



**FILED**

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

Application of Great Oaks Water Company (U162W) for Authority to Establish its Authorized Cost of Capital Pursuant to the Rate Case Plan for Water Utilities.

Application 09-05-007  
(Filed May 4, 2009)

**UPDATED ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

**1. Summary**

This Updated Assigned Commissioner Scoping Memo and Ruling adopts a procedural schedule for Great Oaks Water Company (Great Oaks).

By an earlier Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) dated June 23, 2009, pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure (Rule or Rules),<sup>1</sup> the assigned Commissioner determined the procedural schedule; designated the Presiding Officer; and determined the issues to be addressed following a prehearing conference on San Jose Water Company's Application (A.) 09-05-001, Valencia Water Company's A.09-05-002, Park Water and Apple Valley Ranchos Water Company's A.09-05-003, San Gabriel Valley Water Company's A.09-05-004, Suburban Water

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<sup>1</sup> All subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations. The Rules were substantially revised effective September 13, 2006; the current version is available on the Commission's website: [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

Systems' A.09-05-005, and Great Oaks' A.09-05-007. Except where noted, that Scoping Memo also applied to Great Oaks' application. Great Oaks' application was not consolidated with the other applications and it was not required to follow the procedural schedule adopted for them. The earlier Scoping Memo also determined the applicable *ex parte* rules for a ratesetting proceeding. Additionally, it required that parties must electronically serve the assigned Commissioner and Administrative Law Judge all three-day notices required by Rule 8.2(c)(2) for all *ex parte* meetings with decisionmakers. Portions of the June 23, 2009 Scoping Memo are repeated or slightly modified as needed herein for ease of reference and clarity.

## **2. Background**

On May 4, 2009, Great Oaks filed A.09-05-007. On June 9, 2009, the Commission held a duly noticed prehearing conference before the assigned Administrative Law Judge to determine parties, create the service list, identify issues, consider the schedule, and address other matters as necessary to proceed with the applications.

A protest was timely filed by the Division of Ratepayer Advocates. The Scoping Memo deferred scheduling Great Oaks' application to allow for concurrent or consolidated litigation with a likely general rate case. The Scoping Memo stated:

Great Oaks is the smallest of the Class A water companies. As such, its operational and financial risks may be readily distinguished from the other larger companies. Great Oaks will be allowed to consolidate its cost of capital application, A.09-05-007, with its next general rate case which is to be filed later this summer. If the general rate case is delayed any further, A.09-05-007 will be taken up separately. One consequence is that Great Oaks assumes the risk of any loss in revenue requirement

that might result due to the delay in adopting a new cost of capital concurrent with its general rate case. Regardless of whether Great Oaks files a general rate case in 2009, A.09-05-007 will be processed to adopt a fair and reasonable 2010 base year cost of capital; the appropriate capital structure, embedded costs of debt and other non-equity securities; and a just and reasonable return on equity. (Scoping Memo at 4.)

The Scoping Memo also ruled:

Great Oaks Water Company's A.09-05-007 is not consolidated here, it shall either be consolidated with its general rate case or taken up separately. (Scoping Memo, Ruling Para. 3, at 12.)

### **3. General Rate Case – Application 09-09-001**

Great Oaks filed its anticipated general rate case on September 1, 2009, pursuant to the Commission's rate case plan D.07-05-062, which also required Great Oaks to file this application, A.09-05-007, for its cost of capital. We determine here that we will not consolidate A.09-05-007 with the general rate case, A.09-09-001; however we will coordinate the two schedules to minimize any burden on either Great Oaks or the Division of Ratepayer Advocates. A separate scoping memo and ruling will be issued in A.09-01-001.

### **4. Categorization**

The application was determined to be ratesetting and to require hearings in the June 23, 2009 ruling. (Scoping Memo at 3.) There is no change to categorization.

### **5. Hearing and Record; Restrictions on *Ex Parte* Communications**

This Updated Scoping Memo adopts a schedule that includes formal hearings. (See Rules 7.1(a) and 7.3(a).) The record will be composed of all documents filed and served on parties. It will also include testimony and exhibits received at hearing. Parties shall use the procedures contained in

Rule 11.3 to seek resolution of discovery disputes. Parties are directed to either resolve disputes or expeditiously refer disputes to the assigned Administrative Law Judge to avoid adverse impacts on the schedule.

In a ratesetting proceeding involving hearings, *ex parte* communications are permitted only if consistent with certain restrictions, and are subject to reporting requirements. (See Pub. Util. Code § 1701.3(c) and Rules 8.2, 8.3, and 8.5.)

Parties must electronically serve the assigned Commissioner and Administrative Law Judge all three-day notices required by Rule 8.2(c)(2) for all *ex parte* meetings with decisionmakers.

## **6. Scope and Issues**

As already ruled in the Scoping Memo, issues which require further development are listed below. Parties should develop prepared testimony to address any issues on which factual information or policy opinion may be helpful to explain or support their positions. Issues which turn solely on interpretation of law may be deferred to briefing. In the interest of minimizing delay, however, the parties are cautioned against narrowly interpreting the scope of prepared testimony.

There will be one phase to this proceeding. The Commission will adopt a fair and reasonable 2010 base year cost of capital for Great Oaks; it must therefore determine the appropriate capital structure, and a just and reasonable return on equity and total capital.

The Commission also will address the matter of subsequent adjustments to cost of capital, if any, for post-2010, and will determine a just and reasonable adjustment mechanism, if any, to change the adopted cost of capital for the

two years between the 2010 base year and the next cost of capital proceeding for base year 2013.

## **7. Interim Rates Memorandum Account**

Great Oaks has an interim rate mechanism implemented by Advice Letter 196-C dated September 8, 2009. A decision in this proceeding will determine the applicability of the interim rate mechanism to the 2010 base year cost of capital.

## **8. Standard of Review**

As noted in the Scoping Memo, Great Oaks bears the burden of proof to show that the rate of return it requests is just and reasonable and the related ratemaking mechanism is fair.

In order for the Commission to determine whether a settlement (should a settlement be proposed in this proceeding) is in the public interest, the Commission must be convinced that settlement reflects a reasonable and thorough understanding of the applicable application, and that all of the underlying assumptions, analyses, and data are included in the record. This level of understanding and development of an adequate record are necessary to meet the Commission's requirements for approving any settlement.<sup>2</sup>

## **9. Schedule**

Under the schedule outlined below, the Commission will resolve the proceeding within 18 months of issuance of the June 23, 2009 Scoping Memo, in compliance with Pub. Util. Code § 1701.5, which governs the timeline for

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<sup>2</sup> Rule 12.1(d): "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

resolution of ratesetting proceedings. The schedule for Great Oaks' A.09-05-007 that is adopted here comports with the schedule for the general rate case, A.09-09-001, as discussed at the joint prehearing conference held on October 21, 2009. As necessary in either docket, the schedule may be altered and therefore there may be unilateral changes to the schedules for A.09-09-001 and A.09-05-007.

<b>Adopted Schedule for A. 09-05-007</b>	
• Supplemental Testimony	November 15, 2009
• Intervenors' Testimony served	December 9, 2009
• Rebuttal Testimony served	December 28, 2009
• Public Participation Hearings Within or adjacent to Great Oak's service territory at one or more publicly accessible locations.	To be separately noticed and scheduled in conjunction with A.09-09-001.
• Hearings Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102	January 19, 2010 at 10:00 a.m. Continuing as needed.
• Concurrent Opening Briefs	February 18, 2010
• Reply Briefs & Submission	March 4, 2010

## **10. Settlement**

The applicant and the Division Ratepayer Advocates are encouraged to engage in timely settlement discussions before the scheduled evidentiary hearings in order to resolve or limit the issues. Any proposed settlements for A.09-09-001, the general rate case, or A.09-05-007, the cost of capital application, must be independent and separate for each proceeding, be based on the record, and otherwise conform to the Commission's settlement rules. The unwillingness

of any one party to settle in one application should not affect the ability of parties to separately settle the other application. Parties may contact the assigned Administrative Law Judge to request the assistance of a trained neutral third-party mediator from the Commission's available pool for either of the separate applications.

### **11. Sequence of Witnesses**

Great Oaks and the Division Ratepayer Advocates are to agree upon a sequence of witnesses.

### **12. Briefs**

To the fullest extent reasonably possible, parties shall use a common outline for briefs. This practice promotes understandability, consistency, and completeness. Parties should agree on a common outline for briefs before the conclusion of hearings, and shall bring any unresolved questions regarding the common outline to the attention of the Presiding Officer before the end of hearings. Parties shall update the summary of recommendations at the conclusion of hearing and include it as an attachment to the opening briefs. This update should reflect: a summary of the party's position on each issue, further references as appropriate (*e.g.*, to exhibits, transcript pages), and any other information the party determines to be necessary and useful to present its position.

### **13. Final Oral Argument**

A party in a ratesetting proceeding has the right to make a final oral argument before the Commission if the final oral argument is requested within the time and in the manner specified in the Scoping Memo or later ruling.

(*See* Rule 13.13(b).)

Any party seeking to present a final oral argument shall file and serve a separate motion concurrent with its reply brief. The motion shall state the request, subject to be addressed, amount of time requested, recommended procedure and order of presentation, and anything else relevant to the motion. If more than one party is requesting a final oral argument, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentation, and anything else relevant to the motion. A response to the motion may be filed within five days of the motion.

If a final determination is subsequently made that no hearing is required, Rule 13.13(b) shall cease to apply, along with the right to make a final oral argument.

#### **14. Intervenor Compensation**

The first prehearing conference for A.09-05-007 was held on June 9, 2009. No party has timely filed a notice of intention to seek intervenor compensation.

#### **15. Service and Service List**

The official service list was created at the first prehearing conference, and is now on the Commission's internet page. We shall continue with that service list. Any party who wishes to be removed from the service list should send an email to the assigned Administrative Law Judge and request removal. Electronic Service is now the standard in Rule 1.10: *Electronic Mail Service*. All parties to these proceedings shall serve documents and pleadings using electronic mail whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rules 1.9 and 1.10 govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing may be tendered in paper form, as described in Rules 1.5, 1.6, and 1.13, or electronically under Resolution ALJ-188. Additionally, all filings shall be

served in hard copy (as well as e-mail) on the assigned Administrative Law Judge.

## **16. Presiding Officer**

Administrative Law Judge Douglas M. Long is the Presiding Officer for Great Oaks' A.09-05-007. (*See* Rule 13.2.)

### **IT IS RULED** that:

1. The final categorization for this proceeding is ratesetting and hearings are required, as ruled in the Assigned Commissioner's Scoping Memo and Ruling.
2. *Ex parte* communications are permitted with restrictions, and are subject to reporting requirements. (*See* Rules 8.2, 8.3, and 8.5.)
3. Parties must electronically serve the assigned Commissioner and Administrative Law Judge all three-day notices required by Rule 8.2(c)(2) for all *ex parte* meetings with decisionmakers.
4. The issues and schedule are as set forth in the body of this ruling unless amended by a subsequent ruling or order of the Presiding Officer.
5. Parties must begin discovery immediately.
6. Parties must use a common outline for briefs.
7. Parties must follow the procedure stated in the body of this ruling in requesting a final oral argument. (*See* Rule 13.13(b).)
8. An electronic service protocol is in effect. (*See* Rule 1.10.)
9. Administrative Law Judge Douglas M. Long is the Presiding Officer. (*See* Rule 13.2.)

10. This Updated Assigned Commissioner's Scoping Memo and Ruling only applies to Great Oaks Water Company's A.09-05-007.

Dated November 4, 2009, at San Francisco, California.

          /s/ JOHN A. BOHN            
John A. Bohn  
Assigned Commissioner

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated November 4, 2009, at San Francisco, California.

/s/ GLADYS M. DINGLASAN  
Gladys M. Dinglasan