

Decision 02-04-064

April 22, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Del Oro Water Co., Inc. (U-61-W) for a Determination by the Commission that Certain Main Extension Agreements between Itself and Others are Neither Invalid nor Fail to Comply with the Utility's Rule 15 and/or the Commission's Decision, Rules and Regulations Pertaining to Water Main Extension Agreements

Application 00-11-053  
(Filed November 20, 2000)

**ORDER MODIFYING DECISION AND DENYING REHEARING OF  
DECISION 02-01-014, AS MODIFIED**

**I. SUMMARY**

Breuer, Inc. (Breuer), a party in the underlying application proceeding (A.00-11-053) of the Del Oro Water Company (Del Oro), timely applied for rehearing of Decision (D.) 02-01-014.<sup>1</sup> Since January 1, 1991, Del Oro has required a person or entity seeking new water service in its Lime Saddle District area to enter into a water main extension agreement with it and pay it a non-refundable charge of \$5,000 for each new residential connection. The Del Oro application (A.00-11-053) was filed with us after Breuer and three other plaintiffs filed a civil action in the Butte County Superior Court concerning water

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<sup>1</sup> D.02-01-014 became effective upon our signing it on January 9, 2002. However, it was mailed on January 10, 2002 and the 30-day period for applying for rehearing of a decision under Public Utilities Code section 1705 began on that date. Thirty days expired on Saturday, February 9. Breuer, Inc. filed its application on the first business day thereafter, Monday, February 11, 2002.

main extension agreements Del Oro had entered into with those plaintiffs. Del Oro, by its application, sought a determination from us that the agreement is in compliance with Del Oro's tariff rule 15 and/or relevant Commission decisions, rules and regulations. Breuer, a land developer, and the three other plaintiffs filed protests in A.00-11-053 to Del Oro's application. The superior court stayed the civil action pending our proceeding.

The water main extension agreements are identical agreements. The \$5,000 charge is to be used by Del Oro to finance new public utility facilities from Lake Oroville (Del Oro has an annual allotment of 200 acre-feet of water from Lake Oroville but no facilities to bring the water to Lime Saddle) to connect with Del Oro's Lime Saddle facilities. In 1990, Del Oro purchased the Lime Saddle District area from the Lime Saddle Community Services District. At that time the Lime Saddle Community Services District was serving 259 customers; it was permitted by the Department of Health Services to serve up to 440 connections. The Lime Saddle Community Services District had five water wells that it used to serve its existing customers and it purchased supplemental water from the Stirling Bluffs Corporation, a subsidiary of Del Oro. (The five wells do not provide enough water to serve all of the customers.) The water from Stirling Bluffs was transported to the Lime Saddle Community Services District through an agreement with the Paradise Irrigation District. However, pursuant to agreements between the Lime Saddle Community Services District and Stirling Bluffs and the Paradise Irrigation District, each could refuse to supply water to the Lime Saddle Community Services District if their own customers' needs so required and each agreement could be terminated on five years' notice. At purchase, Del Oro assumed both contracts.

The total cost of the extension is estimated to be \$2.8 million. With the new facilities operating, Del Oro estimates it could serve up to 861 connections.

Del Oro arrived at the \$5,000 per connection charge for new connections by dividing \$2.8 million by the approximately 600 new customers that could be served with the new facilities connecting to Lake Oroville.

Breuer planned on developing 100 homes in the Lime Saddle area. Breuer paid Del Oro \$500,000 under the agreement. Del Oro also entered into agreements with other developers and charged them as well for planned connections. Pursuant to an audit conducted by our staff, the staff found that at the end of 1999, Del Oro had collected \$865,852 to be applied to the Lake Oroville project. According to testimony from Del Oro's president, approximately \$700,000 has been spent as of the date of issuance of D.02-01-014 on the Lake Oroville project facilities, and the company plans to seek a low-interest state loan in order to complete the Lake Oroville intertie in the near future.

Our decision concludes that the agreements comply with Del Oro's tariff rule 15, and that Del Oro has properly accounted for the funds collected through the main extension agreements. (D.01-01-014 at 13 Conclusions of Law Nos. 1 and 2.) Breuer is the sole party seeking rehearing.

## **II. DISCUSSION**

Breuer argues that the decision fails to provide the requisite findings of fact on all material issues in violation of Public Utilities Code section 1705 and its due process rights.<sup>2</sup>

Breuer claims the decision violates section 1705 by failing to contain adequate findings and conclusions. Specifically, Breuer alleges the decision failed to make requisite findings on these issues: 1) there is so little growth in the Lime Saddle area that the connection fees are grossly inadequate to finance the construction; 2) that the \$700,000 spent to date on the Lake Oroville project was expended in a manner that was inconsistent with the contract terms; 3) that the conditions required by the tariff for its provisions to apply were not met; and 4)

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<sup>2</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

that Breuer was required to make a cash advance rather than a contribution of plant facilities. These issues are all fully addressed in the text of D.02-01-014.

Regarding Breuer's contention that little growth in the Lime Saddle area establishes that the connection fees are grossly inadequate to finance the construction, we note both that this issue was not raised in the proceeding and that neither Breuer nor any other party presented evidence on it. The issue, if it existed at all, was not material to the decision.

Further, although Breuer charges the decision's findings and conclusions do not address the issue of whether the \$700,000 spent to date on the Lake Oroville project was expended in a manner consistent with the contract terms, D.02-01-014 specifically identifies the testimony of a staff expert witness, who conducted an audit of Del Oro, and determined that by the end of 1999, Del Oro spent \$672,412 on the projects listed in the main extension agreements and that "the funds were properly recorded and reported in the district's Account 132.... [In addition the staff witness determined] that the main extension agreements each state the purposes for which the funds were collected ... [and that] his examination of canceled checks and invoices showed that the funds were used exclusively for those purposes." (D.02-01-014 at 10.) Moreover, Conclusion of Law No. 2 provides: "[b]ased on a Commission audit of Lime Saddle District books, Del Oro has properly accounted for funds collected through the main extension agreements." (D.02-01-014 at 13.) Breuer's allegation that the Commission did not make findings and conclusions on this issue is without merit. With respect to the remaining issues, while we did discuss each of these issues in the text, the finding of fact section of the decision does not specifically address them in detail and we will modify the decision accordingly.

Breuer alleges that the challenged decision discriminates against new and old customers and between new customers who are treated differently

from each other, in violation of section 453.<sup>3</sup> Breuer does not specify in its application for rehearing how the decision treats new customers differently from each other and/or how this constitutes discrimination. During the proceeding, Breuer essentially contended that since Del Oro's Lime Saddle area was capable of serving an additional 141 customers under the DHS standard for that area, that certain new customers (141) should not have to pay the \$5000 fee for each new connection. If we assume that this is the argument Breuer intended to make in its application, the fact is that all new customers (approximately 600 new customers can be accommodated upon completion of the intertie project) since January 1, 1991 are subject to the main extension agreements; thus all new customers are treated the same. Pursuant to section 1732, "[t]he application for rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in the application." (Emphasis added.) The general allegation is not sufficiently informative for us to understand what Breuer is challenging on this point. Therefore the allegation is without merit.

In addition, Breuer claims that D.02-01-014 fails to acknowledge these alleged discrimination issues and in so failing has also failed to comply with section 1705. We note that the decision does address new customers paying in advance for special facilities and we found that the agreements complied with tariff rule 15. (D.02-01-014, at 5-6.) According to the testimony of our staff witness, "The contracts contain funding to cover the shared portion of the Lime Saddle Marina/Penz Intertie project without unfairly discriminating against any of the parties and without unfairly burdening existing customers with any costs." (*Id.*, at 6.) Breuer is incorrect in alleging that the decision does not take into account the differences between old and new customers, including the cost

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<sup>3</sup> Section 453 prohibits a public utility from providing any preference to or from acting to disadvantage any person or corporation.

differential, in determining that the project does not discriminate against any of the parties.

Breuer contends that Del Oro failed to meet its burden of proof in the application proceeding. Although Breuer is correct that the applicant has the burden of proving his/her/its application in a Commission proceeding (see e.g., *Southern California Edison Company* (1988) 27 Cal.P.U.C.2d 347, 365 (D.88-01-063)), it is incorrect in contending that Del Oro failed to do this. Neither Breuer nor any other party but Del Oro introduced any evidence in the proceeding (and the evidence presented by our Water Division/ORR was favorable to Del Oro). We believe, for the reasons set forth in the text of the decision that the evidence demonstrated that the agreements comply with the utility's tariff rule and further that the evidence regarding the audit report substantiates that Del Oro properly accounted for the funds collected through the agreements. Del Oro proved its case by a preponderance of the evidence.

Section 1705 provides in pertinent part:

...After the conclusion of the hearing, the [C]ommission shall make and file its order, containing its decision. Except for decisions filed after hearings held under [s]ection 1702.1,<sup>4</sup> the decision shall contain, separately stated, findings of fact and conclusions of law by the [C]ommission on all issues material to the order or decision....

In *Greyhound Lines, Inc. v. Public Utilities Com.* (1967) 65 Cal.2d 811, the California Supreme Court declared: "Every issue that must be resolved to reach that ultimate finding is 'material to the order or decision,' and findings are required of the basic facts upon which the ultimate finding is based. (65 Cal.2d at 813, citing *California Motor Transport Co. v. Public Utilities Com.* (1963) 59 Cal.2d 270, 273; and *Associated Freight Lines v. Public Utilities Com.* (1963) 59

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<sup>4</sup> Section 1702.1 provides for an expedited complaint procedure and authorizes the Commission to entertain complaints for reparations and for damages for violations of sections 494 or 532, under sections 734 through 736, when the amount claimed does not exceed the jurisdictional limit of a small claims court.

Cal.2d 583, 585.) Section 1705 is applicable to application proceedings. (*California Motor Transport Co., supra*, 59 Cal.2d at 273.) “Even when the scope of review is limited, as in this case... findings on material issues enable the reviewing court to determine whether the [C]ommission has acted arbitrarily.” (*Id.*, at 274.) “Though it is within the discretion of the [C]ommission to determine the factors material to [the ultimate conclusion] ... [citations omitted] section 1705 requires it to state what those factors are and to make findings on the material issues that ensue therefrom.” (*Id.*, at 275.)

As noted above, although the text of our decision discusses the issues raised by Breuer in its application for rehearing, in some cases the findings and conclusions of law do not fully set out the basis for our conclusions in the decision. Accordingly, we shall use this opportunity to modify the decision and add findings of fact and conclusions of law to better aid in understanding our decision.

Finally, Breuer contends that the legal interpretations made in the decision are erroneous. Breuer poses many questions in its application but its allegation on this issue is very general and it fails to provide specific reference to any particular legal error regarding interpretation (despite the requirements of section 1732), except for a criticism of our reference to *In re Water Main Extension Rule* (1982) 7 Cal.P.U.C.2d 778, 793 (D.82-01-062). However, contrary to Breuer’s allegation our reliance on the earlier decision is on point here. At that time, as now, the Commission was concerned with the impact on small water utilities that are generally experiencing serious cash-flow problems and we there stated that it would be difficult for such utilities to repay advance contracts out of net revenues and that non-refundable contributions from the developer for extensions in these circumstances would be required. Further, we clarified our policy that “non-refundable contributions would apply to ‘advance contracts’ developed under Rule 15.C. and would apply to special facilities that would

qualify as utility plant,” which is the case here. (See e.g., D.02-01-014, at 8-9.)  
The allegation is without merit.

Therefore **IT IS ORDERED** that:

1. D.02-01-014 at page 13 is modified to add the following findings of fact, following Finding of Fact No. 10:

11. The Department of Health Services has encouraged the Lime Saddle District to devise a way to tap the Lake Oroville water.
12. Breuer planned on constructing 100 homes in the Lime Saddle area and, after January 1, 1991, entered into a water main extension agreement with Del Oro, paying it \$500,000.
13. Other developers also entered into the water main extension agreements with Del Oro and paid it fees in the range of \$100,000.
14. According to a staff audit, Del Oro had collected \$865,582 (before taxes and not including interest) by the end of 1999 in connection with the Lake Oroville intertie project.
15. Del Oro presented evidence that it has spent \$700,000 to date on the Lake Oroville project facilities, including a 1/5 million-gallon storage tank, 4000 lineal feet of 10-inch transmission main, upgrades to a treatment plant, and land acquisition for planned booster stations.
16. Del Oro’s president testified that the utility plans to seek a low-interest state loan and to complete the Lake Oroville intertie in the near future.
17. Del Oro’s Rule 15 deals with water main extensions to serve new customer connections in locations where the current water distribution system does not exist or is inadequate.
18. The Water Division analyzed Rule 15 and determined that two provisions of it were relevant to the facts presented here: Rule 15.C.1.b and Rule 15.C.1.d.

19. Water Division's analysis concluded the Del Oro main extension agreement is in compliance with Rule 15.
20. Water Division's analysis concluded that a small water district like Lime Saddle was authorized under Rule 15.C.1.b. to prepare a standard main extension agreement covering "special facilities" like the Lake Oroville water intertie. It also determined that under Rule 15.C.1.d. the utility was authorized for good cause to require nonrefundable contributions as part of the standard main extension contract.
21. Breuer elected at hearing to present no fact witnesses and argued that the issues before the Commission were solely issues of law and tariff interpretation.
22. Under General Order 103, a water company is required to supply water from a source reasonable adequate to provide a continuous supply of water.
23. Del Oro promised refunds, under the agreements, if alternative financing is arranged, which Del Oro contends is a benefit to those who made cash contributions.
24. Water Division concluded that a provision, such as that Del Oro inserted into the agreements, that benefits customers does not conflict with the Commission's intent in enacting Rule 15.
25. In enacting Rule 15.C.1.d. the Commission contemplated that non-refundable contributions would apply to "advance contracts" developed under Rule 15.C. and would apply to special facilities that would qualify as utility plant.
26. Water Division concludes that Rule 15 contemplates water main extension agreements that include "special facilities" as well as mains.
27. Connecting a new customer to a water system, particularly when the new customer intends to develop multiple housing units, will involve installation of pumps, additional storage capacity,

- fire hydrants, and other material besides the pipelines through which the water will flow.
28. The main extension agreement at issue here contains these elements: 1) it covers special facilities (installation of a replacement source of water), 2) proportionate financing (total cost divided by the number of new connections), and 3) contribution financing. The contract sets forth the special facilities to be constructed.
  29. The Commission articulated a policy in D.91-04-068 of granting flexibility to small water companies seeking to upgrade their facilities.
  30. A staff expert conducted an audit of Del Oro, including examining bank records, general ledgers, and annual reports to the Commission for the funds collected, as well as cancelled checks and invoices to verify expenditure of these funds. In addition, he conducted a field examination of the Lime Saddle District and its contracts and accounting for purchased water.
  31. At the end of 1999, the Lime Saddle District had received \$865,852 in main extension agreement contributions (not including interest), had paid \$268,688 in income taxes on contributions, and had spent \$678,412 on projects listed in the main extension agreements.
  32. The staff expert determined that the funds collected were properly recorded and reported in the Lime Saddle District's Account 132 (Special Accounts) and that the funds were deposited in a separate account with the Chico office of Paine Webber, Inc. and later, in a Bank of America savings account.
  33. The staff expert determined that the main extension agreements each state the purpose for which the funds were collected. His examination of the cancelled checks and invoices revealed that the funds were used exclusively for those purposes.

2. D.02-01-014 is modified at page 13 to add the following conclusions of law, following Conclusion of Law No. 4:

5. The addition of non-tariff language to the contracts promising refunds if alternative financing is arranged is consistent with Commission policy and decisions.
6. The current water distribution system in the Lime Saddle area is inadequate to meet all of the customers' needs.
7. The Lake Oroville water intertie is a special facility.
8. Pursuant to Rule 15.C.1.b., the main extension agreement correctly covers special facilities like the Lake Oroville water intertie, as well as mains.
9. Pursuant to our General Order No. 103, section II.1.b, a water company is required to supply water from a source reasonably adequate to provide a continuous supply of water.
10. Pursuant to our General Order No. 103, section III.1, a water system shall, among other things, be adequate to deliver the water requirements of all customers.
11. Rule 15 permits proportionate financing of special facilities similar to the proportionate financing in the Del Oro agreement.
12. Small water utilities, like Del Oro, may require applicants for new extensions to contribute funds for the work.
13. Del Oro has established good cause for requiring non-refundable contributions as part of the standard main extension contract by showing that the funds will be used to cover the shared portion of the Lime Saddle Marina/Penz Intertie project without unfairly discriminating against any of the parties and without unfairly burdening existing customers with any costs, and that the \$5,000 fess gives new customers the promise of an uninterruptible supply of water from lake Oroville.
14. Rule 15 requires that the contract specify the special facilities to be constructed; and Del Oro's agreement satisfies that requirement.

15. The provision in the agreements providing for refunds of the cash contributions if alternative financing is arranged provides a benefit to those paying cash contributions and does not conflict with the Commission's intent in enacting Rule 15 or the refund provisions of that rule.
  16. Tariffs are like contracts between a public utility and its customers.
  17. Tariffs must be read as a whole, so as to give effect to every part, if reasonably practicable, each clause or section helping to interpret the other.
  18. Del Oro has established that the main extension contract is authorized under Rule 15.C., and in compliance with the Commission's rules and regulations.
3. Rehearing of Decision 02-01-014, as modified herein, is denied.
  4. This proceeding is closed.

This order is effective today.

Dated April 22, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners