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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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 $34,928,000 or 12.22% in 2016, by $9,954,000 or 3.11% in 2017, and by $17,567,000 or 5.36% in 2018.

Application 15-01-002
(Filed January 5, 2015)

OFFICE OF RATEPAYER ADVOCATES' OPENING BRIEF REGARDING CONTESTED ISSUES

(PUBLIC VERSION)

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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission ("Commission")'s Rules of Practice and Procedure ("Rules") and pursuant to Commissioner Randolph's Scoping Memo issued April 14, 2015, the Office of Ratepayer Advocates ("ORA") submits this opening brief regarding contested issues in this General Rate Case ("GRC").

While many of the differences between ORA and the San Jose Water Company ("SJWC") are being settled in this proceeding, there are several differences between the parties that remain contested. This brief will discuss the reasons that the Commission should adopt ORA's recommendations on each of those contested issues.

II. SUMMARY OF POSITION ON CONTESTED ISSUES

The following table summarizes ORA's positions on the issues contested between ORA and SJWC:

Revenue Decoupling – Water Revenue Adjustment Mechanism/Modified Cost Balancing Account ("WRAM/MCBA")	Reject proposed full decoupling WRAM/MCBA. Continue Monterey-Style WRAM.
WRAM-Related Conservation Programs	Disallow WRAM-Related Conservation Programs. Recognize that SJWC's proposed School Water Education Program was funded in rates for three years in the last rate case but was only instituted for one school term and reject further ratepayer funding at this time.
Payroll Expense Escalation Factors and Methodology	Use last full year of recorded data, 2014, and escalate to GRC years using Energy Cost of Service ("ECOS") labor escalation factors.
New Positions	Allow a total of five new positions in labor forecasts—three based on employees hired since SJWC's last GRC, one based on customer growth rates, and one based on proposed capital projects. The two new positions should be funded at $97,524 annual compensation.
Temporary and Part-Time Positions	Exclude temporary and part-time labor from labor forecasts.
Bonuses for Officers and Managers	Exclude bonuses from labor forecasts.

Payroll Expense Related to Non-Tariffed Products and Services ("NTP&S")	Exclude labor attributed to NTP&S from labor forecasts.
Regulatory Commission Expense	Adopt forecast expenses of $185,000 for 2016, $190,000 for 2017, and $194,000 for 2018.
Corporate Expense	Adopt 5-year inflation adjusted average forecast of $790,000 for Test Year 2016.
Payroll Taxes – Capitalized Portion of Federal Insurance Contributions Act ("FICA") Tax	Capitalize 24.17% of FICA tax for a resulting tax savings of $589,000.
Tax Memorandum Accounts	Establish tax memorandum account to track Tangible Property Regulation deduction tax savings for refund to ratepayers. Establish tax memorandum account to track Enterprise Zone Sales and Use credit for refund to ratepayers.
Health Care Cost Balancing Account	Reject proposed health care cost balancing account and rely on traditional forecasting process for health care costs in order to preserve incentives to control costs.

III. PROCEDURAL BACKGROUND

SJWC's Test Year 2016 GRC was filed January 5, 2015. ORA timely protested on February 2, 2015. The assigned Commissioner's scoping memo and ruling issued April 14, 2015, confirming the categorization of this proceeding as ratesetting and setting a procedural schedule. A public participation hearing was held March 24, 2015, and evidentiary hearings were held June 15, 16, and 17, 2015. On Friday, June 12, 2015, Mr. Martin Mattes sent a settlement status report by email pursuant to the scoping memo. That status report confirmed that ORA and SJWC reached a settlement in principle on all issues with certain, specified exceptions. This brief analyzes the specified exceptions, which represent the contested issues between ORA and SJWC.

IV. ISSUES RESOLVED BY SETTLEMENT AGREEMENT BETWEEN ORA AND SJWC

A. Utility Plant Additions

N/A

B. Balancing and Memorandum Accounts

N/A

V. ISSUES CONTESTED BETWEEN ORA AND SJWC

A. Revenue Decoupling – WRAM/MCBA

A permanent, full-decoupling WRAM/MCBA is not justified in this GRC. SJWC requested a full decoupling WRAM/MCBA in its last GRC, and that request was rejected.[1] Existing WRAM Pilot Programs authorized by the Commission are under review.[2] And Phase II of the Balanced Rates Rulemaking ("R."), R.11-11-008, will examine accounting mechanisms like WRAM.[3]

SJWC has not justified its WRAM/MCBA request in this proceeding. The company's central point is that "the key rationale of revenue decoupling [is] to remove the incentive to promote sales and encourage the development of conservation prices and non-price water conservation programs."[4] In other words, WRAM/MCBA would create incentives for the company to promote conservation. But SJWC and its customers have very effectively conserved water in the absence of a full decoupling WRAM/MCBA. The company has already met its state-mandated target of reducing per capita urban water use by 20% by December 2020.[5] The company's per capita consumption has been falling since at least 1998 or 1999.[6] In spite of customer growth, total consumption is in decline as well.[7]

The drought does not justify a WRAM/MCBA because the mechanism would be permanent, while the drought is not permanent, and existing mechanisms deal with the drought's impact on SJWC's operations.[8]

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[1] O-01 at 13-7:3-10.

[2] O-01 at 13-7:13-16, 13-8:1-13-9:13.

[3] O-01 at 13-10:16-21.

[4] SJWC-10 at 2-13:10-12.

[5] O-01 at 13-13:10-12, 13-14 Figure 13-A.

[6] Hearing Tr. at 331:12-332:28.

[7] Hearing Tr. at 333:1-11.

[8] O-01 at 13-14:3-13-16:2.

And in light of SJWC's water supply situation, the company's Monterey-Style WRAM is an appropriate ratemaking mechanism for SJWC and its customers.[9]

B. WRAM-Related Conservation Programs

The "WRAM-Related Conservation Programs" proposed by SJWC should not be authorized in rates because WRAM should not be authorized in rates. Other than the School Water Education Program, SJWC will not implement any of the "WRAM-Related Conservation Programs" without a WRAM.[10]

The School Water Education Program was requested for authorization in SJWC's last rate case, and "the plan at that time was to implement that program for each of the three years of that rate case."[11] But the company did not implement that program until the last year of that case—2015.[12] Even though the company only implemented the program in 2015, it was authorized to recover three years' worth of funding in rates.[13] The company's claim that it will discontinue the program if it is not funded in rates again[14] suggests that the company would be allocating the other two and a half years of funding to other expense categories. This lack of commitment to the School Water Education Program suggests that, for whatever reason, it is not an operating priority and should not be funded in rates.

While ORA supports SJWC's ordinary conservation programs,[15] the "WRAM-related Conservation Programs," other than the Waterfluence Program,[16] should not be approved for funding in rates.

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[9] O-01 at 13-18:3-8.

[10] Hearing Tr. at 312:23-27.

[11] Hearing Tr. at 311:1-6.

[12] Hearing Tr. at 311:6-10.

[13] Hearing Tr. at 435:1-9, 436:13-16.

[14] Hearing Tr. at 311:16-312:4.

[15] O-01 at 2-14:2-4.

[16] The Waterfluence Landscape Budget Program is a program available to SJWC through the Santa Clara Valley Water District ("SCVWD") and the costs of the program are borne by SCVWD, not SJWC.

(Footnote Continued on Next Page.)

C. Payroll Expense

1. Escalation Factors and Methodology

SJWC estimates its 2015 payroll expense and escalates to 2016 using a 5% escalation factor for administrative and officer compensation, and a 3% factor for general payroll, temporary and part-time labor.[17] For 2017 and 2018, SJWC escalates using the Energy Cost of Service ("ECOS") labor factors of 1.4% and 1.8%.[18] Interestingly, the ECOS labor factor for 2016—the only year where SJWC does not use the ECOS factor for escalation—is -0.7%.[19]

ORA uses the last full year of recorded data, 2014, and escalates payroll to calculate 2016, 2017, and 2018 payroll based on 1) union contracts for union employees, and 2) ECOS factors from the February 2015 memorandum for all other employees.[20] This approach has the advanatage of using a uniform source for non-union escalation.

The Commission should adopt ORA's escalation methodology and factors, because it uses the last full year of historical data, and relies on a uniform source for non-union payroll escalation. That is a more reliable methodology than escalating an estimate for a year that is not complete (and had just started when SJWC filed its application), and using escalation factors from varying sources, like the 5% factor SJWC uses for officer and administrative payroll in 2016.

(Footnote Continued from Previous Page.)

SJWC-01 at Ch. 18, pp. 15-18.

[17] O-01 at 3-2:15-23.

[18] O-01 at 3-3:2-3.

[19] O-01 at 3-7:1-2.

[20] O-01 at 3-4:3-13, 3-5:18-3-7:4.

2. New Positions

SJWC requests 33 new positions in rates in this proceeding.[21] In its last GRC, SJWC requested 23 new positions in rates but was authorized 4 new positions "based on the customer growth rate, currently funded but vacant positions, claimed excess capacity, and adopted estimates based on capital projects."[22] Similarly in this GRC, SJWC makes an unreasonable request for new positions.[23]

SJWC's request would represent a 9.21% staffing increase when it is only experiencing a 0.29% increase in customers.[24] At the same time as customers are being asked to cut back on water use in response to the drought, SJWC is asking for a dramatic increase in its payroll through new hires. SJWC had 17 vacancies as of the end of May 2015.[25] In this case, SJWC claims that it has excess labor capacity sufficient for more than 12,000 hours of NTP&S labor.[26]

ORA recommends authorizing one additional position for capital projects, in addition to four other new positions—one for the customer growth rate and 3 who have actually been hired since SJWC's last GRC.[27] Five positions is a reasonable amount, accounting for the factors the Commission analyzed in SJWC's last GRC. SJWC's request for 33 positions is simply unreasonable, and unlinked to any of the factors the Commission looked at when analyzing SJWC's request in the previous GRC.

[21] O-01 at 3-7:8-9.

[22] O-01 at 3-7:9-12.

[23] Note that a related discussion of payroll expense related to Non-Tariffed Products and Services occurs in subsection 5., below. For brevity, that discussion will not be repeated here, but it certainly should impact the Commission's analysis of the proposed new positions.

[24] O-01 at 3-7:18-20.

[25] Hearing Tr. at 393:11-15.

[26] O-01 at 3-11:3-16.

[27] O-01 at 3-12:2-12.

3. Temporary and Part-Time Positions

SJWC seeks recovery for forecast temporary and part-time labor. In SJWC's last rate case, these labor categories were denied recovery.[28] Those labor categories should likewise be excluded here.

Further, SJWC indicated that its temporary labor consists of 24 to 26 college students hired for the summer.[29] Its witness on this issue indicated that those temporary "laborers" can perform the work of San Jose Water Company's permanent employees.[30]

It strains credulity for SJWC to claim that these college students can replace experienced, full-time SJWC employees. Temporary and part-time labor includes those 24 to 26 college students and two workers on 30 hour per week schedules or more.[31] Assuming those part-time workers receive compensation in line with 75% of the average employee salary of $97,524,[32] then the 24 to 26 college students receive approximately $142,584[33] collectively in compensation, or approximately $1980 per person per month.[34] If those "temporary laborers" can replace full-time SJWC staff at such a price, then SJWC's payroll is dramatically inflated and ratepayer funding should be reduced.

In line with SJWC's rate case, and in light of the lack of support for these expenditures, temporary and part-time positions should be excluded from ratepayer funding in this proceeding.

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[28] D.14-08-006 at 32 ("The Commission excludes expenses related to temporary, part-time, and vacant positions, as such does not provide continuous or any benefit to ratepayers.").

[29] Hearing Tr. at 387:17-388:20.

[30] Hearing Tr. at 411:2-5.

[31] SJWC-10 at 4-5:27-28.

[32] O-01 at 3-12:9-10.

[33] $288,870 in part-time and temporary labor costs less (2 * $97,524*.75)146286 for approximated part-time labor costs.

[34] $142,584 divided by 24 persons divided by 3 months.

4. Bonuses for Officers and Managers

In the last SJWC GRC, the Commission decided not to allow ratepayer funding for officer bonuses.[35] This case, too, should exclude bonuses from ratepayer funding.

Even though officer bonuses were not allowed for ratepayer funding in the last GRC, SJWC still paid those bonuses.[36] SJWC's witness on this issue admitted that the company's long-term incentive plan is "designed to address concerns of shareholder groups" and that "a significant portion of officer compensation essentially should be based on incentives that align . . . officer compensation with shareholder interests."[37] While this may indeed be good corporate practice, it is one that benefits shareholders and not ratepayers. As a result, the program should not be funded in rates.[38]

[BEGIN CONFIDENTIAL] [redacted]

[redacted]

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[35] D.14-08-006 at 32 ("The Commission will not adopt SJWC's proposed officer bonus amounts in payroll expenses.").

[36] Hearing Tr. at 396:25-397:5.

[37] Hearing Tr. at 397:14-28.

[38] *See also* O-01 at 3-4:18-20.

[39] [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[40] [BEGIN CONFIDENTIAL] [redacted] ND CONFIDENTIAL]

[41] [BEGIN CONFIDENTIAL] [redacted]

[redacted] BEGIN CONFIDENTIAL] [redacted].[END CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

In light of the fact that SJWC's bonus program targets shareholder benefits and the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL], bonuses should be excluded from ratepayer funding in this GRC.

5. Payroll Expense Related to Non-Tariffed Products and Services

The principle of labor expense related to Non-Tariffed Products and Services ("NTP&S") was litigated in SJWC's last GRC,[44] and the issue is again contested in this proceeding. D.14-08-006, which is pending rehearing on this issue, decided to:

> [E]xclude amounts for NTP&S in making payroll estimates. In D.10-10-019, the Commission stated that "it is not reasonable to allow a water or sewer utility to carry extra employees or put into rates additional labor costs which are not necessary for the provision of regulated utility service, in order to provide NTP&S." Accordingly the Commission will exclude NTP&S amounts in its payroll estimates.

D.15-03-048[45] granted rehearing of D.14-08-006 to examine, along with another issue, NTP&S payroll. That rehearing is pending, but the Commission's discussion of the issue in D.15-03-048 is instructive. While the Commission decided that "only incremental costs associated with NTP&S are allocated to shareholders,"[46] the Commission also noted that SJWC's request for additional employees "raises the issue of

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[43] [BEGIN CONFIDENTIAL] [redacted] .[END CONFIDENTIAL]

[44] A.12-01-003.

[45] Also identified as O-03 in this proceeding.

[46] D.15-03-048 at 6.

whether SJWC should be using the labor to provide NTP&S and whether SJWC is in compliance with our NTP&S's rules."[47] Not only does D.15-03-048 recognize a connection between requests for new positions and NTP&S labor, it notes the connection between labor overtime and NTP&S labor:

> [I]t is not clear what portion of the NTP&S labor this amounts to or whether there are other examples of labor that may not in fact be excess capacity. . . . If all Cross Connection Inspector time was billed as overtime to the NTP&S it raises the issue of whether Backflow Testing is a NTP&S under Rule X.B.3.a [of D.10-10-019 Appendix A].[48]

Much like these and other concerns raised in D.15-03-048,[49] it is not clear in this proceeding "whether SJWC's provision of NTP&S is in compliance with our NTP&S rules."[50]

In this case, SJWC has requested the equivalent of 6 full-time employee hours for NTP&S per year for funding in rates.[51] One SJWC employee attributed 59% of his work hours to NTP&S—a Distribution System Inspector.[52] And SJWC requests ratepayer funding for four more positions in the distribution systems department, including an additional distribution system inspector and an additional distribution system supervisor.[53]

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[47] D.15-03-048 at 6-7.

[48] D.15-03-048 at 6 n.10.

[49] D.15-03-048 at 3-10 (especially including the discussion of new personnel requests, long term NTP&S commitments, and the record evidence about whether NTP&S labor is actually excess capacity).

[50] D.15-03-048 at 7.

[51] O-01 at 3-3:12-14.

[52] O-01 at 3-3:14-16.

[53] SJWC A.15-01-002 Ex. E, Ch. 5 at 6.

More broadly, many of the employees who worked for NTP&S were in the Operations & Maintenance ("O&M") and Construction departments.[54] Those two departments were two of the three highest overtime cost departments at SJWC.[55]

Of the 12,202 labor hours attributed to NTP&S in 2014, "over 8,000 hours were attributed to various Distribution System employees and a Cross-Connection Inspector. . . . Four positions, not specific employees, were used more than 50% of the time working for NTP&S."[56]

SJWC's claim that its NTP&S labor is excess capacity is undermined by the fact that it is seeing significant overtime expenses in departments used for NTP&S, the high rate of usage of certain positions and employees for NTP&S, and the company's request to hire more people in positions and departments that are highly used for NTP&S. Taken together, SJWC appears to be using employees, ostensibly paid for by ratepayers to provide regulated services, to provide NTP&S. The result is that ratepayers are fundamentally subsidizing the NTP&S provided by SJWC by paying the salaries and benefits of those employees whose time is used to provide NTP&S.

Further, D.15-03-048 determined that D.14-08-006's "determination on [NTP&S labor] shall remain in effect, and subject to adjustment" pending the outcome of rehearing.[57] Rehearing is still pending, and the determination in D.14-08-006—the exclusion of NTP&S labor—should remain in effect.[58]

NTP&S payroll is an issue connected to SJWC's request for new labor positions, its request for overtime expense, and the hours attributed by certain employees, positions, and departments to NTP&S. In light of the facts of this case, the Commission should adopt ORA's proposal and exclude labor attributed to NTP&S.

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[54] O-01 at 3-10:7-9.

[55] O-01 at 3-10:3-6.

[56] O-01 at 3-11:5-10.

[57] D.15-03-048 at 7.

[58] D.14-08-006 at 32.

D. Regulatory Commission Expense

SJWC estimates $1 million in regulatory expenses over a three year period in this rate case.[59] That estimate "is based on the assumption of a fully litigated General Rate Case, one Cost of Capital proceeding, at least one formal Application coming out of the GRC, and miscellaneous legal and consultant work not related to a formal proceeding such as an OIR."[60] This General Rate Case ("GRC"), of course, is not being fully litigated.[61] SJWC's own witness on this issue, Mr. Palle Jensen, confirmed that a fully litigated GRC is generally more expensive than one where most issues are settled.[62]

SJWC's last GRC[63] was fully litigated.[64] SJWC's regulatory expense for the last three years totaled $570,000.[65] Given that the last three years includes regulatory expenses for a fully-litigated GRC, it is more than reasonable to use a 5-year, inflation adjusted forecast for SJWC's regulatory expense.[66] In fact, the prior three year total suggests that a $1 million estimate is unreasonable. Forecasting a fully-litigated GRC is not reasonable—it is worst-case scenario ratemaking. Forecasts should target the most reasonable expectation of future expenses. The nature of forecasting is that sometimes actual expenses will be higher than forecast, while other times they will be lower than forecast. If the Commission were to adopt worst-case scenario ratemaking as a practice, then actual expenses would much more regularly be lower than forecast, resulting in a windfall to utilities at the expense of ratepayers.

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[59] SJWC-10, at 2-5:3-10.

[60] SJWC-10 at 2-5:5-8.

[61] Hearing Tr. at 316:1-8.

[62] Hearing Tr. at 316:16-20.

[63] A.12-01-003.

[64] Hearing Tr. at 315:10-28.

[65] O-01 at 2-29:3-5.

[66] O-01 at 2-29:5-8 ($185,000 for 2016, $190,000 for 2017, and $194,000 for 2018).

The most reasonable forecast in this case is ORA's, which adjusts historical data for inflation. Note also that San Jose Water Company's last Cost of Capital proceeding, Application ("A.") 11-05-002 was filed May 2, 2011, and decided July 12, 2012 by Decision ("D.")12-07-009. Therefore, a five-year inflation adjusted forecast captures some, if not all, of the costs associated with a cost of capital proceeding—in addition to capturing costs associated with a fully-litigated GRC. If anything, ORA's forecast itself risks overestimating regulatory expense.

E. Corporate Expense

ORA and SJWC use different forecasting methodologies for the corporate expense category. ORA uses a 5-year average and adjusts for inflation, while SJWC uses the amount recorded in 2014 and adjusts for weighted composite and customer growth factors.[67] Because this is an expense category where costs fluctuate from year to year,[68] it is more reasonable to use a 5-year average adjusted for inflation, which smooths out the yearly variations. SJWC's forecast is unreasonable, because it uses the highest amount in a fluctuating expense category and inflates from there.[69]

F. Payroll Taxes – Capitalized Portion of FICA Tax

SJWC should capitalize 24.17% of its FICA tax.[70] Analyzing the company's workpapers, the total capitalized FICA tax should be $813,000 as opposed to the $223,000 averaged in the company's workpapers.[71] The methodology in ORA's report double-counts removal of a portion of the FICA tax capitalization,[72] but after eliminating the double-counting, the FICA tax capitalization should increase to $589,000.

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[67] O-01 at 2-30:5-12.

[68] O-01 at 2-30:10.

[69] O-01 at 2-30:8-10.

[70] Hearing Tr. at 415:19-416:3.

[71] Hearing Tr. at 415:19-416:3.

[72] Hearing Tr. at 416:20-417:8.

G. Tax Memorandum Accounts

ORA proposes two tax memorandum accounts to account for changes in tax law in the Tangible Property Regulation ("TPR") and the Enterprise Zone Sales and Use ("EZ") credit.[73]

Under TPR, SJWC will be able to reclassify certain capitalized maintenance expenditures from capital expenditures to tax deductible maintenance expenses for income tax purposes.[74] SJWC will be reconsidering the capitalized/tax-deductible maintenance expenses going back to 2006, but will file for a refund on its 2014 tax year filing, which will be filed by the extension deadline of September 30, 2015.[75] A memorandum account for the TPR deduction would track Federal Income Tax and California State Corporate Franchise Tax savings resulting from the companies tax filing by September 30, 2015, which will adjust deductions dating back to 2006.[76] Such an approach would ensure that ratepayers benefit from changes in tax law.[77]

The Commission has used memorandum accounts in the past to track changes in tax law, and the same would be appropriate here.[78]

Memorandum account treatment is generally permitted for costs:

> [D]ue to events of an exceptional nature that:
>
> a. are not under the utility's control,
>
> b. could not have been reasonably foreseen in the utility's last general rate case,
>
> c. and that will occur before the utility's next scheduled rate case,

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[73] *See* O-01 at 5-1.

[74] O-01 at 5-3:19-23.

[75] Hearing Tr. at 292:16-294:16.

[76] *See* O-01 at 5-6:8-18.

[77] O-01 at 5-6:15-18.

[78] *See*, *e.g.*, Res. L-411 (admitted as O-02) at 1 ("This resolution establishes a one-way memorandum account for all cost-of-service rate regulated utilities that do not address the New Tax Law in a 2011 or 2012 test year General Rate Case proceeding, to track the impacts of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.").

d. are of a substantial nature such that the amount of money involved is worth the effort of processing a memo account and

e. have ratepayer benefits.[79]

Each of those requirements is met with the proposed TPR tax memorandum account. Tax law changes are exceptional events not under the control of a utility.[80] The TPR change, which occurred in August 2013,[81] could not have been foreseen in SJWC's last rate case.[82] SJWC will file its 2014 taxes before its next rate case.[83] The amount of money involved is substantial—the federal deduction for qualified tangible property for 2013 and prior years was $41.2 million resulting in a $14.4 million change in taxes due and the state deduction was $83.5 million resulting in a $4.8 million change in taxes due.[84] And the memorandum accounts would benefit ratepayers by allowing the financial benefits of the tax change to flow through to ratepayers.[85]

SJWC claims that it is entitled to keep the tax reductions associated with TPR on the ground that having it returned to the ratepayers would amount to retroactive ratemaking. But SJWC has not yet filed its 2014 taxes, which will include the adjusted taxes going back to 2006 under the new TPR.[86] Further, even those TPR adjustments for earlier years affects not only present income taxes, but also the future income taxes that ratepayers must pay.[87]

The qualifying maintenance expenditures that SJWC deducted as expenses for the 2015, 2014, and 2013 and prior tax years will not be available for tax depreciation

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[79] Standard Practice U-27-W at 6, ¶27.

[80] Hearing Tr. at 295:4-7.

[81] O-01 at 5-3:9-10.

[82] Hearing Tr. at 294:24-28.

[83] Hearing Tr. at 294:12-16.

[84] O-01 at 5-5:6-11.

[85] O-01 at 5-6:15-18.

[86] Hearing Tr. at 292:16-294:16.

[87] xxxxxxxx

deductions in the future, because SJWC's tax depreciation for capitalized maintenance expenditures must be reduced by the same amount the expense amounts increase to reflect the reclassification from capital expenditure to deductible expense maintenance expenditure.[88] This reduction of tax depreciation base limits the depreciable assets available for tax depreciation deductions in the future and may therefore increase future income taxes.

Tax law changes usually affect future taxes and utilities have no control over the tax law changes. As a result the Commission has passed the tax reductions or increases onto ratepayers either through flow-through or normalization of the effect of the tax changes.[89] Normalization allows utilities keep the tax reductions, but reduces the rate base by the same amount. The Commission treats tax law changes as an offsetable expense; therefore, it is not retroactive ratemaking. The TPR memorandum account should be established to pass through tax savings to ratepayers.

Further, if the Commission were to allow SJWC to keep the tax reductions associated with TPR for 2015 and prior years, SJWC would receive a windfall tax benefits from TPR, but the ratepayers would end up paying for lesser tax depreciable assets in the future and therefore potentially lower depreciation deductions in the future. Thus, the Commission should order SJWC to establish a memorandum account to accumulate the tax reductions associated with TPR and to refund it to the ratepayers.

Likewise, the EZ credit should be tracked in a memorandum account and refunded to ratepayers depending on the result of SJWC's pending audit.[90]

H. Health Care Cost Balancing Account

SJWC's request for a health care cost balancing account is unjustified and should be rejected. A health care cost balancing account would remove incentives to achieve

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[88] Hearing Tr. at 300:2-26.

[89] *E.g.*, Exhibit O-0, Resolution L-411A and D.87-12-028 for Tax Reduction Act of 1986.

[90] *See* Hearing Tr. at 289:8-19, O-01 at 5-6:20-5-7:4.

cost savings in health care benefits,[91] cost savings which SJWC has commendably and responsibly sought. In 2015, SJWC achieved a 1.34% decrease in medical insurance costs,[92] and a more than 15% decrease in dental insurance costs.[93] Perhaps even more importantly, in 2014 the company began offering medical insurance with employee cost sharing.[94]

By forecasting medical and dental expenses, company management (in its fiduciary duties to shareholders) has incentives to control costs because over- and under-spending impacts the company's finances. With a balancing account, those incentives would no longer exist, as actual costs would simply be tracked and recovered.

SJWC works with ABD Insurance Company and Financial Services for its medical and dental policies.[95] The Affordable Care Act is almost entirely implemented.[96] The standards used to determine whether balancing account treatment is justified are not met here, because the costs are not "due to events of an exceptional nature."[97]

VI. ISSUES CONTESTED BETWEEN THE SIX MUTUAL WATER COMPANIES AND SJWC

ORA submits no opening briefing on these subjects.

A. Whether to Retain or Eliminate the Mountain District and/or the Distinctive Terms of Service Provided for in Schedule 1C

1. Whether There Is Demand that Exceeds SJWC's Capacity to Serve the Mountain District

[91] O-01 at 12-6 – 12-7.

[92] Hearing Tr. at 384:6-11.

[93] Hearing Tr. at 384:25-385:2.

[94] Hearing Tr. at 384:18-24.

[95] O-01 at 12-4:3-9.

[96] O-01 at 12-3:12-17.

[97] O-01 at 12-3:9-11; *see also* Standard Practice U-27-W at 3 ("Balancing Account. . . . When amounts from reserve accounts or memorandum accounts are approved as reasonable by the Commission, those amounts are moved to balancing accounts for recovery"), 6 (¶27, identifying the 5 requirements for a cost to be given memorandum account treatment).

2. If There Is Demand that Exceeds SJWC's Capacity to Serve, What Should Be Done About It

3. $7.00/ccf Over-Use Charge

a. Whether There Is a Cost-of-Service Basis for That Charge

b. Whether That Charge Is Otherwise Justified

4. Interruptible Service

B. Whether Rates for All Customer and Service Classes Should Be Set on a Basis That Equalizes or Tends Toward Equalizing Rates of Return ("RoR") SJWC Derives From Service to Such Classes

1. Whether There Are Differences in RoR Among Customer and Service Classes or Among Customers Within Such Classes

2. If There Are Such Differences in RoR, How and Whether Identical or Similar RoRs Can or Should Be Achieved.

C. Whether to Fund Expanded Water Conservation and Drought Water Source Acquisition Efforts

D. Whether to Base WRAP Discounts on Household Size

VII. UNCONTESTED ISSUES (SJWC OR ORA POSITION ACCEPTED)

A. Sales and Revenue Forecasts

The sales and revenue forecast agreed upon by ORA and SJWC accounts for drought impacts, as well as for increased consumption during any "recovery periods" following the drought.[98] And the mandatory 25% restriction is scheduled to end in February 2016, less than 2 months into the first test year of this general rate case.[99] It would be inappropriate to upset the carefully considered sales and revenue forecasts of ORA and SJWC on the basis of a mandatory restriction that ends so early in the test period.

[98] *See* Hearing Tr. at 338:17-339:14, 342:26-343:4.

[99] Hearing Tr. at 343:5-10.

B. Other Operating, Maintenance and General Expenses

N/A

C. Other Rate Base and Tax Calculations

N/A

D. Water Quality

N/A

E. Customer Service

N/A

F. Escalation Year Rate Adjustments

N/A

G. Other

N/A

VIII. CONCLUSION

For the foregoing reasons, ORA respectfully requests that the Commission adopt ORA's recommendations on the contested issues.

Respectfully submitted,

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