

Decision 98-07-071 July 23, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California Water Service (U 60 W),  
a corporation, for an Order Adopting Certain  
Language for use in Rule 15 Main Extension  
Contracts.

Application 97-01-038  
(Filed January 28, 1997)

McCutchen, Doyle, Brown & Enersen, by  
Gregory Bowling; and Francis S. Ferraro, for  
California Water Service Company, applicant.  
Carl Leverenz, Attorney at Law, and Greg Webb for  
Webb Homes, protestant.  
Donald McCrea, for California Public Utilities  
Commission Water Division.

OPINION

Summary

Application of California Water Service (CWS) for approval of proposed language in its standard contract for water main extensions is denied.

Discussion

CWS filed proposed language for a standard contract for water main extensions. This application was protested by Webb Homes (Webb).

The subject matter of this proceeding is part of a long-running dispute between CWS and Webb concerning the basis of charges to developers for Engineering, Drafting, and Inspection (ED&I) services performed for developers by CWS. A prehearing conference was held on November 7, 1997 before Administrative Law Judge (ALJ) Sheldon Rosenthal. Staff of the Commission's Water Division participated. At that time it was agreed that matters to which

CWS and Webb had stipulated at the prehearing conference could be considered as facts for purposes of a decision in this matter. (Tr. 22, Lns. 4-21.)

The controversy between these parties first came to the attention of the Commission in Case 92-06-025, wherein Webb filed a complaint against CWS alleging that it was being improperly charged for ED&I. That dispute culminated in Decision (D.) 93-02-040, 48 CPUC2d 195, which ordered:

**"1. California Water Service Company (CalWater) shall base its engineering, drafting, and inspection of installed facilities (ED&I) charges for water facilities constructed pursuant to main extension agreements on hourly rates paid by CalWater for performing the tasks. CalWater may include in its ED&I charges a reasonable percentage charge for overheads related to ED&I." (48 CPUC2d at 198.)**

On April 8, 1994 Webb filed for a modification of D.93-02-040 asserting that CWS was charging overheads that exceed the direct ED&I charges, and were thus excessive. It asked for a clarification of D.93-02-040 which would make "...clear that the overhead charges [for ED&I] are to be related to ED&I direct costs only." (D.94-07-017, mimeo., p. 1.) The Commission denied the Petition for Modification. In explaining its reasoning for the denial, the Commission quoted that portion of D.93-02-040 shown above, but this time underscored the last four words. It then stated:

**"It is clear from the ordering paragraph that CalWater is authorized to include a reasonable overhead charge related only to ED&I. No further clarification of this issue is necessary." (D.94-07-017, mimeo., p. 2.)**

Once more returning to D.94-07-017 we quote the Finding of Facts:

- "1. Webb Homes requests that D.93-02-040 be modified to make clear that CalWater's ED&I overhead charges be actually related to ED&I.**
- "2. Ordering Paragraph 1 of D.93-02-040 clearly and explicitly states that CalWater's overhead charges for ED&I be related to ED&I.**

"3. No modification to D.93-02-040 is necessary."  
(D.94-07-017, mimeo., p. 2.)

The proposed decision in this matter was mailed to the parties on March 4, 1998 pursuant to Section 311(d) and was placed on the Commission's April 9, 1998 agenda (Item CA-3). At the request of CalWater, the parties were given an extension of time until June 22, 1998 in which to make comments to the proposed order. (Ruling dated April 2, 1998.) Comments were filed by CalWater. The matter was subsequently withdrawn from the Commission's agenda, but is now ready for decision.

With this background we turn to the present application. Both CWS and Webb agree that reasonable ED&I direct costs may be charged to developers. (Tr. 6, Lns. 13-17.) Both sides agree that the issue for the present proceeding is the charge allowable for indirect costs. (Tr. 6, Lns. 18-25.) Both parties agree that CWS is charging six percent of the entire project costs for indirect expenses, not six percent of only the ED&I costs. (Tr. 9, Lns. 8-14.) CWS asserts that the proposed language to be included in its standard contracts merely clarifies what is presently expected of developers and is in total accord with D.93-02-040 and D.94-07-017. (Tr. 7, Lns. 2-10; Tr. 9, Lns. 18-24.) Webb asserts that the interpretation of CWS is a change of those decisions. (Tr. 9, Lns. 25-28.)

We disagree with the interpretation that CWS has placed on our prior decisions. CWS contends that it may charge a percentage of the total overheads of a project. Ordering Paragraph 1 of D.93-02-040, as shown above, allows CWS to charge a reasonable percentage charge for overheads related to ED&I. Our determination was made abundantly clear when we denied modification of D.93-02-040 and underscored that portion of our prior order restricting overhead charges to those related to ED&I. The Finding of Facts in D.94-07-017 hammer

home the same message. We frankly are at a loss as to how our repeated determination could have been misconstrued by CWS. That a percentage of ED&I is different from a percentage of total project costs does not seem to us to be a difficult concept.

In its comments dated June 22, 1998, CWS repeats its position that the ALJ's proposed decision interprets D.93-02-040 in an overly narrow and improper manner. What is more, CWS indicates that "...to the extent D.94-07-017 differs, that decision also misreads the Commission's earlier pronouncement." (Comments, p. 2.) These comments add nothing of substance to what CWS has already represented to the ALJ, except the notion that the Commission, itself, was incorrect in interpreting its own decision. If that were CWS's belief at the time D.94-07-017 issued it should have brought this to our attention by means of an application for rehearing. (Public Utilities (PU) Code § 1731.) To now claim that the Commission misread a decision in 1994 is a collateral attack on the earlier decision and as such is inappropriate. (PU Code § 1709.)

#### **Findings of Fact**

1. CWS asks that we approve a form of contract which it would enter with developers that would require developers to pay indirect charges for ED&I based on a reasonable percentage of the entire project cost.

2. CWS maintains that such a contract would be in accord with this Commission's directions to CWS in D.93-02-040 and D.94-07-017.

3. D.93-02-040 and D.94-07-017 restrict indirect overheads on ED&I to those overheads that are related to ED&I.

#### **Conclusions of Law**

1. CWS's proposed contract with developers embraces indirect charges that are not related to ED&I.

A.97-01-038 ALJ/SIL/tcg \*

2. CWS's proposed contract with developers does not conform to D.93-02-040 and D.94-07-017.

3. Application 97-01-038 should be denied.

**O R D E R**

**IT IS ORDERED that:**

1. Application 97-01-038 is denied.
2. This proceeding is closed.

This order becomes effective 30 days from today.

Dated July 23, 1998, at San Francisco, California.

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