

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

02-18-11
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)

**REPLY BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES**

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February 18, 2011

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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 Reply 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 and Fontana Divisions.

DRA's Opening Brief addressed almost all of the issues raised by San Gabriel's Opening Brief. DRA will not reargue issues it has discussed previously. Rather, this Reply Brief is limited to providing clarification regarding some of the statements in San Gabriel's Opening Brief. The Commission should not interpret DRA's silence on any matter raised in San Gabriel's Opening Brief as support for San Gabriel's position.

I. SAN GABRIEL’S “CONTRACT LITIGATION” INVOLVES ENFORCEMENT OF SAN GABRIEL’S SETTLEMENT WITH THE POLLUTERS

San Gabriel seeks to charge its customers \$166,000 per year for “contract litigation” that it characterizes as an “ongoing cost of doing business under the complex BPOU Project Agreement.” San Gabriel Opening Brief at 4. To be clear, the “BPOU Project Agreement” referred to by San Gabriel is the *settlement agreement* that San Gabriel executed with the polluters to resolve the Baldwin Park Operable Unit (BPOU) litigation. The settlement agreement would not exist but for the water contamination. As such, enforcement of the settlement agreement – regardless of the current nature of the dispute between San Gabriel and the polluters - is a contamination-related cost which should be deducted, when determined reasonable, from the Water Quality Litigation Memorandum Account (WQLMA) consistent with Decision (D.) 10-10-018, as discussed in DRA’s Opening Brief. The Commission should reject San Gabriel’s artful attempts to characterize its “contract dispute litigation” as something separate from the contamination litigation. This is a classic example of a distinction without a difference.

II. THE MEMORANDUM ACCOUNTS WERE CREATED FOR BOTH PLAINTIFF AND DEFENSE-RELATED CONTAMINATION-RELATED LEGAL EXPENSES

San Gabriel’s Opening Brief suggests that the WQLMA was opened primarily to record legal expenses incurred pursuing the polluters. It states:

San Gabriel’s WQLMA was established in February 1998, pursuant to Commission Resolution No. W-4089, by which the commission encouraged San Gabriel and similarly situated utilities to “aggressively pursue legal action for recompense from the original polluters” ...

In this manner, San Gabriel appears to be attempting to draw a distinction between plaintiff and defense-related litigation costs.

To be clear, Resolution No. W-4089, attached to DRA’s Opening Brief as Attachment B, reflects that the resolution was initially sought by the then Southern California Water Company (SCWC) to record its legal costs of *defending against*

contamination-related lawsuits filed by some of the utility's customers. The resolution authorized the WQLMA on this basis. However, it then went further. In discussing the utility's obligation to proceed against its insurance companies for recovery of its legal costs, the resolution also stated that “[w]e would also expect SCWC would aggressively pursue legal action for recompense from the original polluters.” Resolution W-4089 at 3. Thus, Resolution W-4089 has been construed to permit the recording of both plaintiff and defense-related legal costs, and to permit the recording of the proceeds obtained from both types of litigation, including insurance proceeds for defending against customer contamination claims, and proceeds from settlements with polluters. At the time of the resolution, the Commission saw pursuing the polluters as another way for the utility to obtain funds and thus offset ratepayer liability for the legal costs being incurred by the utility.

The resolution was clear that recovery of the utility's legal costs was not guaranteed: “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.” Resolution W-4089 at 2. “A memorandum account is not a guarantee of eventual recovery of expenses...” Resolution W-4089 at 4.

Finally, Resolution W-4089 was clear that legal costs should be offset from the proceeds in the WQLMA before seeking to put the costs in rates: “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.” Resolution W-4089, Findings and Conclusions #6, at 6 (emphases added). The resolution concludes: “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.” Resolution W-4089, Ordering Paragraph #2, at 7. The resolution then authorizes Suburban Water Company and San Gabriel to “file advice letters seeking similar

memorandum account treatment as we approved for SCWC.” Resolution W-4089, Ordering Paragraph #3, at 7.

In sum, the provisions of Resolution W-4089 are consistent with the requirements of D.10-10-018. They authorize the utility to record all forms of contamination-related legal expenses and proceeds to the WQLMA, and then require legal expenses to be subtracted from those proceeds before the utility may obtain rate relief. Resolution W-4089 does not distinguish among types of legal costs or proceeds for purposes of offsetting costs before seeking rate relief from customers. The Commission should reject any attempt by San Gabriel to make such a distinction as inconsistent with both Resolution W-4089 and D.10-10-018.

III. SAN GABRIEL IS ENTITLED TO RECOVER ITS REASONABLE LEGAL EXPENSES FROM THE WQLMA

San Gabriel complains that it has “been awaiting recovery of the plaintiff-related costs in its WQLMA for over 12 years.” San Gabriel Opening Brief at 10. While the delay is unfortunate, San Gabriel created this problem by its own unwillingness to follow applicable Commission orders. Contrary to the provisions of Resolution W-4089, instead of offsetting its legal expenses from contamination-related proceeds it had recovered in the WQLMA, San Gabriel routinely sought to amortize its plaintiff-related legal costs to its customers. As discussed in DRA’s Opening Brief, the Commission found that proposal “unfair” to San Gabriel’s customers in D.05-07-044 specifically because of the existence of settlement proceeds in the account. Nevertheless, San Gabriel has pursued the same path here, and it should similarly be denied. Thus, consistent with Resolution W-4089, D.05-07-044, and D.10-10-018, the Commission should direct San Gabriel to recover all of its reasonable legal costs, including the plaintiff-related costs, from the gross proceeds in the WQLMA.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should grant the relief requested in DRA's Opening Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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 February 18, 2011 at San Francisco, California.

/s/ ALBERT HILL
Albert Hill

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