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ORIGINAL

Decision No. 77433

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DEL AMO HILLS, INC.; and CAROLDALE, INC., and BWC, INC., dba R. A. WATT COMPANY, Complainants, -vs- DOMINGUEZ WATER CORPORATION, a California corporation, Defendant.	Case No. 8241 (Filed August 9, 1965; Amended February 17, 1967, March 10, 1969)
SEPULVEDA TOWN HOUSES, INC.; and CAROLDALE, INC., and BWC, INC., copartners, dba R. A. WATT COMPANY, Complainants, -vs- DOMINGUEZ-WATER CORPORATION, a California corporation, Defendant.	Case No. 8242 (Filed August 9, 1965; Amended February 17, 1967, March 10, 1969)
R. A. WATT, INCORPORATED; and CAROLDALE, INC., and BWC, INC., copartners, dba R. A. WATT COMPANY, Complainants, -vs- DOMINGUEZ WATER CORPORATION, a California corporation, Defendant.	Case No. 8243 (Filed August 9, 1965; Amended February 14, 1967, March 10, 1969)
R. A. WATT, INCORPORATED, SEPULVEDA HOMES, INC., CAROLDALE, INC., and BWC, INC., dba R. A. WATT COMPANY, Complainants, -vs- DOMINGUEZ WATER CORPORATION, a California corporation, Defendant.	Case No. 8332 (Filed January 12, 1966; Amended February 14, 1967, March 10, 1969)
R. A. WATT, INCORPORATED, SEPULVEDA TOWN HOUSES, INC., AVOCADO LAND CO., INC., SEPULVEDA TERRACE, INC., and CAROLDALE, INC., and BWC, INC., dba R. A. WATT COMPANY, Complainants, -vs- DOMINGUEZ WATER CORPORATION, a California corporation, Defendant.	Case No. 8595 (Filed February 20, 1967; Amended March 10, 1969)

Charles W. Drake and Phillip R. Nicolson, for R. A. Watt, Inc., complainant.
William W. Leavitt, for complainants.
Robert N. Lowry, of Brobeck, Phleger & Harrison, for defendant.
Jerry J. Levander and R. M. Mann, for the Commission staff.

O P I N I O N

Complainants, formerly affiliated subdividers owned or controlled by R. A. Watt, entered into various contracts with defendant water utility during 1964 and 1965 for extension of water facilities from defendant's existing system, to serve industrial and residential tracts planned or under development by them in unincorporated portions of Los Angeles County within defendant's dedicated service area.[1/]

In Cases Nos. 8241, 8242, 8243 and 8332, complainants seek orders requiring defendant to reclassify as "refundable advances", or to repay in cash, the moneys paid by them or on their behalf as "contributions in aid of construction", classified as such by defendant in the contracts for the purpose of enabling complainants to meet the fire flow requirements of Los Angeles County Ordinance No. 7834, as amended (originally adopted August 2, 1960), which the parties agree applied to complainants but not to defendant.[2/] The ordinance, among other matters, required as a condition precedent to securing building permits, approval of subdivision plans and zoning changes, satisfactory evidence to county officials that the water system proposed to serve the development could be operated by the water utility and that the system would meet the county's design and fire flow requirements.

1/ The parties have stipulated that Boise Cascade Building Company, a Delaware corporation, successor to each of the complainants as the result of assignments, mergers and change of corporate name, would be deemed to be the real party in interest as the complainant in all five cases for the purpose of pursuing the complaints and without necessity for further formal amendment of the pleadings. The predecessor complainants will be specifically identified herein, if necessary for clarity.

2/ Exhibit 7, pp. 1-16 shows operative parts of the ordinance applicable to these cases.

Complainants in Case No. 8595 seek an order requiring defendant: (a) to execute a main extension contract for Tract 23903 (an eight-lot industrial and commercial subdivision proposed to be developed east of Vermont Avenue); and (b) to allocate to Tracts 30176, 29814 (proposed R-1 subdivisions west of Vermont Avenue) and 23903 the advance made for a 12-inch main installed in Vermont Avenue, at the request of R. A. Watt, Incorporated, prior to development by other corporate affiliates of the R-1 subdivisions west of Vermont (later designated Tracts 30176 and 29814) and in anticipation of street improvements in Vermont Avenue. The Vermont Avenue main was identified, for contract purposes, as "Tract 29792". In their prayer, complainants seek both (not alternatively) the allocation to Tracts 30176, 29184 and 23903 of the advance made with respect to "Tract 29792" and a cash refund of the entire advance.

Defendant, in Case No. 8243, has asserted an offset and counterclaim of $10,434.48, because the actual cost ($23,960.99) of an oversized approach main in Sepulveda Boulevard, installed contemporaneously with an oversized approach main in Normandie Avenue to serve Tract 27360 (the initial development in the area), exceeded by the amount of the claimed offset the actual cost of the extension from the nearest utility facility (at the intersection of Vermont Avenue and Sepulveda Boulevard) at least equal in size or capacity to the main required to serve that tract, as required by Section C.I.a. of defendant's water main extension rule (Rule No. 15). Defendant assigned separate job numbers to the Sepulveda and Normandie main installations (both were installed by the same contractor), but, under oral arrangements with the subdivider, defendant did not execute a written main extension contract for the Sepulveda portion or require an advance from the subdivider for the estimated cost thereof.

Defendant in Cases Nos. 8241, 8242, 8243 and 8332, asks that the Commission find that its application of the main extension rule to the various contracts involved in those cases, as indicated in the executed contracts, is just and reasonable and lawful; that the complaints be dismissed for failure to state a cause of action, and that the Commission grant defendant any other appropriate relief.

In Case No. 8595, defendant alleges as a further defense that it has offered, subject to Commission approval, to combine and re-execute main extension contracts for Tracts 23903, 30176 and 29814 (the industrial, commercial and R-1 subdivisions adjacent to Vermont Avenue), so as to allocate among those tracts the cost of installing the 12-inch main in Vermont Avenue; that it has not been possible to do this because all of the costs with respect to service to those tracts have not been finally determined and that it is not possible to ascertain what costs are subject to allocation for refund purposes until defendant's liability to refund the cost of complainants' compliance with the "Water Ordinance" (now involved in Case No. 8242) has been finally determined by the Commission. Defendant requests an order in Case No. 8595 dismissing the complaint for failure to state a cause of action and for general relief.

The cases were submitted on briefs following hearings on a consolidated record in February and April, 1969 at Los Angeles before Examiner Gregory. An earlier partial hearing on the original pleadings in four of the cases (Nos. 8241, 8243 and 8332), held before Examiner Gregory at Los Angeles on May 17, 1966, was terminated when it developed that actual installation costs for the facilities involved in those cases were not then available, and that a fifth complaint, concerning the Vermont Avenue installations, would be filed later (Case No. 8595).

The parties are in substantial agreement on the dollar amounts disclosed by this record as the "estimated costs" and the "recorded (actual) costs" for the water facility installations. They are not in accord in their statements, on brief, of what they consider to be the issues presented for decision, which they respectively contend are:

Complainants (Opening Br., pp. 5, 6)

1. Were the main extension contracts involved entered into between defendant and the respective complainants?

2. Did the respective complainants advance to defendant the sums set forth in the main extension contracts including the costs of compliance with the ordinances of Los Angeles County?

3. Do extensions of mains and the installation of water facilities supplying both domestic water and incidental fire protection come within defendant's Main Extension Rule?

4. Did the main extension contracts provide that the added costs of compliance with the ordinances of Los Angeles County as allocated by defendant constitute "contributions" by complainants and therefore are not subject to refund?

5. Were the allocations by defendant to "contributions", of the costs of such compliance advanced to defendant by the respective complainants, violations of defendant's Rule No. 15 and of Section A.4.d.?

6. Were the exactions of "contributions" by defendant deviations from its Rule No. 15?

7. If so, was defendant required to obtain authorization from the Commission to deviate from its Rule No. 15 prior to entering into said contracts, and did it apply to the Commission for such authority?

8. Are the complainants entitled to refunds of the costs of compliance with the Los Angeles County Ordinances?

Defendant (Brief, p. 4)

1. In Cases Nos. 8241, 8242, 8243 and 8332, the central issue is whether the economic burden of subdividers' compliance with the Los Angeles County Water Ordinance, which cannot constitutionally be applied to the defendant, may nonetheless be shifted to the defendant and to its ratepayers by requiring such added cost to be included in the subdividers' advances subject to refund by the defendant.

2. If the Commission should determine that defendant's water main extension rule must be interpreted to require defendant and its ratepayers to assume this burden, a contingent issue is whether the application of the rule under the facts of these cases would be so unreasonable and discriminatory as to entitle defendant to relief pursuant to Section A.8. of the rule (the so-called "hardship" section), or by the exercise of the Commission's inherent regulatory powers.

3. In Case No. 8243, a second issue is whether the amount of the advance payable by the subdivider should be increased by $23,960.99 to reflect the actual cost of constructing the extension from the nearest utility facility at least equal in size or capacity to the main required to serve Tract 27360, as required by Section C.1.a. of defendant's water main extension rule.

4. In Case No. 8595, the issues are whether defendant should be required to execute a water main extension contract with respect to Tract 23903, and whether the cost of the main extension in Vermont Avenue (designated as "Tract 29792") should be allocated to Tracts 30176, 29184 and 23903 or refunded entirely.

As we view the pleadings and the record, there is no issue material to the order or decision herein with respect to paragraphs numbered 1, 2 and 4 of complainants' statement, above. The record shows, with respect to those items, that execution of the various main extension contracts is admitted by the pleadings (par.1). It was stipulated that defendant's exhibits, including Exhibits Nos. 30, 32, 35, 41 and 43, correctly reflect the amounts received by defendant from the respective complainants, including the amounts

referred to as contributions in the main extension contracts attached as exhibits to the First Amended Complaints in Cases Nos. 8241, 8242, 8243 and 8332 and to the Complaint in Case No. 8595 (par.2). The various main extension contracts, as executed by the parties, specifically describe the facilities to be installed and the estimated cost thereof, except the contract for service to Tract 27360 to be discussed later. The contracts allocate portions of the total advance as between amounts refundable or otherwise to be financed by the utility and amounts "contributed by the subdivider to meet County Fire Ordinance requirements" (par.4).

The balance of complainants' statement of the issues (pars.3,5,6 and 7) refers to various aspects of the main extension rule and to the ultimate issue of whether complainants are entitled to refund of amounts classified by defendant as "contributions" (par.8).

A few points, bearing on our consideration of this record and of the parties' contentions may be mentioned at the outset.

First, this Commission may properly regulate the service which must be given in an area to which the utility is dedicated, and the terms on which voluntary extensions into new areas may be made. (All extensions pertinent here were made within defendant's then dedicated service area.) Any arrangements made by the utility which deviate from its rules on file with the Commission, unless and until authorized by the Commission, are of no force and effect (Pub.Util.Code, sec.532; General Order No. 96-A, par.X. See California Water & Telephone Co. v. Public Util.Com. (1959) 51 C.2d 478).

Second, the Los Angeles County Water Ordinance cannot constitutionally be applied to investor-owned public utility water companies, as the field of local legislation has been fully occupied

by the state pursuant to statutes administered and regulations promulgated by this Commission (California Water & Telephone Co. et al. v. County of Los Angeles (1967) 253 C.A. 2d 16; Cal. Const., Art. XII, sec. 23).

Finally, in resolving the issues we shall consider in addition to the testimony and exhibits, applicable provisions of the water main extension rule (defendant's Rule No. 15);[3/] General Order No. 96-A, paragraph X (requiring prior authority for tariff deviations); General Order No. 103 (minimum standards for design and construction of water facilities), par. III. 2.b.; Public Utilities Code, sec. 701 (conferring power on the Commission, within jurisdictional limitations, to make all necessary convenient orders); and, lastly, pertinent authorities, whether cited or not by the parties, that bear upon the issues.

The tabulation below (Defendant's Brief, p.50) shows the advances and contributions of the complainants, as adjusted to actual cost, including the cost of the approach main in Sepulveda Boulevard (Exhibits 30, 32, 35, 41, 43, 44; Tr. 233-34). Defendant has assumed, for the purposes of these cases, that the tracts have been completed; however, actual construction costs of the facilities have not yet been determined due to delays in completion.

3/ Decision No. 64536, dated November 8, 1962, Case No. 5501, 60 Cal. P.U.C. 318, as modified, with respect to Sections A.2., C.1.b. and C.3., by Decision No. 75205, dated January 21, 1969. The only pertinent modification of the rule is with respect to Section C.3., Termination of Main Extension Contracts. The contracts here were entered into in 1964 and 1965 under then-existing provisions of the rule. If herein authorized, the contracts can be terminated under the modified provisions of that section.

Case No.	Contract No.	Tract Nos.	Received From Developer	Recorded Cost Advance	Recorded Cost Oversizing	Credit Due Developer
8241	198	26884) 27984) 27985) 27986) 27987)	$ 91,018.61	$ 70,521.40	$13,444.13*	$ 7,053.09
8242	229	29184	34,982.90	30,481.79	1,616.00	2,885.11
	230	30176	37,208.71	32,948.54	2,794.27	1,465.90
8243	210	27360	70,626.00	68,690.48**	12,370.00	(10,434.48)
	215	28611	21,850.20	17,863.49	945.00	3,041.71
	223	29714	6,660.36	4,723.11***	-	1,937.25
8332	225	23644) 29420) 30177) 30189)	56,559.59	49,651.17	3,656.01	3,252.41
8595	221	29792	18,181.93	11,475.09	5,629.93	1,076.91
			$337,088.30	$286,355.07	$40,455.33	$10,277.90

* Does not include $6,492.95 for oversizing paid for by defendant.

** Includes $23,960.99 for Sepulveda Boulevard main.

*** Includes $588.15 for cost of relocating a hydrant not properly subject to refund (Tr. 119-20).

Complainants' position on the reclassification issue is that reclassification of contributions as refundable advances is justified by the primacy of Section A.4.d. of the main extension rule, and by defendant's admitted failure to secure prior Commission authority to treat as contributions those portions of the advances that constituted the cost of enabling complainants to meet the county's fire flow requirements.[4/]

4/ Section A.4.d. of the rule provides: "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."

Defendant, in a multi-based attack on complainants' position, argues that it would be unreasonable to require it and its rate-paying customers indirectly to bear the cost (by reclassifying contributions as refundable advances) of complainants' need to comply with the county's fire flow requirements when the county ordinance cannot constitutionally be applied to defendant directly. In developing this point, defendant notes that in these cases the county's requirements have made it necessary, at the outset of water system construction, to increase the sizes of distribution mains from 4 inches to 6 inches, from 6 inches to 8 inches, and from 8 inches to 12 or 14 inches, and to make connections to additional sources of water supply.[5/] Defendant then states that because it believed such oversizing was improvident and uneconomical and that the cost thereof would be an improper burden upon it and its rate-payers, and because it also believed that the Water Ordinance (then under attack in the courts by defendant and other investor-owned water utilities) did not apply to it, defendant requested of the complainants, and complainants agreed, that the cost of oversizing be contributed by the subdivider, and that this procedure was also followed with other subdividers who, like complainants here, were subject to the provisions of the ordinance.

5/ Defendant explains that in ordinary residential water system design and construction and assuming reasonably rapid subdivision development, additional connections to sources other than the original water supply source are made to provide for uniform pressures and for circulation of water within the grid system of distribution mains. In consequence, the resulting flows available for firefighting purposes soon exceed the county's minimum requirements. As an example, defendant refers to the situation at Koleeta Avenue in Tract 27360, where the initial requirement was 1,000 gallons per minute, and where, as shown by this record, the available fire flows are now estimated to be in excess of 2,500 gallons per minute.

Defendant, in addition to its economic argument, above, urges that Section A.4.d. of the main extension rule, properly construed, was intended to ensure that a water utility could include in the advance the cost of the utility's need--but not a subdivider's need--to comply with public requirements applicable to it. Hence, because defendant was not subject to the ordinance and did not, by tariff provisions or otherwise, hold itself out (its only provisions for fire protection are reasonable additional fire flow capacities designed for and built into its mains, and its tariff schedules for public fire hydrant and private fire protection services) to provide the service or the means to enable a subdivider to meet local fire flow requirements, the contribution arrangements involved here did not require prior Commission authorization as main extension rule deviations, but, instead, were non-utility fire protection service arrangements negotiable under paragraph III.2.b. of General Order No. 103.[6/]

Defendant argues that the Commission, in Carpignano, 63 Cal. P.U.C. 735, 739 (1964), construed the quoted fire protection provision as permitting a utility to negotiate the terms and conditions of fire protection service only where no applicable tariff has been filed by the utility and to those situations where both the fire protection agency and the utility agree to negotiate a change

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5/ General Order No. 103, par. III.2.b., provides as follows:

> "Fire Protection. Specifications, location, installation, and the responsibility for the maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant. Fire hydrants and public and private fire protection facilities shall be installed to the requirements of the utility and when owned by the utility shall be subject to such conditions as the Commission may determine based upon the compensation for this service." (Emphasis ours.)

to be requested by the utility in an appropriate advice letter. Therefore, so the argument goes, as defendant had no tariff schedule covering facilities necessary to enable subdividers to comply with the Water Ordinance, in arranging for classification of portions of the advances as "contributions" it was proceeding fully within the authorization granted by General Order No. 103 in a situation to which the main extension rule did not then apply and in order to protect it and its ratepayers from uneconomic investment in non-productive facilities. It was not until 1968, defendant asserts, that it first received a direct order from the Commission, in a rate application, to obtain prior authorization for main extension contracts in which contributions in aid of construction are demanded of subdividers to meet fire flow requirements of public authorities (Dominguez Water Corporation, Decision No. 74833, dated October 15, 1968, in Application No. 49793). Defendant states that it proposes to seek such authority in any case arising subsequent to that order.

Defendant concludes its argument on the reclassification issue by urging that in order to prevent complainants from obtaining a windfall "by reason of defendant's good faith failure to seek deviation authority with respect to the contracts involved herein", the Commission, if it believes such authority was required, should exercise its discretion by authorizing defendant to retain as contributions (after adjustment to actual cost) the sums representing the cost of subdividers' compliance with the Water Ordinance. Defendant states that granting such relief would be in accord with the Commission's decision in California Water & Telephone Co., 58 Cal. P.U.C. 435 (1960).

In that case, the utility for several years had required contributions of the cost of providing water service beyond its dedicated service area at elevations above the 165-foot contour, contrary to the provisions of its then-applicable main extension rule. The Commission, under the special circumstances shown by that record, exercised its discretion by granting authority to carry out agreements that had either been fully executed or were under actual construction as of the effective date of its decision. The order stated that future construction should be in strict accordance with the utility's main extension rule unless prior authority to deviate therefrom had first been secured.

Defendant notes that the five complaints herein, unlike the situation in California Water & Telephone Co., supra, involve no question of approval of future contracts calling for contributions on account of fire flow oversizing, as defendant is now under a direct order to seek prior deviation authority in such cases.

Complainants' response to defendant's arguments on the reclassification issue will be considered next, to be followed by an examination of the parties' contentions with respect to the special problems concerning the Sepulveda Boulevard portion of the approach main to serve Tract 27360 (Case No. 8243), and the Vermont Avenue installations (Case No. 8595).

Complainants, in reply to defendant's arguments concerning Section A.4.d. of the main extension rule and to the asserted adverse economic impact on the utility and its ratepayers from reclassification of the contributions to refundable advances, urge that the language of that section is clear; that as complainants were required by the Water Ordinance to provide an integrated water system for their tracts that would meet the county's minimum fire flow specifications, the estimated reasonable cost of the extensions "to be actually installed" (Main Extension Rule, Sec. C.1.a.) was thus required, by Section A.4.d., to be advanced to the utility before construction was commenced. The amount so advanced, adjusted to actual cost, therefore, was wholly refundable pursuant to Section C.2.a. of the rule, absent prior authority for the utility to deviate from the rule by treating portions of the advance as "contributions" of the cost of oversizing mains to meet the county's fire flow requirements. 7/

Replying specifically to defendant's economic argument complainants state that the total estimated oversizing cost advanced for the nine tracts was $40,637.47, and that if the actual cost ($40,455.33 according to defendant) were fully refunded and added to defendant's rate base ($9,013,000 estimated 1968--see Decision No. 74833, supra), any adverse economic effect would be negligible,

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7/ Section C.2.a. of the rule states, in pertinent part:

> "a. The amount advanced under Sections C.1.a.... shall be subject to refund by the utility, in cash, without interest, to the party or parties entitled thereto..."

especially if the benefits of increased fire protection and reduced insurance premiums for the ratepayers were to be taken into consideration.[8/]

The controversy over the Sepulveda Boulevard-Normandie Avenue approach main (Case No. 8243) and various installations in and adjacent to both sides of Vermont Avenue (Case No. 8595), which accounts for a major part of this record, stems from precontractual, pragmatic arrangements between the subdividers and

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8/ The actual cost of the oversizing, indicated incorrectly as $40,454.33 on Exhibit 44, Col.3, was $40,455.33 and is shown by cases and tracts below (Def's. Br., p.22):

Case No.	Tract No.	Oversizing Cost	Exhibit No.
8241	26884	$ 9,417.00	43
	27985	4,027.12	43
8242	29184	1,616.00	41
	30176	2,794.27	41
8243*	27360	12,370.00	30
	28611	945.00	30
8332	23644	2,031.46	32
	29420	1,624.55	32
8595	29792	5,629.93**	35
Total		$40,455.33	

* In Tract 29714, 30 feet of pipe was increased in size from 4 inches to 6 inches in connection with the relocation of a hydrant. No oversizing was involved (Ex. 30; Tr. 223-25).

** The cost of oversizing the main in Vermont Avenue (Tract 29792) is included although complainants do not seek relief in Case No. 8595 on this ground, probably because in that case they seek to have the entire cost of the main allocated to other tracts for refund purposes.

the utility, reflected in their contracts, for installations, including oversized mains, requested by the subdividers to serve theretofore undeveloped areas--chiefly oil fields--south of Sepulveda between Normandie and Vermont Avenues that were either remote from the utility's nearest existing adequate connection (at the intersection of Sepulveda and Vermont), or as to which subdivision plans were then only prospective or tentative.

Neither the utility nor the subdividers, at the time, considered their arrangements as unwarranted deviations from the main extension rule, or to be so unreasonable as to suggest prior recourse to the Commission to make them effective, pursuant to General Order No. 96-A, par. X.A., or to Section A.8. (the "hardship" section) of the main extension rule.[9/]

To review here the lengthy and often conflicting testimony concerning those arrangements would serve no useful purpose. The preliminary discussions for the installations involved in this proceeding were conducted by Frank Forsberg, defendant's construction manager, with various field and management personnel of R. A. Watt, Incorporated and other affiliated developers. Forsberg, with his construction department associates, designed, mapped and costed the various facilities. He then submitted the data to the utility's executives, including Alex Lawrence, secretary-treasurer, for preparation of the contracts, and he also supervised the installations. His testimony was explicit, especially so in connection with the Sepulveda-Normandie approach main and the Vermont Avenue installations.

9/ The written contracts were executed on the standard printed form of main extension contract for subdivisions, the "Preliminary Statement" of which, in pertinent part, reads as follows:

> "This contract is entered into pursuant to the requirement of, and in accordance with the various applicable provisions of, utility's main extension rule ... This contract does not, therefore, require specific authorization of said Commission, to carry out its terms and conditions."

Forsberg's testimony makes clear that when the Watt organization, then engaged in extensive developments in Los Angeles County, succeeded, about June, 1964 to the interests of a previous developer (Calvin Clark, not affiliated with Watt) in the area south of Sepulveda Boulevard, Watt's general plan was for development of residential subdivisions eastward from Normandie Avenue to Vermont Avenue and industrial or commercial tracts east of Vermont. The utility's service area boundary, in that vicinity, paralleled Normandie Avenue a few hundred feet to the west. The three streets--Normandie, Sepulveda and Vermont--were then two-lane highways that followed the terrain. Plans for improvement of Sepulveda were more advanced than for Vermont, while Normandie was an established street with no improvements then anticipated.

Watt proposed to develop first the area between Normandie and Vermont south of the Santa Fe right-of-way, commencing with Tract 27360 in the southwest corner of the general area south of Sepulveda. The Watt group also had plans for later developments southeast of the intersection of Sepulveda and Normandie (see map, Exhibit 29, showing the various tracts with the installations depicted "as-built").[10/] Accordingly, Watt requested that the

10/ In these and the other cases the identification and purpose of the various installations called for by the parties' agreements was obscured by the fact that photocopies of the contracts attached as exhibits to the complaints did not contain the required maps. Accordingly, the parties stipulated, early in the hearing, that defendant's large-scale, "as-built" maps would be received in evidence and used for general reference purposes. Other maps and drawings are either in evidence or are otherwise identified in testimony relating to a specific subject. As an example, a map attached to a counterpart original contract for the approach main to serve Tract 27360 showed the Sepulveda portion of that main extending from the connection point at Vermont westerly to Normandie, in addition to the Normandie portion (Tr. 407-415). A photocopy of that contract, attached as an exhibit to the complaint in Case No. 8243, had no map.

approach main be routed from Vermont and Sepulveda, westerly in Sepulveda to Normandie, thence south in Normandie to approximately the southwest corner of Tract 27360.

Field discussions between Forsberg and Watt personnel, chiefly Bill Barclay, concerning the route and cost of the approach main, including the cost of oversizing for both that main and in-tract distribution mains, resulted in an understanding, not stated but reflected in the contract executed August 26, 1964 (Exhibit "A-2" to complaint, Case No. 8243), that if Watt would pay the cost, including oversizing, of the Normandie Avenue portion of the approach main and the in-tract facilities for Tract 27360, then defendant, at its own cost, would construct the Sepulveda Boulevard portion of the approach main (from the connection at Vermont to the intersection of Normandie and Sepulveda), and would also connect an additional supply of water to the Sepulveda portion of the approach main from an existing main at Alexandria Avenue, near Normandie, to help provide the initial fire flows required by the county ordinance.

The recorded cost of the Sepulveda Boulevard portion of the approach main, for which defendant has asked a set-off from the amounts due to be refunded to complainants, was $23,960.99, consisting of the following (Tr. 231, 233-234):

2,631 feet of 12-inch asbestos cement pipe	$21,801.11
6-inch connection at Alexandria Avenue	1,722.02
1 hydrant, Sepulveda Boulevard and Normandie Avenue	437.86
Total	$23,960.99

No portion of this total was covered by an advance. Lawrence, defendant's secretary-treasurer, admitted at the hearing that construction by the utility, at its own expense, of the Sepulveda portion of the approach main "was probably in violation of its main extension rule inasmuch as this pipeline had no other function than

to serve the subdivision known as Tract 27360 and such other subdivisions as might be developed in the future in that general area" (Tr. 234).[11/]

The testimony of Douglas V. Kulberg (Tr. 396-430), a former Watt project engineer called by complainants in connection with the installations, including the approach main, for Tract 27360, discloses that though Kulberg was a Watt project engineer for Tract 27360 during the time negotiations for the approach main were under discussion and had had talks with Frank Forsberg, he did not, personally, remember having had any discussion with any of the utility's personnel with reference to the main in Sepulveda Boulevard (Tr. 401). He testified that he took the contract prepared by defendant for the installations for Tract 27360, secured its execution by Watt and then returned it to the utility (Tr. 402). Kulberg's testimony, in contrast to that of Forsberg, was not specific as to details of the precontractual negotiations for water service to Tract 27360, though he was able to fix the approximate date (June, 1964) when Watt acquired the interests of the former developer in the area, Calvin Clark Enterprises, Inc.

We now pass to the Vermont Avenue installations the complexity of which precludes extensive discussion here, except to indicate the problems confronting the subdividers and the utility for provision of water or fire protection service, including county fire flow requirements, for vaguely described areas that were then only at the prospective or tentative stage of development.

11/ The installations for the adjoining and next-developed area easterly to Vermont Avenue (Tract 28611, Exhibit 29) and for relocation of a fire hydrant and oversizing a short service line (Tract 29714, Exhibit 28) are detailed in other contracts which also are the subject matter of Case No. 8243. Those installations do not require special comment here, other than to note that defendant has indicated on this record (Tr.223-225, Exhibit 30) that it would bear the adjusted costs, shown in the contract for Tract 29714 as an estimated contribution of $225.79, for relocation of the fire hydrant and for oversizing 30 feet of pipe.

In the fall of 1964, R. A. Watt, Incorporated, because of imminent work on Vermont Avenue, requested defendant to install, as soon as possible, a main in Vermont Avenue extending southerly from Sepulveda Boulevard to a point approximately 200 feet north of the Santa Fe right-of-way (Tr. 312, Exhibit 34). No in-tract distribution facilities were associated with the main, as subdivision plans and plans for in-tract water systems for adjacent areas had not been prepared. Vermont was then basically a two-lane street with unpaved shoulders and no curbs. At that time, plans for improving Vermont by grading and paving were in preparation and work was about to begin. The parcels to the east and west, which were former oil fields, had not been developed. No subdivision map had been recorded for the area east of Vermont. Only a tentative map had been recorded for the area to the west, which had been designated generally as "Tract 29792" and which was then "just one large lot" (Tr. 313, 331, 514-515, 523). In order to accommodate the subdivider and to enable the extension to be made under the rule, defendant designated the Vermont Avenue extension as "Tract 29792" (the tentative designation of the area to the west of Vermont Avenue). It later developed that no tract was ever permanently designated by that number.

Coming to the critical phase of the Vermont Avenue arrangements, a preliminary plan of the proposed extension, dated September 10, 1964 (Exhibit 46), was submitted to Captain Rotella of the Los Angeles County Fire Department, whose duties included implementation of the water ordinance by specifying the fire flows necessary for approval of water system plans (Tr. 531-535). As a condition of his approval, which was granted November 12, 1964, he required, among other things, that five hydrants be installed at the

revised locations specified by him on Exhibit 46, that for any R-1 split-level subdivision development the minimum fire flow should be 1,500 gpm and that for any industrial area the minimum fire flow required was for 5,000 gpm for 10 hours (Exhibit 46). In approving these plans, Captain Rotella deleted a proposed 8-inch main extending easterly into what later became Sprucelake Drive in Tract 23903 on the ground "Plans not set" (Exhibit 46). He also specified that "Remainder of tract water system design shall be reviewed by L. A. Co. Fire Dept." (Exhibit 46).

As a result, a revised plan for the Vermont Avenue extension was prepared. It was approved by the County Engineer on November 17, 1964 (Exhibits 39,66). The revised plan made no provision for connections at any point along the main, east or west. The only facilities to be connected to the main included in the plan were the five hydrants specified by Captain Rotella. No street plan was shown for the parcel to the east and only two "future" streets were projected to the west. (When these streets were later constructed they were built at different locations, requiring relocation of two hydrants--Tr. 441-442).

A contract covering this extension was executed between R. A. Watt, Incorporated and defendant effective January 21, 1965 (Case No. 8595, Exhibit A to complaint). Because a 12-inch main was necessary to comply with Captain Rotella's specifications for fire flows, and an 8-inch main represented defendant's estimate of what was reasonably required, defendant classified $5,478.57 of the cost as non-refundable (Exhibit A to complaint, Exhibit 35).

At the time the contract for the Vermont Avenue main was executed in January, 1965 there were no final plans for in-tract

water systems nearby with which that main could have been associated. The parcel to the west of Vermont (then tentatively designated as Tract 29792) was later designated as Tracts 30176 and 29814. These tracts, for which water systems were still being designed on February 26, 1965 (Exhibits 63 and 64), were developed by Sepulveda Town Houses, Inc., a separate (though affiliated) entity of the Watt group. Extension contracts covering those tracts were not executed until April, 1965 (Case No. 8595, Exhibits B and C to complaint).[12/]

When the Vermont Avenue main (from Sepulveda Boulevard south approximately 1,925 feet almost to the Santa Fe right-of-way) was completed, it, like the 178 foot main at 245th Street, "served nothing" (Tr. 188). Tracts 30176 and 29184 were then only in the preliminary stages of development, and then only on the westerly side (near Normandie Avenue). Within the area bounded by Normandie, Sepulveda, Vermont and the Santa Fe right-of-way, the direction of subdivision development was easterly from Normandie, as previously noted. As Tracts 30176 and 29184 were developed, they were supplied with water from the 12-inch Normandie Avenue main. Later, when nearing completion and to improve in-tract circulation, those tracts

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12/ Exhibit 29, the "as-built" map related to the approach main and in-tract facilities for Tracts 27360 and 28611 (Case No. 8243), shows a short, 12-inch asbestos-cement main extending 178 feet along Vermont Avenue at 245th Street at the southeasterly corner of Tract 28611. That main, oversized from 8-inches to 12-inches, was included in the Tract 28611 installations at the subdivider's request, prior to the Vermont Avenue street improvements, to reduce costs of an additional extension for possible future developments in that area. "It served nothing" when installed (Tr. 172), and is not included in the installations, now being considered, that pertain to Case No. 8595.

were additionally supplied by three "hot-tap" connections (flange tees are used for preplanned connections) to the 12-inch Vermont Avenue main (Tr. 188-189, 325, 441). Design of the Vermont Avenue main did not provide for flange connections to the R-1 area later to be developed as Tracts 30176 and 29184.

A complex and especially controversial phase of the Vermont Avenue extensions merits comment here, because of its relation to the relief requested by complainants in Cases Nos. 8243 and 8595 and the treatment by defendant, for refund and other purposes, of certain installations east of Vermont Avenue, especially those classified by defendant, at the time, as for private fire protection service.

The evidence on this phase of the case discloses that in the fall of 1964, just prior to construction of the 12-inch main in the west side of Vermont Avenue and before the improvement project in that street, Bill Barclay, of R. A. Watt, Incorporated, requested defendant to install five 8-inch laterals from the Vermont Avenue main easterly to a tentative industrial area, later known as Tract 23903. Barclay described the laterals as being for private fire protection service for buildings to be erected later in that area (Exhibit 34, Tr. 316, 323, 328). One of the laterals, longer than the others, extended some 430 feet into Sprucelake Drive, then a tentative, undedicated cul-de-sac street (Exhibits 34, 46).

From information available to it at the time, defendant considered these laterals to be as described by Barclay--solely for private fire protection service--within the meaning of the exclusionary provision of the main extension rule which, in pertinent part, reads--"Extensions solely for...private fire protection... service shall not be made under this rule." (Tr. 350-352, 372).

R. A. Watt, Incorporated was billed and it paid the sum of $4,618.24, representing the cost of installation of the laterals, as required by Special Condition No. 1 of defendant's Schedule No. 4 applicable to private fire protection service (Exhibit 36, Tr. 317, 350-352, 360). Defendant, as was customary in such cases and as a less expensive alternative to running separate domestic service connections across Vermont Avenue or installing a duplicate main along the east side of Vermont, made small metered domestic water service connections to these 8-inch laterals, for office and toilet facilities (Tr. 319-20). (About half of the 2-inch meters were later changed to 1-inch, when billings showed use of less amounts of water than had been anticipated--Tr. 320.)[13/]

Development of Tract 23903 as an industrial subdivision was delayed because of difficulty in meeting Captain Rotella's requirement of a 5,000 gpm fire flow (Tr. 318, 381-382, Exhibit 46). That requirement was later met when defendant was able to augment its water supply by a connection to the Metropolitan Water District system (Tr. 318, 319). In February, 1966, a year later than the date of the deposit for installation of the 8-inch laterals, defendant and Watt executed a refund contract for the $1,600 cost of two 6-inch fire hydrants in Sprucelake Drive (Exhibit 36, Case No. 8595, Exhibit A-1 to Amendments to Complaint). The lateral in Sprucelake Drive later assumed the character of a domestic pipeline parallel to the center line of the street. Defendant, at the hearing,

13/ Defendant's tariffs are in evidence by reference (Tr. 22). Special Condition No. 1 of Schedule No. 4 specifies that the customer shall pay, without refund, the entire cost of installing the fire protection service connection. Special Conditions Nos. 3 and 5, defendant asserts, contemplate that fire connections made under that schedule may also be used for other purposes; if so, there is no requirement in the tariff that the customer's payment be prorated or refunded entirely.

testified that installation of the two fire hydrants under a refund contract was an exception to its usual practice, and expressed willingness to add the cost of the Sprucelake Drive pipeline to that contract, for refund purposes (Tr. 360, 361).

Summary, Findings and Conclusions

As we have noted at the outset of this opinion, there is no substantial dispute in this proceeding as to the dollars of estimated and adjusted costs of the various installations, as shown by defendant's exhibits. The chief areas of dispute relate to the Sepulveda-Normandie approach main, the several installations in the vicinity of Vermont Avenue, and the applicability of various provisions of the main extension rule and other schedules of defendant's tariffs to both the Sepulveda-Normandie and the Vermont installations. The parties have urged that the Commission consider equities asserted to inhere in their arrangements for water service concluded under conditions prevailing at the time.

Approaching a decision here, we note, first, that in 1964 and early 1965, the several complainants and defendant were engaged in complex negotiations for water service to previously undeveloped areas on the fringe of defendant's then-existing service area in unincorporated territory of Los Angeles County. Secondly, the class action filed by California Water Association on behalf of defendant and other investor-owned water utilities in Los Angeles County (No. 842988, Super. Ct., L.A. Co.) was still pending and undecided in the trial court while the various water facility contracts involved here were being negotiated (the contracts for Tracts 30176 and 29184 west of Vermont Avenue were executed after April 8, 1965, the date on which the trial court rendered its judgment that the county water ordinance would not be enforced against investor-owned

water utilities--see Exhs. 26 and 27). Lastly, three proceedings, considered by the parties to be pertinent to issues here, were both pending and finally decided during the period between the filing of the first complaint herein (Case No. 8421, filed August 9, 1965) and the commencement, on February 18, 1969, of adjourned and original hearings on these five consolidated complaints.[14/] It is a permissible inference that at least one of the reasons for delay in reaching a hearing in these consolidated cases may be attributed to the reluctance of defendant and its counsel, who were directly involved or vitally interested in all three proceedings, and of complainants and their counsel who also were interested in the outcome, to proceed further while the issues in those proceedings remained undecided.

14/ The three proceedings were: (a) the appeal in the water ordinance class action, decided July 31, 1967 (California Water & Telephone Co. et al., supra); (b) defendant's rate increase application, in which the utility was ordered to seek prior authority for main extension contracts involving contributions (Decision No. 74833, supra, dated October 15, 1968); and (c) the Commission's reopened investigation of the main extension rule, initiated August 24, 1965, in which various provisions of that rule, including the relation of the Los Angeles County fire flow ordinance to Section A.4.d. (a major issue here), received extensive attention. With reference to Section A.4.d. the opinion states, in part (Decision No. 75205, dated January 21, 1969, Case No. 5501, at p.13):

> "The present language in Section A.4.d. appears to cover all situations where an 'extension' must comply with requirements of public authorities, regardless of whether the requirements are enforceable against the utility or the subdivider. In circumstances where the application of this provision...appears unreasonable to either or both parties, Section A.8. of the present rule permits the matter to be referred to the Commission for determination. If both parties agree on an equitable deviation from the rule, authorization to make effective a contract incorporating the deviation presumably could be requested by advice letter pursuant to Section X.A. of General Order No. 96-A; if the parties disagree, an appropriate formal pleading should be filed."

It results, therefore, that the delay in hearing and submitting this matter for decision--for whatever reasons--has enabled the parties to argue that despite what they did voluntarily, years ago, and without previously having submitted their now disputed arrangements to the Commission for its determination, we should consider those arrangements in the light of the above-mentioned post-contractual developments.

We dismiss the foregoing argument as without merit. The parties were aware, prior to execution of their contracts, of their right to apply to the Commission for prior determination of arrangements they considered to be uncertain, unjust or unreasonable, pursuant to Section A.8. of the main extension rule. The parties were aware also, before executing their contracts, that arrangements for utility service under conditions at variance with defendant's tariffs required prior authorization to make them effective (General Order No. 96-A, Sec. X.A.). The parties, further, were aware, prior to executing their agreements, that 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.

The respective claims of the parties in connection with Section A.4.d. of the rule, discussed earlier, disclose a latent issue of potential significance to the Commission, the County of Los Angeles and to subdividers and investor-owned water utilities generally who may be affected by the Los Angeles County water ordinance or similar

local legislation. That issue, which has policy implications, may be stated: Should investor-owned water utilities in this state be permitted, pursuant to voluntary agreements with subdividers under the main extension rule or authorized deviations therefrom, to incur the ownership burdens of excess capacity plant installed to specifications other than those promulgated by this Commission or by the utility's tariffs, even if the cost of such excess plant is contributed by the subdivider?

It is both unnecessary and inappropriate to decide that question on this record. We note that defendant, while arguing the inapplicability to it of Section A.4.d. where the additional advances were occasioned by a local ordinance purporting to affect a subject later held by the courts to be preempted by statewide regulation, nevertheless was willing, when executing its contracts with complainants, to incur some of the burdens of ownership of the excess plant (i.e., taxes, maintenance, eventual replacement, etc.), recognizing, of course, that the contributed cost of such excess plant would not be considered an investment for rate-fixing purposes.

It is further noted that, as this record shows, defendant's water system serves both incorporated and unincorporated areas in Los Angeles County. Defendant argues, in asserting the reasonableness of its decision to require contribution of the cost of excess fire flow capacity, that its ratepayers in incorporated areas, where the county water ordinance does not apply, are subjected to discrimination by having to bear system costs that include at least the operating costs of the oversized mains in county territory.

A related question that emerges from the foreging discussion, and one which it is unnecessary and inappropriate to decide here, is whether subdividers involved in main extension contracts with

investor-owned water utilities--an activity unquestionably within the paramount jurisdiction of this Commission--can be subjected by a local ordinance to specifications or requirements for water facilities more restrictive than those promulgated and enforced by this Commission.

We leave for future consideration, in an appropriate proceeding, the resolution of the foregoing questions, and turn to questions to be decided here. Complainants have asked, in effect, that we modify or reform their main extension agreements and order defendant to perform them as modified. We lack power to do this (California Water and Telephone Co. v. Public Util. Com., supra). Defendant has requested retroactive authorization for those agreements; for a determination that it acted reasonably in concluding its various arrangements with complainants; that it be authorized to reduce the total amount of moneys considered by defendant to be refundable to Boise Cascade Building Company (the real party in interest) by the cost of the Sepulveda Boulevard portion of the Normandie-Sepulveda approach main; and that the complaints be dismissed for failure to state a cause of action.

It is neither necessary nor appropriate, on a record such as this, to give retroactive validity to the main extension contracts that provided for contributions by complainants of the cost of meeting fire flow specifications of the Los Angeles County water ordinance. If those agreements are invalid for lack of prior authorization by this Commission, the parties will have to extricate themselves from the circumstances as best they can. To authorize such arrangements would be tantamount to conceding that the local ordinance, though not applicable to defendant, still was effective to compel, indirectly, not only the "voluntary" construction of unnecessarily oversized plant, but also

the inclusion in the subdividers' advances of the cost thereof pursuant to Section A.4.d. of the main extension rule, subject to refund only if authorized by this Commission.

We do not recognize the water ordinance as applicable to the arrangements for water or fire protection service concluded by the parties here. The determination, however, of which of the parties should bear the burden of their acquiescence in giving effect to the requirements of that ordinance is a matter within the exclusive jurisdiction of this Commission. In making that determination we are not bound by the terms of the several main extension contracts that provide for contributions by the subdividers of the cost of meeting the county's fire flow specifications. The appellate court, in the class action, held that the water ordinance could not constitutionally be applied to investor-owned utilities. We hold that the ordinance cannot be applied to such utilities in the indirect manner shown by this record. It results, therefore, that defendant should be allowed to retain the questioned contributions, as adjusted to actual cost of the installations represented thereby.

With respect to the Sepulveda Boulevard portion of the 12-inch approach main to serve Tract 27360, defendant clearly violated its main extension rule in failing to require an advance from the subdivider for that installation, as well as for the cost of the 6-inch connection at Alexandria Avenue installed to help provide the initial quantities of water required by the county's specifications. Defendant has asked that it be allowed to deduct from sums due to be refunded to complainants' assignee, Boise Cascade Building Company, the recorded cost of those installations which, together with one fire hydrant located at the corner of Sepulveda and Normandie, amount to $23,960.99.

In disposing of this issue, we note that uncontradicted evidence in this record shows that defendant had no reason, prior to negotiations for service to Tract 27360, to install a main in either Sepulveda Boulevard or Normandie Avenue in what was then undeveloped land near the western boundary of its service area. The nearest connection of adequate size and capacity to serve that tract was located, as this record shows, at the corner of Vermont Avenue and Sepulveda Boulevard. The approach main, routed via Sepulveda and Normandie, was constructed under one contract with one contractor, but with separate job numbers assigned by defendant to facilitate allocation of costs between the subdivider and defendant.

Defendant improvidently and mistakenly used its own funds for the Sepulveda installations. There is no apparent legal or logical reason for not treating the entire approach main as a unit for refund or contribution purposes. Defendant, therefore, should be permitted to deduct from the sum of $34,238.89 (shown on Exhibit 44 as "Credit Due Developer"), less $588.15 for relocating a fire hydrant not subject to refund (Contract No. 233), the difference--calculated on the same cost and pricing bases used for the Normandie Avenue portion of the approach main--between the recorded cost ($21,801.11) of 2,631 feet of 12-inch asbestos cement pipe and the equivalent footage of 8-inch pipe of the same class, plus the recorded cost ($1,722.02) of the connection at Alexandria Avenue. No deduction should be made for the cost of the fire hydrant ($437.86), as the relation of that hydrant to the county's fire flow requirements has not been shown. In short, what we do here is to require refund, to the party entitled thereto, of the cost of an 8-inch main in Sepulveda Boulevard (a size considered adequate by the standards of defendant and this Commission), together with the

cost of the associated fire hydrant at the corner of Sepulveda and Normandie, and to permit defendant to retain, as in the case of the Normandie Avenue portion of the approach main and other oversized installations, the balance, calculated in the manner described above, as a contribution representing the cost of compliance by the subdivider with the water ordinance.

We now turn to the Vermont Avenue installations, and to complainants' request for allocation to Tracts 30176, 29184 and 23903 of the advance made with respect to Tract 29792 and for refund, in cash, of the entire advance. We have noted that defendant has offered, subject to this Commission's authorization, to combine and re-execute main extension contracts for Tracts 23903, 30176 and 29184 so as to allocate among those tracts the cost of installing the 12-inch main in Vermont Avenue (Tract 29792). Defendant has asserted that it will not know what costs are subject to allocation for refund purposes until its liability to refund the costs of complainants' compliance with the water ordinance (involved in Case No. 8242) has been determined. Defendant also asserts that as Boise Cascade Building Company now holds all main extension agreements that provide for refunds, it should be a matter of indifference whether revenues from the above-mentioned parcels, as well as from other parcels served by oversized facilities, are attributed to one tract or another for refund purposes.

Accordingly, as we decide that defendant may retain as contributions the cost of oversizing mains to meet county fire flow specifications, including the mains installed for Tracts 29792, 30176 and 29184, defendant should refund the balance of the recorded costs to the party or parties entitled thereto, in accordance with applicable refund provisions of its main extension rule.

We do not agree with complainants' contention that defendant should be required to execute a separate main extension contract for the facilities installed in Tract 23903, the industrial area east of Vermont Avenue. Those facilities--the five 8-inch laterals and associated small domestic services previously mentioned--were properly installed under defendant's Schedule No. 4, Private Fire Protection Service, pursuant to the specific request of the subdivider for future fire protection and incidental office water for structures later to be built in that area. The fact that one of the laterals (in Sprucelake Drive) later assumed the character of a distribution main in what eventually became a dedicated street, does not vitiate defendant's understanding and action at the time, especially in light of the projected street improvements planned for Vermont Avenue and the uncertainties surrounding development of the area west of Vermont subsequently designated as Tracts 30176 and 29184. Defendant's offer, at the hearing, to refund the recorded cost of the Sprucelake Drive main in addition to the cost of the two 6-inch hydrants connected thereto (Exhibit 38), appears reasonable and should be carried into effect.

Complainants have noted, and the record shows, that the total amount of contributions herein sought to be reclassified as refundable advances is relatively minor as compared with defendant's 1968 rate base. For reasons previously indicated we do not consider that fact as determinative of the underlying question of whether, from a regulatory standpoint, any more effect should be accorded the water ordinance than appears to be necessary to dispose of the issues presented by this record. To require defendant to reclassify these contributions as refundable advances would, in effect, recognize that the local ordinance, though not constitutionally applicable to

defendant, nevertheless retains enough vigor to dictate, to the extent claimed, an effect on defendant's investment in facilities over which this Commission exercises paramount regulatory jurisdiction. As the installations have been in the ground for several years, there is little we can do except to minimize, as far as possible, the economic impact on defendant and its ratepaying customers of an unnecessarily oversized plant. This is the real basis of our decision here on the reclassification issue.

The Commission, on this record, finds the following facts:

1. The named subdivider complainants herein and defendant Dominguez Water Corporation, a regulated public utility water company, during the period from approximately April 7, 1964 to April 22, 1965, negotiated, executed and carried into effect, with prior knowledge of the provisions of Rule 15 (Water Main Extensions) of defendant's then filed and effective tariff and of this Commission's General Order No. 96, Section X.A. (now General Order No. 96-A), certain purported contracts and arrangements for public utility water service, including public fire protection service, requested by complainants for service to certain of their subdivisions or land developments then projected or under construction in unincorporated territory of the County of Los Angeles within defendant's then-existing dedicated water service area. Cost and other details of said contracts, as related to the numerical order of the five complaints herein, are shown by the following exhibits in evidence:

Exhibit No.	Contract No. & Date	Tract Nos.	Case No.
43	198, 4-7-64	26884 27984 27985 27986 27987	8241
41	229, 4-8-65 230, 4-8-65	29184 30176	8242
30	210, 8-21-64 215, 9-17-64 223, 2-1-65	27360 28611 29714	8243
32	225, 2-15-65	23644 29420 30177 30189	8332
35	221, 1-21-65	29792	8595

2. Defendant, as the basis for construction advances by complainants of the estimated cost of the installations described in the several contracts enumerated above, and without having sought or secured prior authorization therefor from this Commission as required by said General Order No. 96, mentioned in each of said contracts, with the acquiescence of the respective complainants, treated certain portions of said advances as unrefundable contributions by complainants of the estimated cost of oversizing certain pipe to meet specifications and other purported requirements of Ordinance No. 7834 of the County of Los Angeles (herein sometimes called the "Water Ordinance", adopted August 2, 1960), as amended and as supplemented or implemented by companion measures sometimes herein called the "Building Ordinance" and the "Zoning Ordinance".

3. The total amount received by defendant from complainants for the installations described in the eight main extension contracts referred to in paragraph 1, above, of these findings, was the sum of $337,088.30 of which sum defendant classified $296,414.83 as advances and $40,673.47 as constributions; the total amount of recorded costs for said installations classified by defendant as advances, including the sum of $23,960.99 for the Sepulveda Boulevard installations and the sum of $588.15 for the cost of relocating a hydrant in Tract 29714, was the sum of $286,355.07; the total amount of recorded costs

classified by defendant as for oversizing mains (not including (a) the cost of oversizing the main in Sepulveda Boulevard, and (b) the sum of $6,492.95 for oversizing paid for by defendant in connection with installations described in the contract designated hereinabove as Contract No. 198) was the sum of $40,455.33.

4. Defendant, on the basis of the sums set forth in Finding No. 3, hereinabove, has calculated that the sum of $10,277.90 is payable as a "Credit Due Developer". We further find that it is reasonable for defendant to adjust said credit to reflect the recorded costs, contributions and amounts payable for the Sepulveda Boulevard main, the Alexandria Avenue connection thereto and the fire hydrant located at the corner of Sepulveda Boulevard and Normandie Avenue, in the manner described.

5. Installation by defendant pursuant to its tariff Schedule No. 4, Private Fire Protection Service, of the five 8-inch laterals and associated small domestic services easterly to Tract 23903 from the 12-inch main in Vermont Avenue, between the Storm Drain Channel and the Santa Fe right-of-way (Map, Exhibit 34), was reasonable under the conditions then prevailing; however, we further find that it is reasonable for defendant to include in sums repayable to the party entitled thereto the recorded cost of the lateral main and small service line installed in Sprucelake Drive, together with the recorded cost of two 6-inch fire hydrants installed in Sprucelake Drive pursuant to a contract in evidence herein, between defendant and R. A. Watt, Incorporated, bearing an effective date of December 22, 1965 (Exhibit 38).

6. All contracts herein between the named complainants and defendant, including the contract in evidence as Exhibit 38 are now held by Boise Cascade Building Company, a corporation, which

corporation is the real party in interest for the purpose of prosecuting these proceedings; accordingly, we further find it to be unnecessary, for the purposes of this decision, to require an allocation to Tracts 30176, 29184 and 23903 of the advance made with respect to Tract 29792. We further find it unreasonable to require an immediate repayment, in cash, of said entire advance.

7. There is no substantial controversy herein concerning the dollar amounts of estimated costs advanced by complainants for the several installations described in the contracts attached as exhibits to the respective complaints or otherwise in this record as exhibits, nor as to defendant's recorded costs for those and other installations referred to in this record and in the foregoing findings.

8. There is no issue of fact in this record material to the decision and order herein other than set forth in the foregoing findings.

The Commission on this record concludes:

1. Except as provided in the order to follow, the relief requested by complainants should be denied.

2. Defendant should be authorized to retain, as a contribution in aid of construction, that portion of the recorded cost of the installations herein, including the installations in Sepulveda Boulevard, that is attributable to compliance by complainants with the fire flow requirements of the Los Angeles County water ordinance.

3. Defendant should be authorized and directed to repay to the party or parties entitled thereto, the balance of said recorded costs in accordance with applicable refund provisions of its Rule 15 (Water Main Extensions), after adjusting the "credit due developer" as heretofore described in connection with the installations in Sepulveda Boulevard and deducting $588.15 from Contract No. 233. Defendant,

after making such adjustment and any other adjustment to said "credit due developer" required by this decision, should transmit to the Commission, by advice letter, two copies of the journal entries used to record in its books of account the repayments to be made and contributions to be retained, resulting from the disposition herein made of this proceeding.

O R D E R

IT IS HEREBY ORDERED that:

1. Except as granted by this order, the relief requested by the several complainants herein is denied.

2. Defendant, Dominguez Water Corporation, is authorized to retain, as contributions in aid of construction, those portions of complainants' advances for construction of water facilities, adjusted to recorded costs, that are attributable to compliance by complainants with the fire flow provisions of Ordinance No. 7834, as amended, of the County of Los Angeles.

3. Defendant is authorized and directed, after making the adjustments to credits due complainants described in the foregoing opinion, to repay to Boise Cascade Building Company, a corporation, or to other parties that may be entitled thereto, the balance of the recorded costs of the water installations described in the foregoing opinion.

4. Defendant, within sixty days after the effective date of this decision, shall transmit to the Commission two copies of the journal entries used to record in its books of account the repayments

made and contributions retained pursuant to the authority herein granted.

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

Dated at San Francisco, California, this 30th day of JUNE, 1970.

William Symons, Jr.
President

Commissioners