

Decision 87 12 034 DEC 9 1987**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension and )  
 Investigation on the Commission's )  
 own motion of tariff filed by Advice )  
 Letter No. 200 of San Jose Water )  
 Company, in Santa Clara County. )

(I&S)  
 Case 87-07-002  
 (Filed July 8, 1987)

In the Matter of the Suspension and )  
 Investigation on the Commission's )  
 own motion of a deviation to the )  
 Standard Main Extension Contract )  
 proposed by Advice Letter No. 198 )  
 of San Jose Water Company, in )  
 Santa Clara County. )

(I&S)  
 Case 87-09-010  
 (Filed September 10, 1987)

McCutchen, Doyle, Brown & Enersen, by  
A. Crawford Green, Attorney at Law, for  
 San Jose Water Company, applicant.  
Louis Lau and Donald P. Van Buren, residents,  
 for themselves, interested parties.

OPINIONStatement of Facts

San Jose Water Company (SJWC), a California corporation, for the past 121 years has been providing public utility water service in portions of Santa Clara County. At present it serves approximately 135 square miles of the county, including areas of San Jose, Los Gatos, Monte Sereno, Saratoga, Campbell, Cupertino, and Santa Clara. Most of SJWC's water is obtained from wells in the valley, some from diversion and storage of runoff from the watersheds of the Los Gatos, Saratoga, and Almaden Creeks, and the remainder is purchased from the Santa Clara Valley Water District.

Most of SJWC's service area is the relatively flat floor of the Santa Clara Valley in this area. However, on the southwestern side the flat valley floor gives way to billowing

hills penetrated by meandering canyon-like valleys as the terrain sharply ascends westward toward the coastal range of mountains.

Thrusting westward toward these hills from the Saratoga-Sunnyvale Road in the City of Cupertino is Rainbow Drive, a residential street. At the western end of Rainbow Drive is a 27 acre hill which juts upward, thimble-like, several hundred feet above the valley below to an approximate elevation of 650 feet above sea level, offering spectacular views across the valley and to the western hills nearby. At this point, it should be noted that over the years SJWC, with some exceptions, has generally avoided offering water service above stated elevations. These vary in different areas. In the areas involved in this proceeding the service area boundary in SJWC's filed tariff follows the 480 foot elevation contour.

In 1977 a developer proposed development of the hill at the end of Rainbow Drive into a luxury home, 21 large parcel subdivision. It was to be styled "Rainbow's End", and parcels ranged in elevation from 410 feet to approximately 640 feet. But only the four bottom parcels of the proposed subdivision were within the filed service territory where SJWC was obligated to serve. Nonetheless, the developer approached SJWC for a service proposal. Because SJWC's controlling reservoirs were distant and approximately 100 feet below the summit at Rainbow's End, service would have required expensive pumping up the hill and a new reservoir on the summit, from which gravity feedback would supply the proposed subdivision.

The developer concluded that SJWC's proposal was too expensive. An alternate source, the Reglin Mutual Water Company (which obtains its water from SJWC), could not serve, so the developer turned to the City of Cupertino's municipal water utility.

Cupertino's nearest service area, across SJWC's intervening service territory, was a half mile north at Columbus

Avenue; too distant and low in elevation to help. Accordingly, the only way Cupertino could serve was to make an import turn out into the large 60 inch Santa Clara County Water District main serving West Valley water utilities from alongside the Southern Pacific tracks. Adjacent to the turn out Cupertino installed a booster pump station and ran 3/4 of a mile of 12-inch and 8-inch mains west on Rainbow Drive to the subdivision, and up the hill to a 90,000 gallon redwood storage tank constructed on the summit. The subdivision was constructed and today has 14 very expensive homes, some of 4,000 sq. ft. with swimming pool and tennis court. The interested parties to this proceeding, Messrs. Lau and Van Buren, are homeowners in this subdivision.

Below Rainbow's End, backed up to the west against the same 600 foot elevation as Rainbow's End, and extending east to the Southern Pacific tracks, is the flat expanse of the Seven Springs Ranch, one of the last large privately owned preserves of undeveloped acreage on the west side of the valley. This ranch is within the Cupertino city limits. The Gregory Group, a Redwood City, California based developer, has acquired 108 acres of this ranch for development as a residential subdivision of 408 units to be styled "Seven Springs". Pursuant to the California Subdivision Map Act, the developer filed a tentative subdivision map with the City. Despite the facts that the subdivision area is within the long filed boundaries of SJWC's service territory, and that SJWC has an in-place infrastructure to serve the subdivision (including 6-inch mains on the north and northwest border, and 19-inch and 12-inch mains respectively on the south and east borders), Cupertino approved the map on the condition that the City municipal utility serve Seven Springs. (See Appendix A Map.)

Thus both Cupertino and SJWC desire to provide the water service required by the new Seven Springs subdivision. However, Cupertino at this point in time cannot provide the service. Rather than exercise its legal rights under Chapter 8.5 of the Public

Utilities (P.U.) Code to seek compensation for loss of its service territory and loss of the value of its supportive infrastructure already in place should Cupertino persist, SJWC elected to negotiate with the City. On March 11, 1987 they reached agreement. By this agreement Cupertino agreed to stand aside while SJWC extends service to and through Seven Springs, but with a provision that Cupertino retains an option to substitute itself as the water purveyor at any time after five but within 15 years; the consideration upon the exercise of the option to be one dollar.

The same agreement provides that SJWC take over Cupertino's service to Rainbow's End. For one dollar a year Cupertino will lease its Rainbow's End facilities to SJWC. If Cupertino does not exercise its option to take over Seven Springs within the time specified in the agreement, Cupertino agrees it will negotiate in good faith to sell these Rainbow's End facilities to SJWC; such sale to be subject to Commission approval as required at that time.

The agreement further provides that SJWC's extension of service to the Seven Springs subdivision, with Commission approval, would be generally in accordance with SJWC's Main Extension Rule 15 provisions, but with three exceptions. First, there would be successive multiple extensions of facilities within the subdivision on notice from, and deposit of appropriate advances by the developer without the execution of separate contracts for each extension. Second, if Cupertino should exercise its option to acquire from SJWC whatever part of the system as may then be completed, the developer's rights to refund of its advances will terminate. Third, the developer must convey to SJWC all the water rights it holds to Seven Springs.

On April 8, 1987 the Gregory Group and SJWC signed a Main Extension Contract in accord with the utility's Main Extension Rule 15 but with the above three exceptions. This agreement was signed subject to Commission approval. An initial advance was made

in 1986 (before enactment of the Tax Reform Act of 1986). The initial 19 units are underway and the expected completion date for the entire 408 unit subdivision is 1990.

On June 2, 1987 SJWC filed Advice Letter No. 198 for Commission approval of the April 8, 1987 Main Extension Contract with the Gregory Group.

On June 15, 1987 SJWC filed Advice Letter No. 200 to add the Rainbow's End facilities and service area to the SJWC system, attaching Codicil Map No. 96 pursuant to the requirements stated in Decision (D.) 86-04-019, and a copy of the March 11, 1987 agreement between SJWC and Cupertino. Because this latter agreement related to both advice letters, SJWC asked that the advice letters become effective concurrently.

Advice Letter No. 200 included a copy of a SJWC notice to the 14 Rainbow's End customers informing them of the proposed transfer and that SJWC's rates differed from Cupertino's rates. A comparison indicated that depending upon consumption these customers would pay between an approximate 18 to 41 percent more.

By letters dated June 19, 21, 25 and July 6, 1987 protests to the proposed annexation and higher rates were received from Rainbow's End customers Phipps, Lau, Benjamin, and Van Buren. As General Order (G.O.) 96-A and P.U. Code § 455 provide for suspension of a protested advice letter, the Commission on July 8 ordered suspension of Advice Letter No. 200 pending a hearing. And because of the interrelated nature of Advice Letter No. 198, the Commission on July 10, 1987 on its own motion ordered suspension of Advice Letter No. 198 for possible consolidation and hearing with Advice Letter No. 200.

The Gregory Group then negotiated with the 14 customers of Rainbow's End, offering to pay the difference in rates for up to a ten-year period. However, because of issues such as future owners, rate changes, and future landscaping, negotiations were unsuccessful. Thereafter SJWC took over negotiations.

On the evening of October 22, 1987 a duly noticed public hearing was held in Saratoga, California before Administrative Law Judge John B. Weiss. Two Rainbow's End customers and a number of SJWC personnel attended. It developed that after the Gregory Group's unsuccessful negotiations with the Rainbow's End customers on rate differences, SJWC had renegotiated Section 2(b) relating to what rates were to be charged during the lease period under the March 11, 1987 Cupertino-SJWC agreement with the City. An amendment, confirmed on October 19, 1987, to the March 11, 1987 agreement provided that through the duration of the lease SJWC would provide service to any and all Rainbow's End customers, charging such customers the lower of whatever SJWC or Cupertino rates are in effect or become effective. At the hearing utility witnesses described how service would be effected to both Rainbow's End and Seven Springs, and submitted exhibits memorializing the Cupertino-SJWC amendment to their March 11, 1987 agreement and attendant circumstances. SJWC affirmed the understanding that SJWC would finance the discrimination resulting vis a vis its regular customers elsewhere and the loss it will effect out of the utility's retained earnings, so that the shareholders, not the remaining ratepayers, will absorb the loss. And in future rate cases during the term of the lease, other customers of SJWC will not be asked in effect to subsidize that service. The two customers present, Messrs. Lau and Van Buren, expressed their acceptance of the arrangement. At conclusion of the hearing both matters were submitted.

By D.87-11-031 issued November 13, 1987, the Commission extended the suspensions of these advice letters until May 13, 1988 (for Case 87-07-002 - Advice Letter No. 200) and June 10, 1988 (for Case 87-09-010 - Advice Letter No. 198) in order to provide time for preparation of this decision.

### Discussion

P.U. Code § 489, inter alia, requires that every public utility must file and maintain with the Commission a collection of tariff schedules, including its current rules and contracts which relate to the services the utility provides. Commission G.O. 96-A, besides providing the general form and construction format for these tariff schedules, establishes the procedure by which a utility obtains authorization or sanction to depart from its filed and effective tariff schedules. Of the various utility tariff schedules, Rule 15 pertains to main extensions and their attendant deposits and refunds.

When a water public utility seeks to deviate in some fashion from the provisions of its filed tariff in order to accommodate specific conditions, it submits to the Commission an advice-letter giving essential information of the reasons, and provides notice to interested parties including effected consumers. If not suspended for investigation, or rejected by the Commission either on complaint or on the Commission's own motion, the change becomes effective on the 30th calendar day after it was filed.

In the instance of Advice Letter No. 198, the three deviations proposed to the Main Extension Contract with the Gregory Group posed no problem; the extension would merely be built in stages at no cost to SJWC except the usual scheduled refunds as units were sold. There would be no adverse impact to either ratepayers or the utility. The utility would obtain new water rights at no charge. The developer would bear all risk with regard to loss of the balance of refunds should Cupertino exercise its options. And SJWC would obtain substantial revenues from up to 408 new units, with a good possibility of acquiring the system permanently although in this event full refunds would be required over the term of the contract.

But because of the Cupertino option, a component attachment to Advice Letter No. 200, but not to Advice Letter

No. 198, the latter advice letter was inextricable from the former, and could not be accepted without both being accepted.

Similarly, Advice Letter No. 200 on its face also posed no problems to prevent acceptance. SJWC would merely add 14 ratepayers paying SJWC rates, for the term of the lease and perhaps permanently. There were also interesting westward expansion possibilities to be derived from the new and expandable elevated water storage tank if the lease evolved into a purchase acquisition later. The new ratepayers at least for the term of the lease would obtain continued good service plus the safeguard of several sources of supply compared to their past dependence upon the single Santa Clara County Water District intertie source. And Cupertino would be released, at least temporarily, from an expensive isolated service obligation to the 14.

But then four of the 14 Rainbow's End ratepayers to be transferred to SJWC for the lease term protested. Since Advice Letter No. 200 would require them to pay SJWC's higher rates, upon transfer they faced paying rate increases of 18 to 41 percent. Any net benefit was not apparent to them. Advice Letter No. 200 squarely depended upon the March 11, 1987 Cupertino-SJWC contract. And SJWC could not charge the Rainbow's End ratepayers the lower Cupertino rates without discriminating against its own ratepayers, acts prohibited by P.U. Code § 453(a). Thus both advice letters had to be suspended.

The decision by SJWC's management to have SJWC's shareholders "swallow" any amount required by any differences in the SJWC and Cupertino rates for the term of the lease, a decision memorialized in an October 19, 1987 amendment by SJWC and Cupertino to their March 11, 1987 agreement finally cut this Gordian knot. At the October 22, 1987 hearing SJWC's attorney stated on the record the utility stockholders would finance the difference "below



the line", and in future rate cases the other SJWC ratepayers would not be asked to subsidize that service. This effectively removes the discrimination issue.

From the present viewpoint we perceive no problems with the March 11, 1987 Cupertino-SJWC agreement, as amended October 19, 1987. That agreement basically provides that SJWC will lease the Rainbow's End facilities for a dollar a year. If Cupertino exercises its option to purchase Seven Springs facilities during the approximate ten-year option period for the one dollar sale price, the City agrees to cooperate in preparing the necessary application at such time to the Commission, and the City will pay SJWC's legal and other expenses in connection with the application, or any eminent domain proceedings, and to obtain release of the trustee's lien of the indenture. If the City exercises its options it agrees it will serve all customers in both subdivisions in accordance with the City's then applicable rates and rules, and without discrimination. It also agrees it will impose no connection charges. If at the end of the option period Cupertino has not exercised its option, the two parties agree to negotiate in good faith for sale of the Rainbow's End facilities to SJWC. The Commission's options remain open with regard to any applications filed at such time.

The transfers and other arrangements encompassed by these advice letters with reasonable certainty will have no significant effect on the environment.

The objections to the lease of Rainbow's End by SJWC being resolved, the three deviations to the SJWC Standard Main Extension Contract with the Gregory Group presenting no problems, and there being no obstacles or objections to the SJWC-Cupertino March 11, 1987 agreement, as amended October 19, 1987, there exists no reason to require further suspension of Advice Letters Nos. 198

and 200. Accordingly they should be permitted to become effective immediately so that the developer can proceed to market the first stage now nearing completion.

Findings of Fact

1. SJWC provides public utility water service in many areas of Santa Clara County, including substantial portions of the City of Cupertino.

2. Cupertino operates its own municipal public utility water system, providing service to a substantial area north of SJWC's service area.

3. Cupertino also provides water service to the small 27 acre Rainbow's End enclave on the western periphery of SJWC's service area in Cupertino.

4. Providing water service to the Rainbow's End enclave is an expensive obligation for Cupertino, involving as it does the necessity of obtaining the required water from a distant intertie to the Santa Clara County Water District pipeline, and then pumping and transporting the water across SJWC's service territory and up the hill to the Rainbow's End storage facility.

5. Seven Springs Subdivision is located within the filed service territory of SJWC and is virtually surrounded by areas presently receiving SJWC's water service.

6. SJWC has the infrastructure in place and is ready, willing and able to serve Seven Springs.

7. Seven Springs, to ultimately involve approximately 408 residential units sited on a flat plane on the valley floor, is an attractive revenue source to any water utility.

8. Cupertino wants to acquire Seven Springs along with its local water rights for its municipal water system, but is not prepared to do so at this time.

9. By approving the developer's tentative subdivision map, but only on the condition that Cupertino's municipal system provide

water service to Seven Springs, Cupertino stalled the development and pressured SJWC to reach an accommodation with the City.

10. An agreement dated March 11, 1987 between Cupertino and SJWC provides for city approval of the subdivision at Seven Springs but with SJWC to extend (under deviation conditions to SJWC's Standard Main Extension Contract) and provide Seven Springs service subject to a 5-15 year Cupertino option to purchase these Seven Springs facilities and water rights for one dollar, in which instance the developer would forfeit any unpaid balance of his refunds. In addition, SJWC would lease and operate under SJWC's rates and rules the City's Rainbow's End facilities. Should Cupertino not exercise its option to acquire Seven Springs SJWC and Cupertino would negotiate sale of Rainbow's End to SJWC.

11. SJWC thereupon filed two advice letters, No. 198 to obtain authorization for its deviations contained in the April 8, 1987 Main Extension Contract with the developer, and No. 200 to obtain approval to lease Rainbow's End.

12. Cupertino's municipal water rates are less than SJWC's water rates.

13. Certain Rainbow's End customers filed protests to Advice Letter No. 200 on the basis of their rates being substantially increased.

14. Because of their interrelated subject matters involving the March 11, 1987 Cupertino-SJWC agreement and the protests of the prospective Rainbow's End customers, on July 8, 1987 (Advice Letter No. 200) and September 10, 1987 (Advice Letter No. 198) the Commission suspended both advice letters for investigation.

15. On October 19, 1987 Cupertino and SJWC amended their March 11, 1987 agreement to provide that SJWC would charge for the duration of the lease the Rainbow's End customers the lower of Cupertino or SJWC rates.

16. To avoid discrimination prohibited by P.U. Code § 453(a), SJWC agreed at the October 22, 1987 hearing to finance the

difference between the higher and lower rates "below the line", i.e., with SJWC's shareholders bearing any loss, and that in future rate proceedings for the term of the lease other SJWC ratepayers would not be asked to subsidize the difference.

17. The transfers and other agreements encompassed by these advice letters with reasonable certainty will have no significant impact on the environment.

18. By D.87-11-031 dated November 13, 1987 the Commission further extended the suspensions.

Conclusion of Law

There exists no reason to require further suspension of Advice Letters Nos. 198 and 200; both should be permitted to become effective immediately so that the developer can proceed with marketing of the first stage of the subdivision now nearing completion.

ORDER

IT IS ORDERED that:

1. The suspension ordered of San Jose Water Company's (SJWC) Advice Letters Nos. 198 and 200 are cancelled effective the date of this order, except that Section 2(b) of the March 11, 1987 agreement between SJWC and the City of Cupertino (Cupertino) which agreement by reference and attachment was incorporated into Advice Letter No. 200 is, pursuant to a letter agreement between SJWC and Cupertino confirmed October 19, 1987, changed to read as follows:

"b. Service to Rainbows End. From the date the Lease commences through the date it is terminated, the Company will provide water service to any and all customers of Rainbows End (i) pursuant to its rules in effect and on file with the PUC from time to time and (ii) at its rates in effect and on file with the PUC from time to time or at the rates of City in effect from time to time, whichever shall be lower."

2. On or after the effective date of this order and for the duration of the Rainbow's End lease, SJWC is authorized and directed to file tariff schedules in accordance with this opinion applicable to the Rainbow's End lease customers, and to set up and maintain a memorandum account to track the difference in revenue to be charged to the SJWC shareholders.

In all other respects the advice letters become effective as submitted.

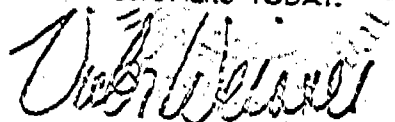
This order is effective today.

Dated DEC 9 - 1987, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weiss, Executive Director

AP

THE NEXT 1

DOCUMENTS

ARE POOR

ORIGINALS

MICROFILMING SERVICES

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RESPONSIBILITY FOR THE

IMAGE QUALITY

CUPERTINO  
MUNI WTR. SERVICE

SAN JOSE WTR. CO  
SERVICE

RANCHO  
CND

7 SPRINGS  
SUBDIVISION

STJC'S  
SERVICE AREA  
BOUNDARY

SANTA CLARA COUNTY WTR. DIST.  
60 INCH MAIN

APPENDIX  
A  
MAP

AREAS AT ISSUE  
145 C. 87-07-002 (ADV. ITR. 200)  
149 C. 87-07-010 (ADV. ITR. 198)

