

Decision 01-08-059 August 23, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WTA-Campbell Technology Park, LLC,

Complainant,

vs.

San Jose Water Company,

Defendant.

Case 00-03-004
(Filed March 2, 2000)

OPINION ON COMPLAINT

Brian T. Cragg, Attorney at Law, for Goodin, MacBride,
Squeri, Ritchie & Day, for WTA-Campbell
Technology Park, LLC, Complainant.

Robert A. Loehr, Attorney at Law, for San Jose
Water Company, Defendant.

I. Summary

Complainant WTA-Campbell Technology Park, LLC (WTA) brings this complaint against San Jose Water Company (SJWC) seeking the opportunity for a refund of a portion of the funds WTA has advanced to SJWC for the utility's installation of a 16-inch main pipe necessary for fire flow purposes. We find that Rule 15 of SJWC's tariffs applies to this case, and direct SJWC to prepare a revised main extension agreement in accordance with this decision. Under the revised agreement, SJWC shall, for a 10-year period following completion of the 16-inch main, refund to WTA a pro-rata amount of the main's cost. Based on

criteria set forth in today's decision, this amount shall be reasonably determined and assessed on subsequent commercial users who obtain service through the 16-inch main, which service otherwise would not have been available absent the facilities contributed by WTA.

II. The Controversy Between WTA and SJWC

The parties have stipulated to the central facts underlying this dispute. Complainant WTA is developing the former site of a drive-in theater as a light industrial park called Campbell Technology Park. The property is located in the City of Campbell and within the service territory of SJWC, which is a California public utility operating under the Commission's jurisdiction. The Santa Clara County Fire Department provides fire protection to the area where the Technology Park is located.

The SJWC water system was inadequate to meet the fire flow requirements established by this Commission in General Order (GO) 103 and by the Santa Clara County Fire Department for WTA's project at Campbell Technology Park.¹ GO 103, Section VIII prescribes a minimum fire flow of 2,000 gallons per minute (gpm) for a light industrial project like that of WTA. For the type and size of structure WTA proposes for the Technology Park, the Santa Clara County Fire Department prescribes a minimum fire flow of 3,500 gpm. Prior to WTA initiating its development, SJWC's system could provide fire flow to the Technology Park at only about 1,000 gpm.

On June 12, 1998, WTA requested that SJWC provide water service to the Campbell Technology Park. SJWC responded to this request on March 17, 1999

¹ Some of the structures planned as part of the Campbell Technology Park exceed 100,000 square feet.

by requiring, among other things, that WTA advance the funds required to install a new 16-inch water main to meet the proposed project's fire flow requirements. SJWC estimated the cost of the new main to be \$686,600.² SJWC's estimate also included the costs of smaller pipes and other facilities installed at the site for a total estimate of \$1,091,200.

According to SJWC, the \$686,600 advanced for the 16-inch water main is not refundable pursuant to Rule 15, and the developer should bear these costs. (SJWC stated that \$111,380 of the total advance of \$1,091,200 is eligible for refund under the provisions of Rule 15 of its tariff.) WTA believes that the \$686,600 estimated cost of the new 16-inch main should also be eligible for refund pursuant to Rule 15. Specifically, WTA requested SJWC to include in the water main extension contract between SJWC and WTA provisions for partial refunds to WTA in the event that certain properties adjacent to the 16-inch main required service that could be provided only through the 16-inch main.

On May 4, 1999, WTA advanced \$1,091,200 under protest and entered into two agreements with SJWC in order to construct the water lines. Construction of the line in dispute is completed.

The 16-inch water main covers about 3,640 feet and passes about 52 separate properties between the point where it ties into SJWC's system and where it feeds the smaller pipes that serve the Campbell Technology Park. According to WTA's witnesses, these surrounding properties have not been intensely developed because of insufficient infrastructure to meet fire flow requirements.

² SJWC states that it expended considerable effort to find the least expensive way to provide the fire flow water main to WTA's property.

III. The Allegations of the Complaint

WTA complains that SJWC has violated Rule 15 of its tariffs by requiring the \$686,600 it advanced to install the 16-inch main to be nonrefundable. WTA also complains that SJWC has violated Pub. Util. Code § 761 because its interpretation of Rule 15 is improper.³

WTA requests the following relief:

“Applying the ‘special facilities’ provision of Rule 15, § C.2.c., for a period of 10 years following completion of a 16-inch main to service Applicant’s Campbell Technology Park development, Utility shall refund a pro-rata amount, reasonably determined, assessed on subsequent commercial users who obtain service through the 16-inch main that otherwise would not have been available absent the facilities contributed by Applicant.”

(Complaint at p. 9.)

SJWC claims that Rule 15 does not apply because the extension was required specifically to meet the fire flow requirements for WTA’s development at the Campbell Technology Park. SJWC also argues that granting WTA’s requested relief would impose on SJWC new and burdensome accounting functions. SJWC states it has treated other developers similarly to WTA, and thus, the different treatment of WTA based on this request would result in discriminatory treatment of customers. SJWC also believes that the complaint

³ WTA also alleges that SJWC violated Rule 15 by failing to consider projected revenues from other customers served by means of the 16-inch main, in determining whether or not the water main would be self supporting. In its brief, WTA states that it was unable to present sufficient evidence to conclusively show that the expected revenues from the 16-inch main qualified it for the type of refund appropriate for a self-supporting facility. Therefore, WTA is not seeking an automatic, 40-year refund to which self-supporting facilities would be entitled.

procedure is not an appropriate vehicle to seek relief that would establish policy changes affecting the entire water industry.

IV. Procedural Background

WTA filed this complaint on March 2, 2000, and SJWC timely filed an answer on April 13, 2000. In the Scoping Memo, Assigned Commissioner Duque designated Administrative Law Judge Prestidge as the presiding officer.

Prehearing conferences were held on May 2 and July 18, 2000. One day of hearings was held on September 11, 2000, and the record closed on October 20, 2000 with the filing of reply briefs.

The Commission issued Decision (D.) 01-02-074 extending the 12-month statutory deadline set forth in Pub. Util. Code § 1701.2(d) for resolving adjudicatory cases. This decision projected issuance of the presiding officer's decision within 90 days (or by May 23, 2001). The Presiding Officer's decision on the merits of the complaint is timely issued pursuant to D.01-02-074.

V. Discussion

A. Rule 15

The relevant portions of Rule 15 of SJWC's tariffs are set forth below.

Rule 15.A.1 a provides that:

“all extensions of distribution mains, from the utility's basic production and transmission system or existing distribution system, to serve new customers, except for those specifically excluded below, shall be made under the provisions of this rule unless specific authority is first obtained from the Commission to deviate therefrom. ...”

Rule 15.A.1.b provides that:

“extensions primarily for fire hydrant, private fire protection, resale, temporary, standby, or supplemental service shall not be made under this rule.”

Rule 15.D.1 states that:

“the cost of distribution mains designed to meet the fire flow requirements set forth in Section VIII.1(a) of General Order No. 103 is to be advanced by the applicant. The utility shall refund this advance as provided in Sections B.2 and C.2 of this Rule.”

Rules 15.B.2 and C.2 contain detailed refund provisions.

B. Rule 15.D Provides for Refunds of the Costs Advanced for Mains Designed to Meet Fire Flow Requirements.

Rule 15.D.1 provides for the opportunity for refunds for costs advanced for distribution mains designed to meet the fire flow requirements set forth in Section VIII of GO 103. The minimum requirements under Section VIII.1(a) of GO 103 for the Technology Park are 2,000 gpm for light industrial use. Because the costs at issue in this case have been advanced for a distribution main designed to meet, among other things, the fire flow requirements of GO 103, these costs are refundable according to Rule 15.

SJWC argues that Rule 15 should not apply here, because Rule 15.A.1.b excludes extensions for, among other things, fire hydrant and private fire protection. According to SJWC, the main extension falls squarely within this exception.

In interpreting tariffs, the Commission has held that the tariff language must be construed as a whole, and should be given a fair and reasonable construction that avoids absurd results or would render some part of the tariff a nullity. (See D.98-12-086, 1998 Cal. PUC LEXIS 1014, 19-20.)

The provision of Rule 15.A.1.b that SJWC cites excludes from Rule 15 extensions “primarily for fire hydrant and private fire protection,” but does not specifically refer to extensions designed to meet fire flow requirements. The parties have focused on the 16-inch main’s ability to meet the applicable fire flow

requirements. Since Rule 15.D.1 specifically refers to mains designed to meet fire flow requirements, the specific references in Rule 15.D.1 should prevail over the more general references in Rule 15.A.1.b. This is a reasonable construction that would avoid rendering some part of the tariff a nullity.

We are not persuaded that Rule 15.D.1 applies to existing mains which comply with GO 103's fire flow requirements when installed, as opposed to mains needed to meet GO 103's requirements when the property owner makes changes in land use. The plain language of Rule 15.D.1 is not so limited.

Our conclusion that the specific language of Rule 15.D.1 should prevail over the exceptions in Rule 15.A.1.b is equitable, because under this construction subsequent commercial developers must bear a portion of the expenses they would otherwise be required to advance for system improvements, in absence of the 16-inch main financed by WTA. It is also equitable given that the record established that the 16-inch main is in fact used by SJWC to provide domestic service to Campbell Technology Park, and it may also be providing domestic use to other customers. Thus, in actuality, this main is not being used only to meet fire flow requirements.

**C. Form 18 Does Not Apply To This Case
Because WTA Funded the Installation of the
16-Inch Water Main Pursuant to Rule 15**

SJWC argues on appeal that WTA is not entitled to refunds from property owners who subsequently receive service through the 16-inch main because Form 18, entitled "Fire Main Extension, Hydrant and/or Private Fire Protection Service," rather than Rule 15.D, governs this case. Form 18 is a form contract to be entered into by SJWC and persons who fund the installment of main extensions and other facilities to meet "various local requirements." Form 18 does not provide for refunds if other property owners subsequently utilize the

main extension or other facilities installed. SJWC contends that since WTA funded the 16-inch water main to meet local, as well as GO 103, fire flow requirements, Form 18, rather than Rule 15.D, applies.

SJWC's argument is without merit. By its own terms, Form 18 does not apply when the installation of a main extension or other work is made pursuant to Rule 15. Here, WTA could have met only approximately half of the GO 103 fire flow requirements for the Campbell Technology Park without the installation of the 16-inch main. Nothing in the language of Rule 15.D limits its applicability to main extensions made solely to meet GO 103 requirements.⁴

In addition, Rule 15 recognizes that main extensions must satisfy local, as well as GO 103 and SJWC, requirements. For example, Rule 15.A.4. provides that when a main extension must comply with a local ordinance, the costs advanced to SJWC must include the amount necessary to meet local requirements.⁵ Similarly, Rule 15.A.4 states that if the local building codes and ordinances contain certain water conservation provisions, these provisions must be included in the main extension contract between the developer and SJWC.

SJWC also argues on appeal that Form 18 should apply in this case, because while it is equitable to refund developers for the cost of main extensions built to meet minimum GO 103 requirements which benefit the community,

⁴ Even if WTA did not qualify for refunds pursuant to Rule 15.D, it appears that WTA may qualify for refunds pursuant to Rule 15.C, because the 16-inch water main was installed to serve a new development, the Campbell Technology Park. However, we need not reach that issue here.

⁵ Rule 15.A.4.d. states: "When an extension must comply with an ordinance, regulation, or specification of a public authority, the estimated and adjusted construction costs of said extension shall be based upon the facilities required to comply therewith."

developers should consider the cost of meeting higher local requirements in determining the location of their projects and should bear these costs without refund. However, both GO 103 and local fire flow requirements benefit the local community by ensuring the availability of adequate water to fight fires. It would be inequitable to require developers to fund the cost of main extensions or other facilities to meet local fire flow requirements without the opportunity for proportional refunds when other property owners subsequently utilize these extensions or facilities.

We conclude that Form 18 does not apply to this case, and that WTA is entitled to refunds as stated below.

D. WTA's Requested Relief Is Consistent With Prior Commission Precedent

The relief WTA seeks is consistent with Commission precedent. For example, in *Humber v. North Gualala Water Co.*, D.93-09-007, 50 CPUC2d 629 (*Humber*) the complainant owned undeveloped property. She sought, among other things, a partial refund of monies advanced for a main extension to provide service to a proposed motel project in compliance with GO 103's fire flow requirements. The portion of the main extension at issue was needed only to serve complainant's property, although other potential customers might later connect to the main extension. The water utility denied complainant any refund of the amounts advanced for the main extension pursuant to Rule 15 of its rules.⁶

⁶ The Commission prescribes the numbering and content of the rules contained in water utility tariffs. Rule 15 in different utilities' tariffs should not differ except in minor respects. SJWC does not argue that *Humber* is inapplicable here because SJWC's tariff language somehow differs from the tariff language in *Humber*.

The Commission ordered the water company to “refund a pro-rata amount, reasonably determined, assessed on subsequent commercial users who obtain service through the 12-inch main that otherwise would not have been available absent the facilities contributed by the complainant.” (*Humber*, 50 CPUC2d at 634, Ordering Paragraph 4.)

The Commission reasoned that Rule 15 is intended to provide a method to construct necessary distribution facilities for commercial development with minimum financial risk to the utility and its consumers from potentially uneconomic or speculative developments. Specifically, by requiring advances from commercial developers, the Commission intended that water utilities, particularly the smaller ones, will “(1) avoid making capital investments that will increase rates paid by other customers, (2) avoid impairing the utility’s financial health, and (3) avoid jeopardizing the adequacy of its service to other consumers.” (*Id.* at 631.)

The Commission then offered the following interpretation of Rule 15:

“...Rule 15 is not intended to require a nonrefundable payment by a developer when an extension accomplishes system upgrades that the utility would be required to make in any event, *or when the extension will within a reasonable time permit service to other builders who follow.*” (*Id.* at 632, emphasis added.)

The Commission also acknowledged that to the extent service to other commercial customers seeking additional service would not be available without the new main, the “intent of Rule 15 is that subsequent commercial users should share a portion of the cost of the new main, and that such payment should be refunded to the original contributor.” (*Id.*)

We agree with WTA that the facts in *Humber* are similar to those in this case. In both cases, a main extension was required to provide service to a new

project and to meet applicable fire flow requirements, and the existing water system was inadequate to provide necessary service to the particular project. In both cases, future customers might require service that can only be provided by connecting to the new main. Therefore, *Humber* supports the result we reach today.

SJWC argues that *Humber* does not apply to this case for several reasons. According to SJWC, in *Humber*, the required new main was for both domestic and fire flow service, and before the main was built, the Department of Health Services (DHS) issued a compliance order requiring the utility to construct a 12-inch main from a storage tank to better provide fire flow and pressure in a nearby commercial area. According to SJWC, neither fact is present in this case.

However, in *Humber*, only 500 feet of the 12-inch main included in the Humber estimate was main that the utility must replace under the DHS enforcement order. Moreover, the Commission held refunds to be appropriate under Rule 15 not only when the extension accomplishes a system upgrade that the utility would be required to make in any event, but also when the extension will within a reasonable time permit service to other builders who follow. (*Humber*, 50 CPUC2d at 632.)

According to SJWC, the most important distinction between the two cases is that in *Humber*, the motel was a new development on previously undeveloped property, and the issue in *Humber* involved possible refunds from *new* developments, whereas in this case, complainants seek the opportunity to obtain refunds from *existing* commercial customers who may upgrade their service. In other words, SJWC might not oppose WTA's claim for a proposed

refund if it were developing a project in a previously undeveloped area. We believe that this is a distinction without a difference in the case before us.

The Commission has previously described Rule 15 as originating during a time when growth into new areas was desirable. “Rule 15 was developed as a consequence of the population explosion in California since the 1940s which necessitated a construction boom to provide homes for these people and water to serve those homes.” (*Panamint Construction Co., Inc. v. Southern California Water Co.*, D.82-02-017, 8 CPUC2d 135, 138-139.)

Since the 1940s, land has become much scarcer in the Silicon Valley/South Bay area, and unrestrained development of undeveloped land often raises environmental concerns. Applying Rule 15’s refund provisions to the facts of this case will encourage “in-fill” development of previously developed but underimproved parcels in urban and suburban areas, because the initial developer of an “in-fill” project will not need to fund the entire cost of infrastructure (such as water mains), to serve the project, if, within a reasonable time, subsequent developers use this infrastructure. The City of Campbell has designated the area surrounding the 16-inch main as a redevelopment area. WTA alleges that the 52 properties along the 16-inch main have not been intensely developed because of insufficient infrastructure to meet the fire flow requirements. Thus, it is the city’s policy to encourage redevelopment in this area, and it would be inequitable under these facts to place the burden for the full cost of the main extension on the first entity to more intensely develop this area. This is especially the case when the only ratepayers that would be affected by WTA’s requested opportunity for refund are the customers on the parcels adjacent to the 16-inch main who receive service through the 16-inch main, who

require enhanced commercial service made possible only through the 16-inch main.

E. SJWC's Other Arguments

SJWC also argues that the refund provision which WTA seeks constitutes a connection fee prohibited by Rule 16 of its tariffs. However, Rule 15 applies in this case, and Rule 16.B.1 provides an exception when the fee is "otherwise provided in the utility's main extension rules," i.e., in this case, Rule 15. Moreover, in *Humber*, the Commission did not view Rule 16 as an impediment to ordering a refund provision.

SJWC also argues that there are many administrative difficulties in implementing WTA's requested relief, and it will be necessary to develop an elaborate tracking system for an undetermined, lengthy period of time. However, Rule 15 provides for the opportunity for refunds in this case. The parties did not specifically address the refund provisions set forth in Rule 15.B.2. However, Complainants' proposal is consistent with the intent of Rule 15 and *Humber*, and we adopt it here as set forth below. The remedy we grant below is circumscribed, requiring SJWC to provide for refund provisions for 10 years, and is triggered only when one of the 52 parcels adjacent to the 16-inch water main is developed or improved in a way that requires enhanced commercial water service only made possible by the installation of the 16-inch main.

SJWC also argues on appeal that property owners subject to the refund requirement should be given notice and an opportunity to be heard before the Commission adopts this decision. However, this decision does not impose a new fee or assessment on property owners, but interprets the existing provisions of Rule 15 as related to refunds. Property owners in the area of the Campbell Technology Park have had notice of Rule 15's requirements since the inception of

the Rule. Further, these property owners will receive notice of the refund requirement when and if they apply for connection to the 16-inch water main in the future, and will otherwise incur no new costs as a result of this decision. Therefore, no additional notice and opportunity to be heard is required.

Finally, SJWC argues that granting WTA's requested relief would be a significant change in industry practice not appropriate to decide in this complaint case. However, in *Humber*, a complaint case, the Commission decided similar issues. As in other complaint cases, we resolve the immediate dispute between WTA and SJWC based on the specific facts of this case.

F. Specific Relief Requested

WTA requests us to order SJWC to deliver to WTA a revised main extension agreement. Under the revised agreement, SJWC would refund to WTA a pro-rata amount, reasonably determined, assessed on subsequent commercial users who obtain service through the 16-inch main commencing in the 10-year period following completion of the main, if the service otherwise would not have been available absent the facilities contributed by WTA.

In testimony, WTA proposed a more detailed method for determining the pro-rata amount: the cost of the main extension would be divided by the number of parcels that could potentially take advantage of the 16-inch main, and new commercial customers which connect to the line would be required to pay a pro-rata share of the line's total cost. Under this approach, the pro-rata share would be \$13,200 per parcel.

In its brief, WTA explains that the redevelopment plan for the area adjacent to the 16-inch line indicated that the City of Campbell might be instrumental in combining parcels as an incentive to redevelopment. Therefore, WTA indicates that allocation could be based on frontage feet, rather than

number of parcels, to account for the possibility that several parcels might be combined as part of the redevelopment process. Under this alternative approach, according to WTA, the cost would be \$188.63 per frontage foot.

SJWC argues that WTA's requested monetary relief is too vague. With respect to WTA's alternative allocation proposal, SJWC argues that the correct number should be \$94.31 per frontage foot, rather than \$188.63, under the assumption that the main serves both sides of the street.⁷

In *Humber*, we directed defendant to refund "a pro-rata amount, reasonably determined," for a period of 10 years. (*Humber*, 50 CPUC2d at 634, Ordering Paragraph 4.) We issue a similar order today. However, because WTA offered testimony on the specifics of the refund provision, and because we wish to reach a final resolution of this matter, we define here what we believe would be reasonable under the facts of this case, unless otherwise agreed to by the parties.

Specifically, for 10 years following completion of the 16-inch main to service WTA's development at Campbell Technology Park, the amount of WTA's potential refund would be \$13,200 per parcel as the parcels existed at the time of the hearings. If a development includes several parcels, then the refund shall be \$13,200 multiplied by the number of included parcels. We do not adopt WTA's alternative allocation proposal made for the first time in its brief. However, the parties may mutually agree on another reasonable allocation method, provided that the refund provision remains in effect for 10 years.

⁷ SJWC assumes, as we do, that WTA arrived at \$188.63 per frontage foot by dividing the cost of the main (\$686,600) by the length of the main (3,640 feet). Assuming that the

Footnote continued on next page

The properties subject to this refund obligation are those shown in Exhibit 2 to the stipulation.

VI. Appeal of Presiding Officer's Decision

On June 1, 2001, SJWC filed an Appeal of the Presiding Officer's Decision (appeal). WTA filed a response to SJWC's appeal on June 18, 2001. We respond to each of the issues raised by SJWC on appeal as follows:

- SJWC argues that the POD commits error by failing to find that under Tariff Form 18, (Form 18), WTA is ineligible for reimbursement for a proportional share of the costs of installation of the 16-inch water main if other property owners subsequently receive service through the 16-inch water main. This argument is without merit. WTA is eligible for a refund pursuant to Rule 15.D because the 16-inch main was installed to meet both GO 103 and local fire flow requirements. Even if WTA were not eligible for a refund pursuant to Rule 15.D, WTA may still be eligible for a refund under Rule 15.C because the 16-inch water main was installed to serve a new development, the Campbell Technology Park. Form 18 by its own terms applies only when a main extension or other work is made to comply with "various local requirements" and is not covered by Rule 15. We have revised the POD to clarify these issues in new Section V.C.
- SJWC argues that it is equitable to refund developers for main extensions made to meet minimum GO 103 fire flow requirements because they serve the community at large, but that developers should

water main serves both sides of the street, the correct amount, according to SJWC, should be \$94.31 per frontage foot.

- not be entitled to refunds for main extensions made to meet additional local requirements. This argument is without merit. We have revised the POD to address this issue in Section V.C.
- SJWC argues that the present situation may be distinguished from the facts in *Humber* because the installation of the new main in *Humber* appeared to have been required to meet GO 103 fire flow requirements. This argument is without merit. Here, WTA is installing the 16-inch water main to meet GO 103, as well as local, fire flow requirements. Further, we concluded in *Humber* that the intent of Rule 15 is for subsequent commercial users to share a portion of the cost of the installation of a new main which will provide service to their properties. That conclusion directly applies to this case. Whether the new main in *Humber* was installed to meet GO 103 or local fire flow requirements was not discussed in *Humber* as a basis for this conclusion. We need not revise the POD to further address this issue.
 - In response to SJWC's argument that the POD commits error by failing to specifically identify the parcels and property owners subject to the refund requirement, WTA has agreed that it would be helpful for the POD to include this information. Therefore, we have revised the POD in Section V.F to include a reference to the exhibit to the stipulation filed by the parties to identify the affected parcels.
 - SJWC argues that the POD commits error by failing to give notice and an opportunity to be heard to property owners who will be affected by the decision. This argument is without merit. The refund requirement adopted in this decision is based on our interpretation of the existing provisions of Rule 15, rather than the adoption of a new fee, and the

customers of SJWC have been on notice of SJWC's existing tariffs since their inception. Further, property owners will receive specific notice of the refund requirement if they apply for a connection to the 16-inch water main, and otherwise will not be affected by this decision. We have revised Section V.E of the POD to note this analysis.

- SJWC argues that Ordering Paragraph 2, which requires SJWC to assess contributions of \$13,200 from each property owner who in the future “obtains service through the 16-inch water main that otherwise would not have been available absent the facilities contributed by WTA” is vague and ambiguous. This argument is without merit. By its own terms, this language applies to any type of service received through the 16-inch main. We therefore need not revise the POD to address this issue.
- SJWC argues that the POD is unclear regarding the commencement date of the 10-year period in which SJWC must refund a pro-rata amount assessed on subsequent commercial users that obtain service through the 16-inch water main. In order to eliminate potential confusion, we have revised Ordering Paragraph 2 to state that the 10-year period commences when both parties have executed the revised main agreement.

Findings of Fact

1. Complainant WTA is developing a light industrial park called Campbell Technology Park within SJWC's service territory.
2. The SJWC water system was inadequate to meet the fire flow requirements for WTA's project at Campbell Technology Park that are established by this

Commission in GO 103 and by the Santa Clara Fire Department, which provides fire protection service to the area.

3. SJWC required WTA to advance the funds to install a new 16-inch water main to meet the proposed project's fire flow requirements. SJWC estimated the cost of the new main to be \$686,600.

4. WTA advanced under protest a total of \$1,091,200 (which includes the \$686,600 required for the construction of the 16-inch water main), and entered into two agreements with SJWC in order to construct the water lines.

Construction of the main in dispute is complete.

5. The 16-inch water main covers about 3,640 feet and passes about 52 separate properties between the point where it ties into SJWC's system and where it feeds the smaller pipes that serve Campbell Technology Park.

6. The properties surrounding Campbell Technology Park have not been intensely developed.

7. The 16-inch main is used by SJWC to provide domestic service to Campbell Technology Park, and it may also be providing domestic service to other customers.

8. Applying Rule 15's refund provisions to the facts of this case will encourage "in-fill" development of previously developed but underimproved parcels in urban and suburban areas, because the initial developer of an "in-fill" project will not need to fund the entire cost of infrastructure such as water mains, to serve the project, if, within a reasonable time, subsequent developers use this same infrastructure.

9. Property owners in the area of the Campbell Technology Park have had notice of the existing refund requirements of Rule 15 since its inception.

10. Property owners in the area of the Campbell Technology Park will receive notice of the refund requirements imposed by this decision if and when they apply for connection to the 16-inch water main.

11. Property owners in the area of the Campbell Technology Park will incur no additional costs as a result of this decision if they do not apply for connection to the 16-inch water main or receive service through the 16-inch water main.

Conclusions of Law

1. Rule 15.D.1 provides for the opportunity for refunds for costs advanced for distribution mains designed to meet the fire flow requirements set forth in Section VIII of GO 103. Since the costs at issue in this case have been advanced for a distribution main designed to meet, among other things, the fire flow requirements of GO 103, these costs are refundable under Rule 15.

2. Form 18 does not apply to this case.

3. In interpreting tariffs, the tariff language must be construed as a whole, and should be given a fair and reasonable construction that avoids absurd results or would render some part of the tariff a nullity.

4. Because Rule 15.D.1 specifically refers to mains designed to meet fire flow requirements, the specific references in section D.1 should prevail over the more general references in Rule 15.A.1.b.

5. Although Rule 15.D.1 applies to mains designed to meet GO 103 requirements, its language does not exclude mains that are also designed to meet local fire flow requirements.

6. Rule 15.A.1.b does not include main extensions necessary to meet local fire flow requirements as exclusions from Rule 15's applicability.

7. Rule 15 recognizes that main extensions must satisfy local, as well as GO 103 and SJWC, requirements.

8. Both GO 103 and local fire flow requirements benefit the community by ensuring an adequate supply of water to fight fires.

9. It would be inequitable to require developers to fund the cost of main extensions or other facilities to meet fire flow requirements without requiring other property owners who subsequently receive service through these main extensions or facilities to pay a proportional share of the cost.

10. Providing WTA the opportunity for refund of a portion of the funds it has advanced for the 16-inch water main is also consistent with the outcome in *Humber v. North Gualala Water Co.*, D.93-09-007, 50 CPUC2d 629.

11. Pursuant to *Humber*, the Commission required refunds under Rule 15 not only when the extension accomplishes a system upgrade that the utility would be required to make in any event, but also when the extension will, within a reasonable time, permit service to developers of subsequent projects.

12. This decision is based on interpretation of the existing refund provisions of Rule 15 and does not impose any new fee or assessment on property owners.

13. We need not give property owners who may subsequently be required to pay a proportional share of the cost of the 16-inch water main additional notice and an opportunity to be heard before adopting this decision.

14. To the extent that WTA requests that the main extension agreement between it and SJWC be revised to provide for refund in appropriate circumstances of amounts advanced by WTA for construction of the 16-inch main, the relief requested in the complaint should be granted.

15. To the extent not otherwise agreed to by the parties, the pro-rata amount of the refund should be determined as follows. The refund should be assessed on subsequent commercial users who, by use of the 16-inch main, obtain service that otherwise would not have been available absent the facilities contributed by

WTA. The refund should be \$13,200 per parcel as the parcels existed at the time of the hearings. If a development includes several parcels, then the refund shall be \$13,200 multiplied by the number of included parcels.

16. This decision should be made effective immediately so that the parties can promptly revise their main extension agreement.

O R D E R

IT IS ORDERED that:

1. The complaint of WTA-Campbell Technology Park, LLC (WTA) against San Jose Water Company (SJWC) is granted insofar as it requests that refund provisions be included in the main extension agreement which SJWC prepared for service to WTA's property.

2. SJWC shall, within 30 days of the effective date of this decision, deliver a revised main extension agreement to WTA containing refund provisions substantially as follows: For a period of 10 years following completion of a 16-inch main to service WTA's Campbell Technology Park development, SJWC shall refund a pro-rata amount, reasonably determined, assessed on subsequent commercial users that obtain service through the 16-inch main that otherwise would not have been available absent the facilities contributed by WTA. The 10-year period shall commence on the date that both parties have executed the agreement.

3. Subsequent refunds to WTA by SJWC, based on the refund provisions of the main extension agreement as revised pursuant to Ordering Paragraph 2, shall be determined as follows: unless otherwise mutually agreed to by SJWC and WTA, the pro-rata amount of the reasonably determined refund shall be \$13,200 per parcel as the parcels existed at the time of the hearings. If a development includes several parcels, the refund shall be \$13,200 multiplied by the number of included parcels.

4. Case 00-03-004 is closed.

This order is effective today.

Dated August 23, 2001, at San Francisco, California.

LORETTA M. LYNCH
President

HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners