

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
10-05-10
04:59 PM

In the Matter of the Application of Valencia Water Company (U342W), a Corporation, for an Order Authorizing it to Increase Rates Charged for Water Service in Order to Realize Increased Annual Revenues of \$4,751,000 or 18.78% in a Test Year Beginning January 2011, \$1,957,000 or 6.40% in a Test Year Beginning January 2012, \$701,000 or 2.16% in an Escalation Year Beginning January 1, 2013, and to Make Further Changes and Additions to its Tariff for Water Service.

Application 10-01-006
(Filed January 4, 2010)

**NOTICE OF *EX PARTE* COMMUNICATION
OF THE DIVISION OF RATEPAYER ADVOCATES**

In accordance with Rule 8.3 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), Division of Ratepayer Advocates (“DRA”) hereby provides notice of a written ex parte communication that occurred on Monday, October 4, 2010, with respect to the above-captioned proceeding.

On October 4, at 6:07 p.m., Darryl Gruen, counsel for DRA, transmitted a message by electronic mail to Administrative Law Judge (“ALJ”) Bruce DeBerry at the e-mail address associated with his employment at the Commission, at 505 Van Ness Avenue, San Francisco, CA 94102. Mr. Gruen’s message was exclusively in writing via e-mail.

The electronic message addressed several points. First, it discussed efforts and problems faced by Valencia Water Company (“Valencia”) and DRA in settling issues identified within Valencia’s Opening Brief under the heading, “Other Requests for Relief”. Second, it clarified DRA’s positions regarding Valencia’s requests that the Commission find it in compliance with water quality

standards, and that the Commission authorize its requests to modify Rules 9 and 11 as identified in its application. Third, it clarified DRA's position regarding Valencia's request for approval of changes to the tariff schedule for its Water SMART program. Finally, it identified the lack of support in the record for Valencia's request to leave its Water Quality Litigation Memorandum Account open.

A copy of the electronic message was sent concurrently to all parties to this proceeding, and is attached to this ex parte notice.

Respectfully submitted,

/s/ Darryl Gruen

DARRYL GRUEN
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

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October 5, 2010

ATTACHMENT

From: Gruen, Darryl
Sent: Monday, October 04, 2010 6:07 PM
To: DeBerry, Bruce
Cc: Gruen, Darryl; 'mmattes@nossaman.com'; 'davidmorse9@gmail.com'; 'bjohnson@valenciawater.com'; 'gmilleman@valenciawater.com'; Larsen, Dave-Isaiah; Cabrera, Jose R.; Fransen, Lindsey; Sanchez, Danilo E.; Yuen, Ting-Pong
Subject: FW: A.10-01-006: Valencia Water Company's "Other Requests for Relief"

Your Honor:

The Division of Ratepayer Advocates is using this e-mail to respond to the e-mail ex parte communication by Valencia Water Company dated Thursday, September 23, 2010, at 12:07 PM. As copies of this communication are being served on all parties at the same time as you are receiving this e-mail, this e-mail satisfies the requirements governing ex parte communications that are set forth by Commission Rule of Practice and Procedure 8.2.

Based upon your guidance, DRA approached Valencia about the possibility of settling some of the issues Valencia identified in Valencia's "Other Requests for Relief" portion of its opening brief, but as we have shared, the parties were unable to settle these issues. However, DRA also wonders whether these issues should have been included in the Settlement Agreements.

DRA could not have known that Valencia's brief would identify many of these other requests for relief for a multitude of reasons. First, many of these such requests were not in Valencia's application. Second, one request was not identified in Valencia's application in the same manner it was identified within Valencia's opening brief. Third, several of Valencia's requests were already included within one of the two settlement agreements.

Valencia claims it was surprised about DRA's request for denial of these issues. In fact, DRA was surprised by the introduction of these requests long after the closing of the record and filing of the briefs, and was left to research and comment upon them with limited time constraints. Moreover, Valencia regularly claimed in its Opening Brief that its application provided for various requests without properly pin citing to applicable portion of the application that requests the relief. Valencia's undocumented request for relief effectively shifts the burden to DRA to search through reams of information in search of Valencia's supporting documentation. Had the settlement discussions between DRA and Valencia incorporated all outstanding issues, not merely the ones Valencia viewed as "disputed", these complications would have been avoided, and valuable staff time and resources of both DRA and Valencia would have been conserved and a more rapid resolution of the rate case would have been possible.

Moreover, DRA wishes to provide several clarifications to the point in its reply brief that recommends the Commission should deny all of Valencia's "Other Requests for Relief". First, DRA does not oppose Valencia's request for a Commission finding that Valencia is in compliance with applicable water quality standards. (Valencia Opening Brief at Page 21.) Second, DRA does not oppose Valencia's requests to modify Rules 9 and 11, as shown on Attachment D to the application (Valencia Opening Brief at Page 23).

Third, DRA wishes to clarify its opposition to Valencia's request for approval of changes in the terms of the tariff schedule. Specifically, Valencia requests that the "Commission specifically approve the changes that *Valencia will need* to make to its tariffs related to the Water SMART Program, Variance Process and WRAM/MCBA as are more fully described in the Supplemental Settlement Agreement." (Opening Brief, Pages 22 and 23). DRA approached Valencia about

settling this issue per Your Honor's guidance, but Valencia refused. Therefore, DRA sees no other option to clarify its reservation than through this e-mail. DRA's concern is that Valencia's request, if granted, inappropriately gives *Valencia* the latitude to determine the tariffs it will need to make. The Commission's Division of Water and Audits has the responsibility to review Valencia's proposed tariffs to ensure that they are consistent with the terms of the Supplemental Settlement Agreement, if the Commission should authorize it.

Finally, DRA notes that Valencia fails to reference any portion of its application, or the record for its request to leave its Water Quality Litigation Memorandum Account ("WQLMA") open to capture any on-going costs and revenues associated with water contamination claims and litigation. (Valencia Opening Brief at Page 19). However, Valencia actually settled its perchlorate litigation in April of 2007. (See Valencia's Exhibit 10, Page 33). DRA is concerned that Valencia will continue to record expenses to this WQLMA with no accountability, even though no litigation is pending. If Valencia must pursue new litigation related to contamination of its water supply, it should request the Commission to open a new memorandum account at that time based upon concrete circumstances.

Respectfully Submitted,

Darryl Gruen
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From: DeBerry, Bruce
Sent: Thursday, September 23, 2010 3:47 PM
To: Mattes, Martin
Cc: Gruen, Darryl; davidmorse@gmail.com; bjohnson@valenciawater.com; gmilleman@valenciawater.com; Larsen, Dave-Isaiah; Cabrera, Jose R.; Fransen, Lindsey; Lane, Mari
Subject: RE: A.10-01-006: Valencia Water Company's "Other Requests for Relief"

I have seen Valencia's Opening Brief and DRA's Reply Brief and although I understand the arguments over these issues, I wonder whether these issues should have been included in the Settlement Agreements. Are parties willing to meet and resolve any or all of these matters and then inform me regarding an additional agreement? Alternatively, I will address any unresolved issues in the decision.

From: Mattes, Martin [mailto:mmattes@nossaman.com]
Sent: Thursday, September 23, 2010 12:07 PM
To: DeBerry, Bruce
Cc: Gruen, Darryl; davidmorse@gmail.com; bjohnson@valenciawater.com; gmilleman@valenciawater.com; Larsen, Dave-Isaiah; Cabrera, Jose R.; Fransen, Lindsey; Lane, Mari
Subject: A.10-01-006: Valencia Water Company's "Other Requests for Relief"

Your Honor --

Valencia Water Company, Applicant in the above-referenced general rate case, directs this ex parte communication to your attention due to the unusual circumstances regarding certain requests for relief presented in Valencia's Opening Brief, at pages 17 to 23. These "Other Requests for Relief" were matters that Valencia considered to be routine and non-controversial. However, in its reply brief, the Division of Ratepayer Advocates took the position that the Commission should deny *all* of Valencia's "Other Requests for Relief." DRA Reply Brief, at 6-7.

Several of Valencia's "Other Requests for Relief" were matters that Valencia had requested in its Application and direct testimony and that had not previously been opposed or even referenced by any party -- including the request for authorization of escalation year rate adjustments (p. 18), the request for a finding of compliance with water quality standards (p. 21), the request for a finding that Valencia's Water Management Program is adequate (p. 22), and the request for minor changes to Tariff Rules 9 and 11 (p. 23). Others were intended simply to call attention to accounting "loose ends" that might otherwise have been overlooked and left unresolved -- including disposition of the Water Quality Litigation Memorandum Account (p. 19), the proposal for a single customer surcharge or surcredit (p. 20), and procedures to implement terms of Valencia's two settlements with DRA (pp. 18-19, 22-23). DRA's broad opposition to all these requests came as a real surprise to Valencia.

Although DRA doesn't mention it specifically, DRA's request that the Commission deny *all* of Valencia's "Other Requests for Relief" includes Valencia's request for a finding of compliance with water quality standards (Valencia Opening Brief, at 21). The Commission's active oversight of water quality compliance is an important protection for both water utilities and their ratepayers, and the Commission's most recent Rate Case Plan decision specifically "require[s] that

any proposed decision in a GRC proceeding make specific findings and recommendations concerning the utility's water quality compliance." D.07-05-062, at 26.

Of greatest concern to Valencia is DRA's opposition to Valencia's request for a finding that its Water Management Program is adequate (DRA Reply Brief, at 11-12). DRA appears to object to the difference in wording of this request from what Valencia asked for in its Application, p. 30 -- a finding that "Valencia's Urban Water Management Plan is sufficient for the Commission's purposes." DRA appears to see a great difference between these two requests, but Valencia does not share that perception.

Submitting Water Management Programs (WMPs) for review in GRCs has been required since 1994, pursuant to D.92-09-084, Ordering Paragraph 7: "Effective January 1, 1994, each Class A water company shall as part of its next general rate case (i) file an updated water management program, and (ii) evaluate the performance of its water management program." The current Rate Case Plan includes a related requirement: The Minimum Data Requirements at the end of the Rate Case Plan appendix to D.07-05-062, at Section II.E.1, requires a demonstration of compliance with Section 10620 of the Water Code by providing a copy of a DWR letter affirming submission of a completed Urban Water Management Plan (UWMP).

At times, the Commission has used the terms "Water Management Plan" and "Water Management Program" interchangeably or has treated the two types of report as identical. *See, e.g., Re California Water Service Co., D.96-06-034; Re California Water Service Co., D.05-07-022*. It is unclear whether the Minimum Data Requirements provision supersedes the longstanding requirement of D.92-09-084. In order to be sure of complying with the Commission's requirements, Valencia included in A.10-01-006 its most recent UWMP (Exhibit 12), the most recent Santa Clarita Valley Water Report (Exhibit 13), and extensive testimony about water supply issues (Exhibit 9), and requested a finding that the UWMP is "sufficient for the Commission's purposes." Because Valencia's evidentiary showing regarding its management of water resources was broader than just the UWMP, Valencia requested a finding that its WMP is adequate. The specific wording of the finding the Commission chooses to render is less important than that there be a finding confirming Valencia's compliance with its water management obligations -- which DRA has never denied.

Respectfully submitted,

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