

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION  
WATER UTILITIES BRANCH

RESOLUTION W-3937  
September 7, 1995

R E S O L U T I O N

(RES. W-3937), SAN JOSE WATER COMPANY. ORDER AUTHORIZING DEVIATION FROM COMMISSION GENERAL ORDER 103, RULES GOVERNING WATER SERVICE INCLUDING MINIMUM STANDARDS FOR DESIGN AND CONSTRUCTION, IN CONNECTION WITH PROVISION OF SERVICE TO TWO LOTS AT THE END OF REDHILL ROAD IN THE COUNTY OF SANTA CLARA.

BY ADVICE LETTER NO. 272, FILED ON JUNE 12, 1995.

SUMMARY

San Jose Water Company (SJWC) is requesting Commission authority to deviate from General Order (G.O.) 103, Rules Governing Water Service including Minimum Standards for Design and Construction, and extend service to two properties, known as APN 517-23-039 and APN 517-23-041, at the end of Redhill Road in the County of Santa Clara. This resolution grants the request.

BACKGROUND

SJWC's service area abuts the northern end of the Diablo Range on the east and the Santa Cruz Mountains on the south and southeast. Developments of any size in these areas are impossible due to the terrain and government requirements for open space and parks. What little development does occur involves individual lots or very small subdivisions, on land that is rocky and hilly.

The service area boundary has generally been determined by the 40 pounds per square inch gauge (p.s.i.g.) pressure line of SJWC's system, because G.O. 103 requires that Commission-regulated utilities maintain normal operating pressures of not less than 40 p.s.i.g. nor more than 125 p.s.i.g. at the service connection, except during periods of hourly maximum demand when the pressure at the time of peak seasonal loads may be not less than 30 p.s.i.g.

Over the years SJWC has provided service to properties that, in some cases, has resulted in pressures at the meter delivery point of less than 40 p.s.i.g. It presently has on file in its tariff book a Map of Areas with Special Pressure and Fire Flow Conditions that shows 40 such areas, 38 near the edge of its service territory. Additionally, SJWC provides water from meter delivery points within its service territory to areas outside its service territory, at tariffed rates, citing the language in G.O. 103, Section V.2.a. (3) that states "Where service is rendered at or near the service area boundary for use beyond the service area the customer will be required to install, operate and maintain the facilities necessary to provide service."

A.L. 272 requests that SJWC be allowed to modify its service territory to include two new lots. Because of the topography, SJWC cannot provide service to these lots at G.O. 103 standards. SJWC requests to be allowed to deviate from G.O. 103. The lot owners will have to install their own facilities, such as booster pumps and tanks, to provide and maintain adequate pressure.

In the past the Water Utilities Branch (Branch) has rejected advice letters such as A.L. 272 and required that SJWC file an Application for Deviation to G.O.103 to secure Commission permission to provide service at less than G.O. 103 standards (see applications A.93-12-035, A.93-11-047, A.93-07-049, and A.89-01-030). The decisions in these cases have consistently authorized the requested service.

#### DISCUSSION

In this filing, SJWC is requesting the Commission to approve the modification of its service area map to include two lots presently located outside its service area that will be served at less than G.O. 103 standards for pressure. According to the request, the owners of the properties will have to install private facilities to meet local requirements for domestic water use. SJWC justifies this substandard service on the grounds that meeting G.O. 103 standards would be too expensive, that the owner is willing to add a permanent deed restriction so all subsequent owners will be aware of the substandard service and that the areas adjacent to these properties are not available for possible future development.

Branch has reviewed the advice letter and states that it would normally recommend that it be rejected. Branch believes that G.O. 103 clearly establishes minimum standards for service from regulated water utilities and that utilities should simply refuse to extend service into areas in which it cannot comply with G.O. 103. Branch cites Decision (D.) 93-09-061, September 17, 1993, in Case (C.) 93-02-015 which states that "a public utility cannot be compelled to render service or to use its facilities where it has not dedicated itself or its facilities. (citation omitted) But when a public utility voluntarily determines to extend its facilities into an area outside its recognized or declared service area boundaries, the utility concurrently must accept an obligation to serve all applicants in that area as it has then dedicated its service to said new area." Branch opines that such service must always be provided at G.O. 103 standards. If it is not, then customers who do not want to pay the Main Extension costs of the facilities needed to provide standard service and utilities who want additional customers with minimum effort and delay will choose to serve areas at substandard service levels based on convenience and opportunity, rendering G.O. 103 useless. Only in extraordinary situations, Branch maintains, and only after the full hearings provided by a formal application, should the Commission allow deviation from this important General Order.

We choose not to reject this advice letter. We anticipate that, if we did, San Jose would probably file a formal application for approval of this deviation, and we would probably approve it. Our standards of approval have been well established in the applications referenced above, and this filing seems to conform to them. It would waste time and valuable resources to require the utility to file, and our staff to process, an application in this instance.

We will authorize SJWC to provide service at less than G.O. 103 standards to certain customers when the following standards are met:

- (1) the customer cannot be served at G.O. 103 standards at a reasonable cost,
- (2) the customer is willing to take service at less than G.O. 103 standards,
- (3) the limitations will be recorded as a deed restriction,
- (4) the residence to be served is in an area in which additional growth is unlikely, and
- (5) the final installation, including customer-provided facilities, meets all local permit requirements.

Although this filing originally makes no mention of cost, and a follow-up amendment to the advice letter only gives estimates in the range of \$200,000 to over \$1 million, indicating that the utility has not made a detailed study of the cost of providing G.O. 103 service, SJWC is a Class A utility with professional staff and extensive experience in estimating and installing facilities. It is safe to accept its assertion that the costs of installing G.O. 103 compliant facilities are not reasonable. The other four criteria were discussed in the filing and were or will be met.

We turn now to a discussion of the extension itself. San Jose proposes to classify these customers as "satellite services." This is a term coined from past SJWC situations similar to this one. SJWC is presently serving some lots outside its service territory from points inside its service territory. The two lots in this advice letter are not contiguous to SJWC's territory but are contiguous to lots outside its territory that it is serving from points inside, and those lots are contiguous to its service territory. Normally, for extensions into non-contiguous territory the utility must file an application (P U Code Section 1001). Only when the extension is into contiguous territory not heretofore served by a public utility of like character can the utility just file an advice letter with a map adjusting its service territory to reflect the new extension (Second paragraph of P U Code Section 1001 and G.O. 96-A). However, this extension is effectively contiguous, in terms of providing water service to properties.

Note, however, that the intervening lots are still not deemed within the service territory. In a situation such as this, where SJWC is extending non G.O. 103 service to lots near, but not adjacent to, its service area, it does not want to include intervening lots in its service area even though they are served from meters within its service territory, as it would with a normal G.O. 103 compliant extension. The reason for this is that the owners of those lots, once they were included in SJWC's service territory, might reasonably demand G.O. 103 level service be provided at SJWC expense. "Satellite service" lots are not contiguous, but only because the service to intervening lots cannot be provided as required by G.O. 103. Such an extension would normally be a contiguous extension, if G.O. 103 standards could be met, since intervening lots would be included.

We choose to accept this "satellite service" description and extension method as being appropriate in cases such as this. Section 1001 of the PU Code addresses itself to service territory certification when there is some concern about potential competition for that service area. That is not the case here. Allowing extensions such as this, after review, adequately complies with Section 1001.

The last issue to address is the proper way to identify these services. The proper way to identify different services is either to file Special Contracts with customers or to file different tariffs. SJWC has only identified these services on the aforementioned map. This is inadequate; there are existing procedures that SJWC can follow. We do not recommend that San Jose file a separate tariff. This situation seems more appropriately handled by filing two Special Contracts. The contracts should address each of the five criteria elucidated in this resolution and contain, as part of the contract, a statement by the customer that he or she understands the availability of the utility's Main Extension Agreement that he or she is choosing not to sign. Upon staff review and acceptance of these special contracts, the utility may provide service.

In the future, using the guidance contained in the resolution, we will allow SJWC, and any other utility with a similar situation, to apply by advice letter to file a special contract asserting that the proposed service meets these criteria, and authorize Branch to review and approve the Special Contracts and tariff sheets delineating the area of substandard service without resolution. In this case we will allow SJWC to file the two Special Contracts in compliance with this resolution, to become effective after Branch review.

#### NOTICE

SJWC's public notification regarding Advice Letter No. 272 was in conformance with the provisions of General Order No. 96-A.

#### PROTESTS

No protests have been received by the Commission.

#### FINDINGS

1. SJWC's request to deviate from General Order 103 has been made in conformance with General Order No. 96-A.
2. SJWC's requested deviation conforms with the criteria applied by former decisions which approved deviations from General Order No. 96-A.
3. SJWC's requested deviation for the two services is reasonable.

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4. SJWC shall continue to request deviations from General Order 103 for subsequent potential customers who request service similar to that authorized in this resolution by filing a Special Contract for each of those customers.

5. SJWC's Advice Letter 272 should be approved after it files Special Contracts with these customers that meet the criteria contained herein.

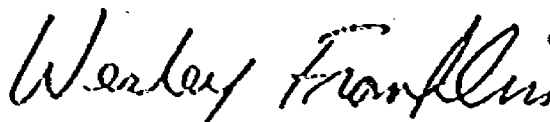
**IT IS ORDERED that:**

1. San Jose Water Company is authorized to deviate from General Order 103, as requested in Advice Letter No. 272, in connection with providing service to the two lots referenced in the Advice Letter, after it files Special Contracts with each lot owner in conformance with the guidance contained in this resolution. The effective date of this authorization shall be five days after the effective date of this resolution or upon Branch review and approval of the Special Contracts, whichever is later.

2. Water Utilities Branch is authorized to evaluate similar requests against the criteria established in this resolution. If in compliance with the criteria, Branch is authorized to approve the deviation request without resolution.

3. This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on September 7, 1995. The following Commissioners approved it:



WESLEY M. FRANKLIN  
Acting Executive Director

DANIEL Wn. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
Commissioners