Resources, to execute the proposed loan contract, and to use the proceeds as specified in the application.

"3. As a condition of the rate increase granted herein, applicants shall be responsible for refunding or applying on behalf of customers, any surplus accrued in the balancing account when ordered by the Commission.

"4. Applicants shall establish and maintain a separate balancing account which shall include all billed surcharge revenue and the value of investment tax credits on the plant financed by the loan as utilized. The balancing account shall be reduced by payments of principal and interest to the State Department of Water Resources. The rate surcharge shall be separately identified on each customer's water bill issued by applicants."

4. The Investigation

In 1995 Bidwell's consultant Brommenschenkle informed staff that Bidwell was diverting surplus SDWBA funds to normal operating expenses because its rates were too low. A staff audit followed resulting in a staff recommended Order Instituting Investigation (OII or I.) 97-04-013 issued April 9, 1997. The OII provided both the jurisdictional basis and the reasons for opening this investigation in the following excerpts from the OII:

"During Bidwell's 1996 general rate increase request investigation, the assigned staff auditor discovered that Bidwell apparently continuously under-funded its SDWBA Account for the years 1979 through 1995 (not all collected surcharge revenues were applied to the account as proceeds to enable repayment)."

"The Commission has broad powers to supervise and regulate water utilities in the state, and may do all things "necessary and

convenient" in the exercise of its power and jurisdiction. (PU Code § 70 1.) Included among its powers is the power to impose fines of up to $20,000 per offense for violations of Commission rules, orders or directions. (PU Code § 2107.) Where the violations are ongoing, each day they continue is a separate and distinct offense. (PU Code § 2108.)

"The staff's declaration states that Bidwell has and continues to violate the Commission's 1979 order to "establish and maintain a separate balancing account which shall include all billed surcharge revenue and the value of investment tax credits on the plant financed by the loan as utilized." (See D.90714, mimeo., p. 17, Ordering Paragraph 4.) Also, staff concludes that other accounting requirements have not been followed."

"Bidwell's apparent position that it could be justified in past years of offsetting historical general operating losses against SDWBA surcharge revenues requires comment. This notion is directly contrary to the Commission's long standing policy and the judicial case law against retroactive ratemaking. And it is contrary to the Commission order approving the imposition of the special surcharge on customers. If Bidwell was not collecting enough general revenue from its customers, it could have requested rate increases from the Commission rather that (sic) using specially earmarked funds for loan repayment that do not belong to Bidwell, and which were by Commission order to be applied to the special account to fund repayment of the loan from the state under the SDWQA."

Excerpts from the Ordering Paragraphs of I.97-04-013:

"1. An investigation on the Commission's own motion is instituted into the operations and practices of the respondents, Thomas and Vicky Jernigan, as individuals having control and management decisionmaking in connection with Bidwell Water Company, and the Bidwell Water Company, a corporation, to determine whether respondents have misappropriated and failed to remit collected surcharge revenues of up to $218,873.59, including interest, to repay the Safe Drinking Water Bond Act loan, and whether any other provisions of Commission decisions concerning the SDWQA loan have been violated."

"6. Respondents are put on notice that, unless they show cause to the contrary, Bidwell Water Company, its officers and directors may be ordered to repay the surcharge revenues of up to $218,873.59, including interest, to the fiscal agent, and that they as individuals may be fined to the full extent permitted by the Public Utilities Code and subject to other action or remedies to secure compliance and protect ratepayers."

"7. An evidentiary hearing shall be held to allow Respondents an opportunity to appear and show cause why the order entered today in paragraphs 2 through 4 should not be permanent, and why the respondents should not be, pursuant to Public Utilities Code Sections 2107 and 2108, fined for their failure to comply with Commission rules and orders."

The issues more simply stated are:

Issue 1 -- Did Bidwell violate a Commission order by underpaying its SDWBA account in the amount of up to $218,873.59 during the years 1979 to 1995?

Issue 2 -- If Issue 1 is proven, should Bidwell be ordered to repay the surcharge revenues and be subject to remedies to secure compliance and protect ratepayers?

Issue 3 -- If Issue 1 is proven, is a punitive fine pursuant to PU Code Sections 2107 and 2108 warranted? If so, how large a fine?

5. Procedural History

A prehearing conference was held in this matter on September 2, 1997. An evidentiary hearing was held in Sacramento on November 25, 1997, before the assigned Administrative Law Judge (ALJ) with assigned Commissioner, Josiah Neeper, in attendance. This matter was submitted on the receipt of concurrent briefs filed January 23, 1998.

From the initiation of this proceeding through filing of briefs in this matter, Bidwell has objected to this proceeding and has filed motions to dismiss this

proceeding on jurisdictional and constitutional grounds which will be discussed below. The ALJ has denied the motions, and we support the denial.

The CSD brief contained a quotation from a written statement of the Indian Valley Community Services District to bolster the staff's recommendation to condition any sale of Bidwell on the restitution of the SDWBA balancing account. This statement was not offered into evidence. On January 30, 1998, Bidwell filed a motion to strike that portion of the CSD brief as follows:

> "Respondent, Bidwell Water Company, objects to and moves to strike that portion of the Consumer Services Division's Post Hearing Brief dated January 23, 1998, appearing at page 10-11 thereof and purporting to be a quotation from a November 24, 1997, pre-hearing statement by the Indian Valley Community Services District, an interested party, on the ground that said matter is hearsay, is the content of a document that has not been authenticated and is an attempt to present unsworn testimony from an unidentified witness as to which respondent's have not been accorded the right of cross-examination in accordance with basic requirements of constitutional due process of law. Said document is quoted at page 10 of the Consumer Services Division's Post Hearing Brief and its admission was objected to at the time of the hearing. (RT 21-26). The objection was not ruled on because the ALJ had not then received the pre-hearing statement at that time and noted that it was not part of the evidence received in the record of this proceeding. (Id. at p. 26.)"

CSD staff did not reply to the motion. The motion to strike that portion of staff's brief will be granted. The statement referred to was not offered as evidence and should not be considered as a factual or evidentiary basis for this decision.

6. Hearing

6.1 CSD's Testimony

CSD appeared and presented the testimony of Mark Bumgardner and Fred Curry.

The OII indicated that as much as $218,873.59 may have been underpaid into the SDWBA Account between 1980 and June of 1997. That amount was comprised of three elements: 1) the amount of missing Investment Tax Credits; 2) underpayments into the SDWBA account; and 3) interest on both amounts over the period in question. In Exhibit 1, CSD now concludes that the amount of the underpayment is $145,000. The major difference between the amounts of $145,004 and $218,873.59 is the result of the CSD's removing the Investment Tax Credit and its related interest as an issue in this case. This issue was removed by CSD witness Bamgardner at the hearing because in his opinion Decision 90714 is unclear on the treatment of Investment Tax Credits which are not claimed on income tax returns.

Also, CSD has accepted Bidwell's recommended balancing account interest rates in its calculations. The results of the CSD revisions are shown in the table (Table III, Exhibit 1) below:

Table 1 (Table III, Exh. 1)
Bidwell Water Company Underpayments to its SDWBA Account
(1980 - 1997)

	Beginning Balance	Deposits	Collections	Difference	Interest	Ending Balance	Interest Rate
1980		$27,675	$30,349	($2,674)	($88)	($2,762)	5.30%
1981	($2,762)	$38,925	$39,195	($270)	($165)	($3,197)	5.30%
1982	($3,197)	$36,544	$36,949	($405)	($215)	($3,817)	5.30%
1983	($3,817)	$34,949	$35,895	($946)	($382)	($5,145)	8.50%
1984	($5,145)	$38,565	$38,157	$408	($363)	($5,100)	8.40%
1985	($5,100)	$41,952	$38,829	$3,123	($262)	($2,239)	7.00%
1986	($2,239)	$36,975	$40,285	($3,310)	($356)	($5,905)	5.50%
1987	($5,905)	$39,513	$39,390	$123	($390)	($6,172)	5.20%
1988	($6,172)	$32,365	$39,995	($7,630)	($665)	($14,466)	5.20%
1989	($14,466)	$22,500	$38,605	($16,105)	($1,539)	($32,110)	5.80%
1990	($32,110)	$30,157	$38,096	($7,939)	($2,917)	($42,967)	7.20%
1991	($42,967)	$40,704	$40,384	$320	($2,595)	($45,241)	5.70%
1992	($45,241)	$31,599	$40,497	($8,898)	($1,698)	($55,837)	3.30%
1993	($55,837)	$23,800	$40,543	($16,743)	($1,701)	($74,282)	2.50%
1994	($74,282)	$27,667	$40,438	($12,771)	($2,293)	($89,346)	2.70%
1995	($89,346)	$21,500	$40,986	($19,486)	($4,110)	($112,942)	4.00%
1980-95		$525,391	$618,593	($93,202)	($19,740)	($112,942)	
1996	($112,942)	$19,115	$41,924	($22,809)	($5,741)	($141,493)	4.36%
1997	($141,493)	$20,693	$20,958	($265)	($3,246)	($145,004)	4.53%
1996-97		$39,808	$62,882	($23,074)	($8,987)	($32,062)	
1980-97		$565,193	$681,475	($116,277)	($28,727)	($145,004)	

6.2. CSD's Arguments

CSD's argument is fairly simple. D.90714 provided that all SDWBA surcharge revenue should be credited to the SDWBA account and used for no other purpose than to repay the SDWBA loan. CSD concludes that Bidwell collected from customers $116,277 more for SDWBA surcharges than it credited to the SDWBA account over the period from 1980 to 1997. Because D.90714 is

clear, an examination of the uses of the funds which were not credited to the SDWBA balancing account is not necessary.

Since customers are repaying the SDWBA loan and are entitled to any overcollection, CSD argues that they should be made whole by having Bidwell credit the account by the amount of the underpayments and the related interest that customer payments should have earned over the period.

CSD recommends that Bidwell's current surcharge be decreased by 30% immediately so that Bidwell's surcharge stop providing a surplus. (Exh. 1 p. 5.)

CSD recommends that Bidwell credit its SDWBA account by the underpayment $116,277 and related interest of $28,727 for a total of $145,004. CSD further recommends that we condition our approval of any future sale of the company upon the payment of the underpayment and related interest. Finally, CSD believes that Bidwell's violation of our prior order is so egregious that it warrants a punitive fine in the amount of $101,000 which would be suspended once Bidwell has complied with the Commission order resulting from this case.

6.3. Respondent's Testimony

At the hearing, Bidwell presented the testimony of two witnesses - Tom Jernigan and his consultant Frank Brommenschenkle. The testimony of Bidwell admits the underpayments of surcharge revenues in the balancing account. Bidwell's showing can best be characterized as one of justification and mitigation.

Bidwell makes the following points:

1. It has never missed a payment on its SDWBA loan.

2. Bidwell for most years during the time period has operated at a loss.

3. All redirected SDWBA funds were used for utility operating expenses.

4. Bidwell took a financial risk in opposing a DWR interest rate change on the loan. The endeavor was solely for the benefit of the ratepayers; no benefits flowed to Bidwell. The outcome was a savings to ratepayers of as much as $175,000 over the life of the loan.

5. None of the SDWBA surcharge funds were ever directed to the personal benefit of the Jernigans.

Based on the above showing Bidwell argues that:

1. Since Bidwell's rates are set by the California Public Utilities Commission and Bidwell was operating at a loss, it was justified in redirecting the SDWBA surcharge funds to legitimate operating expenses.

2. Bidwell believed that it was authorized to redirect funds based on Ordering Paragraph 4 of D.90714.

3. Because it has operated at a loss (including the redirected funds), the ratepayers have, in effect, underpaid for the value of the water received from Bidwell.

4. Because of Bidwell's fighting the DWR interest rate change and thereby saving the ratepayers over $175,000, the ratepayers have gained almost as much from Bidwell's actions as compared to the amount of the redirected funds.

Additionally, Bidwell proffered the following legal arguments:

1. The Commission lacks jurisdiction to order refunds to ratepayers.

2. The Commission can only impose a fine pursuant to PU Code § 2107 by first going to Superior Court pursuant to § 2104.

3. The Commission has waited too long to order the refunds at this time. Bidwell cannot find a specific statute of limitations

> applicable to this type of violation, but it argues that some analogous statute of limitations or the doctrine of latches must be applicable. Also, Bidwell argues that the Commission has waited much more than a reasonable period of time (up to 17 years) to require payment back into the balancing account.

Bidwell argues that the OII should be dismissed.

7. Discussion

7.1. Jurisdiction

Bidwell claims that we lack jurisdiction to entertain this proceeding. Specifically, Bidwell argues that we lack jurisdiction to either order payments into a balancing account or to impose a punitive fine for violating a prior Commission order. Bidwell makes this argument based on its description of this case as a contempt proceeding. Bidwell is wrong. This is not a contempt proceeding. Rather, the first ordering paragraph of the OII in this proceeding sets forth the basic issue of this proceeding as follows:

> "1. An investigation on the Commission's own motion is instituted into the operations and practices of the respondents, Thomas and Vicky Jernigan, as individuals having control and management decisionmaking in connection with Bidwell Water Company, and the Bidwell Water Company, a corporation, to determine whether respondents have misappropriated and failed to remit collected surcharge revenues of up to $218,873.59, including interest, to repay the Safe Drinking Water Bond Act loan, and whether any other provisions of Commission decisions concerning the SDWQA loan have been violated."

Section 451 of the PU Code provides that the rates of public utilities must be just and reasonable. Section 1702 gives the Commission authority to challenge the reasonableness of the rates of regulated public utilities. Section 2107 provides authority to impose fines for the violation of Commission orders. Where violations are ongoing, each day of continuance thereof is a

separate and distinct offense (Section 2108). In addition, Section 701 grants the Commission broad powers to supervise and regulate water utilities in the state, and authorizes the Commission to do all things "necessary and convenient" in the exercise of its power and jurisdiction.

Concerning the imposition of a fine, respondent argues that this Commission must seek fines only pursuant to an action in Superior Court. We agree with the position of the CSD that the Commission has ample authority to impose a fine administratively. It is only necessary to go to Superior Court if the party against whom the fine is levied fails to pay it.

We conclude that the PU Code provides ample jurisdictional authority for us to investigate whether Bidwell has violated a prior order of the Commission, whether its current rates are unreasonable and whether and to what extent a punitive fine should be imposed for any proven violations.

7.2. The Equitable Defense of Laches

In its motions to dismiss this proceeding and in its brief, respondent argues that because the Commission has waited so long (up to 17 years) to bring an action against the respondent, the equitable defense of laches should bar any Commission action because of unreasonable delay and acquiescence of the Commission.

The respondent's actions first became known to the Commission staff in 1995. This proceeding was initiated in 1997. There has been no unreasonable delay or acquiescence.

7.3. Violation of prior order

The CSD showing as reflected in its testimony and exhibits substantiates the allegations that Bidwell collected from customers but failed to credit its SDWBA account by $116,277 over the period from 1980 to 1997. Interest

on this amount equals $28,727. These amounts are illustrated in Table 1 above (from Table III of Exh. 1).

Bidwell itself admits that not all funds collected pursuant to the SDWBA surcharge were credited to the SDWBA balancing account. (See testimony of Jernigan (Tr. 149) and Brommenschenkle Exh. 12 pg 2.)

The plain reading of D.90714 clearly provides that this was prohibited. From the discussion portion of the decision at pages 5 and 6:

> "The surcharge proposed herein covers only the costs of the loan incurred to finance the added plant, not any additional operating expenses that may be incurred. It would not preclude future rate increase requests to cover increased wages, property taxes, power bills, or other operating expenses that may be incurred in the future."

From the Findings of Fact at pages 15 and 16:

> "4. The rate surcharge which is established to repay the DWR loan should last as long as the loan. The surcharge should not be intermingled with other utility charges. Special accounting requirements are necessary to ensure that there are no unintended windfalls to private utility owners."

From the Ordering Paragraphs at page 17:

> "3. As a condition of the rate increase granted herein, applicants shall be responsible for refunding or applying on behalf of customers, any surplus accrued in the balancing account when ordered by the Commission.
>
> "4. Applicants shall establish and maintain a separate balancing account which shall include all billed surcharge revenue and the value of investment tax credits on the plant financed by the loan as utilized. The balancing account shall be reduced by payments of principal and interest to the State Department of Water Resources. The rate surcharge shall be separately identified on each customer's water bill issued by applicants."

Thus it is clear that Bidwell has violated D.90714.

We have considered Bidwell's showing in which it attempts to justify its redirection of funds. We note that much of what Bidwell would have us do would constitute retroactive ratemaking. In essence, Bidwell would have us now find that the rates previously approved by us were insufficient and grant a retroactive increase in rates represented by the amount of redirected funds. We cannot do this. We find that the use of SDWBA funds for expenses not related to the SDWBA loan was not justified.

7.4. The appropriate remedy

We have resolved that Bidwell failed to comply with an earlier Commission decision. We now turn to developing an appropriate remedy. The first and most obvious remedy is to order Bidwell to comply with our prior decision and immediately credit the balancing account with a payment of $145,004. We note, however, that Bidwell is unlikely to have sufficient cash reserves to make such a credit. We also note that the misuse of funds took place over a long period of time. We believe that Bidwell should be allowed to make the SDWBA surcharge account whole over a period of time, if it so desires.

Appendix A of Resolution No. W-3999 dated September 4, 1996 (Attachment 5 of Exh. 1) sets forth the results of operations for Bidwell and shows that its profit margin - the difference between all reasonable expenses and revenue - equals about $22,740 per year at the currently adopted 20% operating ratio.

We will reset the SDWBA surcharge as if the funds had not been previously redirected. We will set the surcharge so that it produces annual revenues of about $14,000. This is the difference between the SDWBA annual loan payment of $36,000 and the expected credit of $22,000. This means that Bidwell should operate for a period of about 6-7 years with little or no profit

margin after making the credit to the SDWBA account. Bidwell will be able to service its SDWBA loan, and Bidwell will continue to be able to recover all reasonable operating expenses (including interest payments) under our current operating ratio method of ratesetting. When the entire credit has been accomplished, Bidwell may seek to have the surcharge adjusted.

CSD would also have us condition the future sale of the company on its complete restitution of the SDWBA account. We will certainly take note of Bidwell's actions in any future application to sell or transfer control of the company, but we will do so when considering any application that comes to us rather than in this decision. We do not want to prejudge any future application to sell or transfer ownership or control. It is our every intention that the ratepayers be made whole. However, we can not predict any and all nuances of a future transaction involving a sale or transfer. We will examine any future transaction and pass judgment on its propriety if and when it comes before us.

7.5. Punitive fine

Section 2107 provides the commission's authority to impose fines:

> "Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than twenty thousand dollars ($20,000) for each offense."

Section 2108 of the PU Code deals with continuing violations as follows:

> "Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense."

CSD recommends a punitive fine in the amount of $101,000 and recommends that most of the fine be suspended when the SDWBA account has been properly brought into balance. CSD calculates its fine recommendation based primarily on using $5,000 per year for each year that violations continued with certain minor adjustments.

Relying on Sections 2107 and 2108 of the PU Code, our range of a fine is from $500 to $20,000 for each day of continuing violations. While the Bidwell showing does not constitute good grounds to justify Bidwell's misuse of funds, it does offer reason to mitigate against the imposition of a maximum fine. Bidwell has testified that the funds were used for utility operating expenses and not redirected to the personal benefit of the owners. Bidwell has also shown that the ratepayers have enjoyed lower rates that would not have been possible without Bidwell's efforts in litigation on behalf of its ratepayers. Bidwell has shown a mistaken belief that it was appropriate to use the funds for operating expenses. Finally, we take note that it was Bidwell itself that brought the violation to staff's attention in 1995.

We are very favorably impressed by the fact that it was Bidwell itself which brought the violations to the staff's notice. We have concluded that there was no malevolent intent on Bidwell's part. Rather, it appears to be more of a case of mis-management. Even though the ratepayers will be made whole upon

the repayment of the misused funds, we will impose a punitive fine in the amount of $1,000. The fact remains that the ratepayers were placed in jeopardy of having to pay twice for the repairs made possible by the SDWBA loan. The ratepayers have paid the $116,277 ($145,004) with interest and yet the loan balance does not reflect that payment. It still remains to be paid.

While the Bidwell showing does not justify its actions, it provides sufficient mitigation for us to not impose a maximum punitive fine. A fine in the amount of $1,000 is sufficient to penalize Bidwell and send the message that this type of action in the future will not be tolerated and may be met with more serious consequences.

8. Comments

The ALJ's Proposed Decision (PD) was mailed on September 3, 1998. Comments on the Proposed Decision were filed by CSD and Bidwell.

We have considered both sets of comments and find that the basic outcome of the PD should not be changed. However, the comments have caused us to review and make minor changes to the decision.

The CSD comments indicated the PD was correct as to the facts and law regarding the basic violation. However, CSD takes exception to the low level of the punitive fine ($1,000 vs. CSD's recommended $100,000) imposed by the ALJ. We have considered the comments of CSD and elect to retain the punitive fine at the same level as adopted by the ALJ -- $1000.

The comments of Bidwell were, for the most part, re-argument of its position that it has maintained throughout this proceedings:

1. The Commission does not have authority to order respondent to repay the SDWBA balancing account.
2. This is a contempt proceeding and the elements to find contempt are not present.

3. The statute of limitations and/or the Doctrine of Laches prevents the Commission from prosecuting these violations.
4. The Commission has no authority to impose fines other than in contempt proceedings.

Finally, Bidwell offered a new argument not raised before. Respondent claims that the Commission must dismiss these proceedings because contrary to the requirement of § 311 of the Public Utilities Code, the proposed decision was issued more than ninety days after submission of the matter. Section 311 (d) provides in relevant part:

> "...The opinion of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an ajudicatory (sic) hearing, it shall be based upon the evidence in the record. Every finding, opinion and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission."

Although the Commission should be conscientious in its compliance with § 311's provision for the timely issuance of the proposed decision, the breach of that expectation cannot, as respondent claims, have jurisdictional consequences. The very words of § 311 (d) make it clear that the proposed decision is not binding on the Commission. We may "adopt, modify, or set aside the proposed

decision" or any part thereof. Similarly, the untimely issuance of the proposed decision cannot alter the Commission's authority to decide the matter.

If accepted as valid, respondent's interpretation of § 311 would create an absurd result contrary to the public interest. Significant public policy reasons demand that jurisdictional derailment cannot result from the untimely filing of a proposed decision which is not binding on this Commission. Clearly, we have a strong regulatory interest in maintaining jurisdiction over a utility's misuse of ratepayer funds and in requiring the utility's compliance with our previous orders. Such jurisdiction is consistent with our statutorily and constitutionally mandated duties, will ensure the integrity of our regulatory programs, and will facilitate the orderly development of the law. In short, such continuing jurisdiction is in the public interest.

If we agreed with Bidwell's argument, the harm could be corrected procedurally by a Commission order setting aside submission, the issuance anew of the proposed decision and the provision of a new comment period. At this point, to set aside submission of this matter, to reissue the proposed decision, and provide another comment period seems a wasteful and unproductive exercise. The law does not require such waste.

Findings of Fact

1. D.90714 issued August 28, 1979, in Application 58617 authorized Bidwell to arrange a loan in the amount of $557,230 from the DWR pursuant to the SDWBA of 1976.

2. The surcharge provided in D.90714 was to cover only the costs of the loan incurred to finance the added plant, not any additional operating expenses that might occur.

3. D.90714 provided that the surcharge should not be intermingled with other utility charges.

4. Bidwell collected from customers $116,000 more for SDWBA surcharges than it credited to the SDWBA account over the period from 1980 to 1997.

5. The interest on the underpayments to the SDWBA account over the period equals $28,727.

6. Bidwell has never missed a payment on its SDWBA loan.

7. The surcharge is excessive in that it produces a surplus of collections over payments each year.

8. Bidwell for most years during the time period has operated at a loss.

9. All redirected SDWBA funds were used for other utility operating expenses.

10. Bidwell took a financial risk in opposing a DWR interest rate change on the loan. The outcome was a savings to ratepayers of as much as $175,000 over the life of the loan.

11. None of the SDWBA surcharge funds were ever directed to the personal benefit of the Jernigans.

12. The Bidwell profit margin equals about $22,740 per year.

13. The SDWBA annual loan payment is about $36,000 per year.

14. It is reasonable to set the SDWBA surcharge so that it produces revenues of about $14,000 per year until the balancing account is properly balanced.

15. A fine of $1,000 is reasonable punishment for Bidwell's violation of D.90714.

16. The Administrative Law Judge's Proposed Decision in this matter was issued more than ninety days after submission of the proceeding.

Conclusions of Law

1. Bidwell violated D.90714 by failing to credit its SDWBA account with all SDWBA collections during the period 1980 to 1997.

2. Bidwell should be ordered to credit the account with all past collections plus interest as computed by the CSD.

3. Bidwell should be ordered to credit the SDWBA $22,000 per year over SDWBA surcharge collections.

4. The SDWBA surcharge should be adjusted to produce revenues of approximately $14,000 per year until the account is properly balanced.

5. California Public Utilities Code Section 2107 provides that any public utility that violates a Commission order may be subject to a penalty of not less than five hundred dollars ($500), nor more than twenty thousand dollars ($20,000) for each offense.

6. Bidwell should be assessed a penalty of one thousand dollars ($1,000).

7. Issuance of the Administrative Law Judge's Proposed Decision more than ninety days after submission does not require dismissal of the proceeding.

O R D E R

IT IS ORDERED that:

1. Within 60 days from the effective date of this decision, Bidwell Water Company (Bidwell) will file an advice letter that will implement this order.

2. Bidwell will credit the Safe Drinking Water Bond Act (SDWBA) account with all past SDWBA loan collections plus interest as computed by the Consumer Services Division in Exh. 1.

3. Bidwell will credit the SDWBA account $22,000 per year over SDWBA estimated surcharge collections.

4. The SDWBA surcharge should be adjusted to produce revenues of approximately $14,000 per year until the full credit is accomplished.

5. After the full credit is accomplished, Bidwell may request an adjustment to its SDWBA surcharge.

6. Bidwell is assessed a penalty of one thousand dollars ($1,000) due within 60 days of the effective date of this order.

7. This proceeding is closed.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Appendix A

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Last updated on 16-JUL-1998 by: LPD
I9704013 LIST

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(End of Appendix A)