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Decision 89-03-037 March 22, 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Sierra Road Improvement Association,)
a mutual water company, for)
Redetermination of the Service Area)
Boundaries of the San Jose Water)
Company, a regulated water company,)
in the vicinity of Santa Clara,)
California.)

ORIGINAL

Application 88-09-058
(Filed September 30, 1988)

Brobeck, Phleger & Harrison, by Paul N. McCloskey, Jr., Attorney at Law, for Sierra Road Improvement Association, applicant.
Robert A. Loehr, Attorney at Law, for San Jose Water Company, respondent.
John Hanna, Attorney at Law, for Trailer & Associates, Inc. and Silver, Rosen & Associates, Inc., interested parties.

OPINION

Summary of Decision

This decision denies the request of Sierra Road Improvement Association (Sierra), a mutual water company, to restrain San Jose Water Company (SJWC) from providing service to Trailer and Associates, Inc. (Trailer) or, in the alternative, to order SJWC to serve all of Sierra's members.

Background

On September 30, 1988, Sierra filed an application requesting that the Commission redetermine the service area of SJWC in the vicinity of Sierra Road, and restrain SJWC from providing service to Trailer in Sierra's historic area or, in the alternative, order SJWC to extend its service area to include all of Sierra's historic area and to serve all Sierra's customers.

Sierra is a mutual water company incorporated in 1948 by 12 property owners on Sierra Road in the foothills east of Piedmont Road and City of San Jose. Sierra was formed because SJWC was either unable and/or unwilling to extend its service east of Piedmont Road. Sierra is not regulated by the Commission.

Sierra obtains water from SJWC at a metered connection within SJWC's service area on Chablis Circle. Sierra pumps the water to its tanks at various elevations, the highest at approximately 780 feet, from which the water is distributed to Sierra's members, presently numbering 52 homeowners. Sierra charges its members \$1.25 per 100 cubic feet and when necessary assesses additional funds for repair and maintenance. Its members rotate the management responsibilities and serve without pay.

Sierra's existing water system is old and will need major improvements to bring it up to SJWC's standards and the requirements of Commission's General Order (GO) 103. Earlier estimates for these improvements have ranged from \$750,000 and \$1.2 million. These estimates did not include the additional taxes SJWC will have to pay on the contributed plant. According to an estimate prepared in September, 1988, by SJWC, the cost of improving Sierra's system to bring it to SJWC's standards will be \$2.01 million including taxes.

In order to provide service to additional homes, Sierra will have to obtain a permit from the Department of Corporations to issue new memberships. Sierra filed its application for a permit to issue new memberships in September, 1988. The Department of Corporations does not issue such a permit unless 75% of the system is constructed.

Trailer is a real property developer. In 1986, Trailer proposed the subdivision and development of 19 lots on Sierra Road. Trailer's subdivision straddles the boundary of SJWC's filed service area. Eight of Trailer's lots are within SJWC's service area and 11 are further east and outside of SJWC's service area.

which extends to the 370 feet elevation line where SJWC can maintain a pressure of 40 psi required by GO 103. The homes on Trailer's lot are expected to be completed and ready for occupancy between May and July, 1989.

Since October 1986, Trailer has been negotiating with Sierra to arrange for water supply to its 19 lots. The parties have been unable to agree on the terms and conditions under which Sierra would be able to supply water to Trailer.

SJWC is able and willing to supply water to Trailer. SJWC has entered into a contract to supply domestic water to eight of the 19 lots located within its service area and supply fire flow to all 19 of Trailer's lots. SJWC is also willing to enter into a contract to supply domestic water to the remaining 11 Trailer lots through a master meter located within SJWC's service area. However, due to opposition by Sierra, SJWC has not entered into such a contract. If Trailer receives water supply from SJWC through a master meter, it will have to form its own mutual water company and provide its own service to its members. Trailer would also be responsible for its own tanks, pumps, service lines and related facilities needed to provide domestic service.

In preparation to serve Trailer, SJWC is constructing a 10-inch water main from Piedmont Road up Sierra Road to Trailer's property. SJWC's 10-inch water main is being placed parallel to Sierra's existing 2-inch main on Sierra Road.

As to the question of extending SJWC's service to all of Sierra's customers, SJWC has agreed to furnish the service provided that Sierra agrees to pay the entire cost of improvements necessary to upgrade Sierra's system to SJWC's standards. The estimated cost of the improvements required to bring all service within Sierra's area up to SJWC's standard is approximately \$2 million including taxes on contributed plant.

Hearings

An evidentiary hearing was held on December 20, 1988 before Administrative Law Judge (ALJ) Garde in San Francisco. The parties agreed to file letter arguments by January 10, 1989. In addition, the parties were allowed until January 20, 1989 to file any comments or arguments on SJWC's late-filed Exhibit 9 which included all pertinent information regarding the purchase of San Jose Highlands Water Company (Highlands) by SJWC. Exhibit 9 was due to be filed on January 10, 1989. The proceeding was submitted on January 20, 1989.

In order to expedite the decision in this proceeding, the parties agreed to:

1. Reduce from 30 days to 15 days the waiting period, prescribed by Section 311, between the service of ALJ's proposed order and the final Commission decision.
2. File comments on the ALJ's propose order within 15 days after it is served.
3. File no reply comments.

Sierra's Position

Sierra seeks a redetermination of SJWC's service area boundaries as filed in the 1974 map, and would prefer that SJWC be required to extend its services to Sierra's entire area under the plan prepared by SJWC's engineers.

According to Sierra, under the Public Utilities (PU) Code § 762, the Commission can specify the manner and time for the installation of extensions in the plants of utilities which the Commission, after a hearing, finds reasonable to be made. Sierra contends that the Commission in past proceedings has uniformly applied rules of reasonableness with respect to extension of public utility services to premises close to existing facilities as well as those located in more remote territory.

Sierra maintains that SJWC's actions since 1974 have included an undertaking to serve part of Sierra's area. Therefore, Sierra contends that SJWC by its action has apparently dedicated its facilities, at least by implication, to the locality of Sierra's operations. According to Sierra, once dedicated to serve part of Sierra's area, SJWC should be estopped from making a distinction between Sierra's customers below the 370-foot level and those above.

Sierra believes that SJWC's plans to serve the new subdivision outside its service area through a metered connection located within its service area, will result in proliferation of new mutual water companies.

Sierra believes that because of the requirement of taxes on contributed plant, SJWC, not Sierra, should construct the facilities at its actual costs, with appropriate contribution from Sierra's members. Sierra opines that it would be reasonable for Sierra's members to contribute the \$624,000 they have agreed to contribute, and that for any additional costs incurred by SJWC in constructing the new improvements to be collected from future customers.

Sierra maintains that although it is not a public utility, it is a non-profit company of its members brought into existence solely by refusal of SJWC to construct the facilities necessary to serve its area. Therefore, Sierra argues that SJWC should not, in equity, be allowed to interfere with Sierra's economic viability.

Based on the above, Sierra concludes that it has provided an adequate basis for the Commission either to restrict SJWC from providing service to Trailer or to require SJWC to extend its service to include all of Sierra's members.

SJWC's Position

SJWC opposes both requests made by Sierra. SJWC contends that it is not aware of any authority by which a mutual water

company such as Sierra can claim a service area as that term is normally used by regulated public utilities. According to SJWC, Sierra is a mutual water company, exempt from regulation by the PUC under PU Code § 2705 and does not possess a certificate to operate as a public utility issued by the Commission. SJWC maintains that Sierra has no tariff schedule, map or any other document filed with the Commission which would purportedly define a "service area".

SJWC claims that it is a regulated public utility and that its tariff sheet filed with the Commission in 1974 which included a map defining its service area boundary was accepted by the Commission. According to SJWC, all the expansion of its facilities since 1974 has occurred within the 1974 boundary line.

Further, SJWC asserts that no mutual water company has the exclusive right to serve its stockholders and it may not enjoin its members from accepting water from another source. In support of its position, SJWC cites the case of Valley View Mutual Water Company v. Brown (1951) 104 CA 2d 177 in which the court held that any requirement of a land owner to accept water from one source only would be clearly contrary to the public policy against restraints on alienation of property. According to SJWC, Trailer is in the anomalous situation where it could ask to be admitted to membership in Sierra, but could not compel its acceptance by that organization. However, SJWC points out that for its eight lots within SJWC's filed service area, Trailer can, and has, upon payment of construction costs, insisted upon service from the regulated public utility.

As to Sierra's request to expand SJWC's service area to serve all of Sierra's members, SJWC opines that both Commission and California case law state that the Commission has no power to order a public utility to serve customers outside the utility's service area, unless the utility had previously dedicated its facilities to serve such outside areas. SJWC maintains that the record in this proceeding clearly shows that it has never dedicated any of its

facilities to serve the public above the 370 foot elevation on Sierra Road.

According to SJWC, the sale of Highlands (discussed later in this opinion) to SJWC was a transfer of one regulated utility to another, voluntarily agreed to by both parties, and as such cannot be used as a precedent for this case. SJWC points out that no such agreement for the purchase and sale of Sierra by SJWC has been achieved.

SJWC insists that it could incorporate Sierra's into SJWC's system only if Sierra was brought up to SJWC and Commission standards. SJWC believes that it would be contrary to public policy to require SJWC's ratepayers and shareholders to subsidize the reconstruction of Sierra's antiquated system.

Finally, SJWC asserts that it has not deliberately 'taken' any customers from Sierra. SJWC points out that Sierra has admitted that at one time it could not serve a church property, and SJWC, at the church's expense, extended its water main within its service area to that property in 1980. According to SJWC, three years later, certain Sierra members within SJWC's service boundary voluntarily requested service from SJWC. SJWC maintains that these services were all provided within the boundary line filed nine years previously.

For the foregoing reasons, SJWC requests that Sierra's application be denied in its entirety.

Trailer's Position

Trailer wishes to receive service from SJWC. For the eight lots located within SJWC's service area, Trailer has already signed a contract to receive water service. For the remaining 11 lots, Trailer plans to form a mutual water company which would receive its water supply from SJWC through a metered connection in SJWC's service area.

Trailer maintains that SJWC, as a public utility, has the obligation to provide water service to Trailer if (1) the service

connection is located in SJWC's service area, and (2) the service will not adversely affect SJWC's ability to serve its existing customers. According to Trailer, SJWC proposes to serve the soon-to-be-formed mutual water company at a point in its service area in accordance with SJWC's tariffs. Trailer contends that the proposal to serve Trailer will not result in a denial of water service to any present customer of SJWC.

Trailer doubts Sierra's ability to provide the necessary service through its antiquated system. Trailer also points out that Sierra does not have the permit from the California Department of Corporations to add new members nor is it able to guarantee a supply of water to Trailer.

Finally, Trailer argues that Sierra is not a public utility and, as such, Trailer does not desire to, nor is it obligated to, purchase water from Sierra. According to Trailer, even if Sierra were a public utility, Trailer, as a consumer, should be able to choose which of the two utilities should serve the upper 11 lots.

Based on the above Trailer requests that SJWC not be restrained from serving Trailer, and that Sierra's application be denied.

Discussion

Sierra requests that SJWC's service area in the vicinity of Sierra Road be redetermined and that SJWC be restrained from providing service to Trailer in Sierra's "historic service area." Since Sierra has not filed with the Commission a tariff schedule or any other document defining its service area, we will examine whether SJWC has provided or has agreed to provide service outside its service area. Accordingly, we turn to a description of SJWC's service area.

On April 8, 1974, SJWC filed a new tariff sheet (# 264-W) showing expansion of its service area east of Piedmont Road and up Sierra Road, including the area immediately north and south of

Sierra Road. The service area boundary was determined by the fact that SJWC could provide water pressure to a level 370 feet above sea level at the minimum 40 psi requirement of GO 103. Therefore, SJWC's service area boundary extends to the 370 feet elevation line.

The record in this proceeding clearly indicated that eight of Trailer's lots which SJWC has agreed to serve are located within SJWC's service area defined above. The remaining 11 lots are located outside SJWC's service area. SJWC has agreed to provide service to these 11 lots through a metered connection within its service area, i.e., below 370 feet elevation. Therefore, SJWC's plans to serve Trailer from within its service area are reasonable. Accordingly, we find no basis to restrain SJWC from providing such service. Nor do we find it reasonable to redefine or amend SJWC's service area boundaries to exclude these eight lots. Given the fact that these boundaries have been in effect since 1974 and that SJWC is ready and willing, indeed even obligated, to serve these customers, we find no basis for amending the boundaries.

As to Sierra's claim that SJWC encroached on its service area and began to serve its former members, we find that Sierra's bylaws prevented it from serving a church property; and SJWC, at the church's expense, extended its main within its service area to that property in 1980. Sierra's inability to serve the church property can be established from the following testimony of Robert Towle, president of Sierra:

"Q Mr. Towle, you referred to ten members, ten former members now being served by San Jose Water Company?

"A Yes.

"Q Do you know the circumstances that led to that transfer of customers?

"A All I know is that in our bylaws we were not allowed to service commercial establishments

or properties, only residential; and at about the three hundred and maybe forty foot level there was a parcel that belonged to a church.

"That church requested water from us, and we were not allowed by our bylaws to service the church.

"So, they put in a water line from the bottom of Sierra Road to, up to the church to service the church.

"I don't know if San Jose Water put it in."

In 1983, several individual members of Sierra, who were located on Sierra Road within SJWC's service area requested and received service from SJWC. These former members of Sierra are being served from the water main installed to serve the church.

It is evident from the above that SJWC has only served customers at customer's request and within SJWC's defined service area. We find no evidence of 'encroachment' or intent to expand SJWC's service area.

Sierra also requests that if the Commission does not restrain SJWC from providing service to Trailer, it order SJWC to extend its service area to serve all of Sierra's members.

In support of its proposal to be acquired by SJWC, Sierra attempted to draw an analogy between its proposal and the purchase of Highlands by SJWC. The details of Highlands' purchases were not available at the time of the hearing. Therefore, SJWC was ordered to provide all pertinent information regarding the purchase of Highlands in late-filed Exhibit 9. According to Exhibit 9, SJWC and Highlands filed A.59841 requesting authorization of sale and transfer to SJWC of Highlands in accordance with the agreement signed by both utilities. The Commission approved the transfer in Decision (D.) 92122. The sale of Highlands to SJWC was a transfer of one regulated utility to another, voluntarily agreed to by both parties, and as such cannot be seen as a precedent for this case.

Next, Sierra contends that SJWC by its actions has dedicated its facilities, at least by implication, to the locality of Sierra's operations. In support of its position, Sierra cites the case of Greyhound Lines v P.U.C., 68 Cal. 2d 406 (1968), in which the Supreme Court points out that while dedication of facilities is jurisdictional, dedication can be measured "by metes and bounds, by distances and routes, by the nature of the service rendered, by the extent of the service rendered, and by a myriad of other conceivable yardsticks."

Also:

"Regardless of peculiar service configurations, the scope of dedication is not determined by mechanical formulas but ultimately by the fact that the utility has dedicated its resources to a particular enterprise, venture, or undertaking." (Greyhound, at 415.)

While Sierra relies on Greyhound to establish the dedication of SJWC's service, it does not note that in Greyhound, the Supreme Court goes on to say "The various indicia of dedication are not uniformly applicable to different utilities nor uniformly useful in answering different questions."

The Greyhound case, however, reaffirmed the holdings in the California Water & Tel. Company v P.U.C. (1959) 51 C. 2d 478, which held that dedication of utility facilities often may be measured by metes and bounds. Cal Water & Tel. Company, supra, page 492, states:

"To summarize, the above cited cases are uniformly to the effect that a public utility may not be compelled to extend its service beyond the territorial limits of its dedication. This is true regardless of the nature of the utility involved."

SJWC's territorial limit was defined in 1974 by its filed service area map, which was unchallenged until now. California PU Code § 1001 permits such service expansions provided only that the expansion does not conflict with an area served by a public utility

of like character. Sierra was not a public utility in 1974 and is not one now.

Furthermore, we have concluded that SJWC has not provided water service beyond its service area boundary nor has it expressed an intention to dedicate its service beyond its service area boundary. Therefore, we are not persuaded that SJWC has dedicated its service to the locality of Sierra's operations.

Although we believe that SJWC has not dedicated its facilities to Sierra's historic service area, we note that SJWC has stated its willingness to incorporate Sierra into SJWC's system if Sierra's system could, at Sierra's expense, be brought up to SJWC's standards. This position is reasonable because it would be contrary to Commission policy to require SJWC's ratepayers and/or shareholders to subsidize the reconstruction of Sierra's system. SJWC's willingness to extend service to Sierra upon payment of the cost of such extension should not be considered a dedication of SJWC's facilities beyond its service area boundary, because in Cal Water & Tel. Company, the court found on the facts of that case that proposals and offers to extend water service upon payment for such extension, without more, did not demonstrate that "unequivocal intention" necessary to dedicate a service to public use.

Finally, we recognize that Sierra is confronted with a perplexing problem, which stems not only from the geographic location of Trailer's property in relation to SJWC's service area boundary but also from economic and physical facts of record which limit our ability to require SJWC to extend its service to all of Sierra's members. We cannot compel Trailer to receive service from Sierra for the 11 lots which are outside of SJWC's service area since we have no jurisdiction over Sierra as a mutual water company; nor do we believe that we can restrain SJWC from providing service to the 11 lots through a master meter located within its service area. Therefore, we conclude that the requests made in Sierra's application should be denied.

Comments on the ALJ's Proposed Decision

The ALJ's proposed decision was filed and mailed to the parties on March 1, 1989. Sierra filed comments on the proposed decision. After reviewing the comments, we see no need to modify the ALJ's proposed decision.

Findings of Fact

1. Sierra requests that the Commission redetermine SJWC's service area in the vicinity of Sierra Road, and restrain SJWC from providing service to Trailer.

2. Sierra is a mutual water company.

3. Sierra is not regulated by the Commission.

4. Sierra obtains water from SJWC at a metered connection within SJWC service area.

5. Sierra's system is old and does not meet SJWC standards or the requirements of GO 103.

6. It will cost approximately \$2 million to improve Sierra's system.

7. Sierra does not have a tariff schedule, map or any other document filed with the Commission which defines its service area.

8. SJWC's service area is defined by tariff sheet (#264-W) filed on April 8, 1974.

9. SJWC has not provided service outside its service area.

10. Trailer is a real property developer.

11. Trailer is developing 19 lots on Sierra Road.

12. Eight of Trailer's lots are within SJWC's service area and the remaining 11 lots are outside of SJWC's service area.

13. SJWC has entered into a contract with Trailer to supply water service to Trailer's eight lots located within SJWC's service area.

14. For the remaining 11 lots, Trailer wishes to form a mutual water company and receive water service from SJWC through a master meter located in SJWC's service area in accordance with SJWC's tariffs.

15. Sierra wishes to serve Trailer's 11 lots located outside SJWC's service area and requests that SJWC be restrained from serving Trailer.

16. Trailer is not obligated to receive service from Sierra.

17. Sierra requests that if SJWC is not restrained from serving Trailer, SJWC be required to expand its service area to serve all Sierra's members.

18. SJWC is willing to extend its service to Sierra's current members only if Sierra, at its own expense, improves its water system to SJWC's standards and the requirements of GO 103.

19. It would be against Commission policy to require SJWC's ratepayers and/or shareholders to subsidize the reconstruction of Sierra's system.

20. Sierra contends that SJWC has dedicated its service to the locality of Sierra's operations.

21. SJWC has not provided service or expressed an intention to dedicate its service beyond its service area boundary.

22. SJWC extended its water main along Sierra Road east of Piedmont Road to serve a church property located within its service area.

23. Sierra's bylaws did not allow it to serve the church property.

24. Certain former members of Sierra which were located along Sierra Road requested and received service from SJWC.

25. The former members of Sierra are located within SJWC's service area and are being served by the main extended to serve the church property.

Conclusions of Law

1. SJWC should not be restrained from providing service to Trailer.

2. SJWC's service area should not be redefined in the vicinity of Sierra Road.

3. SJWC should not be required to extend its service area to serve all Sierra's members.

4. Sierra's application should be denied in its entirety.

5. Because of the urgency of Trailer's need for water service, this order should be made effective today.

ORDER

IT IS ORDERED that:

1. Sierra Road Improvement Association's (Sierra) request to redetermine the service area of San Jose Water Company (SJWC) in the vicinity of Sierra Road, and to restrain SJWC to provide water service to Trailer & Associates, Inc. is denied.

2. Sierra's request to order SJWC to extend its service area to serve all Sierra's members is denied.

3. This proceeding is closed.

This order is effective today.

Dated ~~_____~~ MAR 22 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

Commissioner Patricia Eckert,
present but not participating

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


Victor Weissac, Executive Director

MAR 22 1989

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O P I N I O N

Summary of Decision

This decision denies the request of Sierra Road Improvement Association (Sierra), a mutual water company, to restrain San Jose Water Company (SJWC) from providing service to Trailer and Association, Inc. (Trailer) or, in the alternative, to order SJWC to serve all of Sierra's members.

Background

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connection is located in SJWC's service area, and (2) the service will not adversely affect SJWC's ability to serve its existing customers. According to Trailer, SJWC proposes to serve the soon-to-be-formed mutual water company at a point in its service area in accordance with SJWC's tariffs. Trailer contends that the proposal to serve Trailer will not result in a denial of water service to any present customer of SJWC.

Trailer doubts Sierra's ability to provide the necessary service through its antiquated system. Trailer also points out that Sierra does not have the permit from the California Corporation Commission to add new members nor is it able to guarantee a supply of water to Trailer.

Finally, Trailer argues that Sierra is not a public utility and, as such, Trailer does not desire to, nor is it obligated to, purchase water from Sierra. According to Trailer, even if Sierra were a public utility, Trailer, as a consumer, should be able to choose which of the two utilities should serve the upper 11 lots.

Based on the above Trailer requests that SJWC not be restrained from serving Trailer, and that Sierra's application be denied.

Discussion

Sierra requests that SJWC's service area in the vicinity of Sierra Road be redetermined and that SJWC be restrained from providing service to Trailer in Sierra's "historic service area." Since Sierra has not filed with the Commission a tariff schedule or any other document defining its service area, we will examine whether SJWC has provided or has agreed to provide service outside its service area. Accordingly, we turn to a description of SJWC's service area.

On April 8, 1974, SJWC filed a new tariff sheet (# 264-W) showing expansion of its service area east of Piedmont Road and up Sierra Road, including the area immediately north and south of

Sierra Road. The service area boundary was determined by the fact that SJWC could provide water pressure to a level 370 feet above sea level at the minimum 40 psi requirement of GO 103. Therefore, SJWC's service area boundary extends to the 370 feet elevation line.

The record in this proceeding clearly indicated that eight of Trailer's lots which SJWC has agreed serve are located within SJWC's service area defined above. The remaining 11 lots are located outside SJWC's service area. SJWC has agreed to provide service to these 11 lots through a metered connection within its service area, i.e., below 370 feet elevation. Therefore, SJWC's plans to serve Trailer from within its service area are reasonable. Accordingly, we find no basis to restrain SJWC from providing such service. Nor do we find it reasonable to redefine or amend SJWC's service area boundaries to exclude these eight lots. Given the fact that these boundaries have been in effect since 1974 and that SJWC is ready and willing, indeed even obligated, to serve these customers, we find no basis for amending the boundaries.

As to Sierra's claim that SJWC encroached on its service area and began to serve its former members, we find that Sierra's bylaws prevented it from serving a church property; and SJWC, at the church's expense, extended its main within its service area to that property in 1980. Sierra's inability to serve the church property can be established from the following testimony of Robert Towle, president of Sierra:

"Q Mr. Towle, you referred to ten members, ten former members now being served by San Jose Water Company?

"A Yes.

"Q Do you know the circumstances that led to that transfer of customers?

"A All I know is that in our bylaws we were not allowed to service commercial establishments

Findings of Fact

1. Sierra requests that the Commission redetermine SJWC's service area in the vicinity of Sierra Road, and restrain SJWC from providing service to Trailer.
2. Sierra is a mutual water company.
3. Sierra is not regulated by the Commission.
4. Sierra obtains water from SJWC at a metered connection within SJWC service area.
5. Sierra's system is old and does not meet SJWC standards or the requirements of GO 103.
6. It will cost approximately \$2 million to improve Sierra's system.
7. Sierra does not have a tariff schedule, map or any other document filed with the Commission which defines its service area.
8. SJWC's service area is defined by tariff sheet (#264-W) filed on April 8, 1974.
9. SJWC has not provided service outside its service area.
10. Trailer is a real property developer.
11. Trailer is developing 19 lots on Sierra Road.
12. Eight of Trailer's lots are within SJWC's service area and the remaining 11 lots are outside of SJWC's service area.
13. SJWC has entered into a contract with Trailer to supply water service to Trailer's eight lots located within SJWC's service area.
14. For the remaining 11 lots, Trailer wishes to form a mutual water company and receive water service from SJWC through a master meter located in SJWC's service area in accordance with SJWC's tariffs.
15. Sierra wishes to serve Trailer's 11 lots located outside SJWC's service area and requests that SJWC be restrained from serving Trailer.
16. Trailer is not obligated to receive service from Sierra.