

CALIFORNIA PUBLIC UTILITIES COMMISSION

COMMISSION ADVISORY AND COMPLIANCE DIVISION
WATER UTILITIES BRANCHRESOLUTION W-3610
September 6, 1991R E S O L U T I O N

(RESOLUTION W-3610) DEL ESTE WATER COMPANY.
REQUEST FOR DEVIATION FROM COMMISSION TARIFF RULE NO. 15,
MAIN EXTENSIONS, IN CONNECTION WITH PROVISION OF SERVICE
TO THE GRANT CONSTRUCTION COMPANY DEVELOPMENT.

BY ADVICE LETTER NO. 120, FILED ON JUNE 17, 1991.

SUMMARY

Del Este Water Company (DEWC) is requesting Commission authority to deviate from its tariff Rule 15, Main Extensions (Rule 15) and require Grant Construction Company, Inc. (Grant) to make full contribution of the resultant federal income tax liabilities associated with DEWC's provision of water service to Grant's development in a proposed extension of DEWC's Waterford service area. This resolution grants the request.

BACKGROUND

There is substantial urban growth adjacent to DEWC's existing service areas. Due to the financial impact on DEWC associated with refunds and the utility funded portion of the federal income tax resulting from the Tax Reform Act of 1986 (TRA 86), DEWC has concluded that it does not have available now, nor will it have in the immediate future, funds sufficient to meet refunds and TRA 86 tax liabilities posed by the extension of service to new areas which are now outside of its service area. Therefore, in order to maintain its financial integrity, DEWC will require full contribution of facilities and TRA 86 gross-up in connection with providing service to such areas.

Grant is developing an area contiguous to DEWC's Waterford service area, and has requested water service for its development from DEWC. Until recently DEWC would have provided service to Grant under the advance provisions of Rule 15. Rule 15 requires such a developer to advance to DEWC the cost of facilities necessary to serve the development. DEWC would have then, from its net revenues, refunded Grant's advance at the rate of 2 1/2-percent over a period of 40 years. Rule 15 also provides that under particular financial circumstances, such as those DEWC finds itself in, full contribution of cost of facilities to serve the development can be required from the developer in lieu of advances.

The federal TRA 86 classifies contributions and advances made to investor-owned utilities as income to the utility and requires 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. These "gross-up" requirements are included in Rule 15, and would normally require Grant to contribute only an additional 28-percent of the cost of the facilities to cover its part of the income tax cost of the facilities. This contract requires Grant to contribute enough to cover all federal tax liabilities for a total gross up of 51.5%.

DISCUSSION

Had Grant'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 both the facilities and the full amount of the associated income tax obligation. Grant has agreed to these requirements and has signed a nonstandard main extension contract with DEWC.

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. 120 was in conformance with the provisions of General Order No. 96-A.

PROTESTS

No protest has been received by the Commission.

FINDINGS

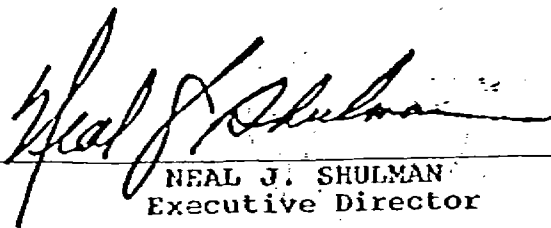
1. DEWC's request to deviate from its filed Rule 15 has been made in conformance with General Order No. 96-A.
2. DEWC's requested deviation and associated nonstandard main extension contract are reasonable.
3. DEWC's request to deviate from its filed Rule 15 in connection with providing service to Grant 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. 120 in connection with providing service to a development by Grant Construction Company, Inc. in the Waterford service area. The effective date of this authorization shall be the same as the effective date of this resolution.

This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on September 6, 1991. The following Commissioners approved it:


NEAL J. SHULMAN
Executive Director

PATRICIA M. ECKERT
President
JOHN B. CHANLAN
DANIEL WM. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain.

G. MITCHELL WILK
Commissioner