STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

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

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October 15, 2013

Agenda ID #12496
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 11-07-005:

This is the proposed decision of Administrative Law Judge (ALJ) Douglas Long, previously designated as the presiding officer in this proceeding. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 10 days beforehand. When the RDM is held, there is a related ex parte communications prohibition period. (See Rule 8.3(c)(4).)

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Long at dug@cpuc.ca.gov and assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ MARYAM EBKE for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

Decision **PROPOSED DECISION OF ALJ LONG** (Mailed 10/15/2013)

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 Service in its Fontana Water Company Division by $8,164,800 or 14.2% in July 2012, $3,067,400 or 4.7% in July 2013, and $3,758,200 or 5.6% in July 2014.	Application 11-07-005 (Filed July 11, 2011)

(See Attachment for a List of Appearances)

DECISION MODIFYING A PROPOSED BILATERAL SETTLEMENT OF SAN GABRIEL VALLEY WATER COMPANY'S 2012 TEST YEAR GENERAL RATE CASE FOR THE FONTANA WATER COMPANY DIVISION AND RESOLVES ALL OTHER CONTESTED ISSUES

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ATTACHMENT – List of Appearances

ATTACHMENT I – Settlement Agreement Between the Division of Ratepayer Advocates and San Gabriel Valley Water Company on Issues Presented in the Present General Rate Case

ATTACHMENT II – San Gabriel Valley Water Company, Fontana Water Company Division (Rate Tables)

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DECISION MODIFYING A PROPOSED BILATERAL SETTLEMENT OF SAN GABRIEL VALLEY WATER COMPANY'S 2012 TEST YEAR GENERAL RATE CASE FOR THE FONTANA WATER COMPANY DIVISION AND RESOLVES ALL OTHER CONTESTED ISSUES

Summary

In today's decision we reject the proposed bilateral settlement as offered by San Gabriel Valley Water Company (San Gabriel or Company) for its Fontana Water Company Division and the Office of Ratepayer Advocates (ORA)[1] because it does not fairly resolve all of the issues in the proceeding. We find that the City of Fontana (City) and the Fontana School District (Schools) more reasonably resolve certain issues and, based upon the City and Schools' arguments, we conclude that San Gabriel's customers would be better served with an alternative ratemaking outcome. We, therefore, propose to modify the bilateral settlement based upon those litigated positions more persuasively offered by the City and Schools. Pursuant to Rule 12.4(c), San Gabriel and ORA must now decide whether to accept the proposed modifications to the settlement or seek other relief as allowed by the rules. As a result of the modified settlement, rates would increase by 3.76%.

In addition, this decision also addresses litigated issues not included in the settlement between San Gabriel and ORA and that are also opposed by the City and Schools.

[1] "The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013."

This proceeding remains open for San Gabriel and ORA to either accept the modified settlement or seek other relief. This decision provides sufficient revenue to allow San Gabriel to offer safe and reliable service and a reasonable opportunity to earn a fair return.

1. Background

San Gabriel Valley Water Company (San Gabriel or Company) is a Class-A water utility subject to the Commission's jurisdiction.

For the Test Year beginning July 1, 2012 and Escalation Years beginning July 1, 2013 and July 1, 2014, San Gabriel requests increases in rates for:

1. general metered water service;
2. conservation rate metered water service;
3. California Alternative Rates for Water;
4. private fire service;
5. construction and tank truck service, service to tract houses during construction; and
6. Facilities Fees in its Fontana Water Company Division.[2]

San Gabriel is also requesting that the tariff rate for recycled water, which the company requested by a separate application (Application (A.) 11-06-005), be adjusted to equal 75% of the quantity rate the Commission adopts for general

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[2] For simplicity we refer throughout this decision to San Gabriel generally and do not introduce the additional term "Fontana" or "Division." We also use City and Schools to likewise avoid either awkward acronyms or using three variations of "Fontana" for the operating division, the City and the Schools. On the other hand, "ORA" is a commonly used and accepted acronym and well known in the Commission's daily business.

All findings and orders herein are applicable only to San Gabriel's Fontana Water Company Division.

metered service in this proceeding. Finally, San Gabriel is requesting advice letter treatment for an in-conduit hydro generation project.

2. Standard of Proof

Applicant bears the burden of proof to show that the regulatory relief it requests is just and reasonable. In order for the Commission to consider the proposed bilateral settlement in this proceeding as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the underlying issues.

3. There was not an All-Party Settlement

The proposed bilateral settlement (Attachment I) comes before the Commission after service of prepared testimony and rebuttal and after evidentiary hearings. Therefore, we must rely on the settlement's factual recital by the two settling parties of the circumstances which led to their settlement. Based on this recital, along all of our factual record, we find that the settlement is not consistent with the facts and the persuasive arguments offered by the City and Schools. (Rule 12. 1(d).)

There is no requirement that we must accept all settlements or that we cannot adopt a settlement which does not include all parties. In all cases, we must test the settlement against Rule 12 and we must consider the positions of parties opposing any bilateral settlement.[3] Finally, any settlement must be fair to all parties and the ratepayers.

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[3] We refer to this settlement as "bilateral" because it is between two opposing parties, San Gabriel and ORA, but it excludes the "third side" of significant ratepayer interests represented by the City and School. Thus it fails to satisfy "all" sides.

4. Proposed Settlement is not in the Public Interest

Based on our review of all filed information, the testimony served and presented in evidentiary hearings, and a careful review of the proposed bilateral settlement between two of the parties, as discussed below, we find that although the proposed settlement was offered by competent and adequately prepared parties able to make informed choices in the settlement process, we cannot find, as required by Rule 12.1 of the Commission's Rules of Practice and Procedure (Rules), the proposed settlement to be reasonable in light of the whole record, consistent with law, and in the public interest.

The proposed settlement is only offered by the applicant and the Office of Ratepayer Advocates (ORA) and specifically ignores, and in parts is unacceptable and even unfair to two other parties, the City of Fontana (City) and the Fontana School District (Schools). The City and Schools presented persuasive arguments which support superior outcomes that are at variance with the settlement. These parties are also competent and adequately prepared and therefore able to make informed choices in the settlement process and they chose to not join the bilateral settlement.

We, therefore, find the bilateral settlement is not in the public interest, and therefore, we must reject the bilateral settlement between San Gabriel and ORA. We must instead resolve the issues litigated by the City and Schools and then resolve the remaining settled issues.

5. Alternative to the Proposed Settlement's Terms

No item settled in this proceeding is dispositive of the appropriate rate treatment in subsequent proceedings. (Rule 12.5.) We find as discussed below in detail for each issue that the City and Schools otherwise raise significant doubt about the fairness of portions of the settlement so that we must consider the

contested issues, and, where persuasive, we must resolve those differences in favor of the City and Schools. As a result of rejecting the settlement we have two options: 1) to resolve all other issues one at a time based upon the litigated record; or 2) review the residual of the settlement to determine whether the outcomes are consistent with the record, consistent with the law, and therefore, acceptable as a reasonable outcome. We choose this latter option (in Section 8 below), to review and accept the balance of the settlement, and then, pursuant to Rule 12.4(c), allow San Gabriel and ORA to either accept the modified terms or to request other relief.[4] After reviewing the record, we can adopt the remainder of the bilateral settlement because all parties, including the City and the Schools, do not dispute the other issues resolved in the bilateral agreement between San Gabriel and ORA, and therefore, we can find those settled outcomes are consistent with the record and in the public interest.

6. Consistent with the Law

Nothing in the proposed settlement precludes or limits in any way the Commission's ability to regulate San Gabriel in the future. However, several of the terms are not fair to ratepayers and thus are not in the public interest, and

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[4] **12.4. (Rule 12.4) Rejection of Settlement.**

The Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest. Upon rejection of the settlement, the Commission may take various steps, including the following:

(a) Hold hearings on the underlying issues, in which case the parties to the settlement may either withdraw it or offer it as joint testimony,

(b) Allow the parties time to renegotiate the settlement, and

(c) Propose alternative terms to the parties to the settlement which are acceptable to the Commission and allow the parties reasonable time within which to elect to accept such terms or to request other relief.

those terms do not satisfy the law. We, therefore, reject those terms as discussed below. As adopted herein, we find the modified settlement to be consistent with the law.

7. Adopting the Undisputed Settlement Terms

We find after reviewing the bilateral settlement in the absence of litigation briefs on the settlement issues not disputed by the City or Schools that the residual, undisputed, terms are reasonable outcomes based on the record available in this proceeding. It would be wasteful of time and resources to needlessly litigate the issues which are otherwise acceptable to all three sides: San Gabriel, ORA, and the City and Schools. There is no requirement that the settlement outcome mimic what the assigned Judge might have determined as reasonable on the record; only that the outcome is reasonable and not outside the bounds of the record. Therefore, unless San Gabriel and ORA reject the modified settlement we otherwise adopt the settlement terms except for the specific modifications contained in this decision.

8. Withdrawal of Facility Fee Increase

San Gabriel filed a motion on September 21, 2012, indicating that it had determined that a more thorough analysis of its proposed increase in Facilities Fees is warranted, especially with respect to private fire service connections. Because the Facilities Fees proposal does not affect any of the other rates proposed in this general rate case San Gabriel requests to withdraw the Facilities Fees proposal. San Gabriel may re-file a request for a change to its Facilities Fees in its next general rate case.

We set aside submission (this proceeding was otherwise submitted upon the filing of reply briefs) to grant the motion and resubmit the proceeding as of September 28, 2012, five business days after the motion. No party objected and we find it reasonable to consider a more thorough proposal in the next rate case.

9. Disputed Projects Otherwise Included in the Bilateral Settlement

9.1. Plant F15

Originally, San Gabriel requested $6,970,000 for Plant F15[5] to acquire land and to install a reservoir, and related facilities. The City opposed this project. ORA also originally opposed the project and recommended it be deferred. Under the bilateral settlement $4,650,000 is to be expended on the project in 2014. The City argues that this project is directly related to the Sand Hill Water Treatment Facility (Sand Hill) discussed elsewhere. The City points out that this project must be granted permits by the City and it raises significant issues, which make construction in 2014 unlikely. (City Opening Brief at 11-12.) The City argues further that the bilateral settlement expressly provides for a land swap with San Gabriel's affiliate, Rosemead Properties. The City objects because a land swap involving Rosemead Properties for the Fontana office complex was the subject of controversy and litigation in prior rate proceedings where the Commission disallowed Rosemead Properties from profiting from the transaction. (*Id*, citing to Decision (D.) 07-04-046; at 47-49.) The City argues the settlement does not provide any ratepayer benefits for the included $4.6 million.

[5] Regrettably, the Company gave numeric titles to many of the projects rather than descriptive titles. We use the numeric or descriptive titles as offered by the Company.

We find that the City identified sufficient doubts for the viability of this project and thus ratepayers are better served by deferring consideration until the next general rate case where we would expect, at a minimum, San Gabriel would have approved permits and definite plan in place for our consideration. We, therefore, exclude this project from rates at this time without prejudice, which means if San Gabriel can satisfy the permitting and planning issues, it can make a request in the next general rate case.

9.2. Plant F20

San Gabriel proposed spending $2.65 million on a new reservoir needed while an existing reservoir is re-painted. The City proposed that San Gabriel only needs $100,000 to repaint the interior of the existing reservoir which can be done, without a new reservoir, while seasonal demand is low. The bilateral settlement would allow $300,000 for land – land which is owned by the City. The City not only gives no indication of being willing to participate but it opposes the project. (City Opening Brief at 13.)

We find it completely inappropriate to allow any costs in rates for a project ostensibly on City land when the City opposes the project. We therefore disallow $300,000 proposed in the settlement but will allow $100,000 for painting costs for the existing tank, which needs to be repainted.

9.3. Plant F23

In the bilateral settlement ORA and San Gabriel agree to include $3,435,000 for 2011 through 2013, necessary in part to fund amenities required by the Conditional Use Permit imposed by the City. The City asserts that it does not object to the project yet states this amount and purpose are not supported by the record. (City Opening Brief at 14.) The City then states: "(A)ny suggestion that $3,435,000 is required because of conditions imposed by the City is baseless

and misleading." (*Id.*) We trust the City not to be trying to reduce rates by a slight-of-hand: i.e., knowing the claim to be true but procedurally arguing the justification is not explicitly included in the record. Therefore, we will exclude the $3,435,000 but allow San Gabriel to establish a Memorandum Account to track costs required by the Condition Use Permit for Plant F23. If San Gabriel actually spends money to fund amenities required by a Conditional Use Permit imposed by the City related to this project, then the Company may seek recovery of that money in its next general rate case (or other appropriate proceeding). San Gabriel must of course convincingly show that these expenditures were the result of a Conditional Use Permit mandate.

9.4. Plant F53

Plant F53 is a Sand Hill related proposal to build two reservoirs, a booster station, and other improvements for $3.45 million. The project is also supposed to provide energy savings. The City argues that it should be assessed in the context of Sand Hill. But, additionally, there are other deficiencies in San Gabriel's justification for the project, in particular the failure to provide a cost-benefit analysis, a point also originally raised by ORA before it settled. (City Opening Brief at 14.)

As discussed below, we find that the Company has not justified this project nor changed our minds about Sand Hill, generally. We therefore agree with the City that neither San Gabriel's direct showing nor the bilateral settlement justify this expenditure.

9.5. Plant F56

San Gabriel requested $3,070,000 for a well replacement site but in the settlement it agreed on $1,000,000 with ORA. The City objects because first, there is no defined project in the settlement to be achieved with the $1,000,000 and second, the City asserts that in the litigation phase there were un-rebutted issues of water contamination because the original project did not include a provision for water treatment. (City Opening Brief at 15.) The City recommends deferring the entire project to the next general rate case where San Gabriel should provide both a cost-benefit study to support the proposed plant and it should also address water contamination issues.

We agree that it makes no sense to include an allowance for only part of a project when there are outstanding questions about both the cost-benefits and contamination. We note that the settlement did not appear to simply agree on a reduced cost for a complete project; when parties agree to a specific scope of work, for a clearly defined cost, then we can more easily accept that reasonable parties reached an agreement that differs from their litigated positions. This project does not appear to satisfy the need for specificity of both cost and scope which is necessary before we will impose a cost on ratepayers.

9.6. Plant F59

San Gabriel originally requested $2.5 million for the project which is related to Sand Hill discussed below. The bilateral settlement between the Company and ORA includes only $700,000 for land acquired in 2011. However, the project is not only extremely preliminary but there is also a concern that there may be litigation over water rights. The City argues that this highlights San Gabriel's failure to meet its burden of proof that the project is viable and,

more importantly, necessary. The settlement says that San Gabriel will subsequently perform a cost-benefit analysis.

We agree with the City that this project is not timely and therefore it is unlikely that the land genuinely meets the test of held for a definite future use which would normally allow rate base treatment for land acquired in anticipation of a viable project. We exclude the land costs at this time. In any future proceeding, if San Gabriel can show a persuasive cost-benefit analysis for this project, which would suggest the land will become used and useful, then it may re-apply for cost recovery.

9.7. Advanced Meter Reading Program

San Gabriel proposes to implement an advanced meter reader program and asked for $4.8 million dollars towards the long-term project. The settlement would allow $2.86 million for a 10-year project. (Proposed Settlement at 23.) The City argues that the Company's principal justification was labor savings otherwise caused by customer growth, but forecast customer growth is zero. The City further argues that there is no evidence that the proposed technology will not be obsolete very soon, and when faced with large rate increases in a time of financial hardship generally, the program is unreasonable. (City Opening Brief at 16-17.)

So far, the Commission has only allowed California-American Water Company to install a form of an automated system in one district. Thus, there is not a strong local water industry experience with advanced meter technology.

The current economic conditions do not justify San Gabriel undertaking an advanced meter reader program, especially when there is no customer growth and no valid cost-benefit justification offered in the record. There is no good need shown to allow San Gabriel to be one of the first to experiment with

advanced meters; it is a relatively small company, even for a Class-A water company, and the customers would be better served if San Gabriel were not an "early adopter" of new technology.

9.8. Hydro-Turbine Pilot Program

As explained in the Settlement Agreement, San Gabriel proposed to construct an in-conduit hydroelectric generating station as a pilot project with NLine Energy, Inc., to demonstrate the viability of converting a hydraulic pressure differential into clean, renewable electrical energy. (San Gabriel Opening Brief at 22.) The City argues that the plans are incomplete, that the water supply is uncertain and no one has seen an adequate explanation of how the project would operate.

We agree with the City, we cannot rely on the settlement to justify the project. The record shows that San Gabriel's witness changed the project description from his direct testimony in his supplemental testimony. (Exhibits (Ex.) SG-5 and SG-15.) The City argues the proposal will be unreliable, there was no feasibility analysis, and provides no benefits. (City Opening Brief at 22.) We, therefore, disallow the hydro-turbine project at this time.

9.9. Mains

The City disputes the allowance settled upon by San Gabriel and ORA for mains replacement which was ostensibly based on the City's Capital Improvement Plan. The City, which presumably knows it plan the best, argues that based on the plan only $5.2 million would correspond to work which would be consistent with street work planned by the City. (City Opening Brief at 19.)

This is another item where San Gabriel and ORA, "settled an issued (down from $29 million to $16.6 million) where a critical participant, the City, did not agree. There is an $11.4 million difference between the City's estimate and the

bilateral settlement. As noted in other issues, we will not let two parties ride roughshod over another and call their bilateral bargain a "settlement."

We will adopt the City's estimate for mains work which coincides with the City's Capital Improvement Plan.

10. Disputed Issues

10.1. Plant F7

In San Gabriel's 2008 general rate case, A.08-07-009, the Commission excluded $537,868 from rate base – these expenses arose from the retaining wall at Plant F7 (Plant F7 was included as Job 4870 in D.09-06-027). San Gabriel asks to revisit those dollars here and we decline.

Although significant time and testimony was devoted to the issue, San Gabriel was not given leave to bring this issue back and ORA is correct that D.09-06-027 disposed of the issue. (ORA Opening Brief at 6 ff.) We, therefore, decline to reconsider this out-of-time issue.

10.2. Walnut Avenue Pipeline Project (Walnut Avenue)

The Walnut Avenue facility was a project previously rejected, but San Gabriel was allowed to revisit the issue. D.09-06-027 required San Gabriel to demonstrate that the project was necessary for improved reliability.[6] ORA argues here that San Gabriel again fails to justify the reliability necessity of the project and merely reargues the same case.

San Gabriel argues essentially two points: the first, which has little direct merit, is that the line has been in service for six years without rate recovery. In

[6] D.09-06-027, Findings of Fact 120, 122, cited by ORA Opening Brief, footnote 20.

fact, that is the outcome for imprudent costs; they remain unrecovered even if the facility is functional. The question in D.09-06-027 was never functionality, it was reliability. San Gabriel does address this point, too. It argues that the Walnut Avenue facility serves a large number of customers, reduces the usage of distribution pipelines, and it improves service in high-demand summer months. (San Gabriel Opening Brief at 29 ff.)

It would appear that the record this time is sufficiently robust to support a finding that the Walnut Avenue project does, in fact, provide reliability benefits. The passage of time is otherwise irrelevant. Therefore, we will allow San Gabriel to begin recovery of the remaining un-depreciated costs in rates because San Gabriel has finally shown the reliability benefit of the project. San Gabriel should learn from this experience that it must always make it best and most thorough case in its initial showing otherwise it risks failing to meet its burden of proof and the Commission is not obliged to give San Gabriel or any utility multiple opportunities to justify a ratemaking proposal.

10.3. Slemmer Settlement

The Slemmer Settlement was extensively litigated in the prior decision relating to settlement reached in the civil suit against San Gabriel and other defendants in the San Bernardino Superior Court on February 14, 2002.[7] In the Slemmer suit, the plaintiffs alleged their rights as minority shareholders in Fontana Union Water Company (Fontana Union) had been violated by the defendants, one of whom was San Gabriel. Among the plaintiff's allegations were that the defendants violated anti-trust laws by settling a lawsuit involving

access to Lytle Creek surface water, and whether the plaintiffs had received a reasonable price for the 358.6 shares previously acquired by San Gabriel. A settlement was entered into by the parties and approved by the San Bernardino Superior Court on July 24, 2006. The settlement terminated the suit, San Gabriel paid $4,200,000 to the plaintiffs, and San Gabriel received an additional 179.2 shares of Fontana Union stock.

The essential question that San Gabriel was allowed to revisit in this proceeding was whether the $1,585,920 of the $4,200,000 paid in the Slemmer Settlement reasonably reflects the fair value to ratepayers for the additional 179.2 shares of Fontana Union stock acquired by San Gabriel. If the fair value is $1,585,920 then the next question to resolve here is whether that cost should be allowed in rate base. San Gabriel is allowed to revisit this issue because D.09-06-027 required that San Gabriel "explain in its exhibits [in this proceeding] why any information in those exhibits that was not included in the record in this proceeding regarding this issue could not have been provided in [the prior] proceeding." (D.09-06-027, Ordering Paragraph 6.)

We treat the requirement in Ordering Paragraph 6 to limit San Gabriel to only information that was not available for the prior proceeding or new information subsequent to that proceeding. Anything that San Gabriel previously possessed and chose not to disclose at that time we will disregard now. Otherwise, San Gabriel (or any other utility) could choose to provide as little information as possible and then expect to continually revisit an issue by doling out ever more nuggets of information. The burden of proof is properly

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[7] ORA Opening Brief at 11, citing D.09-06-027, at 11. This summary is consistent with all opening briefs and the prior decision.

met by timely providing all relevant information, not the least possible information.

San Gabriel presents as new information that it claims was not available for the prior proceeding including:

> San Gabriel did not then have the benefit of all the recorded data from the past three years of escalating costs of alternative water supplies and associated energy costs to demonstrate how much San Gabriel's customers clearly and substantially saved by San Gabriel's increased ownership of Fontana Union shares. (San Gabriel Opening Brief at 37.)

San Gabriel further argues:

> …testimony presented in this case provides a complete record of the information necessary to show that San Gabriel paid a reasonable price for the Fontana Union shares and that the underlying water rights are used, useful, and necessary to San Gabriel in providing water service to its customers – a record the Commission found lacking in the settlement with DRA in the previous [general rate case]. (San Gabriel Opening Brief at 38, citing to Exhibit SG-23 (Whitehead), at 5-6.)

The City argues that, in fact, the additional shares secured no additional water rights and in no way benefit ratepayers. The City argues that San Gabriel has not shown any benefit, and in fact, the Company should not recover costs associated with a lawsuit that the Company termed as meritless because: (1) there was never a dispute about the title to the original shares acquired by San Gabriel, (2) the lawsuit never sought to recover the shares or the water rights, and therefore, (3) ratepayers were not at risk for loss of water rights. (City Opening Brief at 22-26.)

ORA also opposes any further recovery of costs from the Slemmer Settlement. (ORA Opening Brief at 13.) ORA argues that the settlement resolved

issues of wrong-doing in the acquisition of stock, a lawsuit the Company argues was meritless, and therefore, ratepayers should not be responsible.

We think this issue was fully and properly decided in the prior decision. The argument about subsequent costs of replacement water requires us to accept that because the outcome is good we should accept the original cost as reasonable. But this ignores whether San Gabriel needed to acquire those shares and that the only justification at the time was to end the lawsuit and thereby limit shareholder liability. We see nothing to convince us that our prior decision was in error and no reason to reverse our prior disallowance.

10.4. Sand Hill

Sand Hill is yet another issue that would not end. This decision ends it. Deferred to this proceeding was the reasonableness review of the complicated and protracted renovations to Sand Hill where the regulatory litigation spans many years and multiple proceedings.

The Sand Hill facility was first built in the 1960s in the Fontana service district, and in recent years was the subject of several proposals to upgrade it and increase its capacity. ORA provides a reliable and cogent summary in its briefing. (ORA Opening Brief at 14 ff.) San Gabriel continued the use of its original diatomaceous earth filter to treat water; added conventional dual media filter beds; and provided pretreatment capabilities. These were finally completed in 2008. In A.02-11-044, San Gabriel asked for $9.8 million in upgrades which were approved at the time but not installed. (ORA cites to D.04-07-034, at 36.) In its next general rate case, A.05-08-021, San Gabriel again proposed upgrades to Sand Hill with an estimate of $35 million. The upgrades were intended to expand capacity and allow the Sand Hill facility to:

(1) treat 29 million gallons per day;

(2) treat 100% of Lytle Creek water;

(3) treat 100% of State Water Project water; or

(4) treat any combination of both Lytle Creek water and State Water Project water.

Again, the Commission authorized the project. (ORA cites to D.07-04-046, at 40, 118.) The Commission also determined that the Sand Hill's primary function is that of a base load unit, operating as nearly as possible on a 24-hour, seven-days-per-week basis to make maximum possible use of San Gabriel's most economical source of supply. (D.07-04-046 at 38.)

As discussed below, and shown by both City and ORA, Sand Hill does not perform now, and has never performed to the production levels or in the operating configurations proposed by San Gabriel, at a rate that would reasonably justify the expenditures made by San Gabriel.

The City convincingly shows that in the 2008 proceeding San Gabriel asserted in sworn testimony that Sand Hill could treat 29 million gallons of water per day. In fact, in this proceeding San Gabriel has admitted under cross-examination that this statement was not true then and is not true now. (Tr. vol. 3; 378/27-381/10.) In fact, the City argues Sand Hill has never treated 29 million gallons per day in its entire history. (Tr. vol. 1, 150/20-23.) Sand Hill has only treated 25 million gallons or greater for only about 5% of its entire history. (Ex. SG-19. Attachment 13.) The City further argues that when 25 million gallons were treated it was outside "Normal Operating Conditions" as defined by San Gabriel's own expert. We find San Gabriel far from persuasive and we therefore find that the costs incurred for expansion are not reasonable.

Water is delivered to the plant from a penstock that feeds a hydroelectric power plant owned and operated by Southern California Edison Company

(Edison). The record shows that, contrary to assertions by San Gabriel in prior cases and in this one, Edison has never been contractually obliged to serve water other than when the power plant is running and only at the levels needed for electric production. San Gabriel was allowed by D.09-06-027 to revisit that issue and has again failed to show that Edison was obliged to provide any water beyond that which it used itself. Thus, Sand Hill was never likely to receive enough water from Edison to reach 29 million gallons per day. Regardless of the convoluted contortions of San Gabriel's attempts to justify the likelihood of adequate water from Edison, we find San Gabriel is not persuasive and we will not revisit this issue again in future proceedings.

San Gabriel late in this proceeding offered a proposal for a new "bypass" of Edison's facilities which would assist in producing enough water. The City correctly points out there is no "design" in existence and indeed this bypass is essentially a "pipe dream." As further challenged by the City, there were numerous other technical issues which suggest Sand Hill cannot handle water from multiple sources at different receipt point water pressures. The briefs of all parties struggle to untangle the web of design and operating constraints; the points argued in prior cases; and the different suggestions offered in this proceeding; and we find the suggestions offered by San Gabriel to be not just unpersuasive, but not credible. In short, San Gabriel has not met its burden of proof in this proceeding or in prior proceedings that Sand Hill can operate as claimed.

10.4.1. Rate Base Adjustment

San Gabriel asks for $40.3 million in rate base which exceeds the cap of $35 million addressed in D.09-06-027, which itself was still subject to a reasonableness review here. Neither $40.3 million nor $35 million are

reasonable. The Sand Hill plant expenditures are clearly a mistake at either level.

The City and ORA offer two suggestions for Sand Hill's rate base allowance: (1) $17 million included as a limit in rate base by the City (City Opening Brief at 51-52.); or (2) a disallowance of $15.7 million by ORA. (ORA Opening Brief at 41.)

The City argues that $17 million was its recommendation in the prior proceeding even before the costs soared to over $40.3 million from the $35 million discussed in D.09-06-027. The City goes through a calculation comparing Sand Hill to another adjacent facility, Roemer, which was designed by the same engineers and is roughly the same size. That analysis the City claims would support even a larger disallowance (i.e. a smaller rate base allowance of only about $10.9 million) but the City stays with its $17 million recommendation. We will not look at the larger disallowance number that the City does not try to justify as its recommendation.

ORA calculates a hypothetical number based on the fact the Sand Hill was upgraded by only 7.3 million gallons per day, not 12 million, or only 61% of the alleged increase in capacity (7.3 ÷ 12). The merit to ORA's proposal is that a reasonable proxy exists for a comparable plant.

San Gabriel's rates for Sand Hill were always subject to refund following a reasonableness review and it has failed to show that it was remotely reasonable to spend as much money as it did for as little production as resulted from the project. We therefore reject both the $5.3 million in overrun costs and reject recovery at the maximum cap of $35 million we previously set. With a reasonably similar proxy, ORA's $15.7 million disallowance would set a general target or expectation. The City's $17 million is an offer above its own current

calculation of a reasonable cost. We note that ORA argues Sand Hill provided about 61% of the alleged capacity and that would suggest an allowance of $21.35 million of the $35 million cap for the full increase in output of 12 million gallons per day. ($35 million x 61%.) Ratepayers deserve fairness and certainty. Neither fairness nor certainty is offered by San Gabriel's high cost low performance proposal. We will end the issue and adopt the City's value of $17 million, which was its original proposal in the prior proceeding. See Attachment II for the required refund.

11. Procedural History

San Gabriel filed this application late on July 11, 2011 after a delay agreed upon with ORA. A timely prehearing conference was held and a scoping memorandum was issued on October 4, 2011. Following service of testimony and settlement negotiations there were evidentiary hearings on the remaining disputed issues. A bilateral settlement was filed by San Gabriel and ORA but it was opposed by City and Schools. Therefore, briefing allowed parties to address the litigated issues and the disputed issues from the bilateral settlement. On September 12, 2012, San Gabriel filed a motion, granted herein, to withdraw the facilities charge proposal. Submission was set aside and the motion granted. This proceeding was delayed and extensions adopted by the Commission to allow sufficient time to analyze the litigated issues and disputed settlement.

12. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

13. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. There is an adequate record composed of all filed and served documents.
2. The bilateral settlement ignored the positions of the City and Schools.
3. San Gabriel withdrew its request for a facilities fee.
4. The City has not granted necessary permits to San Gabriel for Plant F15, so construction is unlikely.
5. The City has not agreed to the use of its land for a new tank in item Plant F20, so construction is unlikely.
6. The existing tank needs to be repainted.
7. The City did not impose requirements for a Conditional use Permit for Plant F23, so the costs are not related to the permit.
8. Plant F53 is a booster pump for Sand Hill. San Gabriel has not provided a cost-benefit analysis for the plant.
9. Plant F56 lacks a specific scope and a cost benefit analysis.
10. Plant F59 is a project related to Sand Hill. San Gabriel has not provided a cost-benefit analysis that would show a genuine need for land held for future use.
11. San Gabriel's advanced meter reading system has not been shown to be justified under current economic conditions and has not been shown to be state of the art technology.
12. The Hydro-turbine project is incomplete and therefore cannot be justified within the settlement.

13. The mains work proposed in the bilateral settlement is not consistent with the City's Capital Improvement Plan.

14. Plant F7 is a retaining wall previously disallowed and finally resolved by the Commission in D.09-06-027.

15. The Walnut Avenue facility has now been shown to provide enhanced reliability, a point not shown previously. San Gabriel was allowed to revisit this issue in this proceeding in D.XX-XX-XXX.

16. The remaining undepreciated book value invested in the Walnut Avenue facility provides enhanced reliability to customers.

17. The additional cost of $1,585,920 for shares acquired as a part of settling the Slemmer litigation ending the litigation.

18. Sand Hill has failed to operate as claimed by San Gabriel and has never achieved design maximum volumes. Sand Hill's production was increased by only 7 million gallons per day and not 12 million.

19. San Gabriel spent far more money than the $35 million cap and cannot achieve the targeted increase in capacity.

20. The City proposes a rate base proxy of $17 million for the capacity increase at Sand Hill.

Conclusions of Law

1. Applicant bears the burden of proof to show that the proposed settlement is reasonable.

2. A bilateral settlement is not reasonable when it ignores the persuasive postions and best interests of other parties.

3. The proposed settlement is not reasonable in light of the whole record, consistent with law, and in the public interest, therefore the Commission should reject and modify it.

4. The Commission has the discretion and authority to resolve issues which were addressed in the settlement, and modify the proposed settlement based upon the more persuasive testimony and argument of the contesting parties.

5. It is reasonable to set aside submission and grant the late request for San Gabriel to withdraw its facilities fee proposal.

6. Plant F7 was previously litigated and disallowed and therefore should not be re-litigated here.

7. San Gabriel has now met its burden of proof that the Walnut Avenue facility provides enhanced reliability, and therefore, the undepreciated value should now be recovered in rates.

8. The additional cost of $1,585,920 for shares acquired as a part of settling the Slemmer litigation does not provide any value to ratepayers; the cost benefited shareholders by ending the litigation, and therefore, is unreasonable.

9. Sand Hill has failed to operate as claimed by San Gabriel and has never achieved design maximum volumes, and the full cost is therefore unreasonable.

10. A reasonable proxy is fair to ratepayers for the increased production at Sand Hill.

11. The Sand Hill capital improvements are reasonably capped at a proxy cost of $17 million in rate base.

12. This decision should be effective today.

13. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The proposed settlement (Attachment I) between San Gabriel Valley Water Company (San Gabriel) for its Fontana Water Company Division and the Office of Ratepayer Advocates (ORA) is rejected as filed and is modified as proposed herein. Pursuant to Rule 12.4(c) of the Commission's Rules of Practice and Procedure (Rules), San Gabriel and ORA must decide whether to accept the modified settlement or seek other relief as allowed by the Rules. San Gabriel and ORA must respond within 14 days of the issuance of todays' decision. Except as modified in Ordering Paragraph 2, the settlement (attached to this decision as Attachment I) is adopted.

2. The following modifications are made to the proposed settlement between San Gabriel Valley Water Company (San Gabriel) for its Fontana Water Company Division and the Office of Ratepayer Advocates:

   a. Plant F15 is disallowed and excluded from the modified settlement.

   b. Plant F20 is modified in the modified settlement to disallow the cost of land but to still include $100,000 to paint the existing water tank.

   c. Plant F23 has $3,435,000 disallowed for the costs alleged to be required by a Conditional Use Permit in the modified settlement.

   d. Plant F53 is disallowed and excluded from the modified settlement.

   e. Plant F56 is excluded from the modified settlement and deferred until San Gabriel can justify the project in the future.

f. Plant F59 is excluded from the modified settlement and deferred until San Gabriel can justify the project in the future.

g. The Advanced Meter Reading Program is disallowed and excluded from the modified settlement.

h. The Hydro-Turbine Pilot Program is disallowed and excluded from the modified settlement.

i. The capital program for Mains is reduced from the settlement's $16.6 million to $5.2 million, consistent with City of Fontana's Capital Improvement Plan.

3. In the event that San Gabriel Valley Water Company (San Gabriel) for its Fontana Water Company Division and the Office of Ratepayer Advocates accept the modified settlement adopted in Ordering Paragraphs 1 and 2, San Gabriel must file within 14 days of accepting the modified settlement a Tier 1 Advice Letter to implement the rate changes incorporated in the modified settlement as included in the revenue requirement and related tables attached as Attachment III to this decision.

4. San Gabriel Valley Water Company may resubmit a proposal for its Facility Fee in the next general rate case in order to reconsider the proposal withdrawn in this proceeding.

5. Plant F7 was previously disallowed in Decision 09-06-027 and is not reconsidered herein.

6. The Walnut Avenue Pipeline Project has been shown to have reliability benefits and is approved.

7. The additional cost of $1,585,920 for shares acquired as a part of settling the Slemmer litigation is denied.

8. The Sand Hill Water Treatment Facility capital improvements are capped at $17 million in rate base.

9. San Gabriel Valley Water Company (San Gabriel) must file a Tier 1 Advice Letter to establish a Memorandum Account for Plant F23 costs actually incurred and required by City of Fontana a Conditional Use Permit. San Gabriel must maintain specific records which clearly document the expenses in connection with the City of Fontana a Conditional Use Permit.

10. San Gabriel Valley Water Company must file a Tier 2 Advice Letter to implement a refund of any over-collection in rates for Sand Hill Water Treatment Facility plant costs recovered in rates that exceed the rate base cap of $17 million.

11. Application 11-07-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT

List of Appearances

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Last Updated on 15-OCT-2013 by: JVG
A1107005 LIST

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(END OF ATTACHMENT)