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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Apple Valley)
Ranchos Water Company (U 346 W) for Authority)
to Increase Rates Charged for Water Service by)
\$3,896,586 or 20.0% in 2012, \$547,241 or 2.35%)
in 2013, and \$786,254 or 3.32% in 2014.)
_____)

APPLICATION NO. 11-01-001
(Filed January 3, 2011)

**JOINT MOTION OF THE DIVISION OF RATEPAYER ADVOCATES
AND APPLE VALLEY RANCHOS WATER COMPANY TO APPROVE SETTLEMENT
(SETTLEMENT AGREEMENT AND JOINT COMPARISON EXHIBIT ATTACHED)**

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September 15, 2011

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I. INTRODUCTION

Pursuant to Rule 12.1 of the Commission’s Rules of Practice and Procedure (“Rules”) and in accordance with Administrative Law Judge (“ALJ”) Douglas M. Long’s directive at the June 22, 2011 hearing in this proceeding, the Division of Ratepayer Advocates (“DRA”) and Apple Valley Ranchos Water Company (“AVR” or the “Company”) (together, the “Parties”) submit this Joint Motion to Approve the Settlement Agreement between DRA and AVR on general rate case issues (“Settlement Agreement”). The Settlement Agreement resolves most of the issues in this General Rate Case (“GRC”) proceeding.

In the attached Settlement Agreement (Exhibit A hereto) and Joint Comparison Exhibit (Exhibit B hereto), the Parties address in detail AVR’s revenue requirement determination in this GRC for Test Year 2012. The Settlement Agreement and the Parties’ Joint Comparison Exhibit also discuss AVR’s estimated increases for Escalation Years 2013 and 2014 consistent with the Rate Case Plan adopted by the Commission in D.07-05-062 (“RCP”).

The Parties respectfully request and hereby move the Commission to adopt their Settlement Agreement. The purpose of this Joint Motion is to facilitate the Commission’s expeditious consideration and adoption of the attached Settlement Agreement. The Parties believe the Settlement Agreement fulfills the criteria that the Commission requires for approval of GRC settlements in that it is reasonable in light of the whole record, consistent with the law,

and in the public interest as required by Rule 12.1(d). For these reasons, the Commission should grant this Joint Motion and adopt the proposed settlement as set forth in the attached Settlement Agreement.

II. PROCEDURAL BACKGROUND

In accordance with the RCP, AVR filed its Application A.11-01-001 on January 3, 2011 (“Application”), which was assigned to ALJ Bruce DeBerry. AVR had previously filed its proposed application on November 1, 2010. In its Application, AVR requested a revenue increase for 2012 in the amount of \$3,896,586, or 20.0% above revenues generated by current rates. Pursuant to the escalation year increase methodology adopted by the RCP, AVR indicated it will file advice letters setting out its calculations and supporting analysis for the 2013 and 2014 escalation year rates 45 days prior to the first day of each escalation year. AVR did include estimates of the impact of the escalation methodology for 2013 and 2014 solely for the purpose of providing customer notification. The estimated revenue increase for 2013 was \$547,241, or 2.35% above the proposed revenue requirements for Test Year 2012. The estimated revenue increase for 2014 was \$786,254, or 3.32% above the estimated revenue requirement for 2013. AVR estimated that the requested increase would produce a rate of return on equity of 10.20% and a 9.12% return on the Company’s estimated rate base for Test Year 2012. Concurrent with the filing of the Application, AVR supported its Application with prepared testimony and exhibits, its Revenue Requirements Report for Test Year 2012, its General Office Report for Test Year 2012, AVR’s Urban Water Management Report, and Minimum Data Requirements (“MDR”), all of which were served on January 3, 2011.

Protests to the Application were filed by DRA and the Town of Apple Valley (“The Town”) on February 2, 2011. The Apple Valley Unified School District (“School District”) filed a motion for party status in this proceeding on March 7, 2011 that was granted by ALJ DeBerry on March 9, 2011. On May 26, 2011, ALJ DeBerry denied the motion of James and Christine Smith for party status.

ALJ DeBerry conducted a pre-hearing conference on March 1, 2011 and issued a Scoping Memo on March 21, 2011.

DRA served its testimony and Report on the Results of Operations on May 10, 2011 (“DRA Report”). AVR served its rebuttal testimony on May 27, 2011. The Town filed its testimony on May 17, 2001. The School District did not file testimony.

In accordance with DRA’s statutory mandate to represent and advocate on behalf of the interests of public utility customers within the jurisdiction of the Commission, DRA’s staff members propounded numerous data requests. Thus, in addition to its prepared testimony and Revenue Requirements Report, AVR also supported its Application and provided DRA with responses to DRA’s data requests, workpapers, and responses to informal requests.

A public participation hearing (“PPH”) was conducted by ALJ DeBerry on June 1, 2011 in Apple Valley. The proceeding was reassigned to ALJ Long from ALJ DeBerry on June 10, 2011.

Alternative dispute resolution (“ADR”) was scheduled in this proceeding for June 8-10, 2011. Although the ALJ neutral was unable to conduct the ADR at the last minute, the Parties used the time for the scheduled ADR to engage in settlement negotiations. As a result of these negotiations, which continued after the conclusion of the scheduled ADR session, AVR and DRA settled several outstanding issues raised in DRA’s Report. On September 15, 2011, DRA and AVR executed the attached Settlement Agreement which covers most of the issues raised in DRA’s Report. Those unsettled issues (identified in Section III of this Motion) will be briefed by the Parties. Briefs are due two weeks from the filing of the Motion to approve Settlement. Although the Town and the School District participated in settlement negotiations, neither is a signatory to the Settlement Agreement.

A rescheduled evidentiary hearing in this proceeding occurred on June 20-22, 2011 before ALJ Long. At the hearing, AVR’s and DRA’s testimony and reports were marked as exhibits and entered into the record. Neither the Town nor the School District attended the hearings. At the beginning of the proceedings, AVR and DRA also provided ALJ Long with a summary of the issues that had been settled. Hearings were conducted on the remaining unresolved issues. At the conclusion of the evidentiary hearing on June 22, 2011, ALJ Long instructed AVR and DRA to file their Settlement Agreement at the Settling Parties convenience, along with a comparison exhibit containing a description of the impact of the settlement in relation to AVR’s Application and how individual settlement components relate to AVR’s and DRA’s litigation positions, in accordance with Rule 12.1.

Although the Town is not a party to the Settlement Agreement, it actively participated in the proceeding. Throughout the proceeding the Town was represented by a team of lawyers from Best, Best & Krieger. The Town participated in the prehearing conference, asserting a notice deficiency which was rejected by ALJ DeBerry. During discovery, the Town was provided with a copy of AVR's workpapers (redacted) and the Town stated that it hired a consultant to assist in its review of the workpapers. After receiving a 7 day extension, the Town filed testimony in response to AVR's application (Direct Testimony of Dennis Cron) and AVR submitted rebuttal testimony in response (Jordan Rebuttal). The Town attended the PPH held in the Town of Apple Valley on June 1, 2011, participated in an ADR phone conference with ALJ Weatherford and provided edits to the issues list prepared for ADR. During the week of June 5, 2011, the Town attended (via telephone) extensive settlement negotiations. The Town elected not to participate in the evidentiary hearing, foregoing any cross-examination of AVR or DRA witnesses, conditioned upon AVR's agreement not to call the Town's witness, Mr. Cron, for cross examination at the hearing.

The School District participated occasionally in the proceeding, including telephone attendance at the pre-ADR telephone conference with ALJ Weatherford, attendance at the PPH and telephone participation in a portion of the settlement negotiations, but did not conduct discovery or attend the evidentiary hearing.

III. SUMMARY OF PROVISIONS OF SETTLEMENT AGREEMENT

Based primarily on the use of updated 2010-recorded data, the stipulated escalation factors, adjustments to calculations, and the retention of AVR's bi-monthly billing, as discussed throughout the Settlement Agreement, AVR and DRA revised their revenue requirement estimates and the resulting Test Year 2012 revenue requirement increase estimates. With the incorporation of the settled issues, AVR's revised revenue requirement increase for Test Year 2012 was reduced from 20.0% in its Application to 14.83%, while DRA's has increased from 5.70% to 11.44%. The Settlement Agreement resolves the majority of the issues contested by DRA's Report on the Results of Operations. The Settlement Agreement describes how each issue was resolved, a comparison of the Settling Parties' positions and the settlement on each issue, and a set of references to the record evidence addressing the particular issue. The Settlement Agreement does not address AVR's proposals on the issues of Payroll, Employee Benefits, Office Expansion capital project, Group Pension Balancing Account, Pressure Reducing Valve Memorandum Account, Escalation Year increase amounts for Healthcare and Retiree Healthcare, and the appropriate manner to deal with the contingency that the Carlyle transaction involving AVR's parent, Park Water Company, will not close by January 1, 2012.

IV. THE SETTLEMENT MEETS THE CRITERIA UNDER RULE 12.1

The Settlement Agreement meets all standards for approval by the Commission identified in Rule 12.1(d), which states:

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.

First, the Settlement Agreement is reasonable. Second, the Parties are aware of no statutory provision or prior Commission decision that would be impermissibly contravened or compromised by the Settlement Agreement. Third, the Settlement Agreement is in the public interest. The principal public interest affected by this proceeding is AVR's delivery of safe, reliable water service at reasonable rates. The Settlement advances this interest because it fairly balances AVR's opportunity to earn a reasonable rate of return against the needs of its customers for reasonable rates and safe, reliable water service.

In sum, the Parties believe that the Settlement Agreement and the related documentation convey sufficient information for the Commission to discharge its regulatory obligations. Taken

as a whole, the Settlement Agreement satisfies the Commission's standards for approving settlements presented to it.

A. THE SETTLEMENT AGREEMENT IS REASONABLE IN LIGHT OF THE RECORD AS A WHOLE.

As reflected by their testimony and reports, the Parties have both similar and disparate positions and conclusions about the different issues involved in this GRC proceeding. The Parties have reviewed the testimony, reports, MDR, and data request responses and have been involved in discussions of the issues presented in the Application and are knowledgeable and experienced regarding these issues. The Parties also considered the affordability of the rates, statements presented at the PPH, letters to the Commission, AVR's financial health, and the Commission's Water Action Plan. The Parties conducted arm's length settlement negotiations for several weeks after consideration of all testimony and information. The Parties fully considered the facts and law relevant to this case and reached reasonable compromises on most of the issues raised in AVR's Application. In agreeing to a settlement, the Parties have used their collective experience to produce appropriate, well-founded recommendations. The Settlement Agreement clearly describes its scope and expresses the factual and legal considerations that form the grounds on which its approval is requested. The Parties believe the Settlement balances the various interests affected in this proceeding, reflects appropriate compromises of the Parties' litigation positions, and is reasonable.

B. THE SETTLEMENT IS CONSISTENT WITH LAW AND PRIOR COMMISSION DECISIONS.

The Parties are aware of no statutory provisions or prior Commission decisions that would be contravened or compromised by the Settlement Agreement. The issues resolved in the Settlement Agreement are within the scope of the proceeding. If adopted, the Settlement Agreement will result in reasonable rates for AVR's customers.

C. THE SETTLEMENT AGREEMENT IS IN THE PUBLIC INTEREST.

The Commission's first consideration on this point should be that this Settlement Agreement results in reasonable rates to customers, yet provides adequate funding to AVR to ensure safe and reliable provision of water service to those customers.

Numerous Commission decisions have endorsed settlements as an “appropriate method of alternative ratemaking” and express a strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record. See, e.g., D.88-12-083 (30 CPUC 2d 189, 221-23) and D.91-05-029 (40 CPUC 2d 301, 326). This policy supports many worthwhile goals, including not only reducing the expense of litigation, and conserving scarce Commission resources, but also allowing parties to reduce the risk that litigation will produce unacceptable results. D.92-12-019 (46 CPUC 2d 538, 553). This strong public policy favoring settlements also weighs in favor of the Commission resisting the temptation to alter the results of the negotiation process. As long as a settlement taken as a whole is fair, reasonable, and in the public interest, it should be adopted without change.

Furthermore, the provisions of the Settlement Agreement and the Joint Comparison Exhibit show that the settled values generally fall within or below the litigation positions initially established by the Parties. Thus, from reviewing the Settlement Agreement, the Joint Comparison Exhibit, and the process used to arrive at these mutually acceptable outcomes, the Commission may derive substantial assurance that the requirements of Rule 12 and Public Utilities Code Section 451 have been met.

While the Settlement also advances the interest of providing speedy resolution of contested issues and conservation of Commission resources, factors other than “avoiding the time and expense of hearings” have traditionally been weighed by the Commission in assessing whether or not a settlement is in the public interest. For example, the Commission has looked at the extent to which discovery has been completed, the stage of the proceeding, whether the Parties had undertaken a thorough review of the issues, the experience of counsel, the amount offered in settlement, the presence of a governmental participant, the overall strength of applicant’s case, and the relative risks and complexities of the litigation. See, e.g., Decision 00-09-037, 2000 Cal. PUC LEXIS 697 (citing Officers for Justice v. Civil Service Commission of the City and County of San Francisco (9th Cir. 1982) 688 F.2d 615, 625). In the present case, prepared testimony has been served, extensive discovery was completed, and evidentiary hearings were held on June 20-22, 2011. The Parties have undertaken a thorough review of the issues and have been represented by experienced counsel. The recommended revenue requirement is a reasonable amount, as discussed above.

The involvement and presence of DRA, Commission staff responsible for ratepayer interests, as a signatory to the Settlement is strongly indicative of the fact that it is reasonable and

in the public interest. As the Commission has explained, a settlement that “commands broad support among participants fairly reflective of the affected interests” and “does not contain terms which contravene statutory provisions or prior Commission decisions” well serves the public interest. Re San Diego Gas & Elec., D.92-19-019, 46 CPUC2d at 552. DRA is “ideally positioned to comment on the operation of the utility and ratepayer perception” as required by D.92-12-019. Id., at 16.

In addition, the Settlement Agreement and the developed record before the Commission convey sufficient information for the Commission to assess the relative risks and complexities of the litigation and to discharge its regulatory obligations.

The Parties believe that the Settlement Agreement is a reasonable compromise of their respective positions, and that the outcome in the Settlement Agreement is “reasonable in light of the whole record, consistent with law, and in the public interest,” as required by Rule 12.1(d). Looking at each of the various factors, the Commission can and should determine that the Settlement Agreement is in the public interest and is the preferred outcome for this proceeding. Accordingly, the Parties request that the Commission adopt the Settlement Agreement without modification.

V. CONCLUSION

For the reasons discussed above, AVR and DRA respectfully request the Commission approve the attached Settlement Agreement without modification. As discussed, the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and is in the public interest. After a thorough review and analysis of information concerning AVR’s and DRA’s positions and the strengths and weaknesses of the other’s position in this proceeding, the Parties strongly believe that the Settlement Agreement accomplishes a mutually reasonable and acceptable outcome of the Test Year 2012 revenue requirement issues in this proceeding.

Therefore, the Parties respectfully request that the Commission grant this Motion and: (1) adopt the attached Settlement Agreement as reasonable in light of the whole record, consistent with law and in the public interest; (2) authorize AVR to modify water rates for service, consistent with the terms of the Settlement Agreement, subject to further modification resulting from the final decision on the remaining unsettled issues in this proceeding; (3) make the findings and grant the requests to implement the fees, programs, mechanisms, and procedures as set forth in AVR’s Application, as modified by the Settlement Agreement and final decision

on the remaining unsettled issues, including without limitation, Section 18 of the Settlement Agreement; and (4) grant such other and further relief as the Commission finds just and reasonable.

Executed at San Francisco, California:

September 15, 2011

Respectfully submitted,

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