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Decision 97-09-044 September 3, 1997

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

Webb Homes,

Complainant,

v.

California Water Service Company, a Public Utility,

Defendant.

**ORIGINAL**

Case 96-11-009  
(Filed November 12, 1996)

**OPINION**

**Summary**

In today's decision, we approve the parties' proposed resolution of issues in this proceeding. The proposed resolution of issues includes the commitment by the Defendant, California Water Service Company (Cal Water), to file a request for authority from the Commission to apply prospectively, to all developers in Cal Water's Chico District and similarly situated districts, the per-lot advance for special facilities that we approve today as settlement of this dispute.

**Background**

The Complainant, Webb Homes (Webb), develops residential subdivisions in and near Chico, California. Webb is developing two subdivisions (Amber Grove with 173 lots and Greenfield with 150 lots) within Cal Water's Chico District. The issue in this Complaint is whether these two subdivisions should be considered separately or together for purposes of Cal Water's Tariff Rule (Rule) 15.C.1.b. The Rule provides in relevant part:

"If special facilities consisting of items not covered by Section C.1.a are required for the service requested and, when such facilities to be installed will supply both the main extensions and other parts of the utility system, at least 50 percent of the design capacity (in gallons, g.p.m., or other

appropriate units) is required to serve the main extension, the cost of such special facilities may be included in the advance."

Cal Water interprets this Rule to mean that the developer must "pay the cost of special facilities when more than half the supply is needed to serve the area in which new facilities are being extended." Letter by Cal Water to Webb, attached as Exhibit A to the Complaint. Cal Water also asserts that (1) a typical new well in its Chico district serves "400-500 residential customers," *id.*, and (2) because the two subdivisions cumulatively require more than half the capacity of a new well, Webb should advance the associated well costs pursuant to the Rule.

Webb maintains that the two subdivisions are separate and distinct. When treated separately, neither subdivision would need as much as half the capacity of a new well, and therefore, according to Webb, Cal Water's demand that Webb advance well costs violates the Rule. Webb also argues that Cal Water has not treated three other Chico developers in like manner, and so is acting in an arbitrary or discriminatory manner, in violation of Public Utilities Code Section 453(a).

Cal Water's Answer to the Complaint attaches various subdivision maps that show Amber Grove and Greenfield are adjacent subdivisions. As Cal Water reads these maps, "any distinction between [the] subdivisions is clearly arbitrary." *Id.*, p.1.

Cal Water also discusses the three subdivisions that Webb asserts involved more than half of a new well's capacity but whose developers were not required to pay the advance now demanded of Webb. The discussion is unclear, but it appears that Cal Water received an advance for special facilities for one of the subdivisions, while wells were installed at Cal Water's expense at the other two subdivisions, at least one of which was too small (163 units) to trigger the Rule.

### The Stipulation

The Answer to the Complaint proposes a compromise to resolve the dispute. In outline, Cal Water proposes that Webb be required to advance only the proportional cost of a new well, allocated to the two subdivisions on a per-lot basis; upon Commission approval, Cal Water would then also apply the approach to all other

developers in Cal Water's Chico District. Thus, instead of a developer having to pay the full cost of a new well whenever a subdivision triggered the 50% requirement, the developer in all instances would advance costs proportional to the size of the subdivision.<sup>1</sup> Under the proportional approach, according to Cal Water, developers would no longer have an incentive to downsize subdivisions in order to avoid paying an advance pursuant to the current Rule.

In light of Cal Water's willingness to discuss a compromise, the assigned administrative law judge (ALJ) convened a telephone conference among the parties and Water Division staff. Webb agreed to further discussions rather than go immediately to evidentiary hearings. The ALJ noted that Cal Water's proposal, and possibly other alternatives, would involve a deviation from the current Rule; accordingly the parties agreed that Water Division staff should participate in the further discussions.

On July 18, 1997, Cal Water filed a Stipulation and Motion for Adoption of Stipulation, in which Webb and Water Division staff joined. The Stipulation is similar to Cal Water's original proposal. On July 23, the assigned ALJ held a second telephone conference among the signatories, regarding Cal Water's stated desire to apply generally, in Chico and all similarly situated districts, the approach used to resolve this proceeding. Cal Water said that it would seek specific Commission authorization to apply the approach generally, and that it would do so in a general rate case (considered likely for next year) or other appropriate application.

#### Discussion

In principle, a rule for allocating the costs of special facilities should result in no subsidy. In other words, ratepayers should not subsidize developers, but neither should developers subsidize ratepayers. The proportional approach set forth in the Stipulation seems to satisfy this criterion admirably.

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<sup>1</sup> Under the Rule as it now exists, a developer that had to advance the full cost of a new well, but did not require all of that well's capacity, would receive refunds as subsequent developers fully utilized the temporarily excess capacity.

The approach also seems an appropriate resolution in the context of this proceeding, in which the Commission would otherwise have to decide whether two adjacent subdivisions should be treated as one for purposes of triggering an advance by the developer to cover the full costs of a new well. It is unclear whether avoiding such advances is of such concern to developers as to cause them to downsize subdivisions, but other things being equal, Cal Water's existing Rule may invite such strategic behavior. In contrast, the proportional approach offers developers reasonable certainty regarding their cost responsibility for special facilities, and spares Cal Water the job of second-guessing developers' business judgment in their sizing of subdivisions.

Cal Water indicated that some years ago it discussed informally with Commission staff the possibility of the Commission's adopting the proportional approach on a generic basis, but it decided not to pursue adoption because the approach might not be feasible financially for smaller water companies. Without commenting on this concern, we note that Cal Water is one of the larger private water companies, and that in any event we are adopting the proportional approach at present only for the purpose of resolving the complaint at hand.

Some of the provisions of the Stipulation seem to go beyond resolution of this Complaint. For example, the signatories recite that, "Consistent with the Commission's long-standing policy which requires utilities to pay the cost of service pipes and related facilities, ... residential developments of four lots or less should not normally be subject to the per lot fee." *Id.*, p. 4. Cal Water should present such provisions when it applies to the Commission for authority to implement the proportional approach throughout the Chico District and similarly situated districts served by Cal Water.

#### **Findings of Fact**

1. Webb and Cal Water disagree on how Webb's Amber Grove and Greenfield subdivisions should be treated for purposes of Cal Water's Rule 15.C.1.b, relating to advances by developers for special facilities (new well and related infrastructure) that may be necessary to serve a new subdivision.

2. Webb and Cal Water propose to resolve their disagreement through the payment by Webb, for construction of special facilities, of a \$300 advance for each 5/8-inch x 3/4-inch equivalent water meter unit connection. The following lots in Webb's Amber Grove and Greenfield subdivisions would be required to pay the \$300/lot fee:

Amber Grove - Lots 50-66, 104-163, and 165-174

Greenfield - Lots 58-69, 71-107, and 121-150

Webb also agrees to sell to Cal Water, and Cal Water agrees to purchase, a suitable well site at fair market value.

3. The payment of a \$300/lot fee represents a proportional advance toward the current cost of special facilities in Cal Water's Chico District.

4. The Large Water Branch of the Commission's Water Division supports the proposed resolution of this proceeding set forth in Finding of Fact 2.

5. The proposed resolution of this proceeding set forth in Finding of Fact 2 is reasonable in that it would equitably allocate the cost of expansion of Cal Water's system among Webb and later developers, and would not entail a subsidy of such expansion by Cal Water's ratepayers in general. In addition, the proposed resolution moots difficult factual questions concerning the treatment of Webb's subdivisions under Rule 15.C.1.b. Depending on how the Commission were to answer those questions, Webb might bear all or none of the cost of a new well and related infrastructure.

6. Cal Water commits to seek authority from the Commission, in Cal Water's next general rate case or other appropriate application the near future, to implement, throughout Cal Water's Chico and similarly situated districts, proportional advances for special facilities, instead of the policy on advances for special facilities currently set forth in Rule 15.C.1.b.

#### **Conclusions of Law**

1. An appropriate rule for allocating the cost of special facilities should avoid subsidies, whether of developers by ratepayers or of ratepayers by developers.

2. Approval of the proposed resolution of this proceeding set forth in Finding of Fact 2 entails authorizing Cal Water to deviate from its Rule 15.C.1.b.

3. The proposed resolution of this proceeding set forth in Finding of Fact 2 should be approved. For present purposes, such approval is limited to the circumstances presented in this proceeding.

4. Cal Water should seek authority, in a general rate case or other appropriate application, to implement proportional advances for special facilities in Chico and all similarly situated districts throughout its system. Such broader implementation of the approach approved to resolve this proceeding should be considered in another proceeding after all concerned interests have had an opportunity to participate.

5. To enable Webb and Cal Water to complete their arrangements promptly, and for Cal Water to seek the additional authority it desires at the earliest opportunity, today's decision should take effect immediately.

#### **O R D E R**

**IT IS ORDERED that:**

1. The resolution of this proceeding set forth in Finding of Fact 2 is approved, and for this purpose California Water Service Company is authorized to deviate from its Tariff Rule 15.C.1.b.

2. This proceeding is closed.

This order is effective today.

Dated September 3, 1997, at San Francisco, California.

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