ALJ/EA/hh

Decision 82 03 012 MAR 2 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of LAGUNA HILLS SANITATION, INC. for authorization to increase its Contributions-in-Aid for Backbone Plant (CIA - BP) charges for sewer service.	Application 59571 (Filed April 3, 1980)

(See Decision 91972 for appearances.)

Additional Appearances

Chickering & Gregory, by Edward P. Nelsen, Attorney at Law, and Rhodes, Kendall & Harrington, by Clay M. Smith, for The Warmington-Carma Group; Robert C. Gannon, Jr., Attorney at Law, for Laguna Hills Investment Company; and Gibson, Dunn & Crutcher, by Raymond L. Curran, Attorney at Law, for Sterling Homes; protestants.

Virtue & Scheck, Inc., by Paul B. George, Attorney at Law, for Laguna Village, Inc., interested party.

Ellen LeVine, Attorney at Law, for the Commission staff.

I N D E X

OPINION ON FURTHER HEARING AND REHEARING

I. INTRODUCTION

Laguna Hills Sanitation, Inc. (LHSI) receives Contributions-in-Aid for Backbone Plant (CIA-BP), formerly termed connection charges, from developers as a condition of obtaining service. The CIA-BP is a one-time assessment and is used to fund the construction of sewer mains, pumping stations, treatment plant, and effluent handling facilities.

In this application LHSI seeks authority to increase the CIA-BPs to provide sufficient funds to construct backbone plant necessary to meet the final buildout of its service area. To assure that none of the pending developments would contribute less than its fair share of the proposed backbone plant additions and betterments, LHSI also requested that an interim increase in CIA-BP charges be authorized. That requested increase in CIA-BP charges on an interim basis was authorized in most respects by Decision (D.) 91972 dated July 2, 1980. The interim increase, as authorized, is being collected subject to refund with interest.

Application for rehearing of D.91972 was filed by The Warmington-Carma Group (Warmington), a protestant in this proceeding. Although D.91972 was an interim opinion in which all determinations were made subject to further study and hearing, we granted rehearing (D.92271 dated September 16, 1980) to assure that all parties understood that no issues were conclusively determined by D.91972. The rehearing was consolidated with the further hearing required under Interim D.91972.

The further hearing and rehearing was held before Administrative Law Judge (ALJ) Main in Los Angeles November 17-21, 1980, April 2 and 3, 1981, and June 3, 1981. During the November hearings Laguna Village, Inc. (Laguna Village), a developer within LHSI's service area, challenged the Commission's jurisdiction to modify this developer's existing contract with LHSI, dated May 20, 1974, which established levels of CIA-BP charges for Laguna Village. The ALJ thereupon requested the filing of points and authorities on the Commission's authority to modify the existing contract. By ruling dated January 7, 1981, the ALJ found that the Commission had jurisdiction to consider the effect of that contract in setting reasonable future CIA-BP charges in this proceeding. At the close of the evidentiary hearings on June 3, 1981, this application was submitted subject to the receipt of opening, reply, and closing briefs. The concurrent closing briefs were mailed by the parties on October 13, 1981.

II. SUMMARY OF DECISION

In this decision a uniform CIA-BP for all residential developments is set at $1,190 per unit, which is $595 below the interim residential CIA-BP of $1,785. The CIA-BP for commercial and industrial developments is being held at the interim level of $4.75/gallon per day (gpd) with the minimum, however, lowered to the new residential CIA-BP.

In arriving at the new CIA-BPs, we have:

1. Approved a $3,340,200 capital improvement program to meet the final buildout of the LHSI service area.
2. Determined that the interim residential CIA-BP, rather than the charge it superseded (i.e., the connection charge in effect before July 16, 1980), applied to the Warmington development.
3. Determined that the connection charges in effect from time to time in Schedule 4, Connection Charges For Residential Developments (now Contributions-in-Aid for Backbone Plant (CIA-BP) - Residential Developments), rather than those in the 1974 contract between Laguna Village and Rossmoor Sanitation, Inc. (Rossmoor), now LHSI, applied to the Laguna Village development.
4. Declined to reinstate the restricted residential classification for CIA-BPs eliminated by D.91972, supra.
5. Rejected a cost allocation method purportedly based on the relative use of joint facilities as being impractical, both technically and administratively.

Of course, refunds of the portions of the interim CIA-BPs in excess of the new CIA-BPs are required. More specifically, refund of the difference between the interim CIA-BP and the corresponding CIA-BP authorized by this decision must be made, together with accrued interest to each developer from whom that interim CIA-BP has been received.

III. BACKGROUND

Following the adoption of amendments to the Public Utilities (PU) Code which conferred jurisdiction over sewer companies on the Commission, Rossmoor, on July 1, 1972, became a public utility regulated by the Commission. By Advice Letter 2 dated October 18, 1972, Rossmoor filed its tariff schedules, including Schedule 4 - Connection Charges For Residential Customers, and Schedule 5 - Connection Charges For Commercial and Industrial Customers.

In Rossmoor's first general rate proceeding before this Commission (Application (A.) 54129 filed June 22, 1973), its service extensions practices, which were typical of those used throughout the sewer industry by both publicly and privately owned systems, were examined at length. By D.84040 dated February 4, 1975, the Commission, in pertinent part, found:

> "10. Applicant should continue its present practice of requiring developers to contribute in-tract plant and to pay connection fees. The amount charged developers for connection fees should be established as a condition of service filed with the Commission." (Emphasis added.)

and ordered:

> "5. Applicant shall refile rate Schedules Nos. 4 and 5 as conditions of service, and shall set forth the amounts to be charged as connection fees at the levels presently charged. Modification of the amounts to be charged shall be by advice letter filing and shall be subject to approval by resolution of the Commission." (Emphasis added.)

Earlier in that decision it was expressly stated that connection charges "clearly involve a contribution of money to the utility for the privilege of receiving service" and are "used to pay for backbone plant". Even though authorizing connection charges as a condition of receiving service was dictated by prevalent sewer industry practice, it nevertheless represented a notable departure for the Commission from a traditional regulatory scheme oriented toward utility investment. Indeed, among the utilities under our jurisdiction, only sewer utilities assess connection charges as a condition of service and of those only LHSI is large.

As LHSI's remaining source of funds for backbone plant, connection charges must be sufficient to fund the additions and betterments necessary to meet the final buildout of LHSI's service territory. In practice, charges necessary for the final buildout must be determined in advance of actual backbone plant construction and be collected in their entirety while there are still developers.

IV. PLANNED DEVELOPMENTS

The planned developments within the LHSI service area, according to Exhibit 3, are:

Residential			Commercial	
Tract	Type	Units		Acres
5278	Unrestricted	99	Mathis Ranch	20.0
9808	Unrestricted	28	Magdalena Commercial	10.3
10633	Unrestricted	392	Willow Tree	13.0
9667	Unrestricted*	596	Carlotta Commercial	4.7
7934	Restricted	194	Lake Forest Commercial	24.4
9611 & 9613	Unrestricted	399	Freeway-Stuart IV	4.7
			Tract 9860	4.5
11005 (Iglesia)	Unrestricted	132	Lake Forest Shopping Center	9.0
Total		1,840	Plaza Pointe	6.2
			Laguna Hills Commerce Center II	19.0
			Lake Hills Commercial	19.0
			Total	134.8**

*In its closing brief, Sterling Homes indicates it may convert Tract 9667 to a restricted tract.

**In assessing CIA-BPs for those planned commercial developments, LHSI estimates it will apply 126 minimums and flows totaling 96,100 gpd.

V. PROPOSED EXPANSION OF AND IMPROVEMENTS TO BACKBONE SEWAGE PLANT

The overall backbone plant project for which an increase in CIA-BP charges is sought by this application is reasonably related to the final buildout of LHSI's service area. It will, among other things, expand the system's overall capacity from 4 to 5 million gallons per day (MGD) to meet the ultimate service area flows.

The planning and conceptual design of this project, as proposed by LHSI in Exhibits 2 and 32, has been influenced by the Santa Ana Regional Water Quality Control Board's (Regional Board) expectation of system reliability. If LHSI violates discharge requirements of the Regional Board, that board has a number of options: (1) an abatement order, (2) a cease and desist order, and (3) referral of the matter to the attorney general for action in assessing or attempting to have the courts assess civil penalties. LHSI has already been the object of these three enforcement tools of the Regional Board and remains under the close scrutiny of the staff of the Regional Board. LHSI stresses that the Regional Board's staff makes strong suggestions to LHSI as an operator of a sewage treatment system and expect LHSI to comply with its staff's recommendations as evidence of LHSI's good faith in attempting to comply with Regional Board requirements.

Obviously, it is essential that the system, both as it develops further and at its ultimate development, be reliable.

The overall project is estimated to cost $3.3 million over a four-year (1980-1983) construction period. The $3.3 million includes an allowance for inflation of 15% per year for plant constructed after 1980.

In Exhibits 2 and 33 the estimated cost of the project in 1980 constant dollars is summarized as follows.

VI. CAPITAL IMPROVEMENT PROGRAM

Facility	Est. Cost of Improvements
Aliso Creek Pump Station	$ 55,900
Freeway Pump Station	84,600
Northline Pump Station	102,100
Oso Pump Station	88,400
Veeh Pump Station	241,600
Veeh Force Main	62,900
Westline Pump Station	58,200
Wastewater Treatment Plant (WWTP) Expansion	1,391,200
Effluent System	518,500
Total	$2,603,400

Exhibits 2 and 33 set forth the recommendations of LHSI's engineers, PRC Toups (Toups), for the expansion of and improvements to LHSI's backbone plant necessary to meet the ultimate development of LHSI's service area. The estimates of construction costs are derived from conceptual designs for costing rather than from detailed engineering designs. Hargreaves, a Toups civil engineer thoroughly familiar with the LHSI system, performed this work.

Five witnesses testified concerning the proposed plant construction in its entirety: Dryden and Hargreaves for LHSI, Bowerman for Warmington, Kymla for Sterling Homes, and Fukutome for the Commission staff. One witness, Vander Wende for Laguna Village, testified concerning the Veeh Pump Station.

Dryden, a Toups vice president in charge of major federal and private public works contracts, sponsored Exhibit 2 which generally details the proposed plant construction. He testified that the construction is "required if LHSI is to serve increased flows from residential and commercial development while at the same time complying with state and federal water pollution control laws and regulations", and that the system, after the proposed expansion, will serve the ultimate development of LHSI's service area.

Bowerman, a senior vice president of Engineering-Science, Inc., sponsored Exhibit 5 primarily to support a cost distribution method. Bowerman testified that it was substantially correct to conclude that the facilities listed in Exhibit 2 are necessary to improve and expand the system. However, he not only expressed some reservations about the total costing of the improvements but was critical of the methods used in preparing Exhibit 2. It was Bowerman's view that LHSI/Toups should not have stopped at the conceptual design phase for costing, as used in Exhibit 2. Rather, they should have proceeded on to more precise estimates "based upon specific equipment sizing, space, location, (and) land allocation" which, in his view, would be more suitable for use in developing the CEA-BP requirement.

Kymla, the former general manager of Moulton-Niguel Water District, testified that the construction cost projections in Exhibit 2 accurately reflect current construction costs in southern California. Fukutome, the Commission staff engineer, reviewed all elements of the capital improvement program and found them to be needed for the LHSI "total system to function effectively and efficiently in the future." In his review of the Toups' cost estimates, Fukutome concluded that the overall totals were reasonable. This was still his conclusion after considering the fact that the Exhibit 2 figures will not be the ultimate totals when looking three years into the future. With inflationary conditions and the potential for future design revisions resulting from factors such as changing environmental demands or more detailed engineering, the ultimate totals are certain to vary from those tabulated above for the capital improvement program. Another consideration which entered his evaluation was: If it is ultimately determined that collections from developers exceed the amount actually expended on plant construction, the Commission can, at that time, direct the disposition of any excess.

Specific cost components and facilities which became issues in the proceeding will now be addressed.

Contingency Factors

In Exhibits 2 and 33 a 10% contingency factor was used for all of the system components except the Veeh Force Main and the Effluent System where 5% and 15% contingency factors, respectively, were used. The Veeh Force Main was under construction at the time the estimate was made and the Effluent System will be 1983 construction.

Bowerman (for Warmington) criticized the LHSI/Toups contingency factors. He indicated that the contingency factor for jobs already under construction should be almost zero. The main thrust of his criticism appeared to be that a 10% contingency factor was being used indiscriminately as part of a tendency of placing "the prices at least on the high side of the estimate curve, not on the low side of the estimating curve." In its opening brief Warmington accepted Dryden's judgment on all of the contingency add-ons, except for that portion of the 10% contingency in the $1,391,200 WWTP Expansion which applies to the $333,200 clarifier and the $227,500 sludge press. The clarifier was under construction at the time of the hearing, and the sludge press was an identifiable piece of equipment.

In Dryden's experience, most treatment facilities in recent years have cost more than the engineers who design those facilities projected they should cost, not less. The 10% contingency allowance, as used in the capital improvement program, reflects, in this engineer's judgment, a representative average.

In our view an allowance for contingencies in the 10% range on the $3.3 million capital improvement program to be constructed over four years clearly is not unreasonable.

Overhead Allowance

In Exhibits 2 and 33 a uniform allowance of 6% for overhead is used. The 6% figure is an average derived by LHSI from past experience with its capitalized payroll, including benefits, on construction projects. Warmington contends that it is unreasonable to include overhead cost in the determination of connection charges, since LHSI would have the same payroll whether the proposed facilities were constructed or not.

Irrespective of whether the payroll is affected during the period of years over which the facilities will be constructed, LHSI employees will be continually involved in the administrative activity of the construction project. Clearly then, the cost of the proposed facilities, which are to be financed by connection charges, would be understated without the inclusion of overhead. Its inclusion at 6%, which appears reasonable, should be allowed.

Pump Stations Except Veeh

The capital improvement program for pump stations other than Veeh is estimated to cost $389,200. Virtually all of the improvements for these stations are related to emergency backup facilities that are needed in the event of interruption in electrical service so that sewage can be pumped during an outage.

The pump stations will handle sewage from both existing and new developments. Upon completing our assessment of the capital improvement program, we will address the concern expressed by the parties throughout this proceeding that the proposed facilities to be financed by CIA-BPs be reasonably related to needs created by new connectors.

Veeh Pump Station

The $241,600 capital improvement program for the Veeh Pump Station is set forth in Exhibit 33 introduced by Hargreaves.[1/] Exhibit 33 reflects the agreement of the parties that the Veeh Pump Station should be designed for a maximum peak flow of 500 gallons per minute (gpm).

1/ The $241,600 includes $5,300 for wet pit modifications because the pit is suspected of having insufficient wall thickness at lower levels. Since no allowance is included in the $5,300 for core samples to determine the thickness of the pit's concrete walls, coring could either run up the cost by about $1,000 or reduce it by about $4,300. Whether core samples are required is clearly within the discretion of LHSI and its consulting engineer.

Unlike most of LHSI's other pump stations, Veeh is located adjacent to residential development. It is also the only pump station operated by LHSI for which major improvements have been proposed, and the most controversial of the proposed improvements is the $52,400 emergency generator system.

According to Hargreaves, general engineering practice requires that backup generation facilities be provided when a pump station is projected to pump flows of the size projected for Veeh (i.e., 500 gpm). Backup generation at the Veeh Pump Station is, of course, also consistent with LHSI's policy of having backup capability at each of its pump stations.

Presently, there is backup capability at the Mathis Pump Station and the Aliso Pump Station. Backup facilities for the remaining pump stations on the LHSI system are included in the capital improvement program (Exhibit 2). Thus, proposing backup facilities at the Veeh Pump Station is neither unusual nor is it a recent development in the planning of the LHSI system.

The purpose of the backup generation system is to ensure that sewage does not overflow the Veeh Pump Station wet pit and spill onto the ground. When the power at Veeh or any of the other pump stations fails, the wet pit will begin to fill with raw sewage. At Veeh, this filling process would take approximately 10 minutes during peak-flow periods. After the 10 minutes have elapsed, the sewage would rise above the top of the wet pit, and flow over the ground, discharge to catch basins in the street, and then flow to Veeh Creek which is 50 feet away from the pump station. Veeh Creek discharges into a larger, natural tributary, from there into San Diego Creek, and eventually into Newport Bay. Discharges such as this are prohibited by Order 77-100 of the Regional Board.

Apart from LHSI's policy, Hargreaves' evaluation of general engineering practice, and the requirements of Regional Board Order 77-100 (Exhibit 32), all supportive of backup generation, there is the matter of the Veeh Pump Station being adjacent to a residential area. A home facing the Veeh Pump Station has its front door approximately 30 to 35 feet from the fence surrounding the pump station.

Some of the parties suggested that portable generation systems could meet LHSI's needs in a less expensive fashion than individual permanent systems. However, portable systems must be mobilized, moved to the site, erected, and connected to the system. It takes one to one and one-half hours to mobilize a generating unit and get it hooked up to a pump station.

A portable unit simply kept at the site is tantamount to having a stationary unit on the site and it will result in very close to the same cost. In fact, in developing his recommendations, Hargreaves compared the relative costs of portable units versus stationary units and found them to be very close. Even if a portable unit were installed on a permanent basis at the site, a maintenance man would still have to drive to the station and turn on the power switch. This can take about one-half hour which is much longer than it takes for the wet pit to fill up under peak conditions.

Vander Wende (for Laguna Village) was the only witness expressing disagreement with Hargreaves' recommendation to install backup facilities at the Veeh Pump Station. While not disagreeing with Hargreaves' estimate of the cost of constructing backup generation facilities, he testified that the emergency generator system is not necessary.

Vander Wende, a civil engineer and president of McCutchon Engineering, stated that he has never designed a pump station where any spillage would be in an area tributary to a running stream nor has he made an investigation to determine what backup facilities, if any, would be required in such a situation. He also testified that he probably had not designed a pump station for an area comparable to the LHSI service area.

We are persuaded by this record that the location of the Veeh site, being both in an area tributary to a running stream and adjacent to residential development, is probably in itself ample reason for requiring the backup generation facilities. Quite apart from that, however, LHSI clearly has exercised reasonable discretion. General engineering practice, according to LHSI's consulting engineer, requires backup generation for pumping stations of the capacity of those operated by LHSI. In addition, LHSI's standards for sewer systems are obviously higher, and properly so, than bare minimums. Notably, in the latter regard, the privately owned sewer collection systems in tracts being developed by Laguna Village, Warmington, and Sterling Homes are examples of sewer facilities which do not meet LHSI's standards.

The capital improvement program also calls for the installation of variable speed controls, a basic building, block wall and gate, and landscaping at the Veeh Pump Station at an estimated cost of $62,800 before contingency and overhead add-ons. Vander Wende contends that these improvements are not needed but does not dispute the cost estimates.

Again, the Veeh Pump Station is adjacent to a residential area. The primary goal in installing the variable speed drive is the elimination of noxious odors.

The variable speed drive minimizes the difficulties with storage of sewage at night in the wet well. Collection of raw sewage in the wet well for more than an hour will give rise to what is called an anaerobic activity eventually leading to biological activity and the creation of gases. These gases include hydrogen sulfide and ammonia. Of these gases, hydrogen sulfide is very dangerous in certain concentrations. But the most obvious concern is with the odor. The variable speed controls maintain a lower level of sewage in the wet well and match the flow of sewage coming into the wet well so that there is very little sewage stored at any one time in the well.

The basic building is needed to house the emergency generator unit and the associated controls which are more weather-sensitive than the existing controls. Although the building is not expressly required by Orange County, its construction is necessary to meet a requirement for sound proofing of the backup generator imposed by the county.

The county has required LHSI to construct a block wall and gate as a condition of the county's issuance of a building permit for the Veeh Pump Station. It has also required landscaping around the Veeh Pump Station which is located adjacent to a park.

Vander Wende's general recommendation was that LHSI essentially abandon the Veeh Pump Station and install a pre-packaged pump station, without either backup generation or variable speed controls, in its place at the Veeh site. This recommendation, if in fact it could be implemented, probably would not provide a safe and reliable pump station well-suited to a location in a residential area.

In our view the revised capital improvement program for the Veeh Pump Station set forth in Exhibit 33 should be adopted.

Wastewater Treatment Plant

LHSI's WWTP is in a transition period in which the Effluent Disposal System is being converted from an irrigation-type with one set of standards to a system which will discharge into the ocean through the Aliso Water Management Agency (AWMA) pipeline and be subject to a new set of standards. For discharge into the AWMA pipeline, the system must meet the 30/30 standard, i.e., effluent cannot exceed 30 milligrams BOD (Biochemical Oxygen Demand) per liter and 30 milligrams suspended solids per liter on a 30-day average basis.

At the 4.0 MGD flows prevailing in the service area prior to any flow contributions by the planned developments set forth in Exhibit 2, the LHSI system cannot meet the 30/30 standard and will not be able to until completion of construction Phases I and II under way at the WWTP. Financing of these two construction phases has been obtained through the California Pollution Control Financing Authority (CPCFA), and a rate surcharge authorized by D.91339 in A.59033 provides funds to service the debt.

To allow for the planned developments (i.e., the new connectors), the WWTP must have capacity to meet the 30/30 standard at an average hydraulic flow of 5 MGD. The proposed $1,391,200 expansion (Phase III construction) of the WWTP, which is a central part of the entire capital improvement program, will increase the treatment capability from 4 to 5 MGD. The elements of that expansion are set forth in Exhibit 2 as follows:

Phase III Construction
Expansion Stage of Wastewater Treatment Plant

Treatment - Add a Screen and Two Aerators	$ 39,500
Reequip Existing Clarifier	160,200
Add Clarifier (#4)	333,200
Yard Piping	17,400
Electrical and Instrumentation	150,000
Air Flotation Thickener for This Added Capacity	103,500
Pavement	28,800
Sludge Press	227,500
Engineering	130,000
Permits, Fees	3,000
Overhead at 6%	71,600
Subtotal	$1,264,700
Contingency at 10%	126,500
Total	$1,391,200

There were criticisms of this Phase III construction's serving also the needs of existing customers, a matter we will elaborate upon later in this decision. There were also criticisms of the 10% contingency factor's being applied to Clarifier #4, as a facility already under construction, and to the new sludge press, as a known item of equipment. We addressed the latter criticisms in our discussion of contingency factors.

Apart from the above points of contention, none of the parties seriously challenged either the need or the specific cost estimates for this part of the program.

Effluent Lake System

The part of the capital improvement program to expand and modify the effluent lake system is set forth in Exhibit 2 as follows:

Expand and Modify Effluent Lake System

Site General:	
Fencing With Grading (6,000 LF + 50,000 SF)	$ 95,500
Pumps	52,900
Level Monitors	900
Siphon Controls (Hyd. Float Contr. 3'FL-3 Way)	3,100
Pavement Road $23,000 + Site Among Lakes $30,000	60,900
Piping 4,000 LF	163,300
Subtotal	$281,600
Engineering	40,200
Permits, Fees	3,500
Overhead at 6%	25,500
Subtotal	450,900
Contingency at 15%	67,600
Total	$518,500

The effluent lakes, through their holding or storage function, provide for variations, some of an unexpected nature, in system flows. At the present time, the lakes provide holding capacity pending discharge for irrigation. After the construction of the AWMA pipeline, the lakes will still be needed for emergency standby storage.

Several parties to the proceeding suggested that the lakes would be largely unnecessary after the construction of the AWMA pipeline. In response, LHSI pointed out that such a conclusion rests on the assumptions that (1) there will never be a problem with the AWMA ocean discharge system and (2) LHSI's treatment plant will always be processing sewage to such standards that it can be legally discharged through AWMA to the ocean. Neither of these assumptions can be relied on with certainty.

If the AWMA facilities are out of service for any reason or if the LHSI plant is not treating effluent to the proper standards, LHSI will not be allowed to discharge through the AWMA pipeline. In that event the entire flow coming to the plant would have to be transported to the storage lakes where there are approximately 15 days' storage. Clearly then, there will be a continuing need for the storage lakes in a backup role.

The $52,900 for pumps and the $163,300 for piping in the improvement program for the effluent lake system will provide capacity to pump 4 to 5 MGD. If the additional piping is not installed and, at some point in the future, the AWMA pipeline was not available, there would be an overflow at the effluent holding pond (not to be confused with the effluent lakes) immediately downstream from the treatment plant, resulting in discharges into Veeh Lake in violation of discharge requirements

of the Regional Board. If an emergency requires water to be transported to the effluent lakes, LHSI must have the capability to drain the lakes immediately in case of another emergency and thus the pumps are required.

Some of the other proposed improvements to the effluent system were also targets for criticism. But disparaging the proposed paving at the lakes does not make maintenance of the lakes any less difficult without pavement in wet weather; nor does criticism alter the obvious reasonableness of fencing off the lake area. The paved road and paved "site among lakes" are necessary for efficient operation of the system, and the fencing is in the interest of safety.

Benefits to Existing Customers

During the proceeding various components of the proposed improvements were described as benefiting both existing and new customers or lowering operating costs. In this regard attention was particularly drawn to the upgrading of the treatment plant and to certain other improvements such as the 4,000 feet of piping and the pumps for the effluent lakes. It is Warmington's position that:

1. Some of the new facilities will benefit existing customers to the same extent they will benefit new customers, and the burden of paying for them should not fall entirely on the developers; and
2. To the extent operating costs will be lowered as the result of the installation of new equipment, the equipment should be paid for from the savings in operating costs.

It is true, as Warmington contends, that certain of the proposed facilities will benefit existing customers. It is equally true, however, that certain of LHSI's existing facilities are of sufficient size to benefit both new and existing customers. As one example, the headworks and certain other portions of the existing treatment plant are sized to 5 MGD, the required capacity projected for a fully developed LHSI service area. These existing facilities with sufficient capacity to serve the new connectors either were part of the original Rossmoor plant financed by debt and stock issues or were funded by (1) past connection fee payments or (2) LHSI's ratepayers through the surcharge authorized by D.91339, supra.

Incremental capacity is rarely timed in precise conformity with the addition of new residential and industrial flow. Generally, according to LHSI's consulting engineer, capacity is added by increments reflecting economies of scale tempered with the knowledge that the most practical economical size of system components may vary. Indeed, even the different elements comprising a treatment plant, for example, can be sized to handle additional capacity at different rates because of the flexibility and range of use of some of those elements in the treatment process.

Turning our attention to the proposed improvements which may lower operating costs, we would certainly expect that some of the backbone plant installations made by LHSI from connection fees from time to time in the past also would have had the effect of lowering operating expenses in some way. That is clearly the expectation because backbone plant, regardless of its effect on operating expenses, has been financed by connection fees collected from developers as a condition of

obtaining service. There was no reason then to require the ratepayer to pay for backbone plant, which lowered operating expenses, nor is there now. Backbone plant financed in this way benefits not only existing customers but new customers in that savings in operating expenses are flowed through into rates either through a prescribed effluent cost adjustment mechanism or as an adjustment to offsettable expense items.

Specifically, in regard to the effluent lake system, Warmington argues that the reductions in operating expenses as a result of eliminating the Irvine leases justifies placing the cost of improvement to the effluent lake system on the ratepayer. However, it is the AWWA facility, rather than the proposed improvements to the Effluent System, which eliminates the need for Irvine leases. LHSI's ratepayers are paying the costs of operating those AWWA facilities through LHSI's effluent disposal balancing account and LHSI's contract with the intermediary public agency, the El Toro Water District.

The proposed CIA-BP of $1,256 per residential unit ($1,304 per unrestricted unit if the differential eliminated by D.91972, supra, is restored) as a condition of obtaining service is not significantly in excess of that being charged by surrounding publicly owned sewer districts.

In sum, the evidence clearly persuades us that the overall capital improvement program, as set forth in Exhibits 2 and 33, comprises an expansion of and improvements to LHSI's backbone sewage plant reasonably required to meet the final buildout of the service area. With reference to the cost estimates for the improvement program, it appears problematical

that refining the individual estimates would lessen materially the estimating error in total project costs. This is an error that is bound to occur, as the actual construction costs to be incurred over the next several years undoubtedly will come in either over or under the estimates. On balance, the cost estimates for the program (Exhibits 2 and 33) appear in the aggregate to be reasonable and their total may therefore be used in computing the new CIA-BP charges.

VII. WARMINGTON TRACT 10633

Protestant Warmington is the developer-builder of Tract 10633, a 392-unit affordable housing condominium project with prices ranging from $41,000 to $74,000 per unit, containing within its boundaries a privately owned gravity sewer system which connects into LHSI's sewer system. Warmington contends that the CIA-BP it may be assessed by LHSI became fixed at the time Warmington's in-tract sewer line was connected to the extension of LHSI's sewer main.

In that regard the evidence establishes that the main trunk sewer line connection linking the Warmington privately owned sewer system to LHSI's system had been made by late March 1980, since at that time the connection was, according to a Warmington witness, being inspected by Orange County and LHSI personnel. The evidence, however, also establishes that a brick and mortar plug, which was not removed until late August 1980, blocked access to the LHSI main.

The Schedule 4 tariff in effect until July 16, 1980 provided that:

> "Unless otherwise deferred by Rossmoor Sanitation, Inc. the connection charge shall be paid before the actual physical connection of the customer's service line to the Rossmoor Sanitation, Inc. system."

A $564 connection charge per unrestricted residential unit was in effect under that schedule from April 7, 1975 until July 16, 1980.

The Schedule 4 tariff in effect on and after July 16, 1980 provided that:

> "Unless otherwise deferred by Laguna Hills Sanitation, Inc. the CIA-BP shall be made before sewer service is provided to the development."

The interim CIA-BP in effect on and after July 16, 1980 under that schedule was $1,785 for each dwelling unit.

The decision (D.91972) authorizing the interim CIA-BP, as noted earlier, was issued July 2, 1980. Prior to that, during 1979 and again in 1980, various affected developers, including Warmington, were informed by LHSI of projected increases in connection fees. In November 1979 LHSI filed an advice letter seeking to increase the CIA-BP to $1,800 per residential unit. That advice letter was eventually rejected after which, on April 3, 1980, the present application, which led to the interim decision and is now before us for final decision, was filed.

Warmington further contends that the deferral by LHSI provided for in the Schedule 4 tariff applies to the collection and payment of connection fees but not to the level of connection fees. If "physical connection", as that term was used in the tariff prior to July 16, 1980, took place in August 1980 when the brick and mortar plug blocking access to the LHSI main was removed, the connection fee would be fixed at the time of occupancy. However, if "physical connection" took place before the March 1980 inspection, then under this further Warmington contention the $564 per unit connection fee would apply, making it pivotal whether an LHSI deferral encompasses the level of the connection fee as well as its payment.

At this point, it should be made clear that if we were to resolve any lack of clarity in the tariff in Warmington's favor, our action would redound to the detriment of the other affected developers. Lack of clarity is thus not an adequate basis for finding in favor of Warmington.

As we have seen, the tariff expressly states only that the connection charge shall be paid"unless deferred" by the utility. Deferral of connection charges either to assure their adequacy in the aggregate to cover the cost of backbone plant expansion[2/] or to assure that all pending developments that contribute to the need for backbone plant expansion will share equitably in the cost of that expansion is reasonable. Indeed, this kind of deferral

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2/ In our interim decision (D.91972, supra) we said:

> "A primary concern of this Commission is to assure there will be an adequate sewer system to serve the people who will live in the area. Toward that end, either the primary plant has to be expanded or a commensurate limitation placed on new connections to the sewer system. The sole source of funds for the needed expansion is the CIA-BP charge."

yields a far more rational result than simply depriving LHSI of the funds during the deferral period, as freezing the payment of connection charges at the level in effect at the time of "physical connection" would do. We find that LHSI deferred Warmington's payment in order to assure adequacy of the connection charges in the aggregate to cover the cost of the backbone plant expansion and to assure that all developments benefiting from the expansion shared equitably in its cost. Under these particular circumstances, LHSI's deferral of Warmington's payment was reasonable and within the scope of the tariff provision.

LHSI's present management has adopted a policy of assessing the CIA-BP upon the issuance of certificates of use and occupancy by Orange County. The certificates are relied upon to signal impending occupancy, and the intended effect of the policy is to reduce to the shortest period practicable the time between payment of the CIA-BP and construction of the proposed projects to be funded by CIA-BP. Warmington's other basis for claiming that it should be entitled to the lower connection charge in effect prior to the July 2, 1980 decision establishing the interim CIA-BP is in response to this policy. Upon obtaining from Orange County certificates of use and occupancy for 92 of its 392 units, Warmington tendered, on June 26, 1980, payment of connection charges to LHSI for 92 units. The payment was not accepted by LHSI.

Generally, the certificates of occupancy precede actual occupancy by only a few days and are not obtained until all the utility companies involved have completed their inspections and communicated their approvals to the county. Specifically, under the practice normally followed for LHSI operations by Orange County, any structure to be occupied in the LHSI service area must have a formal release from LHSI's construction department. The release, of course, is one that is forthcoming only after LHSI is satisfied that sewer facilities have been properly installed and are operable. However, for Warmington's Tract 10633, Orange County deviated from its normal practice and did so apparently to assist Warmington to reduce costs.

In that instance, the certificates of occupancy were issued prior to the time sewer facilities were properly installed and approved by LHSI and at least six weeks before occupancy of the units. Warmington's first occupancies, in fact, were not accomplished until September 2, 1980, more than two months after the tendered payment. We conclude that LHSI acted reasonably and within the intent of its policy when it refused to accept Warmington's payment of the CFA-3P on the basis of those irregularly issued certificates of occupancy.

There was some suggestion in Warmington's opening brief that it may have somehow relied upon its being subject only to the lower sewer connection charges in effect prior to July 16, 1980 when it determined the prices at which it would sell its affordable housing. However, during the course of the hearing it was stated for the record by counsel for Warmington that Warmington had not relied on the $564 connection charge in determining the price at which the homes would be sold (RT 405).

To put at rest the possibility that Warmington may have suffered some financial loss as a result of the interim decision, official notice is taken of the fact that under the rules and regulations of Orange County's Affordable Housing Program, Warmington receives certain housing credits which it can use in connection with other developments in Orange County or which can be sold and transferred to other developers. A witness for Warmington testified to the fact that Warmington did receive these credits, that they were worth from $10,000 to $15,000 each, and that in excess of 25 credits had already been sold by Warmington.

In sum, the Commission concludes that Warmington's Tract 10633 should be subject to the CIA-3F to be determined in this proceeding.

VIII. LAGUNA VILLAGE AGREEMENT

Laguna Village is the developer-builder of a 1,140-unit condominium complex in LHSI's service area. 399 of the units in this complex are yet to be built. The unbuilt units are in Tracts 9611 and 9613 and are part of the planned development (Exhibit 2) used by LHSI in determining its proposed increase in CIA-3Fs.

Laguna Village contends that the CIA-3F it may be assessed for the units of this complex is governed by a Main Extension, Contribution, and Service Agreement (Exhibit 20) entered into by Laguna Village and Rossmoor in 1974. Pertinent tariff history preceding the Exhibit 20 agreement is as follows:

After coming under our jurisdiction, Rossmoor filed, on October 20, 1972, its tariff schedules[3/] (tariffs), including Rule 9, Form 6, and Schedule 4, which became effective November 20, 1972. Rule 9 (now Rule 23), Main Extensions, required that: "A Main Extension, Contribution and Service Contract shall be executed by Rossmoor and the applicant or applicants for the Main Extension before Rossmoor commences construction work on said extensions..." Form 6 was the sample form of the Main Extension, Contribution, and Service Contract. Blank spaces were provided on this sample form for the entry of connection charges. The then-existing Schedule 4, Connection Charges For Residential Customers, provided that the connection charge for any unrestricted family residential unit would be set by reference to the WWTP Construction Cost Index:

> "(A) The connection charge for any unrestricted family residential dwelling unit shall be $200.00 for each dwelling unit. This basic connection charge shall be reviewed annually in December by the staff of Rossmoor Sanitation, Inc. and increased or decreased for the following calendar year to a charge obtained by multiplying $200.00 by the Waste Water Treatment Plant Construction Cost Index of the Federal Water Quality Administration for Los Angeles as of the July immediately preceding the December in which the review is being made, then dividing this product by 167.1, which was said index as of July, 1971, and rounded to the nearest one dollar."

3/ Tariff schedules consist of the following parts: Title Page, Table of Contents, Preliminary Statements, Service Area Maps, Rate Schedules, Summary List of Contracts and Deviations, Rules, and Sample Forms.

In April 1974 Laguna Village submitted to Rossmoor its approved building plans for approximately 1,200 condominium units. In May 1974 Exhibit 20, the Main Extension, Contribution, and Service Contract, on the equivalent of Form 6, was entered into by Rossmoor and Laguna Village. This agreement provided, among other things, that (1) Laguna Village would "contribute to Rossmoor, as a contribution to its capital, cash in an amount equal to $239.00 per each single family residential lot...for sewage treatment and disposal service...", and (2) in the event Laguna Village's area was not totally developed within one year from the date of the agreement, Rossmoor could, at its discretion, add to the $239 contribution per unit an additional 6% compounded annually to provide for expected increases in construction costs. It appears that the $239 figure was obtained from Schedule 4 as the connection charge for unrestricted residential units then in effect.

The Exhibit 20 agreement also provided that sewage collection and disposal service and plant and system capacity would be provided "at the regular rate of charge established by Rossmoor from time to time" and that "this agreement is entered into and said sewage collection and disposal service shall be subject to all and each of the provisions, conditions and limitations of the Rules and Regulations of Rossmoor Sanitation, Inc. as the same shall from time to time provide..." (Emphasis added.)

It is Laguna Village's position, in light of the above facts, that it has contract rates, including the 6% escalator, which have been filed with and approved by the Commission, have become part of the utility's tariffs, and have the force and effect of law unless and until specifically changed by the Commission. LHSI, Warmington, Sterling Homes, and staff disagree with Laguna Village. It is their position that the Schedule 4 charges have applied to Laguna Village at all times.

We pointed out in the background material provided near the outset of this decision that D.84040 dated February 4, 1975 ordered Schedule 4 refiled, as establishing conditions of receiving service, with the connection charges fixed at the levels then being charged. The order further directed that "modification of the amounts to be charged shall be by advice letter filing and shall be subject to approval by resolution of the Commission." The pertinent connection fee in Schedule 4, as refiled, was $239 per unit, the same fee level as set forth in the Exhibit 20 agreement.

In 1974 Laguna Village paid the $239 connection fee per unit for 366 single-family residential units. The next payments of connection fees by Laguna Village were made in January and June 1977 for 59 units and 167 units, respectively. These payments were not made at the $239 rate annually escalated by 6% as permitted in the Exhibit 20 agreement but at the Schedule 4 rate of $239 per unit then still in effect.

By Resolution W-2230 dated September 7, 1977 in Advice Letter 9, Rossmoor was authorized to increase the connection charges in Schedule 4. For unrestricted dwelling units the connection fee was increased from $239 to $564 per unit.

The next payment of connection fees by Laguna Village was in July 1978 for 72 units at the Schedule 4 rate of $564 per unit. Laguna Village made that payment and all subsequent payments of connection fees under protest, contending its Exhibit 20 contract rate of $239 plus the 6% annual escalator should apply. There were two subsequent payments. One was in September 1978 for 77 units at the Schedule 4 rate of $564 per unit and the other was in March 1981 for 72 units at the Schedule 4 interim rate of $1,705 per unit.

The foregoing payment record clearly shows that LHSI's billings have been consistent with its position that Schedule 4 was at all times determinative of the amount of the connection fee to be charged Laguna Village.

As part of its position that the Exhibit 20 rates are legally enforceable contract rates, Laguna Village asserts that the Commission is not the proper forum in which to determine issues concerning enforceability. Clearly, this Commission not only can but has the duty to consider the effect of the Exhibit 20 sewer connection charge contract on the setting of reasonable future connection charges in this proceeding. (Law v Railroad Commission (1921) 184 C 737.) Moreover, the issue of whether Laguna Village knew that contract rates could be modified by this Commission is not determinative. In entering into a contract with a public utility, Laguna Village is presumed to have contracted subject to the Commission's power to modify such contracts.

There is not, however, a need to modify directly the Exhibit 20 contract in this proceeding since, as will be developed below, that contract at no time lawfully provided for a departure from the connection charges on file and in effect in Schedule 4 of Rossmoor/LHSI's tariffs.

Under our basic regulatory scheme, consonant with PU Code Section 532[4] as implemented through General Order 96-A,[5] all utility service is furnished under filed tariff schedules with exceptions permitted only where specifically authorized.

4/ "532. Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time, nor shall any public utility engaged in furnishing or rendering more than one product, commodity, or service, charge, demand, collect, or receive a different compensation for the collective, combined, or contemporaneous furnishing or rendition of two or more of such products, commodities, or services, than the aggregate of the rates, tolls, rentals, or charges specified in its schedules on file and in effect at the time, applicable to each such product, commodity, or service when separately furnished or rendered, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons. The commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility. (Former Sec. 17(b).)"

5/ Although General Order 96-A has not yet been amended to specifically include sewer utilities, their tariff filings are required to comply with that general order.

Obviously, it is inherent in this basic scheme that contracts authorized by tariff schedules should be subject to substantially less stringent requirements than contracts and services at other than filed tariff schedules. A comparison of Sections IX and X of General Order 96-A contrasts the requirements for these fundamentally different types of contracts:

> "IX. CONTRACTS AUTHORIZED BY TARIFF SCHEDULES
>
> "Whenever it is expressly provided by a filed tariff sheet of a utility that a written contract shall be executed by a customer as a condition to the receipt of service, relating either to the quantity or duration of service or the installation of equipment, the executed contract need not be filed with the Commission, but a copy of the general form of contract to be used in each case shall be filed with the tariff schedules as hereinabove provided. Each such contract form shall contain substantially the following provision:
>
> "'This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction.'"
>
> "X. CONTRACTS AND SERVICES AT OTHER THAN FILED TARIFF SCHEDULES
>
> "A. General Requirements and Procedure. Except as expressly permitted by the succeeding subsection B of this Section X, no utility of a class specified herein shall hereafter make effective any contract, arrangement or deviation for the furnishing of any public utility service at rates or under conditions other than the rates and conditions contained in its tariff schedules on file and in effect at the time, unless it first obtain the authorization of the Commission to carry out the terms of such contract, arrangement or deviation.

Request for such authorization should be made by formal application in accordance with the Commission's Rules of Procedure, except that where the service is of minor importance or temporary in nature, the Commission may accept an application and showing of necessity by Advice Letter; four copies of the Advice Letter and contract or agreement shall be furnished. Any subsequent amendment to the agreement or contract also shall be filed with the Commission in the same manner."

* * *

"Each contract for which approval is sought shall contain substantially the following provisions:

"'This contract shall not become effective until authorization of the Public Utilities Commission of the State of California is first obtained.'

* * *

"Such contract shall also contain substantially the following provision:

"'This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction.'

"All service shall be furnished under filed tariff schedules, but where exceptions have been permitted an up-to-date public listing, as provided in Section II hereof, shall be maintained in the tariff schedules following the rate schedule sheets and before the rule sheets."

As pointed out earlier, the Exhibit 20 agreement conforms to the sample of the general form of contract on file in LHSI's tariffs as Form 6. As a general form containing blanks for rate levels, Form 6 obviously is intended as a General Order 96-A Section IX type of contract, the purpose of which is not to deviate from the rates and conditions contained in the utility's tariff schedules but to implement them.

When executed, the Exhibit 20 agreement tracked the then-existing tariff rate. Once the tariff rate changed, either the Exhibit 20 agreement rate by imputation must also have made that same change or it became an unauthorized deviation from Schedule 4 and therefore invalid. Clearly, the prior filing of the blank form employed in the Exhibit 20 contract will not suffice to permit service under other than the regular tariff provisions, where established regulatory rules require the filing of a rate contract with the Commission and Commission approval of the contract.

Laguna Village's contention that it has contract rates, including the 6% escalator, which have been filed with and approved by the Commission is in error. The Schedule 4 rates apply to Laguna Village, and they are the rates which have been filed and approved by the Commission and which have the force and effect of law unless and until specifically changed by the Commission.

Apart from not meeting the General Order 96-A requirements for permitting service under other than the regular tariff provisions, which alone suffices to make Laguna Village's position untenable, the Exhibit 20 agreement itself provides that it is subject to tariff rules filed after the date of execution of the contract. Exhibit 20 is therefore subject to Schedule 4, which in part is a tariff rule.

D.84040, supra, upon finding that "the amount charged developers for connection fees should be established as a condition of service", ordered Schedule 4 refiled as a condition of service.6/ Thus, Schedule 4, in addition to being a rate schedule, is a tariff service rule. As a tariff service rule, which is similar in general character to a main extension rule, Schedule 4 applies to the Exhibit 20 agreement as that agreement was expressly "entered into...subject to...the Rules and Regulations of Rossmoor Sanitation, Inc. as the same shall from time to time provide..."

In summary, it is implicit within the Exhibit 20 contract that the connection charges specified in the contract are modified automatically to coincide with the connection charges on file and in effect in Schedule 4 of LWSI's tariffs upon changes occurring in that schedule. Otherwise, the Exhibit 20 contract is inoperative, lacking the required authorization of this Commission for a departure from the regular tariff rate.

6/ In addition to D.84040's designating the connection fees schedules as conditions of service, that decision also dispelled any contention that the connection charges are a contribution to Rossmoor's capital as stated in the Exhibit 20 contract. Rather, the connection charges received from developers must be accounted for as contributions in aid of construction.

IX. RESTRICTED RESIDENTIAL DEVELOPMENTS

At this late stage in the development of LHSI's service area, there are not expected to be more than one or two new restricted developments. A restricted development is one in which residential dwelling units are limited by deed or other means to adults-only occupancy.

In the application as filed, LHSI proposed to retain a difference in CIA-BP charges for restricted and unrestricted developments. However, in Interim D.91972, supra, the Commission, on a temporary basis subject to further review, decided to eliminate the previously approved differential between these CIA-BPs. LHSI continues to believe that there is a basis for some differential.

In fact, LHSI surmises that flows from unrestricted units are 76% greater than flows from restricted units based on the following assumptions and analysis: In both restricted and unrestricted units, sewage flow averages about 80 gallons per day per person; the average density in unrestricted units is approximately 3.0 persons per unit; the average density in restricted units is 1.7 persons per unit; and $\frac{3.0}{1.7} \times 100\% = 176\%$.

The above density figures were obtained from an actual census of Leisure World supplied by Professional Community Management for restricted residential units and from surveys of new connectors and reconnectors conducted by LHSI for unrestricted units. The flow figures came from several sources.

As an example, from time to time LHSI has attempted to determine the system's average flow per capita. On those occasions the procedure was to measure the total flow at the treatment plant and then subtract the quantity of water supplied by Laguna Hills Water Company to commercial and industrial customers, all of which are metered, to approximate the flow attributable to residential customers. Dividing the resultant approximation of residential flow by a population estimate of LHSI's service area has consistently yielded an average flow in the range of 80 to 85 gallons per capita, regardless of the time of year in which the measurements were made.

Another example cited was manhole metering performed in the third quarter of 1980 at two manholes, one of which was located in a restricted residential area and the other in an unrestricted residential area. At the manhole in the restricted area, which is a part of Leisure World, a flow from 45 connections serving 99 people was measured. It was found to average 8,020 gallons daily, making the flow per connection 178.2 gpd and the flow per capita 80 gpd. LHSI considered these results reasonable.

At the manhole in the unrestricted area, which was a part of the El Toro residential area, a flow from 35 connections serving approximately 90 people was measured. The minimum flow was 2,257 and the maximum flow was 9,345 gpd. The average flow excluding the maximum was 3,501 gpd and was equivalent to a flow per capita of nearly 40 gpd. LHSI's consulting engineers commented on these results as follows:

> "The results for the El Toro residential area showed wide variations and, with the exception of the 9/24-9/25 maximum of 9,345 gpd, lower than expected from single family housing. The 9/24-9/25 results may be due to debris accumulation on the V-noted weir.
>
> "The reasons for the low flows are not self-evident. The number of units occupied during the monitoring program may have been significantly less than the total 35 tributary to the flow meter. Another possibility is that the average number of occupants per dwelling during the monitoring period was much lower than normal for single family housing developments of this type."

LHSI rejected the results for the 35 units in the El Toro residential area as unreasonable. Instead, LHSI relies upon an earlier determination:

> "These /35/ units were first occupied in July of 1979. During the very rainy period that we had during the period of January through March of 1980, the average water usage per house, when divided by the average occupancy rate, which was determined by a previous study, we came out with approximately 80 gallons per capita per day in that area, ..."

From all of the foregoing, LHSI has concluded that the flow per dwelling unit, whether restricted or unrestricted, is generally proportional to the number of people residing in the unit and that the residential flow per capita in the LHSI service area approximates 80 gpd. On its face, however, the data base used is neither sufficiently broad nor sufficiently reliable to support adequately these far-reaching conclusions.

Clearly, monitoring flow from less than 100 out of some 15,000 connections could hardly be considered monitoring a representative sample. Even then, the data so obtained were in substantial part rejected by LHSI as being unreasonable, making the integrity of the sparse remaining data also open to question.

Past erroneous measurements of flows at the treatment plant do not inspire confidence in LHSI's "attempts made from time to time to determine the system's average flow per capita." Obviously, the accuracy of the guideline figure of 80 gpd per capita LHSI has reached cannot be greater than that of the primary measurements upon which the guideline figure is based. Besides treatment flow, the other primary measurement subject to significant estimating error is the population of LHSI's service area.

Simply put, accurate data on flow per capita and population density either by subareas or the entire service area may not be available. In any event, the flow per capita has not been shown in any conclusive way to be the same in both restricted and unrestricted areas; LHSI's determination of population density of unrestricted areas based on information obtained from new connectors and reconnectors may not be representative of the average population density of the unrestricted area; and the average density figure for Leisure World can understate the number of adults per unit to the extent there are vacant units.

As classifications determinative of a CIA-BP differential; the unrestricted/restricted classifications appear fundamentally flawed and inequitable since an unrestricted one-bedroom or studio apartment-type condominium unit presumably would have no higher density than that which would be found in Leisure World. Furthermore, if the unrestricted units in this comparison were a part of affordable housing, a restricted classification would run counter to public policy by burdening affordable housing with a higher CIA-BP than other developments which may be imposing similar flows on LWSI's sewer system.

As stated at the outset, there should be very limited application of a restricted category for the CIA-BP at this stage in the development of the LWSI service area. Tract 7934 in Leisure World is one new development that is known will be restricted to adults-only occupancy. It will have 194 units. The pertinent restriction reads as follows:

> ". . . No more than two (2) persons may permanently occupy a one-bedroom Unit, no more than three (3) persons may permanently occupy a two-bedroom Unit and no more than four (4) persons may permanently occupy a three-bedroom Unit without the approval of the Mutual. No person under the age of fifty-two (52) may reside in a Unit."

The average density of 1.7 persons per unit being used by LWSI for restricted units hardly appears compatible with the contents of this restriction, especially in light of the fact that the CIA-BP is a one-time charge for constructing backbone plant adequate to meeting ultimate service area flows.

Besides LHSI, Professional Community Management et al. advocate having the restricted classification reinstated. Staff and the developers who would not benefit from that classification oppose its reinstatement.

In summary, units of Tract 7934 of Leisure World have not been shown to have the potential for imposing a significantly lesser flow burden on the LHSI system than the units of the other new developments. The record does not contain clear facts dealing with usage patterns, per capita sewage flow, and population per development to support the reinstatement of a differential in CIA-BPs between restricted and unrestricted developments.

X. COMMERCIAL DEVELOPMENTS

In D.91972, supra, the interim CIA-BPs for commercial or industrial developments and for residential developments were set at $4.75 per gallon per day and $1,785 per unit, respectively. LHSI now recommends holding commercial CIA-BP at the interim level, while reducing the interim residential CIA-BP.

Under the present relationship in CIA-BPs, parity exists at an average residential flow of 375 gpd (i.e., $1.785 ÷ $4.75/gpd = 375 gpd). LHSI maintains that parity in this relationship should be set at a figure of less than 300 gpd per unit to be reflective of a more realistic average residential flow projection.

The LHSI recommendation was unopposed. We will hold the commercial CIA-BP at the $4.75/gpd level and make the new minimum commercial CIA-BP match the new residential CIA-BP.

XI. COST ALLOCATION

Under LHSI's proposal the average cost method that has been used in determining the present as well as the past CIA-BP charges would be retained. Under this method the CIA-BP charges are determined without regard for the specific backbone plant facilities required to serve any particular development. Warmington disagrees in principle with this approach. Through witness Bowerman, Warmington proposes allocating costs of jointly used facilities in accordance with relative use.

Bowerman testified that the method he has proposed results in each of the developers paying a connection charge based on the value of the portion of LHSI's system serving that developer's tract. He further testified that under his method each developer would pay a fair share of the present value of existing facilities and each developer would pay a share of the cost of new facilities required for plant capacity expansion based on the extent to which his development uses those facilities.

The following principles are embodied in Bowerman's relative use method of cost allocation:

1. Any connector (developer) must pay the total costs of all local sewers and pump stations which serve only his sole interest.
2. The new connector should pay the utility for his share of any part of the system he uses, in accordance with the following formula:

$$BCC = \frac{Pc}{Pus} C_s + \frac{Pc}{Pup} C_p + \frac{Pc}{Putd} C_{td}$$

BCC = Basic Connection Cost

Pc = Population to be connected

Pus = Total population which will be using a given sewer

C_s = Present replacement cost of the sewer being used

Pup = Total population which will be using a given pump station

Cp = Present replacement cost of that pump station depreciated in accordance with wear and true life

Putd = Population using the treatment and disposal facilities

C_{td} = Present replacement cost of the treatment and disposal system, depreciated in accordance with wear and true life

The foregoing cost allocation formula attempts to charge each developer an amount of CIA-BP which covers his share of any part of the system his development uses. The costs of sewer, pump, and treatment plant facilities are allocated on the basis of population served. The costs reflect present estimated replacement costs, less depreciation.

The Commission staff recognizes that a direct benefit method such as this one sponsored by Bowerman may result in a more precise measure of actual cost to serve each development. However, in the staff's view, the difficulties inherent to a proper application of this method render it impractical, especially at this late stage in the development of the sewer system.

In that regard staff witness Fukutome testified that the following conditions must be met before the allocations would have any practical use or value:

1. The ultimate development within LHSI's service area must be known and accounted for in the initial allocation in order for its application to be equitable and at all manageable.

2. There must be agreement on what the replacement cost is of each system component to be allocated.

3. More precise population figures for each of the developed areas and the new developments would have to be obtained.

4. There must be a more thorough study of sewer flows to determine which developments or portions of developments use which facilities.

5. There must be studies to show that sewage flow per capita is uniform in different parts of the service area. (If flows are not uniform, the use of population in the equation will have to be abandoned. Instead, flows will have to be estimated for each area depending on flow per capita and persons per dwelling unit in that area.)

6. There must be some way of fairly allocating backbone plant cost to commercial developments instead of using the same equivalent number of persons per acre of each commercial development.

7. Any claims of inequity by developers who have already paid CIA-BP charges must be settled (i.e., claims that some credit should be included in charges allocated under the direct benefit method because previous CIA-BP payments were not used to build facilities used by those developments).

We share our staff's concern that a relative use basis of cost allocation, even though it may be attractive in theory, is in practice fraught with inherent difficulties. It should also be recognized that any changes made now in the cost allocation method will come at a very late stage in the development of this sewage system.

Measured in terms of the ultimate flow of 5 MGD projected for the treatment plant, the service area is now 80% developed. The remaining 20% is approximately accounted for by the residential and commercial/industrial developments listed in Exhibit 3. Those are also the developments used in Exhibits 3 and 34 to calculate the CTA-BP charges necessary to fund a $2,866,900 portion of the proposed construction costs. The remainder, or $473,900, will be financed from CTA-BP charges previously collected from existing developments.

We are persuaded that obtaining reliable, definitive data for implementing a relative use cost allocation procedure would likely be prohibitively time-consuming and costly. But even if valid data were more readily obtainable, the end results of the allocation could not be directly applied. They require modification because, in the relative use method's apportioning, both the present value of existing facilities and the cost of new facilities among both existing and new developments, the $2,866,900 required from the new developments is not the amount allocated among those developments.

Upon constraining the end results of the allocation to fit the cost of new facilities less funds on hand from CIA-BP charges collected from existing developments, the rationale supporting the method deteriorates: No longer would each developer, according to Bowerman's testimony, "pay a fair share of the present value of existing facilities and...a share of the cost of new facilities required for plant capacity expansion based on the extent to which his development uses those facilities." Instead, each developer would pay either more or less than the relative use cost apportionment depending on whether it was necessary to factor up or factor down the portions of existing and new plant assigned to new developments to make those portions equal in total to the cost of the new facilities less CIA-BP funds on hand from existing developments.

A continuation of LHSI's practice, under which all new connectors pay an average pro rata share of the capital improvement program for backbone plant, should clearly be preferable to an allocation likely not only to be based on dubious or controversial relative use data but requiring distortion to be made usable. In its basing the CIA-BP on average costs regardless of whether the additional backbone plant benefits existing customers, new customers, or both, LHSI's present method is both fair and consistent with general ratemaking practice.

In sum, continuation of LHSI's method of allocating costs for additional backbone plant is reasonable. Development of a method for allocating costs of jointly used facilities on the basis of relative use is impractical, both technically and administratively.

XII. COMPUTATION OF NEW CIA-BP

In the preceding sections we have determined, among other things, the size of the capital improvement program and that (1) the residential CIA-BP established by this decision will apply to Warmington and Laguna Village; (2) a restricted residential category will not be reinstated; and (3) the commercial CIA-BP will be held at the interim level of $4.75/gpd with the minimum, however, lowered to the new residential CIA-BP. From these determinations a new residential CIA-BP of $1,190 per dwelling unit is computed as follows:

(Dollars in Thousands)

Total Construction Costs	$3,340.8	
Less:		
Cash not subject to refund at 7/1/80[a]	473.9	
Interest (net after taxes)[b]	72.0	
CIA-BP Requirement		$2,794.9
Less Commercial CIA-BPs:		
126 minimums		126R
96,100 gpd x $4.75/gpd		456.5
Residential CIA-BP Requirement 1,840 units x R/unit		1,840R

$$1{,}840R = \$2{,}794.9 - 126R - \$456.5$$

$$(1{,}840 + 126)R = \$2{,}794.9 - \$456.5$$

$$\underline{R = \$1.19 \text{ per unit}}$$

Where R is the residential CIA-BP.

a/ Unexpended CIA-BP funds collected prior to 7/1/80 plus interest.

b/ Approximately one-half of interest shown in Exhibit 19 specifically calculated as follows:

$$\$148.3 \times \frac{3{,}340.8}{3{,}442.4} \times .5 = \$72.0$$

XIII. REFUNDS

By this decision, the residential CIA-BP is being reduced by $595 from the interim level of $1,785 and the commercial CIA-BP minimum by $810 from the interim level of $2,000. Accordingly, refunds, with interest as required by Ordering Paragraph 2 of D.91972, supra, of the difference between the interim CIA-BP and the corresponding CIA-BP set forth in Appendix A to this decision, must be made to each developer from whom that interim CIA-BP has been received.

Our staff has recommended a further refund in the event there are surplus CIA-BP funds upon completion of the capital improvement program. In response, LHSI pointed out that the actual extent of an overcollection, if any, would not be known until the mid-1980s, and at that time LHSI could have other legitimate backbone system construction costs to which CIA-BP should apply.

LHSI suggests that the Commission defer any decision on the disposition of surplus CIA-BP funds until such time as there is in fact a surplus. We find merit in LHSI's suggestion. We also note there is no provision for further collection from the developers involved should there turn out to be a deficiency instead of a surplus in CIA-BP funds to complete the capital improvement program.

XIV. OTHER MATTERS

Earlier in this decision we rejected Laguna Village's claim that it has contract rather than Schedule 4 rates. However, in conjunction with an argument on contract rates not being subject to "automatic" modification, Laguna Village asserted that it "was not notified of nor afforded any opportunity to participate in the proceeding resulting in the issuance of

Resolution No. W-2230" dated September 7, 1977 in Rossmoor's Advice Letter 9 filing. That resolution authorized, among other things, a $307 increase in the connection charge prescribed in Schedule 4 for an unrestricted residential unit.

As already noted in this decision, the Resolution W-2230 increase in connection charges was sought by advice letter, and not an application, expressly in accordance with a directive in D.84040, supra. Advice Letter 9 contained the following paragraph on notice:

> "No utilities or other interested parties have requested notification of the filing of tariffs by this company. The submitted tariffs do not affect its customers as they involve future connection charges only. Copies of this advice letter and related tariff sheets are being mailed to the only adjacent utilities..."

In Resolution W-2230 the Commission concluded, after investigation by its staff, that the requested connection charge increases were reasonable, found the increase in charges justified, and authorized Rossmoor to place the increased charges in effect. Because Laguna Village has at all pertinent times been subject to LHSI's Schedule 4, its posture with respect to the advice letter filing is no different than that of other developers who were or are active in LHSI's service area.

Laguna Village also claims that if LHSI had collected the CIA-BP authorized in Resolution W-2230 prior to the construction of the affected tracts instead of when they were ready for occupancy, no new facilities would now be required. In that regard Laguna Village asserts that the "improvements to be built in 1977 are identical to those now before the Commission for approval under Application 59571." These assertions are plainly in error.

The improvement program for the treatment plant proposed in this proceeding is markedly different from that in the Advice Letter 9 filing, and factors other than a change in policy governing when connection charges would be collected were at work, causing delays in constructing the improvement program set forth in Advice Letter 9. Some of these factors were:

1. A change in priorities brought about by the need to upgrade forthwith the treatment plant. It was found that the present flow was 4 MGD, a flow level that was not supposed to be reached, under the then-guiding projections, until the ultimate development of LHSI's service area.7/
2. Failure of certain developments to be constructed on time.
3. Funds borrowed from the CIA-BP account to meet operating expenses.8/

Laguna Village's position that, absent a change in policy governing when CIA-BPs are collected, no new backbone facilities would now be required is untenable.

7/ If the CPCFA-backed loan referred to earlier in this decision could not have been obtained, it would have become necessary to divert all unexpended CIA-BP account funds to pay for this upgrading of the treatment plant.

8/ D.91182 dated January 8, 1980 in A.58275 prohibits any repetition of this practice.

XV. FINDINGS AND CONCLUSIONS

Findings of Fact

1. LHSI's sewer system is currently in a transition period from an irrigation-type system with one set of standards to a system which discharges into the ocean through the AWMA pipeline with a different set of standards.

2. In order to discharge into the AWMA pipeline, LHSI's system must meet a 30/30 standard, i.e., effluent cannot exceed 30 milligrams BOD per liter and/or 30 milligrams suspended solids per liter on a 30-day average basis.

3. A surcharge authorized in D.91339 (A.59033) provided LHSI with sufficient funds for the "Phase I and II construction" at its treatment plant and related facilities. At the conclusion of this construction, LHSI's plant will meet the 30/30 standard at an average hydraulic flow of 4.0 MGD.

4. With the addition of new flow created by the planned developments (Exhibit 3), it will be necessary for LHSI's treatment plant to have capacity to meet the 30/30 standard at an average hydraulic flow of 5.0 MGD.

5. For failure to meet the requirements of its Order 77-100, the Regional Board has taken various enforcement actions against LHSI.

6. The staff of the Regional Board carefully scrutinizes LHSI's operations as a basis for determining LHSI's good faith in attempting to comply with Regional Board requirements.

7. The planning and conceptual design of the capital improvement program, as proposed by LHSI in Exhibits 2 and 32, has been influenced by the Regional Board's expectation of system reliability.

8. Just as certain of the proposed facilities will benefit existing customers, certain of LHSI's existing facilities are of sufficient size that they will benefit both new and existing customers.

9. Some of the CIA-BPs derived from existing development in LHSI's service area have been employed to construct facilities which will benefit both existing and new customers.

10. Because of economies of scale, it is economically prudent to add additional capacity to sewage treatment plants in large increments.

11. It is difficult, if not impossible, to precisely tie additions of incremental treatment capacity to funds received by LHSI from time to time as CIA-BP from individual developments.

12. The final buildout of the LHSI service area is to be completed by developers, most of whom are parties to this proceeding.

13. The financing of backbone sewage treatment plants through connection charges (CIA-BP) is the general practice with respect to sewer systems.

14. The CIA-BPs proposed by LHSI do not significantly exceed the rates being charged by surrounding publicly owned sewer districts.

15. LHSI is the only large sewer system subject to our jurisdiction. The CIA-BP is LHSI's source of funds for expansion of and improvements to backbone sewage plant to meet the final buildout of its service area. It is collected from developers as a condition of service. It has not been, and should not be, subject to adjustment where the backbone plant to be built may reduce operating expenses.

16. In projecting LHSI's costs, it is reasonable to employ on the average a contingency factor of 10%.

17. In projecting LHSI's costs, it is reasonable to employ on the average an overhead factor of 6%.

18. LHSI's policy of having backup generation for its pump stations is sound.

19. The maximum peak flow to the Veeh Pump Station will be 500 gpm.

20. Construction of backup generation facilities at the Veeh Pump Station will ensure that, in the event of a power outage, raw sewage will not overflow the Veeh Pump Station wet pit and spill onto the ground.

21. Construction of backup generation facilities at the Veeh Pump Station is a reasonable step to take to avoid violations of Regional Board Order 77-100.

22. The Veeh Pump Station is located in a residential area approximately 50 feet from Veeh Creek.

23. Portable generation systems are not an adequate substitute for the construction of permanent backup generation facilities at the Veeh Pump Station.

24. There is no basis for concluding that the installation of a prepackaged pump station, such as that suggested by Vander Wende on behalf of Laguna Village, will provide an adequate substitute for LHSI's proposed capital improvement program at the Veeh Pump Station.

25. The installation of variable speed controls at the Veeh Pump Station will maintain a more constant level of sewage in the wet pit which will facilitate odor control and the prevention of dangerous collections of gases.

26. Soundproofing of the backup generation system is necessary because of the residential character of the neighborhood surrounding the Veeh Pump Station.

27. The building proposed by LHSI is necessary to provide a structure for additional soundproofing of the generator unit, the protection of pump station controls, and the housing of the emergency generator unit.

28. Orange County has required LHSI to construct a block wall and gate as a condition of the county's issuance of a building permit for the Veeh Pump Station. Inclusion of these costs in the capital improvement program for Veeh is reasonable.

29. Landscaping of the Veeh Pump Station will be required because of the pump station's close proximity to a park and residences.

30. The capital improvement program for the Veeh Pump Station set forth in Exhibit 33 is reasonable.

31. The new sludge press proposed by LHSI for the treatment plant will be of a larger capacity than the existing press, will benefit both new and existing customers, and, because it will operate during a shorter period of time during the day than the existing press, will reduce odor problems.

32. Phase III construction at the treatment plant is needed to expand its capacity from 4 to 5 MGD.

33. With the construction of the AWMA pipeline, LHSI's effluent lake system is employed for emergency standby storage.

34. Additional piping capacity is necessary to ensure the effluent lake's proper operation for the purpose described in the preceding finding.

35. With the termination of the Irvine Ranch leases, LHSI requires the capacity to drain the effluent lakes immediately.

36. The installation of permanent pumps at the effluent lakes will enable LHSI to accomplish the required draining and will benefit ratepayers by eliminating the necessity for renting portable pumps.

37. The proposed pavements at the effluent lakes and paved road to the lakes will lead to a more efficient operation of the system by facilitating maintenance at the lakes.

38. The overall capital improvement program, as set forth in Exhibits 2 and 33, comprises an expansion of and improvements to LHSI's backbone sewage plant reasonably required to meet the final buildout of its service area.

39. For purposes of developing project costs over the next three years, it is reasonable to employ an inflation factor of 15% per year.

40. The cost estimates for the capital improvement program appear in the aggregate to be reasonable and their total may therefore be used in computing the new CIA-BP.

41. Warmington is the developer-builder of Tract 10633, a 392-unit affordable housing condominium project, containing within its boundaries a privately owned gravity sewer system which connects into LHSI's sewer system.

42. In June 1980 Warmington tendered payment of connection charges of $564 per unit for the 392 units on the basis that the physical connection to LHSI's system had been made. LHSI rejected the tendered payment.

43. In June 1980 Warmington also tendered payment of connection charges of $564 per unit for 92 of the units. These were the units for which certificates of occupancy had been obtained from Orange County. LHSI also rejected this tendered payment.

44. In August 1980 Warmington paid under protest connection charges of $1,750 per unit.

45. The main trunk sewer line connection linking the Tract 10633 privately owned sewer system to LHSI's system had been made sometime before, or at least by, late March 1980. However, a brick and mortar plug, which was not removed until late August 1980, blocked access to the LHSI main.

46. LHSI's tariff in effect in June 1980 provided that:

> "Unless otherwise deferred by Rossmoor Sanitation, Inc., the connection charge shall be paid before the actual physical connection of the customer service line to Rossmoor Sanitation, Inc.'s system."

47. Deferral of connection charges either to assure their adequacy in the aggregate to cover the cost of backbone plant expansion or to assure that all pending developments that contribute to the need for backbone plant expansion share equitably in the cost is reasonable and within the purview of the above tariff provision.

48. LHSI deferred Warmington's payment in order to assure adequacy of the connection charges in the aggregate to cover the cost of the backbone plant and to assure that all developments benefiting from the expansion shared equitably in its cost. Under these particular circumstances, LHSI's deferral of Warmington's payment was reasonable.

49. Since the present general manager of LHSI assumed his responsibilities in 1978, LHSI's policy with respect to assessing CIA-BP (formerly connection charges) has been to assess developers the rates in its Schedule 4 immediately prior to the occupancy of the units for which CIA-BP was being exacted and to collect the connection charge only after completion of the inspection of facilities by LHSI and issuance of the certificates of occupancy by Orange County.

50. The first occupancy of Tract 10633 did not take place until September 1980, almost two months after LHSI's CIA-BP was increased to its present levels in response to D.91972, supra.

51. Certificates of occupancy tendered to LHSI in June 1980 were not reliable indicators of impending occupancy.

52. The certificates referenced in the preceding finding were not obtained by Warmington under the normal practice in Orange County.

53. LHSI acted reasonably and in accordance with its policy governing collection of connection charges in refusing to assess CIA-BP for Tract 10633 at the rates in effect in June 1980.

54. The policy described in Finding 49 is reasonable in that it reduces the amount of time between LHSI's projection of the need for new plant and LHSI's collection of CIA-BP to pay for that plant.

55. At the time that the collection system in Tract 10633 was affixed to the LHSI main, Tract 10633 was not ready for occupancy.

56. If LHSI assessed CIA-BP for Tract 10633 at the rates in existence prior to July 16, 1980, the remaining developers who are parties to this proceeding would have had to pay substantially higher levels of CIA-BP to produce the funds necessary for the proposed facilities.

57. LHSI's application of its tariff Schedule 4 to Tract 10633 was reasonable.

58. During 1979 and 1980 LHSI advised affected developers, including Warmington, that LHSI was projecting increases in connection fees to a range of between $1,200 and $1,500 per unit.

59. In the early spring of 1979, officers of Warmington were advised that LHSI was projecting increases in CIA-BP to a range of between $1,200 and $1,500 per unit.

60. Warmington did not rely upon a CIA-BP projection of $564 per unit in determining the cost of the homes in Tract 10633.

61. To the extent that Warmington constructs affordable housing in excess of the basic percentage requirement of Orange County, Warmington will generate low-income credits which can be sold to other developers at an amount of between $10,000 to $15,000 per unit.

62. Based on Findings 58 through 61 above, no equitable basis exists for exempting Tract 10633 from the CIA-BP levels to be determined in this proceeding.

63. The May 1974 contract between Laguna Village and Rossmoor (Exhibit 20) was prepared employing Form 6 of Rossmoor's tariffs. Form 6 contains blank spaces for the entry of connection charges.

64. A connection charge of $239 per single-family residential unit was entered in Exhibit 20, which was in agreement with the charge then in effect in Rossmoor's Schedule 4.

65. In 1974 Laguna Village paid the $239 connection fee for 366 units. In January and June 1977 Laguna Village paid connection fees for 59 and 167 units, respectively. These payments were made at the Schedule 4 rate of $239 per unit then still in effect. The payments were not made at the $239 rate escalated by 6% per year as permitted in the Exhibit 20 contract.

66. In September 1977 the Schedule 4 connection fee for unrestricted dwellings was increased from $239 to $564 per unit. The next payment of connection fees by Laguna Village was in July 1978 for 72 units at the Schedule 4 rate of $564 per unit. Laguna Village made that payment and all subsequent payments under protest.

67. At all times Rossmoor/LHSI has charged Laguna Village the effective Schedule 4 connection fee.

68. The Exhibit 20 agreement, as executed, was not submitted to the Commission for approval. It is an established regulatory rule that all utility services are furnished under filed tariff schedules with exceptions permitted only where specifically authorized.

69. LHSI's manhole metering has been insufficient in scope to measure representative flows in restricted and unrestricted areas.

70. Apart from being insufficiently broad-based, the data thus far obtained by manhole metering are otherwise of questionable reliability.

71. LHSI uses a population density in unrestricted developments of 3.0 persons per dwelling unit. The accuracy of this density figure is not known.

72. The flow per capita has not been shown to be the same in both restricted and unrestricted areas.

73. Tract 7934 is a new restricted development in Leisure World. It will have 194 units to which the following restriction will apply:

> ". . . No more than two (2) persons may permanently occupy a one-bedroom Unit, no more than three (3) persons may permanently occupy a two-bedroom Unit and no more than four (4) persons may permanently occupy a three-bedroom Unit without the approval of the Mutual. No person under the age of fifty-two (52) may reside in a Unit."

74. The average density of 1.7 persons per unit used by LHSI for restricted units does not appear suitable for application to Tract 7934 in light of the contents of the above restriction and the fact that the CIA-BP is a one-time charge for constructing backbone plant adequate to meeting ultimate service area flows.

75. The units of Tract 7934 have not been shown to have the potential for imposing a significantly lesser flow burden on the LHSI system than the units of the other new developments.

76. Based on the foregoing findings, there is not an adequate basis to support reinstatement of a differential in CIA-BP charges between restricted and unrestricted developments.

77. The interim CIA-BP for commercial and industrial developments is inordinately low in relation to the interim CIA-BP for residential developments.

78. Parity in these existing CIA-BPs occurs at an average projected residential flow of 375 gpd per unit. Commercial CIA-BP should be set so that parity is reached at less than 300 gpd per unit, a more realistic average residential flow projection.

79. LHSI's proposal to retain commercial CIA-BP at $4.75/gpd while lowering the residential CIA-BP is reasonable. A new minimum commercial CIA-BP which matches the new residential CIA-BP is reasonable.

80. The LHSI sewer system is in a late stage of its development. Measured in terms of an ultimate flow of 5 MGD projected for the treatment plant, the service area is now 80% developed.

81. Development of a method for allocating cost of jointly used LHSI sewer plant on the basis of relative use is impractical, both technically and administratively.

82. In basing the CIA-BP on average costs regardless of whether the additional backbone plant benefits existing customers, new customers, or both, LHSI's present method is both fair and consistent with general ratemaking practice.

83. LHSI's method of allocating costs for additional backbone plant is reasonable.

84. The total estimated construction cost of LHSI's capital improvement program is $3,340,800.

85. Unexpended CIA-BP funds collected prior to July 1, 1980, including interest, amount to $473,900.

86. An appropriate allowance for interest (after taxes) to be earned on CIA-BP funds is $72,000.

87. The portion of the total construction cost to be met directly by the new CIA-BPs (i.e., after deducting the amounts in Findings 84 and 85) is $2,794,900.

88. A uniform residential CIA-BP of $1,190 per dwelling unit is justified and reasonable.

89. The interim CIA-BPs, insofar as they differ from those prescribed by this decision, were unjust and unreasonable, and Interim D.91972, supra, provided for the refunding of that difference.

90. It is reasonable to defer determining the disposition to be given to surplus CIA-BP funds, if any, until completion of the capital improvement program.

Conclusions of Law

1. LHSI's tariffs in effect in June 1980 did not require LHSI to assess connection fees at the time of physical connection of a development to the LHSI system.

2. LHSI did not violate any provision of its tariffs by assessing CIA-BP for Tract 10633 at the levels fixed by D.91972.

3. Warmington's Tract 10633 should be subject to the CIA-BP determined in this proceeding.

4. The filing of a blank contract form in a utility's tariffs does not permit the utility to, by employing that form, contract for rates different than those set forth in the utility's rate schedules.

5. The level of connection fees set forth in the Exhibit 20 contract cannot be assessed by Rossmoor/LHSI if different than the rates set forth in Schedule 4.

6. Consistent with Conclusions 4 and 5, it is implicit within the Exhibit 20 contract that the connection charges it prescribes must be modified automatically to coincide with those in Schedule 4 of Rossmoor/LHSI's tariffs upon rate changes occurring in that schedule. Otherwise, the Exhibit 20 contract, lacking the required authorization from this Commission to deviate from the regular tariff rate, is rendered inoperative.

7. Laguna Village has been subject at all times to Schedule 4 of Rossmoor/LHSI's tariffs.

8. Laguna Village Tracts 9611 and 9613 should be subject to the CIA-BP determined in this proceeding.

9. A differential in CIA-BP charges between restricted and unrestricted developments should not be reinstated.

10. The commercial CIA-BP of $4.75/gpd should be retained and the new minimum commercial CIA-BP should match the new residential CIA-BP.

11. The new residential CIA-BP should be fixed at $1,190 per dwelling unit.

12. LHSI should be directed to file the revised tariff schedules attached as Appendix A to this decision.

13. Refunds, with interest as required by Ordering Paragraph 2 of D.91972, supra, of the difference between the interim CIA-BP and the corresponding CIA-BP prescribed in Appendix A to this decision should be made to each developer from whom that interim CIA-BP has been received.

ORDER ON FURTHER HEARING AND REHEARING

IT IS ORDERED that Laguna Hills Sanitation, Inc. shall:

1. File the revised Contributions-in-Aid for Backbone Plant schedules in Appendix A in compliance with General Order 96-A within 5 days after the effective date of this order. The effective date of the revised schedules shall be 5 days after filing.

2. Make refunds as set forth in Conclusion of Law 13 above within 30 days after the effective date of this order.

This order becomes effective 30 days from today.

Dated MAR 2 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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

Joseph E. Bodovitz, Executive Director

SCHEDULE 4

CONTRIBUTIONS-IN-AID FOR BACKBONE PLANT (CIA-BP)

Residential Developments

Applicability

Applicable to Residential Developments.

Territory

El Toro, Laguna Hills, Rossmoor Leisure World and vicinity, Orange County.

(A) The CIA-BP for residential dwelling units shall be $1,190 for each dwelling unit. (R)

(B) Unless otherwise deferred by Laguna Hills Sanitation, Inc. the CIA-BP shall be made before sewer service is provided to the development. (The deferral can cover both the level and the payment of the connection charge.) (T)

(C) If the sewage discharged by a residential dwelling unit does not conform to the definition, as established by Laguna Hills Sanitation, Inc. as to quantity or quality, the above rates shall be increased accordingly, either before service is rendered or any time thereafter, and shall be final and not subject to arbitration. Immediately upon notification to a customer of such an increase, it shall be due and payable, and failure to pay shall be grounds for discontinuation of service to the customer by Laguna Hills Sanitation, Inc.

(D) Laguna Hills Sanitation, Inc. may require from any prospective residential developer and prior to commencement of service to the development, a statement as to the quantity and quality of sewage to be discharged into its system. At the option of Laguna Hills Sanitation, Inc. the statement may be used to check if the CIA-BP to be made by the developer should be based on residential or commercial rates, if it does not meet the characteristics of ordinary domestic sewage as to quantity and quality.

SCHEDULE 5

CONTRIBUTIONS-IN-AID FOR BACKBONE PLANT (CIA-BP)

Commercial and Industrial Developments

Applicability

Applicable to Commercial and Industrial Developments.

Territory

El Toro, Laguna Hills, Rossmoor Leisure World and vicinity, Orange County.

(A) The CIA-BP for any commercial or industrial development establishment shall be based on the daily volume of sewage to be discharged into the Laguna Hills Sanitation, Inc. system by each establishment within a development.

(B) The basic CIA-BP for each establishment within a development shall be an amount equal to the number of gallons of sewage to be discharged into the Laguna Hills Sanitation, Inc. system each day times $4.75.

(C) Prior to service being rendered to establishments in the development, an estimated daily volume of sewage shall be determined by Laguna Hills Sanitation, Inc.'s engineer, using methods which are considered standard for such determinations. This initial determination shall be the final basis for the CIA-BP unless an adjustment is provided for as outlined in Section (D) below.

(D) At the option of the developer, a totalizing flowmeter approved by Laguna Hills Sanitation, Inc. may be installed in the customer's service pipe to measure the actual volume of sewage discharged by the establishment. The meter shall be installed and operated at the developer's expense, but under the supervision of Laguna Hills Sanitation, Inc. If the flow totalized over a single one-year period indicates that the average daily volume of sewage contributed by the customer during that single one-year period is different from the daily volume previously established by Laguna Hills Sanitation, Inc.'s engineer, the developer's CIA-BP will be adjusted accordingly. The one-year period referred to above shall be a period of full operation of the establishment as determined by Laguna Hills Sanitation, Inc.

SCHEDULE 5 (Continued)

CONTRIBUTIONS-IN-AID FOR BACKBONE PLANT (CIA-BP)

Commercial and Industrial Developments

(E) The minimum CIA-BP for any commercial or industrial establishment within a development shall be $1,190 and no adjustment below that amount shall be allowed. (R)

(F) Unless otherwise mutually agreed between Laguna Hills Sanitation, Inc. and the developer, the CIA-BP shall be made before sewer service is provided to the development.

(G) If the sewage discharged by a commercial or industrial establishment does not conform to the definition of ordinary domestic sewage as set forth in Schedule 2, Paragraph D, the basic rate set forth in (B) above shall be increased proportionately by the method set forth in Schedule 2, Paragraph (E) and/or Paragraph (F). This increase will be determined by Laguna Hills Sanitation, Inc. either before commencement of service or within 2 years thereafter. Immediately upon notification of the developer and/or customer of such an increase, it shall be due and payable in 15 days and failure to pay shall be grounds for disconnection of service to the development or customer by Laguna Hills Sanitation, Inc.

(H) Laguna Hills Sanitation, Inc. may require, from any prospective commercial or industrial developer, and prior to commencement of service to the development, a statement as to the quantity and quality of sewage to be discharged into its system. At the option of Laguna Hills Sanitation, Inc. the statement may be used to any degree in determining the CIA-BP to be made by the developer.

(I) Laguna Hills Sanitation, Inc. may deviate from any of the foregoing rules in special circumstances and cases to be conclusively determined by Laguna Hills Sanitation, Inc.

(END OF APPENDIX A)