

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SAN JOSE WATER COMPANY (U 168 W)
for an Order Authorizing it to increase the
Water Rate Assistance Program funding
surcharge and to institute an annual
surcharge adjustment mechanism.

Application 13-06-008
(Filed June 6, 2013)

**DECISION APPROVING SETTLEMENT AGREEMENT
BETWEEN THE OFFICE OF RATEPAYER ADVOCATES
AND SAN JOSE WATER COMPANY**

1. Summary

This decision adopts the proposed settlement between the Office of Ratepayer Advocates and San Jose Water Company (San Jose). In connection with San Jose's Water Rate Assistance Program (WRAP), the parties agreed to the following terms: (1) increase, from \$0.20 to \$1.15, the WRAP customer monthly surcharge, implemented by advice letter; (2) establish an audit and verification program to ensure the eligibility of customers enrolled through data sharing and report on findings; and (3) at this time, not to adopt a mechanism to allow annual adjustment to the WRAP surcharge. This decision resolves all issues raised in this proceeding. The proceeding is closed.

2. Background**2.1. Procedural Background**

San Jose Water Company (San Jose) filed Application 13-06-008 on June 6, 2013 requesting the Commission to increase the monthly customer surcharge for its Water Rate Assistance Program (WRAP) from \$.20 per customer per month to \$1.15 per customer per month and implement a mechanism to allow an annual adjustment, via a Tier 1 Advice Letter, to the WRAP surcharge to reflect changes in program enrollment and rates (Application).

The Office of Ratepayer Advocates (ORA) filed a protest on July 15, 2013 (Protest).¹ ORA identified three issues for the Commission to address:

(1) verification of one-time data sharing program implementation expenses, (2) verification of accounting procedures to track low-income customers and WRAP's incremental costs, and (3) verification that ongoing operational costs are not already included in rates. The assigned Administrative Law Judge (ALJ) scheduled a prehearing conference (PHC) for August 12, 2013 and requested parties to file PHC Statements. As directed, ORA and San Jose filed a Joint PHC Statement explaining that the two had held negotiations and resolved the issues identified in ORA's protest.

Following the August 12, 2013 PHC, the assigned Commissioner issued a Ruling and Scoping Memo identifying the parties, confirming an adopted schedule, determining that evidentiary hearings are not necessary, and listing the issues for the proceeding as follows: (1) whether the proposed WRAP surcharge

¹ The Office of Ratepayer Advocates is formerly known as the Division of Ratepayer Advocates. California Senate Bill 96, approved by the Governor on September 26, 2013, formally changed the name.

increase from \$0.20 to \$1.15 is reasonable and should be adopted;

(2) whether the creation of an annual program surcharge adjustment mechanism is reasonable and should be adopted; (3) verification of one-time data sharing program implementation expenses; (4) verification that ongoing operational costs are not currently included in customer rates; and (5) verification of accounting procedures to track the number of low-income customers and the program's incremental costs.

On August 30, 2013, San Jose and ORA jointly filed a motion requesting the Commission to adopt its Settlement Agreement and included a copy of the settlement (Joint Motion). The Settlement Agreement is Appendix A of this decision.²

Because an evidentiary hearing was not held in this proceeding, there was no opportunity to enter testimony into the record. On September 25, 2013, as directed by the ALJ, San Jose and ORA filed a motion to enter the testimony of Stephen Wesley Owens into evidence.³ No party objected to the motion. On September 27, 2013, the ALJ issued a Ruling approving the motion to enter into the record of the proceeding, Exhibit SJWC 1 – Testimony of Stephen Wesley Owens Regarding Modification to San Jose Water Company's WRAP and Exhibit SJWC 2 – Qualifications of Stephen Wesley Owens.

² Joint Motion of the Office of Ratepayer Advocates and San Jose Water Company for Adoption of Settlement Agreement (Joint Motion). The Settlement Agreement was attached as Attachment A to the Joint Motion.

³ The ALJ informed parties, via e-mail on September 26, 2013, that a document referenced in the testimony had been omitted from the filing. On September 26, 2013, ORA and San Jose filed an Amendment to include the omitted document and correct the Application number on the testimony.

2.2. History of the WRAP and its Surcharge

The WRAP, authorized in Decision (D.) 04-08-054, provides assistance to qualifying low-income customers in the San Jose service area through a 15 percent discount on monthly bills. The program is funded through a flat monthly surcharge paid by ratepayers not participating in the WRAP. That surcharge is currently set at \$0.20 per customer per month.

From November 2006 to January 2010, participation in the program nearly tripled from 2,300 customers to approximately 6,300 due primarily to outreach efforts and the 2008 financial crisis.⁴ However, in December 2012, San Jose fully implemented a data sharing program with Pacific Gas and Electric Company (PG&E).⁵ Under the data sharing program, customers qualified for low-income assistance with their PG&E accounts are automatically enrolled in the WRAP. The data sharing program increased the number of WRAP participants to more than 24,000 customers as of April 2013.⁶

When San Jose initially established WRAP, the program was designed such that the revenue from the \$0.41 surcharge would offset the costs of the 15 percent discounts provided to approximately 16,500 WRAP customers.⁷ While WRAP participation levels have experienced a 400 percent increase, the Commission decreased the surcharge to \$0.10 in 2006, and then increased it to \$0.20 in September 2009 where it has remained. The current \$0.20 surcharge,

⁴ Exhibit SJWC-1 at 2-3.

⁵ *Id.* at 3.

⁶ *Ibid.*

⁷ *Id.* at 2.

established in September 2009, is based on the 5,000 WRAP customers at that time.⁸

3. Proposed Settlement Agreement

According to the Joint Motion, ORA and San Jose engaged in good faith settlement negotiations with San Jose providing documentation verifying ORA's concerns. Those concerns include: (1) that the one-time data sharing program implementation costs are properly recorded in San Jose's Data Sharing Cost Tracking Memorandum Account and not in the WRAP balancing account; (2) that ongoing costs are not already included in customer rates; and (3) that the procedures used by San Jose for tracking the number of low-income customers and the program's incremental costs are adequate.

The proposed Settlement Agreement is an all-party settlement and resolves all issues that were raised in the Application and Protest. No protests or comments were filed in response to the Joint Motion. The key terms of the Settlement Agreement are summarized below.

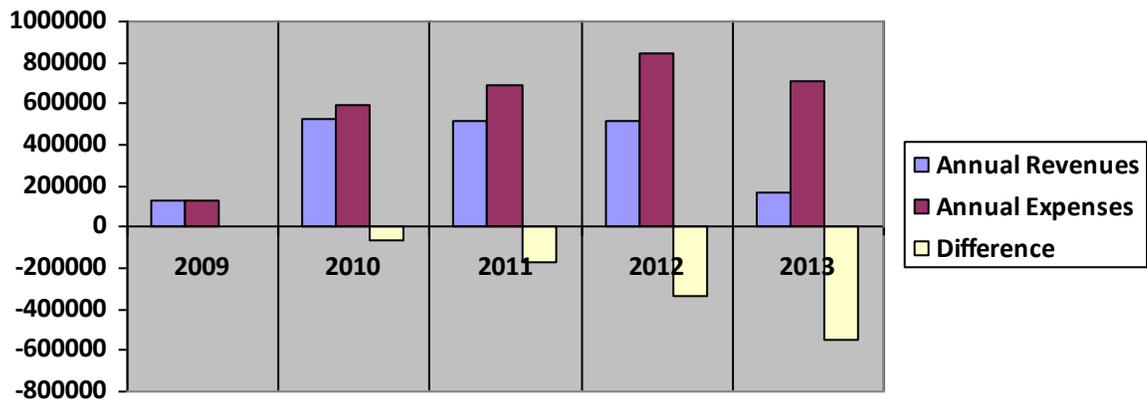
3.1. Increase of WRAP Surcharge

Under the Settlement Agreement, the WRAP surcharge is increased from \$0.20 to \$1.15, and implemented by a Tier 1 advice letter. The increase should address the existing discrepancy between the program's costs and revenues, which have resulted in an under-collection of the WRAP balancing account.

⁸ *Ibid.*

As previously discussed, since its approval in September 2009, the WRAP surcharge has remained at \$0.20 while the number of participants has increased from 5,000 customers to 24,400, as of April 2013. San Jose provided a table in its testimony, comparing annual WRAP revenues from the surcharge with the annual expenses including interest. Chart 1, below, is a recreation of that table.

Chart 1



In order to attain a balance between revenues and expenses, San Jose and ORA agree that the surcharge should be set at \$1.15 per customer per month.

San Jose provided the following formula for calculating the surcharge:

$$\text{WRAP Surcharge} = \frac{\# \text{ WRAP Customers} \times \text{Avg Bill} \times 15\% + \text{WRAP Expenses}}{\# \text{ of Non -WRAP Customers}}$$

San Jose provided the following data for this calculation:⁹

$$\$1.15 = \frac{24,400 \times \$61.52 \times 0.15 + \$2,705,958}{\text{# of Non -WRAP Customers}}$$

⁹ SJWC-1 at Attachment 1.

194,700

3.2. WRAP Audit and Verification Program

Under the Settlement Agreement, San Jose will establish a program to audit and verify, on an ongoing basis, the eligibility of its WRAP customers who are not a “hard match” with any individual enrolled in PG&E’s low income program, based on a comparison of surnames and addresses. San Jose will report on the findings of this process in its next general rate case, scheduled to be filed in January 2016.

As discussed in its protest, ORA expressed concern regarding the accounting procedures to track low-income customers. San Jose provided documentation verifying, to ORA’s satisfaction, that the accounting procedures for tracking the number of low-income customers are adequate.¹⁰ Both ORA and San Jose contend that the WRAP Audit and Verification program would ensure the continued eligibility of those WRAP customers enrolled through means other than the data sharing program with PG&E.

The data sharing program adopted by the Commission requires regulated water utilities to match data received from regulated energy utilities to effectively ascertain customer eligibility for enrollment in low-income assistance programs. For San Jose, customers whose surnames and address are successfully matched and are identified as eligible for the low-income program are automatically enrolled in WRAP with an opportunity, through a notification letter, to opt-out of the program.¹¹

¹⁰ Joint Motion at 4.

¹¹ Exhibit SJWC-1 at 3.

3.3. Annual Adjustment Mechanism

The Settlement Agreement requires that San Jose not establish a mechanism for an annual adjustment to the WRAP surcharge to reflect changes in program enrollment and rates. In its application, San Jose requested that the Commission allow it to “implement a mechanism to allow annual adjustments, via a Tier 1 Advice Letter, to the WRAP surcharge to reflect changes in program enrollment and rates.”¹² Neither the San Jose Application nor the Testimony provided a description of the mechanism. ORA was critical of the request and San Jose agreed to eliminate the request.¹³

4. Standard of Review for Settlement Agreements

We review this uncontested Settlement Agreement pursuant to Rule 12.1(d),¹⁴ which provides that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with the law, and in the public interest.” We find the proposed settlement meets the Rule 12.1(d) criteria, and we therefore approve the settlement. Below, we discuss each of the three criteria in detail.

The Settlement Agreement was a collaborative effort between the parties. ORA, which represents ratepayer interests, protested the application of San Jose. ORA and San Jose engaged in good faith settlement negotiations.¹⁵

The Settlement Agreement is consistent with Commission decisions on settlements, which express a strong public policy favoring settlement of disputes

¹² San Jose Application at 3.

¹³ Joint Motion at 5.

¹⁴ All references to Rules are to the Commission’s Rules of Practice and Procedure.

¹⁵ Settlement Agreement at 4.

if they are fair and reasonable in light of the whole record.¹⁶ This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.¹⁷ As long as a settlement, taken as a whole, is reasonable in light of the record, consistent with law, and in the public interest, it may be adopted.

4.1. The Settlement Agreement is Reasonable in Light of the Whole Record

We find that the record contains sufficient information for us to determine the reasonableness of the Settlement Agreement.

In assessing whether the Settlement Agreement is reasonable, we consider here the record including Exhibit SJWC-1 and its Attachment 1, attached to the Joint Motion, and the undisputed material facts and conclusions set forth in the Settlement Agreement.¹⁸

The record demonstrates that immediate Commission action is necessary. Exhibit SJWC-1 documents the history of the WRAP, the rapid increase in the number of WRAP customers since the implementation of data sharing with PG&E, and the revenue effect of the WRAP surcharge. Based on Exhibit SJWC-1, the revenue undercollection was \$65,742 at the end of 2010 and over \$0.5 million by April of 2013.¹⁹ Without immediate action, the undercollection balance will continue, and future customers will bear the burden of making up the difference.

¹⁶ See D.05-03-022 at 9.

¹⁷ *Id.*

¹⁸ Settlement Agreement at 2-4.

¹⁹ SJWC-01 at 4, Table 1.

The methodology for calculating the new WRAP surcharge is reasonable. The amount of the adjustment to the current WRAP surcharge amount is reasonable.

The audit and verification program provided for in the Settlement Agreement satisfies ORA's concern the expenses associated with WRAP are warranted.²⁰

We find that the changes implemented by the Settlement Agreement are a reasonable way to resolve this proceeding. The Settlement Agreement will allow for an immediate reduction in the rate of undercollection and will thereby limit the burden to future ratepayers.

4.2. Settlement Agreement is Consistent with the Law

The joint parties, who represent all of the parties in the current proceeding, assert that the terms of the Settlement Agreement comply with all applicable laws and decisions. We agree that nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

²⁰ Joint Motion at 6.

4.3. Settlement Agreement is in the Public Interest

We also find that the Settlement Agreement is in the public interest and in the interest of San Jose's customers. It has the support of both parties in the proceeding, San Jose who provides the water service and ORA who represents the ratepayers. Approval of the Settlement Agreement avoids the cost of further litigation regarding this issue and conserves Commission resources. It prevents ratepayers from shouldering the burden of additional undercollections. As the joint parties put it, the Settlement Agreement enables San Jose to resolve the chronic under-collection in its WRAP balancing account by balancing WRAP revenues and subsidies and the audit program will ensure that WRAP funds are used to benefit only customers who require and are eligible for the benefit of the program. Furthermore, because the Settlement Agreement provides for the funding of a program that benefits low-income customers while simultaneously ensure that the benefits are justified, it strongly advances the public interest.²¹

5. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

²¹ Joint Motion at 8.

Findings of Fact

1. In December 2012, San Jose Water Company fully implemented a data sharing program with Pacific Gas and Electric Company.
2. The data sharing program allows customers who have qualified for low-income assistance with their PG&E accounts to be enrolled automatically in the WRAP.
3. The data sharing program increased the number of WRAP participants to more than 24,000 as of April 2013.
4. WRAP participation levels increased 400 percent from 2006 to 2013 but the surcharge fell and rose from the original \$0.41 to \$0.10 and then up to the current \$0.20 per customer per month.
5. The current \$0.20 surcharge, established in September 2009, is based on the 5,000 customers at that time.
6. On May 25, 2012, San Jose and ORA filed the Joint Motion requesting approval of the Settlement Agreement which addressed all of the proposals made by San Jose in the Petition and all issues raised by ORA in its response.
7. The Settlement Agreement requires that San Jose implement the following:
 - increase the WRAP surcharge from \$0.20 to \$1.15 per customer per month;
 - establish a program to audit and verify, on an ongoing basis, the eligibility of its WRAP customers whose surnames and addresses do not match any individual enrolled in PG&E's low income program; and
 - not establish a mechanism for an annual adjustment to the WRAP surcharge to reflect changes in program enrollment and rates.
8. The proposed Settlement Agreement is an all-party settlement and resolves all issues raised in the Application and Protest.

9. Immediate Commission action is necessary.
10. The Settlement Agreement will allow for an immediate reduction in the rate of undercollection and limit the burden to future ratepayers.

Conclusions of Law

1. No term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.
2. The methodology for calculating the revised WRAP surcharge is reasonable.
3. The amount of the adjustment to the current WRAP surcharge amount is reasonable.
4. The requirements of the Settlement Agreement are a reasonable way to resolve the proceeding.
5. Pursuant to Commission Rules of Practice and Procedure 12.1(d), the Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.
6. The requirement for a 30-day period for public review and comment should be waived, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2).
7. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.
8. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between the Office of Ratepayer Advocates and San Jose Water Company, attached hereto as Appendix A, is approved.

2. San Jose Water Company shall file a Tier 1 advice letter to adjust the existing ongoing Water Rate Assistance Program (WRAP) surcharge to \$1.15 per customer per month for all non-WRAP customers. The Tier 1 advice letter shall be filed no later than 10 days from the issuance of this Decision. The advice letter shall become effective upon filing.

3. San Jose Water Company shall establish, on an ongoing basis, an audit and verification program to ensure the eligibility of Water Rate Assistance Program customers whose last name and address do not match an individual enrolled in Pacific Gas and Electric Company's low income program.

4. In its next general ratecase, San Jose Water Company shall report on the findings of the audit and verification program described in Ordering Paragraph Number 3 of this decision.

5. Application 13-06-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.