

CALIFORNIA PUBLIC UTILITIES COMMISSION

COMMISSION ADVISORY AND COMPLIANCE DIVISION
WATER UTILITIES BRANCHRESOLUTION W-3573
JUNE 5, 1991R E S O L U T I O N

(RESOLUTION W-3573) DEL ESTE WATER COMPANY.
REQUEST FOR DEVIATION FROM COMMISSION TARIFF RULE NO. 15,
MAIN EXTENSIONS, IN CONNECTION WITH PROVISION OF SERVICE
TO THE LANDMARK BUSINESS CENTER.

BY SUPPLEMENTAL ADVICE LETTER NO. 119-A, FILED ON APRIL 15, 1991

SUMMARY

There is substantial urban growth adjacent to Del Este Water Company's (DEWC) existing service area. DEWC has concluded that it does not have sufficient funds to meet main extension refunds and income tax liabilities that result from extending its mains to provide water service for this growth if it must do so under the provisions of tariff Rule No. 15, Main Extensions (Rule 15). Therefore, in order to maintain its financial integrity, DEWC is requesting authorization to deviate from Rule 15 and require Landmark Business Center (Landmark) to make full contribution in the amount of \$127,455 for the facilities and resultant tax liabilities. This resolution grants the request.

BACKGROUND

Landmark is developing an area contiguous to DEWC's Salida District near Modesto, and has requested water service for its development from DEWC. Until this time DEWC would have provided service to Landmark under provisions of Rule 15. Rule 15 requires such a developer to "advance" to DEWC the cost of the facilities necessary to serve the development. DEWC would have then, from its net revenues, refunded Landmark's advance at the rate of 2 1/2-percent over a period of 40 years.

Under Rule 15, Landmark would have also been required to contribute an additional 28-percent of the cost of the facilities to cover part of the income tax cost of the facilities to DEWC. The federal Tax Reform Act of 1986 classified future contributions and advances made to investor-owned utilities as income to the utility and required such utilities to pay income tax on the value of the facilities. The Commission by Decision 87-09-026 in Investigation 86-11-019 ruled that Class A utilities would be allowed to pass only part of these costs to the developer.

DISCUSSION

Had Landmark's development been within DEWC's authorized service area at the time service was requested, DEWC would be required to provide service under the provisions of DEWC's filed tariffs, including Rule 15. However, because the development is not yet within its service area, DEWC has the right to refuse service. Because of the rapid growth in the area, DEWC states that it finds itself with substantial refund and income tax obligations associated with that growth. It states further that as a consequence of this financial impact, it can no longer extend service into areas not currently within its service area unless those seeking service agree to contribute the facilities and the full amount of the associated income tax obligation. Landmark has agreed to these requirements and has signed a nonstandard main extension contract with DEWC. The contract is attached to this resolution as Appendix A.

The Water Utilities Branch has reviewed the request for authority to deviate from Rule 15 and the nonstandard contract, and finds both to be reasonable and in agreement with Commission rules and procedures.

NOTICE

DEWC's public notification regarding Advice Letter No. 119-A was in conformance with the provisions of General Order No. 96-A.

PROTESTS

No protest has been received by the Commission.

FINDINGS

1. DEWC's request to deviate from its filed Rule 15 has been made in conformance with General Order No. 96-A.
2. DEWC's requested deviation and associated nonstandard main extension contract are reasonable.
3. DEWC's request to deviate from its filed Rule 15 in connection with providing service to Landmark should be approved.

IT IS ORDERED THAT:

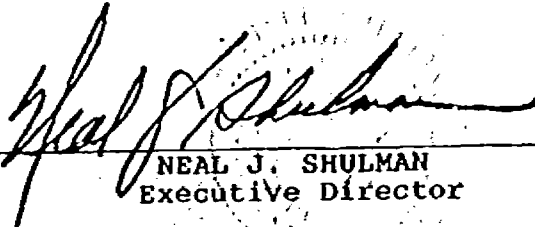
1. Del Este Water Company is authorized to deviate from its filed tariff Rule No. 15, Main Extensions, as requested in Advice Letter No. 119-A in connection with providing service to Landmark Business Center. The effective date of this authorization shall be the same as the effective date of this resolution.

This resolution is effective today.

Resolution W-3573
DEWC/AL119-A/REP:mem

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on June 5, 1991. The following Commissioners approved it:

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners


NEAL J. SHULMAN
Executive Director

DISTRIBUTION FACILITIES CONTRACT

(Utility Installation)
(Outside Existing Service Area)

UTILITY

NAME DEL ESTE WATER COMPANY
ADDRESS P.O. Box 3250, Modesto, CA 95353

APPLICANT

NAME LANDMARK BUSINESS CENTER
ADDRESS 1620 N. Carpenter Rd., Suite C-28, Modesto, CA 95351
DESCRIPTION Applicant is a developer who proposes to develop the real property which is the subject of this contract.

PRELIMINARY STATEMENT

This Contract is entered into under the provisions of Utility's Main Extension Rule ("Rule") in effect and on file with the California Public Utilities Commission ("Commission"), a copy of which is attached hereto as Exhibit A and made a part hereof. This Contract deviates from the provisions of the Rule and therefore requires specific authorization of the Commission to carry out its terms and conditions.

PURPOSE OF CONTRACT

Applicant hereby applies for a water main extension. The Distribution Facilities described in attached Exhibit B shall be installed by Utility. Such Facilities will be used for the purpose of furnishing public utility water service to that certain property ("Property") known as:

LANDMARK BUSINESS CENTER NO. 2

and delineated on that map attached hereto as Exhibit C. Exhibit C shows the area to be served and Utility's existing Salida System service area. Since the form of this contract deviates from the Company's standard main extension contract, this contract must be approved by the Commission before it becomes effective. Accordingly, since the Property is outside of the Utility's said service area, Utility's obligations hereunder are contingent on inclusion of the

Property in Utility's service area upon approval thereof by the Commission. Utility agrees that it will, as soon as necessary materials and labor are available, and necessary permits, franchises, licenses or other governmental authorizations have been obtained, commence and prosecute to completion with all reasonable diligence the work of installing the Distribution Facilities. Utility further agrees that when the Distribution Facilities are complete, Utility will provide utility service to the Property in accordance with Utility's tariffs. The Distribution Facilities to be so installed and the tie-in to Utility's existing facilities are shown on the map attached hereto as Exhibit D.

FIRE PROTECTION

The distribution system is designed to meet the minimum fire flow requirements contained in Section VIII.1(a) in the California Public Utilities Commission General Order No. 103, as ordered by Decision 82-04-089 dated April 21, 1982.

APPLICANTS ADVANCE; FULL CONTRIBUTION; FULL GROSS-UP

Set forth on Exhibit B hereto is a detailed schedule of the Distribution Facilities (including, without limitation, mains, services, pumps, meters and other facilities) to be installed hereunder by Utility, together with Utility's estimated cost thereof. Applicant shall advance such estimated cost to Utility, together with a sum equal to the full gross-up of Utility's federal income tax liability with respect thereto under the Tax Reform Act of 1986 ("TRA 86"). The total amount of such TRA tax liability ("Applicant's TRA 86 Gross-up") shall be 51.5% of such estimated cost or such other percentage thereof as may apply at the time such payment is due by reason of a change in the federal income tax rate applicable to Utility made subsequent to the date of execution of this Contract. The total amount to be so advanced to Utility is the sum of \$127,455.00. Said advance shall be a contribution in aid of construction and shall not be subject to refund but shall be subject to revision pursuant to Section A.6.e. of the Rule. Any such revision pursuant to said Section A.6.e. shall include the full TRA 86 Gross-up of Utility's federal income tax liability with respect thereto. Applicant agrees to pay the amount of the advance in full in cash to Utility upon 10 days written notice by Utility. Utility shall not commence installation of the Distribution Facilities until the full amount of such estimated cost and Applicant's TRA 86 Gross-up shall have been so advanced to it by Applicant. Any provision of this Contract or of the Rule to the contrary notwithstanding, Utility shall have no obligation to provide service to a bona fide customer in the area subject to this contract until and unless Utility shall have received from Applicant the full amount of Applicant's advance and TRA 86 Gross-up of Utility's federal income tax liability thereunder, adjusted pursuant to Section A.6.e. of the Rule.

UTILITY'S RIGHT TO OFFSET

Utility shall have the right to offset against any refunds payable hereunder upon any revision of the amount to be advanced pursuant to Section A.6.e. of the Rule the amount of any indebtedness then due or owing by Applicant to Utility.

CONDITIONS

The Utility will not be required to make extensions under this Contract where the easements, rights of way or streets are not kept free from other interfering construction or street work during installation of the Distribution Facilities. Applicant agrees to use its best efforts to assist Utility to obtain any and all permits, franchises or other governmental authorizations which may be required for the installation of the Distribution Facilities. Applicant will provide any easements or rights of way required for the installation.

SUCCESSORS AND ASSIGNS

The obligations of the Applicant shall be joint and several. This Contract shall bind and inure to the benefit of the heirs, representatives, executors, administrators, successors and/or assigns of the respective parties hereto.

JURISDICTION OF PUBLIC UTILITIES COMMISSION

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. This Contract shall not become effective until authorization of the Commission is first obtained.

The effective date of this Contract shall be January 29, 1991.

SIGNATURES

UTILITY

APPLICANT

DEL ESTE WATER COMPANY

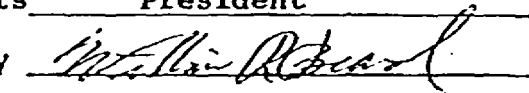
LANDMARK BUSINESS CENTER

By 



Its President

Managing partner

By 

Its Vice President

Date Feb 7, 1991.

Date 2-7, 1991.