

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of San Jose Water Company (U168W) for an Order authorizing it to increase rates charged for water service by \$47,394,000 or 21.5% in 2013, by \$12,963,000 or 4.87% in 2014, and by \$34,797,000 or 12.59% in 2015.

A.12-01-003
(Filed January 3, 2012)

**OFFICE OF RATEPAYER ADVOCATES' REPLY TO SAN JOSE WATER
COMPANY'S COMMENTS ON THE PROPOSED DECISION
RESOLVING THE GENERAL RATE CASE
OF SAN JOSE WATER COMPANY**

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I. INTRODUCTION

Pursuant to Rule 14.3(d) of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission (the "Commission"), The Office of Ratepayer Advocates ("ORA") hereby submits the following Reply to San Jose Water Company ("SJWC")'s Comments on the Proposed Decision Resolving the General Rate Case of San Jose Water Company (the "Proposed Decision" or "PD") served on July 31, 2014, in the above-captioned proceeding.

II. ANALYSIS

A. SJWC's Comments Amount to an Additional Round of Briefing Intended to Re-litigate This Proceeding

SJWC's comments do not comply with Rule 14.3(c). Instead of focusing on factual, legal, or technical errors, SJWC served 25 pages¹ of comments that represent a

¹ The argument for SJWC's briefing is 25 pages, there are an additional 12 pages of appendices, indices, and the cover page. Note that SJWC's comments are longer than the utility's briefing on safety and security issues, filed May 3, 2013, and are only 17 pages shorter than the company's reply brief in this proceeding, filed August 7, 2012.

fourth round of briefing in this case.² Because they do not comply with Rule 14.3, the Commission should disregard SJWC's comments.³

Neither party achieved everything it wanted in this case. While ORA recognized that the Commission's PD "achieves a balanced resolution of disputed issues in the proceeding,"⁴ SJWC has taken advantage of the opportunity to provide comments to re-argue issues decided by the Commission. Reply comments, being limited to five pages,⁵ do not provide adequate space to address each of SJWC's 25 pages of comments.

ORA recognizes that, even where its positions were not adopted, record evidence supported the Commission's resolution of contested issues in this case.

SJWC, on the other hand, chose to re-argue issues. For example, SJWC asserts that "[t]he Proposed Decision not only ignores SJWC's rebuttal evidence supporting the Company's 3-tier proposal; it fails to address SJWC's proposal to retain the existing 2-tier rate design if a WRAM/MCBA is not authorized."⁶ Not only is this assertion irrelevant,⁷ it is incorrect. In fact, the PD specifically recognizes that, "SJWC's three-tier residential rate design proposal is conditioned upon concurrent Commission approval of its proposal for a full [WRAM/MCBA]. Absent approval of the WRAM/MCBA, SJWC proposes to retain its present two-tier residential rate design."⁸ The Commission simply decides, after weighing the record, to adopt ORA's proposed rate design.⁹

This type of argument pervades SJWC's comments. Rather than describe all of the points where SJWC tries to re-litigate this rate case, the next section of this reply will

² The prior three rounds were the opening briefs (filed July 20, 2012), reply briefs (filed August 7, 2012), and briefs on security and safety issues (filed May 3, 2013).

³ With one exception discussed in section B, *infra*.

⁴ Opening Comments of the Office of Ratepayer Advocates at 1.

⁵ Rule 14.3(d).

⁶ SJWC Opening Comments at 4.

⁷ The Commission is free to make decisions supported by the record—the Commission need not specifically address each piece of evidence in explaining its decision.

⁸ PD at 113.

⁹ PD at 115.

point out the one section of its comments where SJWC actually does address a factual error in the PD.

B. SJWC Correctly Suggests the Proposed Decision Should Correct the Test Year 2013 Rent Expense Amount

Section O of SJWC’s comments is the only section that comments on a factual error in the PD. That section addresses Test Year 2013 Rent Expense.¹⁰ In rebuttal testimony, SJWC changed its Test Year 2013 Rent Expense estimate to \$382,000.¹¹ At hearing, ORA’s witness agreed that \$382,000 is an appropriate amount for Test Year 2013 Rent Expense.¹² This is the only section of SJWC’s Opening Comments that the Commission should adopt.

C. In Addition to Attempting to Re-litigate This Case, SJWC Inappropriately Relies on Extra-Record Evidence in its Comments

SJWC’s disregard for the Commission’s Rules in its opening comments is not limited just to re-briefing this rate case. Additionally, SJWC attempts to use extra-record evidence to sway the Commission. For example, SJWC argues for the funding of more employee positions by claiming “[o]ver the **two years since briefs were filed** in this GRC, SJWC has found it necessary, despite uncertainty as to the disposition of its application, to fill some of the 27 additional positions proposed in Ms. Leal’s testimony. As of this date, eleven of those positions have been filled”¹³ This argument is contrary to Commission rules. Not only did the Commission weigh the record evidence and make its decision on labor and payroll expense,¹⁴ but SJWC now attempts to

¹⁰ SJWC Opening Comments at 21.

¹¹ See SJW-10, ch. 5 (Jensen) at 5-28-29.

¹² Hearing Tr. (ORA – Ma) at 320:2 – 5.

¹³ SJWC Opening Comments at 16.

¹⁴ PD at 27 – 32.

introduce evidence that is not part of the record, that is not sponsored by a witness, and that no party has a chance to subject to cross-examination.¹⁵

Not only is this argument inappropriate and contrary to Commission Rules, it ignores that the Commission's role is to conduct ratemaking—not to rubber stamp SJWC's operations as reasonable. The Commission decided to adopt 4 of the requested 27 new positions “as this reflects actual addition of employees to SJWC's payroll in 2012, the increase in staff that might be expected given the growth in customers, currently funded but vacant positions, and the adopted estimates in this decision for capital projects.”¹⁶

III. CONCLUSION

For the foregoing reasons, SJWC's opening comments¹⁷ should be rejected.

Respectfully submitted,

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¹⁵ SJWC Opening Comments at 16. Note also that SJWC requested 27 positions in 2013 rates but makes no claim that any of the 11 supposed new positions were hired in 2013. It is also unclear whether these positions were some of the “currently funded but vacant positions” identified at page 31 of the PD. This is the type of information that could be discovered if the information were part of the record, sponsored by a witness, and subject to cross-examination. Absent those protections, it must be rejected.

¹⁶ PD at 31 – 32.

¹⁷ With the exception of section O, SJWC Opening Comments at 21.