

CALIFORNIA PUBLIC UTILITIES COMMISSION

COMMISSION ADVISORY AND COMPLIANCE DIVISION
WATER UTILITIES BRANCHRESOLUTION W-3621
October 23, 1991R E S O L U T I O N

(RESOLUTION W-3621) DEL ESTE WATER COMPANY.
REQUEST FOR DEVIATION FROM COMMISSION TARIFF RULE NO. 15,
MAIN EXTENSIONS, IN CONNECTION WITH PROVISION OF SERVICE
TO THE ORANGEBURG PARK, INC. DEVELOPMENT.

BY ADVICE LETTER NO. 121, FILED ON AUGUST 23, 1991.

SUMMARY

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

BACKGROUND

Orangeburg is developing an area contiguous to DEWC's Modesto service area, and has requested water service for its development from DEWC. Until recently DEWC would have provided service to Orangeburg 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 refunded Orangeburg's advance payment at the rate of 2 1/2-percent over a period of 40 years from its net revenues. Rule 15 also provides that under particular financial circumstances, such as those DEWC finds itself in, the utility may require the developer to contribute the cost of facilities to serve the development in lieu of advances.

The federal Tax Reform Act of 1986 (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 Orangeburg 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 Orangeburg to contribute enough to cover all federal tax liabilities for a total gross-up of 51.5%.

There is substantial urban growth adjacent to DEWC's existing service areas. Due to the financial impact associated with refunds and the utility funded portion of the federal income tax resulting from the TRA 86, DEWC has concluded that it does not have sufficient funds available now nor will it have them in the immediate future. DEWC feels that the lack of funds will add constraints in meeting the refund responsibilities 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 seeks permission to require full contribution of facilities and TRA 86 gross-up in connection with providing service to such areas.

DISCUSSION

Had Orangeburg'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. Orangeburg 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.

DEWC has submitted evidence showing they have the ability to meet the water requirements of the service area extension and customer increase in addition to meeting prior water requirements.

NOTICE

DEWC's public notification regarding Advice Letter No. 121 was in conformance with the provisions of General Order No. 96-A.

PROTESTS

No protest has been received by the Commission.

FINDINGS

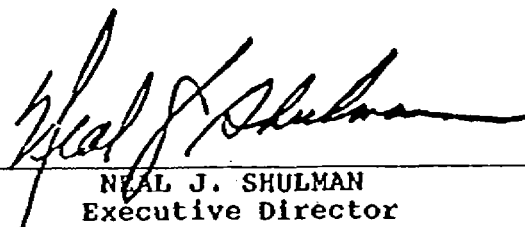
1. DEWC's request to deviate from its filed Rule 15 has been made in conformance with General Order No. 96-A.
2. DEWC's request to extend service area has been made in conformance with Water Branch policy and General Order No. 96-A.
3. DEWC's requested deviation and associated nonstandard main extension contract are reasonable.
4. DEWC's request to deviate from its filed Rule 15 in connection with providing service to Orangeburg 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. 121 in connection with providing service to a development by Orangeburg Park, Inc. in the Modesto service area. The effective date of this authorization shall be 5 days after the effective date of this resolution.
2. Del Este Water Company is authorized to make effective, 5 days after the effective date of this resolution, the revised tariff service map and tariff sheets attached to Advice Letter No. 121.

This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on October 23, 1991. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

PATRICIA M. ECKERT
President
JOHN B. CHANIAN
DANIEL W. FESSLER
NORMAN D. SHUMWAY
Commissioners