BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
01-28-11
04:59 PM

In the Matter of the Application of San Gabriel Valley Water Company (U337W) for Authority to Increase Rates Charged for Water Services in its Los Angeles County Division by $10,232,700 or 17.8% in July 2011; $1,767,700 or 2.6% in July 2012; and $2,245,800 or 3.2% in July 2013 and in its Fontana Water Company division by $1,252,200 or 2.1% in July 2011.

Application 10-07-019
(Filed July 16, 2010)

OPENING BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES

TRACI BONE
SELINA SHEK

Attorneys for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Email: tbo@cpuc.ca.gov
Phone: (415) 703-2048
Email: sel@cpuc.ca.gov
Phone: (415) 703-2423
Fax: (415) 703-2262

January 28, 2011

442818

TABLE OF CONTENTS

I. **INTRODUCTION** 1

II. **PROCEDURAL BACKGROUND** 2

III. **DECISION 10-10-018 REQUIRES THAT ALL REASONABLE CONTAMINATION-RELATED LEGAL EXPENSES BE SUBTRACTED FROM THE CREDIT BALANCE IN SAN GABRIEL'S WQLMA** 3

A. OVERVIEW 3

B. SAN GABRIEL'S ARGUMENTS 4

C. THE CONTAMINATION ACCOUNTING RULES ADOPTED IN D.10-10-0186

D. APPLICATION OF D.10-10-018 TO SAN GABRIEL'S ARGUMENTS 7

1. Legal Costs to Pursue Polluters 7

2. Legal Costs To Defend Against Contamination-Related Claims 9

3. On-Going Legal Costs To Enforce A Settlement With The Polluters 9

E. CONCLUSION 11

IV. **THE COMMISSION HAS A LEGAL OBLIGATION TO COMPLY WITH D.10-10-018** 11

V. **SAN GABRIEL SHOULD NOT BE PERMITTED TO ESTABLISH A HEALTH AND DENTAL EXPENSE BALANCING ACCOUNT** 12

VI. **CONCLUSION** 16

CERTIFICATE OF SERVICE

ATTACHEMENT A

ATTACHMENT B

ATTACHMENT C

TABLE OF AUTHORITIES

Cases

Southern California Edison Co. v. Public Utilities Com.,
140 Cal App 4th 1085 (2006) 11, 12

CPUC Decisions

D.10-10-018 ..... passim
D.09-03-025 15
D.08-06-022 ..... 5, 9
D.05-07-044 ..... 8, 9
D.03-04-061 12

California Public Utilities Code

Public Utilities Code § 1708 ..... 11, 12

CPUC Resolutions

Resolution W-4094 ..... 3, 10
Resolution W-4089 ..... 3, 10

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Gabriel Valley Water Company (U337W) for Authority to Increase Rates Charged for Water Services in its Los Angeles County Division by $10,232,700 or 17.8% in July 2011; $1,767,700 or 2.6% in July 2012; and $2,245,800 or 3.2% in July 2013 and in its Fontana Water Company division by $1,252,200 or 2.1% in July 2011.	Application 10-07-019 (Filed July 16, 2010)

OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES

I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling dated October 27, 2010 (Scoping Memo), the Division of Ratepayer Advocates (DRA) hereby files its Opening Brief in San Gabriel Valley Water Company's (San Gabriel or the Company) application to increase rates charged for water service in its Los Angeles County Division and in its Fontana Division.

The Scoping Memo identified the major issues within the scope of this proceeding to include:

- Reasonableness of general office expenses;
- Accuracy of sale and revenue forecasts;
- Reasonableness of operations and maintenance and administrative and general expenses;

- Accuracy of projected increases in staff as well as staff pension and benefit costs;
- Amount and recovery of water quality litigation expenses;
- Amount and recovery of water treatment costs;
- Proposed capital improvements during the general rate case term;
- Capital improvements placed in service since the previous rate case;
- Allocation of general office costs among the Los Angeles and Fontana Divisions; and
- Costs of the Fontana office complex.

San Gabriel and DRA have proposed a settlement of most of these major General Rate Case (GRC) issues, with only four issues left unresolved and briefed here: (1) whether San Gabriel may amortize (through a surcharge to its customers) approximately $3.5 million in legal costs it has incurred to pursue water polluters, or whether these legal costs should be offset from the $11.5 million credit balance in its Water Quality Litigation Memorandum Account (WQLMA); (2) the related issue of whether San Gabriel may amortize defense-related litigation costs it incurred related to the contamination; (3) the related issue of whether San Gabriel may amortize future legal costs associated with enforcing its settlement with the polluters; and (4) whether San Gabriel should be granted a balancing account to pass through increasing health and dental insurance costs to its customers.

II. PROCEDURAL BACKGROUND

San Gabriel filed its application on July 16, 2010. DRA and the Cities of Fontana and El Monte protested the application. The Commission convened a Prehearing Conference in this proceeding on September 2, 2010. DRA and the City of Fontana each served their Direct Testimony on November 16, 2010. The City of El Monte did not file testimony. San Gabriel served its Rebuttal Testimony on December 3, 2010.

DRA and San Gabriel discussed settlement in Los Angeles from December 8 through December 15. These settlement discussions continued through e-mail and phone calls until the filing of the Settlement Agreement on January 27, 2011. The Cities of Fontana and El Monte also participated to a more limited extent in the settlement discussions. The Commission conducted a hearing in San Francisco on January 5, 2011, primarily to enter the record into evidence, and to allow cross examination on the issues related to San Gabriel's recovery of its contamination-related legal costs.

III. DECISION (D.) 10-10-018 REQUIRES THAT ALL REASONABLE CONTAMINATION-RELATED LEGAL EXPENSES BE SUBTRACTED FROM THE CREDIT BALANCE IN SAN GABRIEL'S WQLMA

A. Overview

San Gabriel's WQLMA was created pursuant to Advice Letter No. 300, which was accepted by the Commission on February 20, 1998, effective January 29, 1998.[1] As of September 2010, the WQLMA had a credit balance of $11,532,750,[2] resulting from the collection of approximately $9.7 million in general damage settlements from polluters,[3] plus accrued interest.

Notwithstanding this credit balance of over $11.5 million in its WQLMA, San Gabriel seeks authority in this general rate case to amortize all of its past and future water contamination-related legal expenses to its customers, including: (1) $3,453,583 million recorded in the WQLMA as plaintiff-related legal expenses as of September 2010;[4] (2) additional comparable legal expenses recorded in the

---

[1] For ease of reference, Advice Letter No. 300 and the Commission acceptance of the advice letter is attached hereto as Attachment A. Resolutions W-4089 and W-4094 authorizing such advice letters "to record expenses resulting from water contamination litigation" (Resolution W-4094 at 2) are attached hereto as Attachments B and C respectively.

[2] Exhibit DRA-1 (Charvez) at 10-2, lines 19-21.

[3] Exhibit SG-11 (Whitehead) at 5, lines 8-10.

[4] Exhibit SG-20 (Whitehead) at 7, lines 22-28.

WQLMA as of the date of the decision in this GRC;[5] (3) $218,071 recorded in the WQLMA as defense-related legal expenses as of December 2009;[6] and (4) $166,000 per year forecasted by San Gabriel as necessary to enforce its settlement agreement with the polluters at the Baldwin Park Operable Unit (BPOU).[7]

DRA does not dispute that San Gabriel is entitled to recover its reasonable legal expenses related to water contamination. However, San Gabriel's request to amortize these expenses in rates should be denied. All of these legal expenses – including those incurred to obtain monies from the polluters, those incurred to defend itself against plaintiff claims, and those incurred as ongoing legal expenses to enforce the settlement with the polluters - must be offset from the $11.5 million credit balance contained in the WQLMA. This approach is consistent with the Commission's recent determination regarding the calculation of "net proceeds" in D.10-10-018. In that decision, the Commission found that all contamination-related costs should be offset from gross proceeds in a WQLMA. Contrary to the express intention of the Commission in issuing D.10-10-018 that polluters, rather than ratepayers, pay for water contamination-related expenses, San Gabriel's position is that its ratepayers should be required to pay a portion of these costs. In advancing this position, San Gabriel's intention is to preserve the gross proceeds in the WQLMA for future "sharing" between San Gabriel shareholders and ratepayers.

B. San Gabriel's Arguments

San Gabriel's testimony in support of requiring its ratepayers to pay over $3.4 million in costs to pursue polluters is convoluted and inaccurate.[8] San

---

[5] Exhibit SG-11 (Whitehead) at 4, lines 11-4.

[6] Exhibit SG-9 (Magallanes) at 5, lines 4-27.

[7] Exhibit SG-20 (Whitehead) at 5 and 6, lines 25-2.

[8] For example, Mr. Whitehead asserts that "DRA discussed in detail only the memorandum account categories that relate to legal costs incurred to defend the company against toxic tort lawsuits." Exhibit SG-20 (Whitehead) at 7, lines 12-13. This is incorrect. DRA only referred

(continued on next page)

Gabriel suggests that these legal costs cannot be subtracted from the WQLMA because the $11.5 million credit balance in the WQLMA awaits "later disposition by the Commission" pursuant to determinations in Rulemaking (R.) 09-03-019 (the same proceeding that resulted in D.10-01-018, discussed below).[9] San Gabriel also implies that it is entitled to amortize these legal costs – and therefore preserve the credit balance in the memorandum account - as a form of reward for successfully obtaining $82 million in earlier litigation with the polluters.[10]

With regard to its costs incurred to defend itself against contamination-related claims (defense-related claims), San Gabriel was authorized to amortize such costs in its last GRC decision, D.08-06-022. By Advice Letter No. 370, San Gabriel was authorized to amortize a balance of $422,663 with a surcharge to customers expiring February 23, 2010. San Gabriel seeks authority in this GRC to file a Tier 1 advice letter to amortize the remaining balance of defense-related costs, which were $218,071 as of December 2009.[11]

With regard to its forecast of $166,000 per year to enforce the BPOU settlement agreement in "contract disputes" against the polluters, San Gabriel argues that such expenses are "routine costs of doing business" and are not authorized to be recorded to the WQLMA because the litigation against the polluters was dismissed by court order.[12]

(continued from previous page)
briefly to defense-related legal costs, and eliminated this minor reference in its Errata. DRA did not discuss the issue in any detail, nor did DRA argue that such "costs should be offset by insurance proceeds" as Mr. Whitehead goes on to claim. Exhibit SG-20 (Whitehead) at 7, lines 12-17. Mr. Whitehead also asserts "... DRA fails to acknowledge that the $3.4 million unrecovered balance already reflects the offset of proceeds from polluters for attorney fees." Exhibit SG-20 (Whitehead) at 8, lines 5-7. DRA cannot fathom what this sentence means, as the $3.4 million has not been offset from anything, which is why San Gabriel seeks its recovery.

[9] Exhibit SG-11 (Whitehead) at 5, lines 10-13.

[10] Exhibit SG-20 (Whitehead) at 11, lines 15-21.

[11] Exhibit SG-9 (Magallanes) at 5, lines 4-27.

[12] Exhibit SG-20 (Whitehead) at 6, lines 15-29.

C. The Contamination Accounting Rules Adopted In D.10-10-018

Decision 10-10-018, issued four months ago in the Commission's Rulemaking (R.) 09-03-014, adopts accounting rules for treatment of contamination-related proceeds (Contamination Proceeds Rules). The Rules adopted in D.10-10-018 resolve any question that *all* of San Gabriel's legal expenses incurred as a result of the water contamination, and proposed to be amortized to customers, must instead be offset against the gross proceeds in the WQLMA.[13] Ordering Paragraph 6 defines "net proceeds" in a WQLMA that may be shared between shareholders and ratepayers to exclude "all ... reasonable legal expenses related to litigation" and any reasonable costs that would not have been incurred in the absence of contamination:

> Gross proceeds received minus all **(1) reasonable legal expenses related to litigation,** (2) costs of remedying plants, facilities, and resources to bring the water supply to a safe and reliable condition in accordance with General Order 103-A standards, and **(3) all other reasonable costs and expenses that are the direct result and would not have to be incurred in the absence of such contamination,** including all relevant costs already recovered from ratepayers (for which they have been, or will be, repaid or credited).[14]

Thus, all of these contamination-related charges are to be paid from the gross proceeds in a WQLMA – not amortized to customers – before any "sharing" of net proceeds can occur.

Decision 10-10-018 is unambiguous in that the Contamination Proceeds Rules are meant to govern all future Commission deliberations involving the allocation of contamination proceeds.[15] The Rules are to be applied uniformly to

---

[13] *See, e.g.*, D.10-10-018, Ordering Paragraph 5, *mimeo* at 64.

[14] D.10-10-018, Ordering Paragraph 6, *mimeo* pp. 64-65 (emphases added).

[15] *See, e.g.*, D.10-10-018 *mimeo* at 4 ("Given the current lack of standardized rules that govern contamination-related proceeds, the Commission found it imperative that clear rules and pathways be laid out regarding the inclusion or exclusion of replacement plant in rate base, in

(continued on next page)

all water utilities to ensure consistent treatment of contamination proceeds throughout the water industry. The Decision is entitled "Decision Adopting Rules for Accounting Treatment of Contamination Proceeds…." It states: "Going forward, the accounting treatment and rules adopted in this decision shall govern."[16]

Because *all* contamination-related expenses must be subtracted from gross proceeds, San Gabriel's arguments to distinguish the various legal costs to justify their amortization to customers are irrelevant. Decision 10-10-018 makes no such distinctions, whether among types of legal costs, or any other contamination-related cost. To the extent gross proceeds exist, all such costs must be subtracted from those gross proceeds before any "sharing" of net proceeds in a WQLMA may be contemplated. Consequently, such costs are not properly amortized to ratepayers. This conclusion is clearly intended by the third prong of the definition of "net proceeds," which requires that contamination-related costs amortized to ratepayers be repaid or credited back to ratepayers.

D. Application of D.10-10-018 To San Gabriel's Arguments

1. Legal Costs to Pursue Polluters

As discussed above, San Gabriel has presented muddled arguments in support of its position that its costs of over $3.4 million to pursue polluters should not be paid from the WQLMA. To the extent that San Gabriel believes it is entitled to a "reward" for its successful settlement with the polluters, this is not the proper venue for that determination because San Gabriel has not provided information sufficient to grant its request here. D.10-10-018 provides that such a "reward" or "sharing" between ratepayers and shareholders cannot occur until,

---

(continued from previous page)
order to assure a fair and reasonable allocation of proceeds between ratepayers and shareholders, and that ratepayers only pay a return on used and useful plant in service.").

[16] D.10-10-018 *mimeo* at 55.

among other things: (1) all contaminated plant has been replaced or remediated; (2) all costs have been determined and net proceeds remain; and (3) the Commission determines such "sharing" is appropriate, "where circumstances warrant" and pursuant to an analysis that considers the factors set forth in Appendix D of D.10-10-018. San Gabriel has not met any of these requirements in this GRC.

Further, this Commission rejected a previous San Gabriel request to amortize such costs to ratepayers on the basis that it would be "unfair" to ratepayers. In D.05-07-044 San Gabriel argued that its contamination litigation costs should not be subtracted from its contamination proceeds because its settlement with the polluters expressly waived the Company's rights to obtain legal fees. That decision rejected the Company's proposal and explained that adopting the Company's proposal to pass these costs on to ratepayers where settlement proceeds existed would be unfair:

> If we were to approve San Gabriel's request, those litigation costs would now be collected instead from its ratepayers while it books the settlement award as a shareholder gain. That would be unfair. If ratepayers are to be asked to bear litigation expenses, then any recoveries should first be used to offset those expenses.[17]

The logic of D.05-07-044 applies here, and is consistent with the objectives embodied in the Contamination Proceeds Rules. These legal costs must be paid back to San Gabriel through the proceeds in the WQLMA.

It is also significant to note that these legal costs to pursue polluters are on-going, and thus it is premature to consider sharing of the funds in the WQLMA between shareholders and ratepayers. While the litigation regarding the BPOU is concluded, San Gabriel is pursuing legal action against several other polluters in other operable units. To the extent that San Gabriel incurs reasonable legal

[17] D.05-07-044 *mimeo* at 23.

expenses to pursue the responsible polluters in these other operable units, D.10-10-018 provides a mechanism for San Gabriel to recover those costs from the gross proceeds in the WQLMA.

2. Legal Costs To Defend Against Contamination-Related Claims

DRA did not provide testimony regarding San Gabriel's request to amortize over $200,000 in defense-related legal costs to its ratepayers. San Gabriel's previous two GRCs have permitted San Gabriel to amortize over $400,000 of these costs to its ratepayers.[18] DRA's failure to object to such amortization in this GRC was an oversight. However, DRA notes here that D.10-10-018 is intended to have prospective effect, and that the Commission has a legal obligation to comply with its own Rules.[19] Consequently, while DRA does not seek repayment to ratepayers of those defense-related legal costs which they have previously paid as a result of the determinations in prior GRCs in this proceeding,[20] DRA does seek to have the Contamination Proceeds Rules adopted in D.10-10-018 applied in this GRC. Pursuant to those Rules, it would be inappropriate to amortize any further contamination-related legal costs to customers. Instead, San Gabriel should be authorized to recover all such reasonable costs through the gross proceeds in its WQLMA, consistent with D.10-10-018.

3. On-Going Legal Costs To Enforce A Settlement With The Polluters

San Gabriel argues that it is entitled to amortize its on-going legal expenses required to enforce its settlement agreement with polluters because such expenses are (1) "routine costs of doing business" and (2) not authorized to be recorded to

---

[18] *See* D.05-07-044, Ordering Paragraph 8, *mimeo* at 57 and D.08-06-022, Ordering Paragraph 11, *mimeo* at 72.

[19] See discussion in Section IV, below.

[20] DRA does not hereby waive the right to see recovery of those charges to ratepayers in another proceeding.

the WQLMA because the litigation against the polluters was dismissed by court order.[21]

San Gabriel's arguments are mistaken in two ways. First, as discussed previously, the Contamination Proceeds Rules make no distinction between completed and on-going litigation, nor the reason for the litigation, nor which side of the litigation the utility happens to be on. It simply requires that all contamination-related expenses be subtracted from the gross proceeds in a WQLMA.

There is no dispute that the ongoing $166,000 per year in legal expenses forecasted by San Gabriel are related to enforcing the settlement agreement with the polluters. San Gabriel's on-going legal expenses to enforce the settlement would not exist but for the contamination and the settlement with the polluters; by defining net proceeds as it does, D.10-10-018 effectively prohibits San Gabriel from attempting to preserve the credit balance in the WQLMA in the hopes of "sharing" that credit balance between shareholders and ratepayers in a future proceeding. Rather, the definition of net proceeds in D.10-10-018 contemplates that San Gabriel be authorized to offset such reasonable ongoing "contract dispute" expenses from the WQLMA.

Second, nothing in the resolutions establishing the WQLMAs - W-4089 and W-4094[22] - prevent San Gabriel from recording any contamination-related legal costs in them. In practice, San Gabriel and many of the other water utilities with WQLMAs have booked all types of contamination-related legal costs to these accounts. For example, Resolutions W-4089 and W-4094 appear to only expressly contemplate legal costs to defend lawsuits filed against the utilities. However, the utilities have subsequently, and properly, recorded those costs they

[21] Exhibit SG-20 (Whitehead) at 6, lines 15-29.

[22] For administrative convenience, these resolutions are attached hereto as Attachments B and C respectively.

have incurred to pursue lawsuits against the polluters. This practice has been affirmed in Commission decisions. Similarly, had San Gabriel sought to record its costs to enforce the settlement with polluters – a settlement arising from its previously recorded costs to pursue the polluters – the resolutions would not have prevented this.

E. Conclusion

In summary, San Gabriel's request to amortize its contamination-related legal expenses – whether incurred in plaintiff or defense-related litigation or to enforce a settlement agreement against those polluters after the litigation is ended – should be denied. All such legal expenses should be recorded in the WQLMA, and those expenses determined to be reasonable should be offset against the credit balance in that account, consistent with the requirements of D.10-10-018.

IV. THE COMMISSION HAS A LEGAL OBLIGATION TO COMPLY WITH D.10-10-018

As discussed above, Decision 10-10-018 adopts Contamination Proceeds Rules requiring that all contamination-related costs be deducted from gross proceeds before net proceeds are calculated,[23] and that any remaining net proceeds may be allocated between shareholders and ratepayers, "where circumstances warrant" using a list of prescribed factors.[24]

The Commission may not ignore the Rules adopted in D.10-10-018 and apply different determinations here. First, the Commission is obligated to follow its rules, and failure to do so constitutes legal error.[25] Second, to the extent that the Commission elects to deviate from the Rules in D.10-10-018, Public Utilities Code § 1708 requires that it must provide notice and an opportunity to be heard to

---

[23] D.10-10-018, Ordering Paragraph 6, *mimeo* at 64-65.

[24] D.10-10-018, Ordering Paragraph 5, *mimeo* at 64 and Appendix D.

[25] *See, e.g., Southern California Edison Co. v. Public Utilities Com.*, 140 Cal App 4th 1085 (2006) (decision annulled for Commission's prejudicial failure to proceed in the manner required by law).

the general public, including specifically parties to the rulemaking which produced the Rules.

Section 1708 provides:

> The [C]ommission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

In D.03-04-061 the Commission agreed that effectively modifying an earlier decision through a later decision without notice and an opportunity to be heard constitutes legal error. In that case, The Utility Reform Network (TURN) pointed out that a Commission decision establishing rules regarding natural gas subscriptions effectively negated an earlier decision without providing the requisite notice and opportunity to be heard.[26] Decision 03-04-061 agreed and the Commission granted TURN's application for rehearing.

Applied here, if the Commission elects to deviate from the Contamination Proceeds Rules established in D.10-10-018, it must provide notice and an opportunity to be heard to the parties to R.09-03-014, the rulemaking that resulted in the Contamination Proceeds Rules. However, it is more appropriate for the Commission to follow its recently adopted rules.

V. SAN GABRIEL SHOULD NOT BE PERMITTED TO ESTABLISH A HEALTH AND DENTAL EXPENSE BALANCING ACCOUNT

San Gabriel requests authority to establish a Health and Dental Cost Balancing Account.[27] This would allow San Gabriel to pass through to ratepayers increased health and dental insurance expenses after the Test Year – rather than

[26] D.03-04-061, Ordering Paragraph 1 at p.10.

[27] Exhibit SG-9 (Magallanes) at 7-9.

requiring San Gabriel to accurately budget for these expenses and attempt to reduce costs when increases are proposed. San Gabriel argues that it needs a balancing account because of the magnitude of its health and dental insurance expenses, the "sharp volatility" of the expenses, the difficultly in forecasting the expenses, the uncertainty created by state and national health care legislation, and because health and dental insurance costs are outside of its control. San Gabriel also argues that the Commission's grant of such an account to California Edison Company (SCE) is precedential.

DRA recommends that the Commission disallow this request because: (1) San Gabriel's claim that health and dental insurance costs are outside its control is incorrect; (2) it is premature to take such drastic action based upon how changes in national health care might affect San Gabriel; (3) San Gabriel's testimony overstates the magnitude of cost increases; (4) DRA and San Gabriel have settled on reasonable escalation factors which should adequately protect San Gabriel; and (5) authorizing a health and dental cost balancing account whereby San Gabriel can pass increased insurance costs directly to ratepayers will diminish the Company's incentive for managing these expenses in a cost effective manner.[28]

San Gabriel's claim that health and dental insurance costs are outside its control is incorrect on several levels. First, San Gabriel can control its own costs by sharing some portion of insurance costs with its employees. San Gabriel currently pays 100% of its employees' health and dental insurance costs.[29] Similar to government employee benefits, more private companies, including water utilities such as Park Water, Golden State Water, and San Jose Water, are

[28] Exhibit DRA-1 (Esule) at pp. 10-3 to 10-5. *See also,* Exhibit DRA-2 (Aslam) at pp. 1-21 to1-25.

[29] According to San Gabriel's witness Daniel Dell'Osa, in an e-mail dated November 3, 2010, San Gabriel pays 100% of the cost of the employee's medical and dental insurance and 60% of the added costs when dependents are also covered. Exhibit DRA-1 (Esule) at 10-4, note 146.

requiring that their employees share the cost of medical premiums.[30] According to the State of California Department of Personnel Administration, state employees pay from 17% to 28% of their health care premiums.[31] Golden State Water Company requires that their employees pay 15% of their health care premiums; San Jose Water Company and Park Water Company also require that their employees pay a portion of their health care premiums.[32]

Second, San Gabriel can control costs by comparison shopping for the best insurance rates, which it currently does.[33] San Gabriel elected to renew dental insurance at a 51% increase in rates when other coverage was available at a 14.9% increase, but it has not sought an employee contribution to offset those cost increases.[34]

San Gabriel's primary testimony on the balancing account request implies that the magnitude of possible cost increases to San Gabriel will be significant. It states: "A recent announcement from San Gabriel's insurer, Anthem Blue Cross, of a 39% rate hike for California individual health insurance policyholders demonstrates the potential for sharp increases."[35] While the same testimony acknowledges that that rate hike is unlikely to apply to San Gabriel, it relies on the 39% number to illustrate the volatile swings in health care costs justifying the need for the balancing account.[36] Notably, other testimony reveals that San Gabriel has not been subject to such extreme rate hikes, and does not forecast

---

[30] Exhibit DRA-1 (Esule) at pp. 10-3 to 10-4. *See also* Attachment C of Exhibit DRA-2, a news article explaining that a study shows that more companies are shifting a portion of health care costs to employees.

[31] Exhibit DRA-1 (Esule) at pp. 10-3 to 10-4.

[32] Exhibit DRA-1 (Esule) at pp. 10-3 to 10-4.

[33] See Exhibit SG-10, Attachment E, for a letter from San Gabriel's insurance broker regarding medical and dental renewal rates.

[34] Exhibit DRA-2 (Aslam) at 1-23 and 1-24.

[35] Exhibit SG-9 (Magallanes) at pp. 7-8, lines 29-1.

[36] Exhibit SG-9 (Magallanes) at 8, lines 1-8.

them for future years. Anthem Blue Cross rates increased by only 5.23% in 2010 and San Gabriel projects increases of 12.47% for 2011 and 2012.[37] In total, San Gabriel estimates health insurance cost increases of 13.56% in 2010, 15.89% in 2011, and 12.47% in 2012.[38]

San Gabriel's reliance on D.09-03-025 – authorizing SCE to establish a health insurance balancing account - as precedent supporting San Gabriel's request is inappropriate. First, no other Commission-regulated water company has a balancing account for health and dental cost premiums. Second, Southern California Edison is significantly larger than San Gabriel, with health care costs forecasted at $115 million dollars in 2009.[39] The size of these expenditures and the Commission's desire to protect SCE ratepayers from a possible overestimate of health care expenses, was the impetus behind the Commission's decision to grant SCE the balancing account: "We agree with SCE's forecasting methodology but, because SCE's forecasted medical expenses are such a significant amount, we adopt a two-way balancing account to protect ratepayers from any overestimating of this amount."[40] In contrast, San Gabriel's costs are forecasted at $964,262 in 2011, which is only 1.4% of San Gabriel's proposed revenue requirement for the Los Angeles Division.[41] Because of the difference in scope and scale between the two companies, the comparison is simply inappropriate; the Commission's authorization of SCE's balancing account does not justify establishment of such an account for San Gabriel.

Finally, San Gabriel argues in rebuttal testimony that "DRA's own 'uncertainty' is the most compelling reason supporting San Gabriel's request for

---

[37] Exhibit SG-10 (Nicholson) at 5, lines10-15.

[38] Exhibit SG-10 (Nicholson) at 5, lines 7-8.

[39] D.09-03-025 *mimeo* at 142.

[40] D.09-03-025 *mimeo* at 143.

[41] San Gabriel Application General Workpapers, WP Ex9a, at p.48

this balancing account."[42] San Gabriel misconstrues DRA's uncertainty. DRA merely admits that there is some uncertainty caused by the national health care overhaul, but properly notes that "it is premature to determine how changes in national health care may affect San Gabriel."[43] DRA then explains that San Gabriel's request should be denied because San Gabriel will have no incentive to shop for more economic plans, or require employees to cost-share, if a balancing account is approved.[44]

In lieu of granting San Gabriel's request for a balancing account, DRA proposes that San Gabriel's concerns about increased health care costs be addressed by appropriate escalation factors,[45] combined with an incentive to constrain costs through continuation of its comparison shopping efforts and initiation of employee cost sharing.

VI. CONCLUSION

For all of the foregoing reasons, and for the reasons set-forth in its testimony, the Commission should reject all three of San Gabriel's proposals to amortize its contamination-related legal expenses and reject San Gabriel's proposal to establish a health and dental expense balancing account.

---

[42] Exhibit SG-18 at 3, lines 4-5.

[43] Exhibit DRA-1 (Esule) at 10.3, lines 19-21.

[44] Exhibit DRA-1 (Esule) at 10.3 to 10-5.

[45] The escalation factors adopted in the settlement are 15.89% in 2011 and 12.47% in 2012 for heath insurance and 11.33% in 2011 and 1.75% in 2012 for dental insurance. All of these escalation factors are well above the Consumer Price Index and should adequately protect San Gabriel.

Respectfully submitted,

/s/ Ttraci Bone

Traci Bone
Selina Shek

Attorneys for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Email: tbo@cpuc.ca.gov
Phone: (415) 703-2048
Fax: (415) 703-2262

January 28, 2011

ATTACHMENT A

San Gabriel Advice Letter No. 300 Accepted By The CPUC on February 20, 1998

STATE OF CALIFORNIA

PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 20, 1998

File No. 602-19

Michael L. Whitehead, President
San Gabriel Valley Water Company
11142 Garvey Avenue
EL MONTE, CA 91734

Dear Mr. Whitehead:

The Commission has accepted the utility's request in Advice Letter No. 300 to establish a memorandum account to record water contamination litigation expenses for its Los Angeles District. The effective date of the advice letter filing is January 29, 1998.

Enclosed is a copy of the approved advice letter for the utility's files.

Very truly yours,

JOSIE R. BABARAN
Program Technician III
Small Water Branch

Enclosure

RECEIVED IN LOS ANGELES
JAN 29 1998

SAN GABRIEL VALLEY WATER COMPANY

(U337W)

Advice Letter No. 300 January 29, 1998

TO THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Gabriel Valley Water Company ("San Gabriel") hereby transmits for filing with the Commission an original and four copies of this Advice Letter requesting the Commission to authorize San Gabriel to establish a memorandum account for water contamination litigation expenses relating to San Gabriel's Los Angeles County division.

This filing is submitted in accordance with the Commission's Resolution No. W-4089 dated January 21, 1998. That resolution authorized Southern California Water Company ("SCWC") to establish a memorandum account for water contamination litigation expenses arising in connection with a major civil lawsuit filed against SCWC by numerous plaintiffs in its San Gabriel Valley division. By adopting Resolution No. W-4089, the Commission authorized SCWC to record in the memorandum account, attorneys' fees and litigation expenses relating to that litigation. The Commission also stated that SCWC's reasonable legal expenses incurred actively pursuing its rights under its insurance policies and aggressively pursuing legal action for recompense from the original groundwater polluters would be considered appropriate for inclusion in the memorandum account as well.

On October 30, 1997 San Gabriel was served with a similar water contamination lawsuit filed on behalf of several hundred plaintiffs alleging damages, negligence, wrongful death, strict liability, trespass, continuing trespass, public nuisance, private nuisance, continuing nuisance, negligence per se, absolute liability for ultrahazardous activity, and fraudulent concealment, in connection with public utility water service provided by San Gabriel. That lawsuit, *Kristin Santamaria, et al., v. Suburban Water Systems, et al., including San Gabriel Valley Water Company and Southern California Water Company*, Case No. KC 025 995, was filed in the Los Angeles County Superior Court. San Gabriel firmly believes that the lawsuit is completely without merit and that the company will prevail.

San Gabriel immediately tendered the lawsuit to its general liability insurance carriers for defense and indemnity. Those insurers have notified San Gabriel that they are reserving their rights to deny coverage under the insurance policies but are, however, investigating the matter with respect to coverage and defense issues. Because of the insurance companies' failure to accept coverage or to pay the full cost of defense, San Gabriel has been forced to retain qualified legal counsel to represent the company in this highly complex litigation. As a result,

11142 GARVEY AVENUE • P.O. BOX 6010 • EL MONTE, CALIFORNIA 91734-2010 • (626) 448-6183 • Fax (626) 448-5530

San Gabriel has incurred and will continue to incur significant amounts of attorneys' fees and related litigation expenses. The company is also incurring attorneys' fees and expenses to pursue the insurance carriers to enforce its right to coverage and defense costs under the general liability insurance policies and to pursue claims against parties responsible for the groundwater pollution. Those expenses were not foreseeable and, of course, were not included in the company's last general rate case.

In adopting Resolution No. W-4089 authorizing the SCWC memorandum account, the Commission stated, "Suburban Water Company and San Gabriel Valley Water Company should be allowed to file by advice letter seeking similar memorandum account coverage." Accordingly, San Gabriel requests authority to establish a memorandum account to record the legal fees and related expenses described above and as more fully discussed in Resolution No. W-4089 and also to record any recovery of fees and expenses from the insurance companies or others.

By filing this Advice Letter, San Gabriel does not seek an increase in its current rates or charges. San Gabriel understands that establishing this memorandum account and recording the attorneys' fees and related litigation expenses allows San Gabriel the opportunity to seek recovery of those amounts through a future rate filing with the Commission but does not guarantee recovery. Concurrently with the filing of this Advice Letter the company is providing the Water Division staff with a copy of the lawsuit and other materials documenting the pendency of the lawsuit.

In accordance with the requirements of Section III.G. of General Order No. 96-A, this Advice Letter will be sent to the parties listed on the attached distribution list. No other parties have requested notification of tariff filings related to the Los Angeles County division.

Because of the significant amount of ongoing attorneys' fees and related litigation expenses and in light of the Commission's order in Resolution No. W-4089, San Gabriel requests that the Commission authorize it to establish the memorandum account as of the date of filing of this Advice Letter.

SAN GABRIEL VALLEY WATER COMPANY

M. L. Whitehead

Michael L. Whitehead
President

DISTRIBUTION LIST

Los Angeles County Division
Advice Letter No. 300

City of Arcadia
240 West Huntington Drive
Arcadia, CA 91006

City Clerk, City of Baldwin Park
14403 East Pacific Avenue
Baldwin Park, CA 91706

California-American Water Company
880 Kuhn Drive
Chula Vista, CA 91914

City of El Monte Water Department
11333 Valley Boulevard
El Monte, CA 91734

City of Industry Waterworks System
Post Office Box 3136
La Puente, CA 91744

City Clerk, City of Irwindale
5050 North Irwindale Avenue
Irwindale, CA 91706

City Clerk, City of La Puente
15900 East Main Street
La Puente, CA 91744

La Puente Valley County Water District
15825 East Main Street
La Puente, CA 91744

City of Montebello Water Department
1600 West Beverly Boulevard
Montebello, CA 90640

City of Monterey Park Water Department
320 West Newmark Avenue
Monterey Park, CA 91754

City of Pico Rivera Water Department
6615 Passons Boulevard
Pico Rivera, CA 90660

Pico Water District
Post Office Box 758
Pico Rivera, CA 90660-0758

City Clerk, City of Rosemead
8838 Valley Boulevard
Rosemead, CA 91770

City Clerk, City of San Gabriel
532 West Mission Drive
San Gabriel, CA 91778

San Gabriel County Water District
8366 East Grand Avenue
Rosemead, CA 91770

City of Santa Fe Springs Water Dept.
Post Office Box 2120
Santa Fe Springs, CA 90670

City Clerk, City of South El Monte
1415 Santa Anita Avenue
South El Monte, CA 91733

Southern California Water Company
630 East Foothill Boulevard
San Dimas, CA 91773

Suburban Water Systems
1211 East Center Court Drive
Covina, CA 91724-3603

Valley County Water District
14521 East Ramona Boulevard
Baldwin Park, CA 91706

DISTRIBUTION LIST

Los Angeles County Division
Advice Letter No. 300

City of West Covina Water Dept.
1444 West Garvey Avenue
West Covina, CA 91790

City of Whittier Water Department
13230 East Penn Street
Whittier, CA 90602

Mr. John A. Yager
Water Utilities Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-4208

ATTACHMENT B

CPUC Resolution W-4089

Dated January 21, 1998

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION NO. W-4089
January 21, 1998

RESOLUTION

(RES. W-4089), SOUTHERN CALIFORNIA WATER COMPANY (SCWC). ORDER AUTHORIZING THE ESTABLISHMENT OF A MEMORANDUM ACCOUNT FOR WATER CONTAMINATION LITIGATION EXPENSES FOR ITS SAN GABRIEL DISTRICT.

BY ADVICE LETTER NO. 982-W RECEIVED AUGUST 1, 1997

SUMMARY

This Resolution grants Southern California Water Company's request to establish a memorandum account for the water contamination litigation expenses for its San Gabriel Valley District.

BACKGROUND

On August 1, 1997, SCWC filed Advice Letter No. 982-W requesting authority to establish a new memorandum account applicable to its San Gabriel Valley District. SCWC indicates that the memorandum account will be used to record substantial and unanticipated costs related to a major civil lawsuit filed against the company.

In Advice Letter No. 982-W SCWC advises us that on April 24, 1997, a complaint for negligence, wrongful death, strict liability, trespass, public nuisance, private nuisance, negligence per se, strict liability for ultrahazardous activities, and fraudulent concealment was filed in Los Angeles Superior Court on behalf of more than 140 plaintiffs. The plaintiffs allege that (i) , they are and at all relevant times were customers of SCWC, (ii) , for a period of more than 20 years SCWC has provided and continues to provide them with contaminated water from wells located in the area of the San Gabriel Valley that has been designated a federal environmental (EPA) superfund site, and (iii), the maintenance of this contaminated well water has resulted in the contamination of the ground water, soil, and air with trichloroethylene, perchloroethene, carbon tetrachloride and other solvents. The plaintiffs allege that SCWC's actions were the direct and legal cause of the injuries to the plaintiffs' person, personal

property, and financial interests in undetermined amounts to be determined at trial. Plaintiffs seek damages, including general, special, and punitive damages, according to proof at trial, as well as reasonable attorney's fees and costs of suit, and other appropriate relief.

The Main San Gabriel Water Basin is an adjudicated basin; consequently, all extractions are controlled by an overseer, a board appointed by the LA Superior Court called the "Watermaster". All of the water providers that pump from the basin, including SCWC, work closely with regional, state and federal regulatory health officials responsible for ensuring that all water delivered to customers is safe and in conformance with state and federal water quality standards. There is contamination in the underground aquifer, but there are no allegations or evidence that it was caused by SCWC, or by any other water provider. It is a result of industrial development in the San Gabriel Valley during and after World War II. Responsibility for cleaning up the contamination lies with the federal government under the Superfund Program.

While SCWC believes that the lawsuit has no basis and expects to ultimately prevail in this matter, SCWC has incurred and expects to incur substantial costs in its defense, *which costs may or may not be recoverable through insurance.* The company indicates that these costs were not contemplated at the time of the last general rate case proceeding and are therefore not currently reflected in rates. The costs SCWC seeks to include in the balancing account include legal fees, public relations fees, water quality testing costs and other consulting fees.

SCWC requests to use the memorandum account to record all costs since April 24, 1997, related to this lawsuit, which it claims are not elsewhere reflected in rates. At a later date, SCWC may seek recovery of the recorded costs through a separate rate filing if such costs are not recovered from insurance proceeds. This filing would include a thorough and detailed explanation of the costs incurred and a justification of their reasonableness for recovery. SCWC, in its advice letter, acknowledges that the establishment of the memorandum account and the recording of costs therein only permits SCWC to seek, and does not guarantee, future recovery of these costs.

DISCUSSION

While SCWC contended in its advice letter filing that no Commission resolution is required to establish its request for a memorandum account, historically, the establishment of all memorandum accounts have been by an approved resolution or decision. Indeed, a more appropriate vehicle to have delivered this request for establishment of the memorandum account would probably have been a formal application. But, that was not done, so we shall address the request here.

In informational requests to SCWC and through discussions with SCWC, the company claims that it has spent through November 30, 1997 a total of $369,238 related to the lawsuit. Water Division staff has also determined that in SCWC's last general rate case filing that the company requested an amount for legal expenses totaling $210,000 which relate only to the "normal" day-to-day, year-to-year legal expenses of the company's operations, not for the defense of a lawsuit of this magnitude.

We agree that a lawsuit of this magnitude will require additional expenses beyond that which SCWC could have anticipated in its last general rate case. However, the unexpected expenses associated with the contamination litigation and the resulting memorandum account should be just those associated with the legal defense of the lawsuit. Without prejudging the reasonableness of the expenses SCWC intends to book to the memo account, we want to put the company on record that we will carefully scrutinize the amounts and types of expenses booked to the memorandum account. For example, the company may want to reconsider the inclusion of public relation fees into the memo account. Also, to the degree that the cost of water testing is already covered in rates, the same caution applies.

Insurance Coverage

SCWC has responded to the staff as to the insurance coverage the company has and how it relates to this lawsuit. The company has commercial general liability insurance coverage, (a $2 million primary aggregate coverage with a $250,000 self-insured retention feature) and a $25 million excess umbrella policy. The annual premiums on these policies are $136,000 and $126,000, respectively. SCWC says the policies have pollution exclusion provisions which in certain cases may render them inapplicable to this suit. Also, under the self-insured retention features, it could be liable for the first $250,000 of any damage award.

Some of the company's insurance carriers have stated to the company that they would provide for the cost of the defense, although they are asserting reservation of rights.

We expect that SCWC will not be passive with the insurance companies to which it pays premiums funded by its ratepayers, the customers of the water company. SCWC should actively and quickly pursue resolution of its rights under the insurance policies currently in force. We would also expect SCWC would aggressively pursue legal action for recompense from the original polluters. Reasonable legal expenses associated with these actions would also be considered appropriate for inclusion in the memorandum account.

Regulatory and Ratemaking Implications

The Watermaster is responsible for overseeing pumping by all purveyors in the basin, and essentially dictates how much SCWC (and the others) can pump from the basin. The Watermaster also has oversight authority for any new wells being drilled in the basin, meaning that the Watermaster can dictate where in the basin SCWC (and others) can pump in order to control the migration of the known contamination plumes.

The Department of Health Services (DHS) sets minimum testing requirements which SCWC and other pumpers from the basin follow. DHS also sets minimum water quality standards which SCWC must meet in order to serve its customers. Treatment requirements are set based on these minimum standards. For example, SCWC may, if its well water exceeds the minimum standards, chose to blend its water with other "cleaner" water or chose to not utilize the water from that source well. All treatment must have approval of DHS. DHS has complete oversight of water quality and requires that SCWC meet regulatory standards.

We note for the record at this time that the Commission and the Department of Health Services has a Memorandum of Understanding (MOU) which has as its joint goal and responsibility to ensure that California water companies regulated by the PUC are economically maintaining safe and reliable water supplies. The MOU sets forth those policies and procedures which DHS and the PUC shall follow to achieve this mutual goal. We are in total agreement with the policies and practices of DHS in this matter concerning the contamination in the San Gabriel Valley Basin.

SCWC proposes to track all costs since April 24, 1997 in a memorandum account. A memorandum account is not a guarantee of eventual recovery of expenses, nor is it carried as a regular account under the uniform system of accounts for water utilities. It is carried "off the books", as a memo account. The costs spent so far by SCWC to defend itself in this lawsuit have been booked to its regulated accounts and have been reflected in lesser earnings for the company for its 1997 recorded year then would have been realized had the suit not been filed.

Our policy on memo account treatment has always been that the burden of proof of the reasonableness of expenses charged to the account is the responsibility of the utility requesting reimbursement of such expenses. We see no reason to deviate from this procedure in this instance. We are particularly concerned with the possibility that this lawsuit may possibly end up in a settlement and not go to trial. Should the Commission allow settlement costs (less any insurance proceeds) in rates to be recovered from its ratepayers? If SCWC settles, would that encourage additional suits yielding more settlements?

Also, the Commission said in the Southern California Water Co. Headquarters case, D. 92-03-094 (March 31, 1992) 43 Cal. P.U.C. 2d600:

> "It is a well established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum account or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking. (Emphasis in original.)"

Therefore, we will only allow the tracking of those expenses incurred after the establishment of the account.

We note that this contamination issue is not just SCWC's problem. Suburban Water Company and San Gabriel Valley Water Company also pump from the basin and either have had suits brought against them or expect them to be filed shortly. We are also aware that in northern California the water basins in and around Sacramento have become similarly contaminated with perchlorates, a residual from the production of rocket fuel. Southern California Water Company's Rancho Cordova District and Citizens Utilities are affected.

The Commission has authorized memorandum accounts for specific water quality improvements projects, such as lead and copper testing, as ordered by the DHS and for natural disasters such as earthquakes and fires. However, it has generally been the Commission's policy that litigation costs are not allowable for ratemaking if the utility is found negligent or admits liability. It is too soon to judge the merits of this lawsuit or to the ultimate disposition of the memo account which we will authorize today.

Due to the fact that Suburban Water Company and San Gabriel Valley Water Company are in a similar position to SCWC we will also allow these two companies to file similar advice letters to establish memorandum accounts for water contamination litigation expenses in the San Gabriel Valley Basin should they become involved in similar litigation.

NOTICES AND PROTESTS

There have been no protests to this advice letter filing.

FINDINGS AND CONCLUSIONS

1. On April 24, 1997, a complaint was filed in Los Angles Superior Court alleging among other things that SCWC has provided and continues to provide its customers in its San Gabriel Valley District with contaminated water.

2. SCWC has liability insurance that may or may not cover its expenses to defend itself in court.

3. The source of the alleged contaminated water is the San Gabriel Valley Basin, a EPA Superfund site.

4. The Commission has approved memorandum accounts for water utilities for various expenses, including water quality expenses, earthquakes and fire.

5. The establishment of a memorandum account does not necessarily guarantee full recovery of the expenses booked to that account.

6. SCWC should be required to justify the reasonableness of all expenses associated with the memorandum account, offset by insurance proceeds and/or proceeds from the polluters, before it is granted rate relief.

7. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates.

8. Suburban Water Company and San Gabriel Valley Water Company pump from the same aquifer as does SCWC and have begun to experience some of the same costs as SCWC.

9. Suburban Water Company and San Gabriel Valley Water Company should be allowed to file by advice letter seeking similar memorandum account coverage.

IT IS ORDERED that:

1. Southern California Water Company is authorized to establish a memorandum account for the litigation expenses as discussed in this resolution and incurred after January 21, 1998, the effective date of this resolution, for its San Gabriel Valley District.

2. Southern California Water Company should use every means possible to maximize its insurance proceeds and to seek restitution from the polluters of the basin so as to lessen any possible regulatory burden on its customers.

3. Suburban Water Company and San Gabriel Valley Water Company may file advice letters seeking similar memorandum account treatment as we approved for SCWC.

4. This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 21, 1998. The following Commissioners approved it:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

ATTACHMENT C

CPUC Resolution W-4094

Dated March 26, 1998

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION NO. W-4094
March 26, 1998

RESOLUTION

(RES. W-4094), ALL WATER UTILITIES. ORDER AUTHORIZING THE ESTABLISHMENT OF A MEMORANDUM ACCOUNT FOR WATER CONTAMINATION LITIGATION EXPENSES FOR ALL WATER UTILITIES.

SUMMARY

This Resolution authorizes all water utilities to establish a memorandum account for water contamination litigation expenses.

BACKGROUND

Last year, complaints by numerous plaintiffs for negligence, wrongful death, strict liability, trespass, public nuisance, private nuisance and injunctive relief, have been filed in the Superior Courts of California against Southern California Water Company (SCWC), San Gabriel Valley Water Company (SGVWC), and Suburban Water Company (Suburban). The plaintiffs allege that the maintenance of this contaminated well water has resulted in the contamination of the ground water, soil, and air with trichloroethylene, perchloroethene, carbon tetrachloride and other solvents. On January 21, 1998, the Commission adopted Resolution No. W-4089 authorizing SCWC to establish a memorandum account related to the lawsuits filed against it, and in that resolution we also authorized Suburban and SGVWC to file advice letters seeking similar memorandum account treatment.

DISCUSSION

We have recently been informed by SCWC and Citizens Utilities Company of California (CUCC) that additional lawsuits similar to those described in Resolution No. W-4089 have been filed against SCWC and CUCC for the contamination of ground water, soil and air in the Sacramento Valley Basin. This leads us to believe that water contamination lawsuits of this nature could become widespread throughout the State in the coming years. Therefore, it is

recommended that all water utilities under Commission jurisdiction be authorized to establish memorandum accounts for recording expenses resulting from water contamination litigation. The Class A water utilities should also be authorized to file for recovery of reasonable expenses recorded in the memorandum account in a subsequent general rate case application and the other water utilities should be authorized to request recovery by a separate advice letter filing. It is further recommended that all provisions and conditions of Resolution No. W-4089 apply in this resolution.

NOTICES AND PROTESTS

Public notice is not required at this time. When a utility seeks recovery of expenses recorded in the memorandum account, public notification will be required as prescribed in the advice letter procedures of G.O. No. 96-A.

FINDINGS AND CONCLUSIONS

1. Complaints by numerous plaintiffs have been filed in the Superior Courts of California alleging, among other things, that certain Commission regulated water utilities have provided and continue to provide its customers with contaminated water.

2. On January 21, 1998, the Commission adopted Resolution No. W-4089 authorizing SCWC to establish a memorandum account related to the lawsuits filed against it. In that resolution Suburban and SGVWC were authorized to file advice letters seeking similar memorandum account treatment.

3. Water contamination litigation could become widespread throughout the State in the coming years.

4. All water utilities under Commission jurisdiction should be authorized to establish memorandum accounts for recording expenses resulting from water contamination litigation. The water utilities should also be authorized to file for recovery of reasonable expenses recorded in the memorandum account in a subsequent general rate case application or separate advice letter filing.

5. All conditions and provisions in Resolution No. W-4089 should apply in this resolution.

IT IS ORDERED that:

1. All water utilities under Commission jurisdiction are authorized to establish memorandum accounts for the litigation expenses as discussed in this resolution and incurred after March 26, 1998, the effective date of this resolution.

2. Class A water utilities under Commission jurisdiction are authorized to file for recovery of reasonable expenses recorded in the water contamination litigation expense memorandum account in a subsequent general rate case application.

3. Class B, C, and D water utilities are authorized to file for recovery of reasonable expenses recorded in the water contamination litigation expense memorandum account in a subsequent general rate case or by advice letter.

4. All provisions and conditions in Resolution No. W-4089 will apply in this resolution.

5. This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 26, 1998. The following Commissioners approved it:

WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES**" in **A.10-07-019** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on January 28, 2011 at San Francisco, California.

/s/ JAIME VADO

Jaime Vado

SERVICE LIST
A.10-07-019

TBO@cpuc.ca.gov
dgondek@elmonteca.gov
kendall.macvey@bbklaw.com
mmattes@nossaman.com
dadellosa@sgvwater.com
tjryan@sgvwater.com
hsm@cpuc.ca.gov
vcc@cpuc.ca.gov
jhe@cpuc.ca.gov
sel@cpuc.ca.gov